

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-5832-6]

**Proposed Reissuance of NPDES General Permits for Storm Water Discharges From Construction Activities****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of proposed NPDES general permits.

**SUMMARY:** The Regional Administrators of Regions I, II, III, VI, VII, VIII, IX, and X are today proposing to re-issue National Pollutant Discharge Elimination System (NPDES) general permits for storm water discharges associated with construction activity. EPA first issued permits for these activities in September 1992. Almost all of these existing permits expire in September 1997 and today's proposed permits will be replacements. Today's permits are similar to the 1992 permits and will authorize the discharge of storm water from construction activities consistent with the terms and conditions of these permits.

**ADDRESSES:** The index to the administrative record for this permit is available at the appropriate Regional Office or from the EPA Water Docket in Washington, DC. The complete administrative record is located at the Water Docket, MC-4101, U.S. EPA, 401 M Street SW, Washington, DC 20460. Copies of information in the record are available upon request. A reasonable fee may be charged for copying. Specific record information can also be made available at the appropriate Regional Office upon request.

**FOR FURTHER INFORMATION CONTACT:** For further information on the proposed NPDES general permit write or telephone the EPA Regional Storm Water Coordinators at the addresses listed in Part IV. J. of this Fact Sheet. **PUBLIC COMMENT PERIOD:** The public comment period for this proposed permit will be from the date of publication until August 1, 1997. All public comments shall be submitted to: ATTN: CBGP—Comments, W-97-01, Water Docket MC-4101, U.S. EPA, Room 2616 Mall, 401 M Street SW., Washington, DC 20460

Please submit the original and three copies of your comments and enclosures (including references). Comments must be received or post-marked by midnight no later than August 1, 1997. To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer

that commenters cite, where possible, the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to: ow-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and forms of encryption. Electronic comments must be identified by the docket number W-97-01. No Confidential Business Information (CBI) should be submitted through e-mail. Comments and data will also be accepted on disks in WordPerfect 5.1 format or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The record for these proposed permits has been established under docket number W-97-01, and includes supporting documentation as well as printed, paper versions of electronic comments. It does not include any information claimed as CBI. The record is available for inspection from 9 am to 4 pm, Monday through Friday, excluding legal holidays, at the Water Docket, Room M2616, Washington, DC 20460. For access to the docket materials, please call (202) 260-3027 to schedule an appointment.

**Public Hearings**

Public hearings will be held at the times and locations provided below.

**EPA Region 1:****Boston, Massachusetts**

**Date:** Thursday, July 24, 1997.

**Time:** 6:00 pm–9:00 pm.

**Place:** John A. Volpe National Transportation Systems Center, 55 Broadway—Kendall Square, Cambridge, MA 02142.

**Portland, Maine**

**Date:** Tuesday, July 22, 1997.

**Time:** 2:00 pm–5:00 pm.

**Place:** Portland City Hall, 389 Congress Street, Room 208, Portland, ME 04101.

**Concord, New Hampshire**

**Date:** Tuesday, July 1, 1997.

**Time:** 6:00 pm–9:00 pm.

**Place:** Department of Environmental Services, Auditorium, 6 Hazen Drive, Concord, NH 03302.

**EPA Region 6:****Public Meetings**

Houston, TX: June 17, 1997, 1:00 pm, Howard Johnson/Hobby, 7777 Airport Blvd., Houston, Texas.

Albuquerque, NM: June 20, 1997, 1:00 pm, University of New Mexico, Student Union Grand Ballroom, Albuquerque, New Mexico.

Dallas, TX: July 10, 1997, 9:00 am, EPA Region 6 Offices, 12th Floor, 1445 Ross Ave., Dallas, Texas.

**Public Hearing**

Dallas, TX: July 10, 1997, 1:00 pm, EPA Region 6 Offices, 12th Floor, 1445 Ross Ave., Dallas, Texas.

The public meetings will include a presentation on the draft permits and a question and answer session. Written, but not oral, comments for the official permit record will be accepted at the public meetings. The public hearing in Dallas covers all Region 6 draft permits proposed today, will be conducted in accordance with 40 CFR 124.12, and provides interested parties with the opportunity to provide written and/or oral comments for the official record.

**EPA Region 9:**

**Date:** July 24, 1997.

**Time:** 1–5 p.m.

**Place:** Arizona Department of Environmental Quality, Public Meeting Room, 3033 North Central Ave., Phoenix, Arizona.

**EPA Region 10:****Boise, Idaho**

**Date:** Thursday, July 24, 1997.

**Time:** 6:00 pm–10:00 pm.

**Place:** Idaho Public Television Building, Telemedia Room (First Floor), 1455 North Orchard, Boise, Idaho 83706

**Seattle, Washington**

**Date:** Tuesday, July 29, 1997.

**Time:** 6:00 pm–10:00 pm.

**Place:** Park Place Building, Denali/Kenai Room (14th Floor), 1200 6th Avenue, Seattle, Washington 98101

**Anchorage, Alaska**

**Date:** Thursday, July 31, 1997.

**Time:** 5:00 pm–9:00 pm.

**Place:** Federal Building/United States Court House, Room 135, 222 West 7th Avenue, Anchorage, Alaska 99513

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## Part I—Introduction

The Regional Administrators of the United States Environmental Protection Agency (EPA) are proposing to re-issue general permits to authorize storm water discharges associated with construction activity disturbing five or greater acres. EPA is expanding coverage in this proposal to also provide for coverage for construction sites of under five acres of disturbed land where designated by the Director for coverage under 40 CFR 122.26(a)(1)(v) or 122.26(a)(9) and 122.26(g)(1)(i). These proposed permits will take the place of the existing construction storm water general permits, which in almost all cases were issued for five year terms in September 1992 and expire in September 1997.

These proposed new permits are similar to the existing permit, with several changes. The most significant changes include expanded conditions to protect endangered and threatened species; new conditions to protect historic properties; a new requirement to post a copy of the permit coverage confirmation and a brief description of the project; provide for public access to copies of a pollution prevention plan on the site, or in another nearby location where it can be viewed by the public, if they request; terms for construction activities transitioning from the existing

permit; clarification of who must be a permittee and their requirements; a streamlined permitting option for utility companies; the requirement to submit a notice of permit termination when construction is completed; the ability to acquire permit coverage for other construction dedicated industrial activities (e.g. concrete batching plant) under this one permit; and pollution prevention plan performance objectives.

Point source discharges of storm water associated with industrial activity are prohibited unless authorized under a National Pollutant Discharge Elimination System (NPDES) permit by the Clean Water Act. In 1990, EPA promulgated the storm water permit application rule (55 FR 47990), as revised, which defined what types of industrial activity are subject to this requirement. EPA defined storm water discharges associated with industrial activity to include construction activity disturbing five or more acres of land. EPA issued the first general permits to cover construction activities in September 1992. These proposed general permits for storm water discharges associated with construction activity will be issued with distinctly different permit numbers in the following areas:

*Region 1:* The Commonwealth of Massachusetts, the States of Maine and New Hampshire, and Indian Country lands in the Commonwealth of Massachusetts, the States of Maine, New Hampshire, Rhode Island, and Connecticut; and Indian Country lands and Federal facilities in Vermont.

*Region 2:* The Commonwealth of Puerto Rico and Indian Country lands in the State of New York.

*Region 3:* District of Columbia; Federal facilities in the State of Delaware.

*Region 6:* The States of New Mexico and Texas; Indian Country lands in Louisiana, Oklahoma and Texas; New Mexico (except Navajo Reservation lands (see Region 9) and Ute Mountain Ute Reservation lands (see Region 8)).

*Region 7:* Indian Country lands in Iowa, Kansas and Nebraska, (except Pine Ridge Reservation lands (see Region 8)).

*Region 8:* Federal facilities in Colorado and Indian Country lands in Colorado (including the portion of the Ute Mountain Ute Reservation located in New Mexico); Indian Country lands in Montana; Indian Country lands in North Dakota (including that portion of the Standing Rock Reservation located in South Dakota—except for the Lake Traverse Reservation which is covered under the permit for areas of South Dakota); Indian Country lands in South

Dakota (including the portion of the Pine Ridge Reservation located in Nebraska and the portion of the Lake Traverse Reservation located in North Dakota—except for the Standing Rock Reservation which is covered under the permit for areas of North Dakota); Indian County lands in Utah (except Goshute and Navajo Reservation lands (see Region 9)) and Indian Country lands in Wyoming.

*Region 9:* The Island of American Samoa, the State of Arizona, the Island of Guam, Johnston Atoll, Midway Island and Wake Island, Commonwealth of the Northern Mariana Islands; and Indian Country lands in the State of Arizona (including Navajo Reservation lands in New Mexico and Utah), the State of California, and the State of Nevada (including the Duck Valley Reservation in Idaho, the Fort McDermitt Reservation in Oregon and the Goshute Reservation in Utah).

*Region 10:* The States of Idaho and Alaska; Indian Country lands in Idaho (except Duck Valley Reservation (see Region 9)), Alaska, Washington, and Oregon (except see Region 9 for Fort McDermitt Reservation); and Federal facilities in Washington.

## Part II—Coverage of General Permits

Section 402(p) of the Clean Water Act (CWA) states that storm water discharges associated with industrial activity to waters of the United States must be authorized by an NPDES permit. On November 16, 1990, EPA published regulations under the NPDES program which defined the term “storm water discharge associated with industrial activity”. Included in this definition are storm water discharges from construction activities (including clearing, grading, and excavation activities) that result in the disturbance of five or more acres of total land area, including smaller areas that are part of a larger common plan of development or sale (40 CFR 122.26(b)(14)(x)).<sup>1</sup> These types of construction activity are commonly referred to as Phase I construction activities. The term “storm water discharge from construction activities” will be used in this document to refer to the variety of storm water discharges from Phase I construction sites that are related to actions commonly occurring on, or in

<sup>1</sup> On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exemption for construction sites of less than five acres to the EPA for further rulemaking (*Natural Resources Defense Council v. EPA*, Nos. 90-70671 and 91-70200, slip op. at 6217 (9th Cir. June 4, 1992). Until a new rule is promulgated to address sites of under five acres, EPA will continue to require NPDES permits for storm water discharges from construction activities of five or more acres.

support of, construction, including those that meet the definition of a storm water discharge associated with industrial activity or those that are designated under the designation provisions of 40 CFR 122.26.

The previous permit may have created some confusion as to eligibility for operators of sites disturbing less than five acres that are part of a larger common plan of development or sale. EPA is clarifying in today's proposed permit, that all construction activity regulated under 40 CFR 122.26(b)(14)(x) is eligible for coverage under this permit including small construction sites disturbing less than five acres that are a part of a larger common plan of development of which disturbance cumulatively exceeds five acres. These are also Phase I construction activities.

EPA further clarifies that singular construction sites with disturbances of less than five acres are not eligible for coverage under this permit unless they are specifically designated for coverage under 40 CFR 122.26 (a)(1)(v) or under 122.26(a)(9) and 122.26(g)(1)(i). Under EPA's existing regulations, these facilities are required to submit permit applications not later than August 7, 2001, unless an applicant is specifically required by the Director to submit an application before that time. These small (Phase II) construction sites will be addressed by EPA in future rulemaking in response to the Ninth Circuit decision. EPA is employing the assistance of a Federal Advisory Committee to make recommendations on how best to deal with such sites. EPA will publish a proposed rule addressing these Phase II small construction activities by September 1, 1997 and will finalize this rule by March 1, 1999. As a result of this effort, if singular construction sites of less than five acres are regulated under the NPDES Phase II storm water permitting program, permits for those sites will be issued at a future date.

EPA issued the first round of Phase I construction general permits on two dates; September 9, 1992 for certain States and territories and on September 25, 1992 for the remaining States and territories where EPA is the permitting authority. Today's proposed permit is the second round permit for use in the States, Territories and Indian Country lands where EPA is the NPDES permitting authority. In this second round permit, EPA is expanding permit coverage to certain Indian Country lands which were not covered under the 1992 permit. These new areas are listed in the areas of coverage section of the proposed permit and this fact sheet.

All Phase I construction activity operators in EPA Region IV should take note, that different from the 1992 permit, this second round permit no longer authorizes discharges from construction activities in Indian Country lands located in Florida, Mississippi or North Carolina. EPA Region IV is preparing a separate second round permit for use in all Region IV areas where EPA is the NPDES permitting authority. This permit was separately noticed in the **Federal Register** on April 16, 1997 (Volume 62, Number 73, pages 18605–18628) for storm water discharges in Florida.

EPA intends to issue this second round construction storm water general permit prior to expiration of the existing 1992 permit which expires on September 9, 1997 for most locations where EPA is the permitting authority and on September 25, 1997 for the other areas. EPA intends to make every effort to issue this permit prior to the expiration date of the existing permits. However, if this does not occur, under the Administrative Procedures Act (APA), when EPA is the permit issuing authority, the conditions in an expired permit remain in force until the effective date of the new permit, provided the applicant submits a timely application (40 CFR 122.6, 48 FR 14158 (April 1, 1983)).

EPA is proposing that construction projects currently authorized to discharge under the 1992 construction general permit, submit a new notice of intent (NOI) for continued coverage under the APA extended permit, should they need continuing permit coverage past the expiration date. If a project is scheduled to begin near the time of permit expiration and EPA has yet to issue the new permit, EPA recommends that the operator submit an NOI further in advance of the start of the project than the minimum 48 hours and prior to expiration of the existing permit.

Upon issuance of the new permit, operators as defined in this proposed permit, must submit an NOI in accordance with the requirements of the permit. The proposed permit proposes the use of a revised NOI form. This new general permit would authorize storm water discharges from existing construction sites and new construction sites over the five year term of issuance. To obtain authorization under today's permit, a discharger must submit a complete and accurate NOI and comply with the terms of the permit. The terms of the permit, including the requirements for submitting an NOI, are discussed in more detail below.

The following discharges are not authorized by this proposed general permit:

- Storm water discharges associated with industrial activity that originate from the site after construction activities have been completed and the site has undergone final stabilization;
- Non-storm water discharges (except certain non-storm water discharges specifically listed in today's general permit). However, today's permit can authorize storm water discharges from construction activities where the discharges are mixed with non-storm water discharges that are authorized by a different NPDES permit;
- Storm water discharges from construction activities that are covered by an existing NPDES individual or general permit. However, storm water discharges associated with industrial activity from a construction site that are authorized by an existing permit may be authorized by today's general permit after the existing permit expires, provided the expired permit did not establish numeric limitations for the storm water discharges;
- Storm water discharges from construction activities that the Director has determined to be or may reasonably be expected to be contributing to a violation of a water quality standard;
- Storm water discharges from construction activity and the construction and implementation of Best Management Practices (BMPs) to control storm water runoff, if the discharges are likely to adversely affect a listed endangered or threatened species or its critical habitat (unless in compliance with specific Endangered Species Act (ESA) related permit conditions in this permit); and
- Storm water discharges from construction activities, and the construction and implementation of Best Management Practices (BMPs) to control storm water runoff, if the discharges are not in compliance with the National Historic Preservation Act (NHPA).

### Part III—Summary of Options for Controlling Pollutants

EPA is providing the following summary information on controlling pollutants in storm water discharges in order to assist permittees in preparing storm water pollution prevention plans. Most controls for construction activities can be categorized into two groups:

- Sediment and erosion controls; and
  - Storm water management measures.
- Sediment and erosion controls generally address pollutants in storm water generated from the site during the time when construction activities are

occurring. Storm water management measures generally are installed during and before competition of the construction process, but primarily result in reductions of pollutants in storm water discharged from the site after the construction has been completed. Additional measures include housekeeping best management practices.

#### A. Sediment and Erosion Controls

Erosion controls provide the first line of defense in preventing offsite sediment movement and are designed to prevent erosion through protection and preservation of soils. Sediment controls are designed to remove sediment from runoff before the runoff is discharged from the site. Sediment and erosion controls can be further divided into two major classes of controls: stabilization practices and structural practices. Major types of sediment and erosion practices are summarized below. A more complete description of these practices is given in "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices," U.S. EPA, 1992.

##### 1. Sediment and Erosion Controls: Stabilization Practices

Stabilization, as discussed here, refers to covering or maintaining an existing cover over soils. The cover may be vegetation, such as grass, trees, vines, or shrubs. Stabilization measures can also include nonvegetative controls such as geotextiles, riprap, or gabions (wire mesh boxes filled with rock). Mulches, such as straw or bark, are most effective when used in conjunction with establishing vegetation, but can be used without vegetation. Stabilization of exposed and denuded soils is one of the most important factors in minimizing erosion while construction activities occur. A vegetation cover reduces the erosion potential of a site by absorbing the kinetic energy of raindrops that would otherwise disturb unprotected soil; intercepting water so that it infiltrates into the ground instead of running off the surface; and slowing the velocity of runoff, thereby promoting deposition of sediment in the runoff. Stabilization measures are often the most important measures taken to prevent offsite sediment movement and can provide large reductions suspended sediment levels in discharges and receiving waters.<sup>2</sup> Examples of

stabilization measures are summarized below.

a. *Temporary Seeding.* Temporary seeding provides for temporary stabilization by establishing vegetation at areas of the site where activities will temporarily cease until later in the construction project. Without temporary stabilization, soils at these areas are exposed to precipitation for an extended time period, even though work is not occurring on these areas. Temporary seeding practices have been found to be up to 95 percent effective in reducing erosion.<sup>3</sup>

b. *Permanent Seeding.* Permanent seeding involves establishing a sustainable ground cover at a site. Permanent seeding stabilizes the soil to reduce sediment in runoff from the site by controlling erosion and is typically required at most sites for aesthetic reasons.

c. *Mulching.* Mulching is typically conducted as part of permanent and temporary seeding practices. Where temporary and permanent seeding is not feasible, exposed soils can be stabilized by applying plant residues or other suitable materials to the soil surface. Although generally not as effective as seeding practices, mulching by itself, does provide some erosion control. Mulching in conjunction with seeding provides erosion protection prior to the onset of vegetation growth. In addition, mulching protects seeding activities, providing a higher likelihood of successful establishment of vegetation. To maintain optimum effectiveness, mulches must be anchored to resist wind displacement.

d. *Sod Stabilization.* Sod stabilization involves establishing long-term stands of grass with sod on exposed surfaces. When installed and maintained properly, sodding can be more than 99 percent effective in reducing erosion,<sup>4</sup> making it the most effective vegetation practice available. The cost of sod stabilization (relative to other vegetative controls) typically limits its use to exposed soils where a quick vegetative cover is desired and sites which can be maintained with ground equipment. In addition, sod is sensitive to climate and may require intensive watering and fertilization.

e. *Vegetative Buffer Strips.* Vegetative buffer strips are preserved or planted strips of vegetation at the top and bottom of a slope, outlining property boundaries, or adjacent to receiving

waters such as streams or wetlands. Vegetative buffer strips can slow runoff flows at critical areas, decreasing erosion and allowing sediment deposition.

f. *Protection of Trees.* This practice involves preserving and protecting selected trees that exist on the site prior to development. Mature trees provide extensive canopy and root systems which help to hold soil in place. Shade trees also keep soil from drying rapidly and becoming susceptible to erosion. Measures taken to protect trees can vary significantly, from simple measures such as installing tree fencing around the drip line and installing tree armoring, to more complex measures such as building retaining walls and tree wells.

##### 2. Sediment and Erosion Controls: Structural Practices

Structural practices involve the installation of devices to divert flow, store flow, or limit runoff. Structural practices have several objectives. First, structural practices can be designed to prevent water from crossing disturbed areas where sediment may be removed. This involves diverting runoff from undisturbed up slope areas through use of earth dikes, temporary swales, perimeter dike/swales, or diversions to stable areas. A second objective of structural practices can be to remove sediment from site runoff before the runoff leaves the site. Approaches to removing sediment from site runoff include diverting flows to a trapping or storage device or filtering diffuse flow through silt fences before it leaves the site. All structural practices require proper maintenance (removal of sediment) to remain functional.

a. *Earth Dike.* Earth dikes are temporary berms or ridges of compacted soil that channel water to a desired location. Earth dikes should be stabilized with vegetation.

b. *Silt Fence.* Silt fences are a barrier of geotextile fabric (filter cloth) used to intercept sediment in diffuse runoff. They must be carefully maintained to ensure structural stability and to remove excess sediment.

c. *Drainage Swales.* A drainage swale is a drainage channel lined with grass, riprap, asphalt, concrete, or other materials. Drainage swales are installed to convey runoff without causing erosion.

d. *Sediment Traps.* Sediment traps can be installed in a drainage way, at a storm drain inlet, or other points of discharge from a disturbed area.

e. *Check Dams.* Check dams are small temporary dams constructed across a swale or drainage ditch to reduce the

<sup>2</sup> "Performance of Current Sediment Control Measures at Maryland Construction Sites," January 1990, Metropolitan Washington Council of Governments.

<sup>3</sup> "Guides for Erosion and Sediment Control in California," USDA, Soil Conservation Service, Davis CA, Revised 1985.

<sup>4</sup> "Guides for Erosion and Sediment Control in California," USDA—Soil Conservation Service, Davis CA, Revised 1985.

velocity of runoff flows, thereby reducing erosion of the swale or ditch. Check dams should not be used in a live stream. Check dams reduce the need for more stringent erosion control practices in the swale due to the decreased velocity and energy of runoff.

f. *Level Spreader*. Level spreaders are outlets for dikes and diversions consisting of an excavated depression constructed at zero grade across a slope. Level spreaders convert concentrated runoff into diffuse runoff and release it onto areas stabilized by existing vegetation.

g. *Subsurface Drain*. Subsurface drains transport water to an area where the water can be managed effectively. Drains can be made of tile, pipe, or tubing.

h. *Pipe Slope Drain*. A pipe slope drain is a temporary structure placed from the top of a slope to the bottom of a slope to convey surface runoff down slopes without causing erosion.

i. *Temporary Storm Drain Diversion*. Temporary storm drain diversions are used to re-direct flow in a storm drain to discharge into a sediment trapping device.

j. *Storm Drain Inlet Protection*. Storm drain inlet protection can be provided by a sediment filter or an excavated impounding area around a storm drain inlet. These devices prevent sediment from entering storm drainage systems prior to permanent stabilization of the disturbed area.

k. *Rock Outlet Protection*. Rock protection placed at the outlet end of culverts or channels can reduce the depth, velocity, and energy of water so that the flow will not erode the receiving downstream reach.

l. *Other Controls*. Other controls include temporary sediment basins, sump pits, entrance stabilization measures, waterway crossings, and wind breaks.

#### B. Storm Water Management Measures

Storm water management measures are installed during and prior to completion of the construction process, but primarily result in reductions of pollutants in storm water discharged from the site after the construction has been completed. Construction activities often result in significant changes in land use. Such changes typically involve an increase in the overall imperviousness of the site, which can result in dramatic changes to the runoff patterns of a site. As the amount within a drainage area increases, the amount of pollutants carried by the runoff increases. In addition, activities such as automobile travel on roads can result in higher pollutant concentrations in

runoff compared to preconstruction levels. Traditional storm water management controls attempt to limit the increases in the amount of runoff and the amount of pollutants discharged from a site associated with the change in land use.

Major classes of storm water management measures include infiltration of runoff onsite; flow attenuation by vegetation or natural depressions; outfall velocity dissipation devices; storm water retention structures and artificial wetlands; and storm water detention structures. For many sites, a combination of these controls may be appropriate. A summary of storm water management controls is provided below. A more complete description of storm water management controls is found in "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices," U.S. EPA, 1992, and "A Current Assessment of Urban Best Management Practices," Metropolitan Washington Council of Governments, March 1992.

##### 1. Onsite Infiltration

A variety of infiltration technologies, including infiltration trenches and infiltration basins, can reduce the volume and pollutant loadings of storm water discharges from a site. Infiltration devices tend to mitigate changes to predevelopment hydrologic conditions. Properly designed and installed infiltration devices can reduce peak discharges, provide ground water recharge, augment low flow conditions of receiving streams, reduce storm water discharge volumes and pollutant loads, and protect downstream channels from erosion. Infiltration devices are a feasible option where soils are permeable and the water table and bedrock are well below the surface. Infiltration basins can also be used as sediment basins during construction<sup>5</sup>. Infiltration trenches can be more easily placed into under-utilized areas of a development and can be used for small sites and infill developments. However, trenches may require regular maintenance to prevent clogs, particularly where grass inlets or other pollutant removing inlets are not used. In some situations, such as low density areas of parking lots, porous pavement can provide for infiltration.

<sup>5</sup> "Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs," July, 1987, Metropolitan Washington Council of Governments.

##### 2. Flow Attenuation by Vegetation or Natural Depressions

Flow attenuation provided by vegetation or natural depressions can provide pollutant removal and infiltration and can lower the erosive potential of flows<sup>6</sup>. In addition, these practices can enhance habitat values and the appearance of a site. Vegetative flow attenuation devices include grass swales and filter strips as well as trees that are either preserved or planted during construction.

Typically the costs of vegetative controls are less than other storm water practices. The use of check dams incorporated into flow paths can provide additional infiltration and flow attenuation.<sup>7</sup> Given the limited capacity to accept large volumes of runoff, and potential erosion problems associated with large concentrated flows, vegetative controls should usually be used in combination with other storm water devices.

Grass swales are typically used in areas such as low or medium density residential development and highway medians as an alternative to curb and gutter drainage systems.<sup>8</sup>

##### 3. Outfall Velocity Dissipation Devices

Outfall velocity dissipation devices include riprap and stone or concrete flow spreaders. Outfall velocity dissipation devices slow the flow of water discharged from a site to lessen erosion caused by the discharge.

##### 4. Retention Structures/Artificial Wetlands

Retention structures include ponds and artificial wetlands that are designed to maintain a permanent pool of water. Properly installed and maintained retention structures (also known as wet ponds) and artificial wetlands<sup>9</sup> can achieve a high removal rate of sediment, BOD, organic nutrients and metals, and are most cost-effective when used to control runoff from larger, intensively developed sites.<sup>10</sup> These devices rely on settling and biological processes to

<sup>6</sup> "Urban Targeting and BMP Selection," United States EPA, Region V, November 1990.

<sup>7</sup> "Standards and Specifications for Infiltration Practices," 1984, Maryland Water Resources Administration.

<sup>8</sup> "Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs," Metropolitan Washington Council of Governments, July 1987.

<sup>9</sup> See "Wetland basins for Storm Water Treatment: Discussion and Background," Maryland Sediment and Storm Water Division, 1987 and "The Use of Wetlands for Controlling Stormwater Pollution," Strecker, E., et. al., 1990.

<sup>10</sup> "Controlling Urban Runoff, A Practical Manual for Planning and Designing Urban BMPs," Metropolitan Washington Council of Governments, 1987.

remove pollutants. Retention ponds and artificial wetlands can also create wildlife habitat, recreation, and landscape amenities, as well as corresponding higher property values.

#### 5. Water Quality Detention Structures

Storm water detention structures include extended detention ponds, which control the rate at which the pond drains after a storm event. Extended detention ponds are usually designed to completely drain in about 24 to 40 hours, and will remain dry at other times. They can provide pollutant removal efficiencies that are similar to those of retention ponds.<sup>11</sup> Extended detention systems are typically designed to provide both water quality and water quantity (flood control) benefits.

#### C. Housekeeping BMPs

Pollutants that may enter storm water from construction sites because of poor housekeeping include oils, grease, paints, gasoline, concrete truck wash down, raw materials used in the manufacture of concrete (e.g., sand, aggregate, and cement), solvents, litter, debris, and sanitary wastes. Construction site management plans can address the following to prevent the discharge of these pollutants:

- Designate areas for equipment maintenance and repair;
- Provide waste receptacles at convenient locations and provide regular collection of wastes;
- Locate equipment wash down areas on site, and provide appropriate control of washwaters;
- Provide protected storage areas for chemicals, paints, solvents, fertilizers, and other potentially toxic materials; and
- Provide adequately maintained sanitary facilities.

### Part IV—Summary of Permit Conditions

#### A. Eligibility

These proposed permits would authorize all discharges of storm water from construction activities, except those discussed under the Limitations on Coverage section. Any discharge authorized by a different NPDES permit may be commingled with discharges authorized by this permit. The proposed permit would also authorize discharges from support activities which are related to the construction project (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, etc.) provided that the

support activities meet the following conditions:

- The support activity is not a commercial operation serving multiple unrelated construction projects and does not operate beyond the completion of the construction project; and
- Appropriate controls and measures are identified in the storm water pollution prevention plan for the discharges from the support activity areas.

#### B. Limitations on Coverage

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

1. Storm water discharges which originate from the site after the construction activities have been completed and the site has undergone final stabilization
2. Storm water discharges which are mixed with non storm water sources other than those identified and in compliance with the permit. Non storm water discharges which are authorized under a different NPDES permit may be commingled with discharges authorized under this permit.
3. Storm water discharges associated with construction activity that have been issued an individual permit or required to obtain coverage under an alternative general permit are not covered under this permit.
4. Storm water discharges which the Director (EPA) has determined to be or may reasonably be expected to be contributing to a violation of water quality standards are not covered by this permit.
5. Discharges which are not in compliance with the Endangered Species Act (ESA). In order to obtain coverage, the applicant must certify to meeting one of the criteria detailed in the permit. The criteria are as follows: (a) The storm water discharge(s), and the construction and implementation of Best Management Practices (BMPs) to control storm water runoff, are not likely to adversely affect species identified in Addendum A<sup>12</sup> of this permit or critical habitat for a listed species; or (b) the applicant's activity has received previous authorization

<sup>12</sup> Proposed Addendum A is a State/County listing of endangered species that applicants can refer to to ensure compliance with the eligibility terms and conditions of the proposed permit. Addendum A is not included in this notice, but can be found as Addendum H to the Multi-Sector Storm Water General Permit issued on September 29, 1995 (60 FR 50804). EPA will prepare a final Addendum A to accompany the issuance of the final permit after the public comment period. Reviewers wishing to make comment on Addendum A for today's proposed permit may do so by reviewing Addendum H in the Multi-Sector Permit.

under section 7 or section 10 of the Endangered Species Act and that authorization addressed storm water discharges and/or BMPs to control storm water runoff (e.g., developer included impact of entire project in consultation over a wetlands dredge and fill permit under Section 7 of the Endangered Species Act); or (c) the applicant's activity was considered as part of a larger, more comprehensive assessment of impacts on endangered and threatened species under section 7 or section 10 of the Endangered Species Act that which accounts for storm water discharges and BMPs to control storm water runoff (e.g., where an area-wide habitat conservation plan and section 10 permit is issued which addresses impacts from construction activities including those from storm water, or a National Environmental Policy Act (NEPA) review is conducted which incorporates ESA section 7 procedures); or (d) consultation under section 7 of the Endangered Species Act is conducted for the applicant's activity which results in either a no jeopardy opinion or a written concurrence on a finding of no likelihood of adverse effects; or (e) the applicant's activity was considered as part of a larger, more comprehensive site-specific assessment of impacts on endangered and threatened species by the owner or other operator of the site and that permittee certified eligibility under item (a), (b), (c), or (d) above (e.g., owner was able to certify no adverse impacts for the project as a whole under item (a), so the contractor can then certify under item (e)). Utility companies applying for permit coverage for the entire permit area of coverage as defined under Part I.A. may certify under item (e) since authorization to discharge is contingent on a principal operator of a construction project having been granted coverage under this, or an alternative NPDES permit for the areas of the site where utilities installation activities will occur.

EPA notes that it is requiring all applicants to follow directions provided in Addendum A to ensure protection of listed species and critical habitat when applying for permit coverage. Those directions require that applicants assess the impacts of their "storm water discharges" and "BMPs to control storm water runoff" on listed species and critical habitat that are located "in proximity" to the those discharges and BMPs. In proximity is defined at Addendum A to include species: located in the path or immediate area through which or over which contaminated point source storm water

<sup>11</sup> "Urban Targeting and BMP Selection," United States EPA, Region V, November 1990.

flows from construction activities to the point of discharge into the receiving water; located in the immediate vicinity of, or nearby, the point of discharge into receiving waters; or located in the area of a site where storm water BMPs are planned or are to be constructed. This definition reflects the purpose of this permit which regulates storm water discharges and measures (i.e., BMPs) to control those discharges. However, EPA also solicits comment on whether the area or scope of impacts to be considered by applicants should be broadened to encompass listed species found on the entire construction site and not just those species found "in proximity" as currently defined in Addendum A.

6. Storm water discharges adversely affecting properties eligible for protection under the National Historic Preservation Act. To be eligible for coverage under this permit, all applicants must determine whether their storm water discharges or BMPs to control storm water runoff would affect a property that is listed or is eligible for listing in the National Historic Register maintained by the Secretary of Interior (also known as "historic properties" in the NHPA regulations at 36 CFR 800.2). Applicants must comply with all requirements in this permit (including those pertaining to the development of storm water pollution prevention plans and submission of NOIs) to protect historic properties. Coverage under this permit is available only if (a) the storm water discharges or BMPs to control storm water runoff do not affect a property that is listed or is eligible for listing in the National Historic Register maintained by the Secretary of Interior; or, (b) the applicant consults with the State Historic Preservation Officer (SHPO) or the Tribal Historic Preservation Officer (THPO) on the potential for adverse effects which results in a no effect finding; or (c) the applicant has obtained and is in compliance with a written agreement between the applicant and the SHPO/THPO that outlines all measures to be undertaken by the applicant to mitigate or prevent adverse effects to the historic property; or (d) the applicant agrees to implement and comply with the terms of a written agreement between another owner/operator (e.g., subdivision developer, property owner, etc.) and the SHPO/THPO that outlines all measures to be undertaken by operators on the site to mitigate or prevent adverse effects to the historic property; or (e) the applicant's activity was considered as part of a larger, more comprehensive site-specific assessment of effects on

historic properties by the owner or other operator of the site and that permittee certified eligibility under items (a), (b), (c), or (d) above. Utility companies applying for permit coverage for the entire construction site may certify under item (d) since authorization to discharge is contingent on a principal operator of a construction project having been granted coverage under this, or an alternative NPDES permit for the areas of the site where utilities installation activities will occur.

This permit does not authorize any storm water discharges or BMPs to control storm water runoff which are not in compliance with any applicable State or local historic preservation laws.

#### *C. Obtaining Coverage*

Dischargers who submit a complete and accurate NOI in accordance with the requirements of this permit are authorized to discharge storm water from construction sites under the terms and conditions of this permit. As proposed, authorization to discharge occurs two days after the date that the NOI is postmarked, unless otherwise notified by EPA. Dischargers must have developed and be ready to implement a Storm Water Pollution Prevention Plan (SWPPP) for the areas of the construction project for which they are responsible prior to submission of the NOI. A new NOI must be filed by the new operator when an operator changes or when a new operator is added.

The Agency requests comment on an alternative time frame for NOI submittal. EPA solicits comments on requiring a 30-day advance time frame in which to submit a notice of intent. EPA believes this additional time would allow for a more timely administrative processing of each NOI and allow EPA time to acknowledge coverage and assign a permit number to the permittee prior to work actually commencing on the site. In addition, the 30-day advance notice period may allow EPA more time to review potential impacts of construction activities on endangered species and historic properties. Comments on this option should be submitted during the public review and comment period described above.

EPA may deny coverage under this permit and require submittal of an individual NPDES permit application based on a review of the completeness and/or content of the NOI or other information (e.g., water quality information, compliance history, etc.). Where EPA requires a discharger authorized under the general permit to apply for an individual NPDES permit or an alternative general permit, EPA will notify the discharger in writing that

a permit application is required. Coverage under this general permit will automatically terminate if the discharger fails to submit the required individual or alternative permit application in a timely manner. Where the discharger does submit a requested permit application, coverage under this general permit will automatically terminate on the effective date of the issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee.

#### *D. Terminating Coverage*

Operators needing to terminate coverage must submit a Notice of Termination (NOT). Permittees must submit the NOT within 30 days after completion of their construction activities and final stabilization of their portion of the site. An NOT must also be submitted by the first operator when another operator takes over the responsibilities of a previous operator. Notice of Termination requirements are discussed later in this fact sheet. When a utility company is covered by an area wide permit for installation of services, it is not required to submit NOTs for each project.

#### *E. Notice of Intent Requirements*

NPDES general permits for storm water discharges associated with industrial activity require that dischargers submit a Notice of Intent (NOI) to be covered by the permit prior to the authorization of their discharges under such permit (see 40 CFR 122.28(b)(2), (April 2, 1992, (57 FR 11394)). Consistent with these regulatory requirements, today's permit establishes NOI requirements. Dischargers that submit a complete and accurate NOI are not required to submit an individual permit application for such discharge, unless the Director specifically notifies the discharger that an individual permit application must be submitted.

Dischargers who want to obtain coverage under this permit must submit an NOI using the form provided by EPA (or a photocopy thereof). Proposed NOI forms are in Addendum C of the proposed permit. Each entity which meets either of the two criteria in Part IX (Definitions) of the permit for an "operator" must submit an NOI. An "operator" is any party associated with a construction project which has operational control over project specifications (including the ability to make modifications in specifications) or has day-to-day operational control of those activities at a project site which are necessary to ensure compliance with the permit. The criteria for an operator



in the permit are the same as EPA intended for the existing permits. However, a definition for the term operator has been added to the permit for clarification.

The rationale for the criteria for an operator was discussed in Appendix A—Summary of Responses to Public Comment which accompanied the issuance of the expiring permit (September 9, 1992, (57 FR 41190)). To ensure effective implementation of the requirements of the permit, the permit must directly regulate each entity with control over the critical functions identified above in the definition of an operator. Control over project specifications is necessary to ensure that a project design includes appropriate sediment and erosion control measures and post construction storm water management measures. Day to day operational control is necessary to ensure effective implementation of permit requirements at a project site.

The entities who are considered operators will commonly consist of the owner or developer of a project (the party with control of project specifications) and the general contractor (the party with day to day operational control of the activities at project site which are necessary to ensure compliance with the permit). Contractors and subcontractors who are under the general supervision of the general contractor are not considered operators and would not need to submit NOIs. However, they must certify that they understand the terms and conditions of the proposed permit in accordance with Part IV. E of the permit.

Utility companies (e.g., telephone, electric, gas, cable TV, etc.) are a special class of operator. They typically disturb only a very small portion of the construction site during installation of above ground or underground utility lines. Main service lines are typically installed before construction of buildings, with stubs left for later connections to individual houses or buildings as they are completed. All this utility installation is typically done by utility company personnel or contractors hired directly by the utility company. All installation is typically completed long before final site stabilization is even possible, so utility companies will seldom, if ever, have responsibility for final stabilization (except for areas disturbed by utility companies only during the construction process). While the owner of the project specifies what level of service is desired and safety codes dictate minimum specifications (e.g., size and type of electric wire, depth of trenches, etc.), the utility company retains the ultimate

decision on specifications (e.g., could choose to install bigger lines to serve future demand in adjacent areas) and retains ownership of the utility lines after they are installed in the utility easements. The utility company's long term ownership of utility lines is significant, in that developers and construction companies typically transfer the completed project to the ultimate owner and have no future interest in the site. Utility contractors hired by a utility company or other site operators and not meeting the definition of "operator" are considered subcontractors for the purpose of the permit and are covered by the subcontractor certification requirements of Part IV.E.

In some ways utility companies operate akin to subcontractors, but often without a contract since State/Tribal laws typically require the utility company to provide service to anyone who pays the appropriate installation charges. At times, only one utility company may exist for a particular service within a service area. A site owner often has no choice about which utility company to use and even where there is a choice it is usually between a limited number of "authorized" utility companies. Once a utility company is selected, the site operator typically must allow the utility company to do the installation and cannot choose to install the lines itself. This adds up to a very limited, if any, direct control a site operator actually has over utility company operations on a site other than identifying where easements and structures will be located and coordination on timing of installation. In addition, during enforcement actions there have been complaints from the construction industry that there have been instances where lack of coordination and clear definition of responsibilities have led to damage to storm water control measures without the operator of such measures even being aware that another party was on site.

Recognizing the special case utility companies present, today's permit proposes to establish special NOI and permit requirements for the limited construction activities by utility companies and to allow coverage for the entire permit area with the submittal of a single NOI. Area-wide coverage would only be available provided the site owner/operator has previously obtained coverage for the more comprehensive construction activities at the site and the pollution prevention plan addresses utilities installation and assigns responsibilities for control measures.

As envisioned, the site owner/operator could develop measures specifically for the utility and include them in a "master" pollution prevention plan, or the utility company could provide appropriate control measures for its activities on site to the site owner/operator for attachment to the "master" pollution prevention plan. Given the limited activities of utility companies, the site inspection and other permit conditions of a more comprehensive nature would default to the site owner/operator for implementation. This conditional permit coverage reduces the administrative and financial burden of requiring separate NOIs for each utility company operating at every construction site.

Some of the other options considered for addressing utilities installation included: requiring a full NOI and pollution prevention plan for each utility company project or allowing the utility company to submit a single NOI for area wide permit coverage, but requiring a pollution prevention plan for each project (or providing an addendum for the site operator's plan). While either alternative could satisfy the requirements of the Clean Water Act, the Agency prefers to implement a process with fewer administrative burdens and economic impacts. A requirement for a separate NOI from each utility company at a site would add two to six additional NOIs per project. This would increase the administrative burden on the regulated community, the States, Tribes and EPA. A requirement for NOIs and full pollution prevention plans from each utility company at a site would add unnecessary cost to the relatively routine process of installing utilities (as opposed to the more complicated aspects of managing runoff from an entire construction project). This added cost would eventually be passed on to the owner/buyer of the completed project. While utility companies do have a role in preventing pollution of storm water at construction sites, the Agency has attempted to include utility company accountability in the permit in the most practicable manner possible. The Agency requests comments on these and any alternative methods to insure accountability and equity for all operators at construction sites.

Dischargers operating under approved State, Tribal or local sediment and erosion plans, grading plans, or storm water management plans, must, in addition to filing copies of the NOI with EPA, submit signed copies of the NOI to the State or local agency approving such plans by the deadlines stated below.



### 1. Deadlines for Submitting NOIs

Deadlines for submittal of NOIs to be authorized to discharge under this permit are as follows:

- Parties with operational control over project specifications, (the owners and/or developers), must submit an NOI at least two days prior to commencement of the construction activity.

- Other parties with day to day operational control of activities at a project site must submit an NOI two days prior to their commencing work at the site.

- For storm water discharges from construction sites where the operator changes, (including projects where an operator is added after an NOI has been submitted), an NOI shall be submitted at least two days prior to when the operator commences work at the site.

- Utility companies (telephone, gas, electric, water, sewer and cable etc.) whose involvement in an individual construction project is limited to installation of underground or above ground service lines and associated equipment to provide connections from a main transmission line to individual customers, may file a single NOI to obtain coverage for all such activities in the defined areas of permit coverage. A utility company should file for coverage at least two days prior to beginning work. Coverage obtained by utility companies in this manner is limited to the utility company's activities on sites where an operator of the individual construction project has obtained coverage under this permit; an alternate general permit or an individual permit. The pollution prevention plan for the construction site must identify control measures for the installation of the utilities and the parties responsible for those measures.

When a utility company is constructing a project for itself, it must obtain permit coverage on a case by case basis in the manner described for operators with control over project specifications (i.e.; two days prior to beginning work). Permittees with construction projects authorized to discharge under the previous general permit issued in 1992 must:

- Submit a new NOI within thirty (30) days of the effective date of this permit in order to continue authorization to discharge after July 2, 1997. If the permittee will be eligible to submit a Notice of Termination (NOT) (e.g., construction finished and final stabilization complete) before the 30th day, no NOI is required.

- During the time between the effective date of this permit and July 2,

1997, comply with the terms and conditions of the 1992 baseline general permit they were previously authorized under and submitted an NOI for extended coverage as described under the Administrative Procedures Act before termination of the 1992 baseline general permit.

- Update their current pollution prevention plan to comply with the requirements of Part IV no later than July 2, 1997.

EPA will accept an NOI at a later date for any unpermitted activities that may have occurred between the time construction commenced and the time authorization is received. Late NOIs can only provide coverage for future discharges and do not retro-actively apply to any unpermitted discharges that may have occurred in the past.

*Options Considered:* Several options for NOI deadlines were considered. As described above, the Agency requests comment on an alternative NOI submittal time frame of 30-days. Commenters should give consideration to the criteria that could be used to establish the final permit's NOI deadlines, such as: recognizing the time lapse between submission of the NOI and receipt of actual discharge authorization and minimizing the impact this time lapse could have on the construction industry, providing a mechanism for considering each project's potential impacts on the environment, endangered species or historic properties and thus their eligibility for general permit coverage, providing a realistic time for at least one operator (typically the owner) at a construction project to receive confirmation of permit coverage, providing a common link between the various permittees at a construction site, and minimizing, where possible, the total number of NOIs that would be necessary at each construction project.

The proposed option contained in this proposed permit is to retain the two day NOI deadline used in the 1992 permits. The advantage of this approach is the short turn-around in obtaining permit coverage. While there are certain problems regarding coverage that have arisen with a short time frame, including inadvertently granted coverage and incomplete NOIs, EPA believes that such deficiencies have been resolved without adverse impacts on the environment. EPA is continuing this option as the preferred option due to the flexibility to provide permit coverage for these activities in a timely fashion without adverse impact on the environment.

The option EPA is requesting comment on would require a longer lead

time for NOI submittal by the owner or developer of the site that would allow enough time for that permittee to receive confirmation of permit authorization, including an assigned permit number. This initial NOI would include an assessment of the permit eligibility of the site as a whole, including addressing any endangered species or historic preservation concerns early on in the process. Subsequent applicants, such as the contractors hired by the owner/developer, could then rely on this initial assessment and be eligible to file an NOI only two days prior to commencing work. This option could possibly reduce the cost to implement a pollution prevention plan, in that subsequent contractors would be able to identify any owner/develop applicants that may have already developed a pollution prevention plan that covers all construction activities on the site. Subsequent applicants could thereby avoid duplicate cost to complete their own plan specific to their portion of the site activity.

A third option was to require all operators to submit NOIs 14 days in advance of commencing construction. While this approach allowed additional time for review of NOIs, experience in processing of NOIs suggests that two weeks is not enough time for determining completeness of the NOI and returning a response to the applicant. While electronic filing of NOIs could help, the Agency currently does not have the capability to accept electronic applications and some operators may not have the ability to file NOIs electronically.

A fourth option was to require an NOI for each construction project from the operator(s) with control over site specifications (e.g., developer or owner). Operators with day to day control over implementation of storm water controls (e.g. general contractor) would be allowed to submit a single NOI for all their company's activities within the permit area. This option had the obvious advantage of reducing the total number of NOIs that would need to be submitted. However, the operators implementing a more complex pollution prevention plan covering all of the site-dependent activities at a wide range of different construction sites (as opposed to the relatively small and consistent activities of a utility company) would require a higher level of permit controls to provide environmental accountability. Uncertainty over the time needed to develop the appropriate permit conditions for such an approach lead to abandoning this approach in favor of concentrating on ensuring that

a replacement construction general permit was available for new construction projects before the current permit expires.

The Agency requests comments on the 30-day advance notice option and welcomes any suggestions on streamlining obtaining permit coverage while still ensuring compliance with the Agency's responsibilities under the Clean Water Act, the Endangered Species Act, and the National Historic Preservation Act. The Agency notes that it is currently undergoing consultation under section 7 of the Endangered Species Act and plans to initiate consultation under sections 106 and 110 of the National Historic Preservation Act on the issuance of this permit. These consultations may result in additional permit conditions to protect endangered and threatened species, critical habitat, and historic properties.

## 2. Contents of the NOI.

An NOI (a draft copy of a proposed new form is found in Addendum C of today's notice (or a photocopy)) must be completed and submitted to EPA's NOI Center address to obtain authorization to discharge under today's permit. The NOI contained in this proposed permit is a revised NOI. EPA is requesting much of the same information as in the previous form, but has also added additional questions concerning endangered species, historic preservation, and pollution prevention plan status. EPA is concurrently providing this NOI to the Office of Management and Budget for review under the Paperwork Reduction Act. The NOI form requires the following information:

- The street address (description of location if no street address is available), county, and the latitude and longitude of the approximated center of the construction site/project for which the notification is submitted;
- The name, address, and telephone number of the operator(s) filing the NOI for permit coverage and operator status as a Federal, State, Tribal, private, or public entity;
- Whether or not the construction project is located on an Indian lands;
- The name of the receiving water(s), or if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the receiving water(s);
- The permit number of other operator at the site, to the extent available;
- An estimate of project start date and completion date, estimate of the number of acres of the site on which soil will be disturbed,

Acreage may be determined by dividing square footage by 43,560, as demonstrated in the following example.

*Convert 54,450 ft<sup>2</sup> to acres*

Divide 54,450 ft<sup>2</sup> by 43,560 square feet per acre:  $54,450 \text{ ft}^2 \div 43,560 \text{ ft}^2/\text{acre} = 1.25 \text{ acres}$ ;

- An estimation of the frequency of discharge;
- The location of where the pollution prevention plan can be viewed if different from the project address.
- A certification that a storm water pollution prevention plan, including both construction and post construction controls, has been prepared for the site in accordance with the permit and that such plan complies with approved State, Tribal and/or local sediment and erosion plans or permits and/or storm water management plans or permits. A copy of the plans or permits should not be included with the NOI submission, and should not be submitted unless requested by EPA;
- Whether any species identified in Addendum A of the permit are in proximity to the storm water discharges to be covered by this permit or to the BMPs to be used to comply with this permit. Addendum A of the permit contains instructions for making this determination;
- That there will be no effect on any properties listed or eligible for listing on the National Register of Historic Places under the National Historic Preservation Act that are located on the construction site; and
- The applicant must also sign a certification statement indicating an understanding of the terms and conditions of the permit.

Notice of Intent Requirements for Utility Companies seeking Area Wide Coverage (these requirements apply only when the utility companies are installing service):

- The name, address and telephone number of the utility company filing the NOI for permit coverage and operator status as a Federal, State, Tribal, private, public or public entity;
- The State, Tribal or other area of which coverage is being requested, and whether or not any construction projects will be located on Indian Reservation lands;
- The name, address, and telephone number of the utility company's point of contact for the utility company's compliance with the area wider coverage;
- A certification that a storm water pollution prevention plan with standard operating procedures of the limited utility company construction activities related to installation of service

connections has been prepared in accordance with the requirements of this permit and that the plan provides compliance with approved state and/or local sediment and erosion plans or permits and storm water management plans or permits; and

- Certification of eligibility and compliance with the Endangered Species Act and The National Historic Preservation Act.

The NOI must be signed in accordance with the signatory requirements of 40 CFR 122.22. A complete description of these signatory requirements is provided in the Standard Permits Section of the general permit.

## 3. Where To Submit

Completed NOI forms are to be submitted to the address indicated on the NOI form. The following items should be posted at the construction site in a prominent place for public viewing: a copy of the Director's acknowledgment of coverage and the assigned permit number; a local contact telephone number and address for public access to view the pollution prevention plan at reasonable times during regular business hours (advance notice by the public of the desire to view the plan may be required, not to exceed two working days). The permit does not require that free copies of the plan be provided to interested members of the public, only that they have reasonable access to view the document and copy it at their own expense; and a brief description of the project.

## F. Special Conditions Management Practices, and Other Non-Numeric Limitations

### 1. Prohibition on Non-Storm Water Discharges

Today's proposed permits would not authorize non-storm water discharges that are mixed with storm water discharges except for the specific classes of non-storm water discharges described in the permit. Non-storm water discharges that would be authorized under today's proposed permits would include discharges from firefighting activities; fire hydrant flushings; waters used to wash vehicles or control dust in accordance with permit requirements; potable water sources including waterline flushings; routine external building wash down that does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs;

uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.<sup>13</sup> Discharges of material other than storm water which are in compliance with another NPDES permit issued for that discharge may be mixed with the storm water discharges authorized by this permit.

To be authorized under today's proposed permits, these sources of non-storm water (except flows from firefighting activities) must be specifically identified in the storm water pollution prevention plan prepared for the facility. (Plan requirements are discussed in more detail below).

Today's proposed permits would not require pollution prevention measures to be identified and implemented for non-storm water flows from firefighting activities since these flows will usually occur as unplanned emergency situations where it is necessary to take immediate action to protect the public.

The general prohibition on non-storm water discharges in today's permit ensures that non-storm water discharges (except for those classes of non-storm water discharges that are authorized subject to compliance with certain conditions) are not inadvertently authorized by this permit. Where a storm water discharge is mixed with process wastewaters or other sources of non-storm water prior to discharge, and the discharge is currently not authorized by an NPDES permit, the discharge cannot be covered by today's permit and the discharger should submit the appropriate application forms (Forms 1 and 2C) to obtain permit coverage or discontinue the discharge.

## 2. Releases of Reportable Quantities of Hazardous Substances or Oil

Today's proposed permits would provide that the discharge of hazardous substances or oil from a facility must be prevented or minimized in accordance with the storm water pollution plan developed for the facility. Where a permitted storm water discharge contains a hazardous substance or oil in an amount equal to or in excess of a reporting quantity established under 40 CFR 110, 40 CFR 117, or 40 CFR 302, during a 24-hour period, today's permits would require the following actions:

- The permittee must notify the National Response Center (NRC) (800-424-8802; in the Washington, D.C.

metropolitan area 202-426-2675) in accordance with the requirements of 40 CFR 110, 40 CFR 117, and 40 CFR 302, as soon as they have knowledge of the discharge;

- The permittee must modify the storm water pollution prevention plan for the facility within 14 calendar days of knowledge of the release to provide a description of the release, the date of the release and the circumstances leading to the release. In addition, the permittee must modify the plan, as appropriate, to identify measures to prevent the reoccurrence of such releases and to respond to such releases.

- Within 14 calendar days of the knowledge of the release, the permittee must submit to EPA a written description of the release (including the type and estimated amount of material released), the date that such release occurred, the circumstances leading to the release, and (4) any steps to be taken to minimize the chance of future occurrences.

Where a discharge of a hazardous substance or oil in excess of reporting quantities is caused by a non-storm water discharge (e.g., a spill of oil into a separate storm sewer), the spill would not be authorized by this proposed permit. The discharger must report the spill as required under 40 CFR 110. In the event of a spill, the requirements of Section 311 of the CWA and otherwise applicable provisions of Sections 301 and 402 of the CWA continue to apply.

This approach is consistent with the requirements for reporting releases of hazardous substances and oil—requirements that make a clear distinction between hazardous substances typically found in storm water discharges and those associated with spills that are not considered part of a normal storm water discharge (see 40 CFR 117.12(d)(2)(i)).

## 3. Compliance With Water Quality Standards

The previous permit did not specifically address water quality standards. Today's proposed permit would require as an eligibility condition that dischargers seeking coverage under this permit not be causing or have the reasonable potential to cause or contribute to a violation of a water quality standard. If a discharge is known to be doing such, prior to or at the time of application, then the operator may not seek coverage under this general permit but must seek coverage under an alternative permit. Where a discharge is already authorized under this permit and is later discovered to cause or have the reasonable potential to cause or contribute to the violation of an

applicable State, Tribal or Federal Water Quality Standard, the permitting authority will notify the operator 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 document these actions in the pollution prevention plan. If violations remain or reoccur, then coverage under this permit will be terminated by the permitting authority and an alternative permit may be issued. Compliance with this requirement does not preclude any enforcement activity as provided by the Clean Water Act for the underlying violation.

## 4. Operator Responsibility

The proposed permits outline the expected responsibilities of the various operators which may be working at the construction site. Permittees with operational control of the project specifications must ensure that these specifications meet the minimum requirements of the pollution prevention plan; the pollution prevention plan indicates which area of the projects they have operational control over; and ensure that the plan indicates who has day to day operational control including names and permit numbers. If a person with day to day operational control is not identified at the time the pollution prevention plan is developed, the permittee with operational control of the project specifications will be responsible.

Permittees with day to day operational control of a construction site must ensure the pollution prevention plan meets minimum requirements; ensure that the plan clearly identifies which areas of the project they have control over; and ensure that the pollution prevention plan indicates the name and permit number of the person with operational control of the project specifications.

The permit also identifies partial site operators. These are operators with operational control over only a portion of a larger construction site. These operators are only responsible for permit compliance and pollution prevention plan compliance as it relates to their activities on site. They must also ensure that their activity does not cause another party's pollution controls to be less effective. Partial site operators must either implement their portions of a common pollution prevention plan or develop and implement their own pollution prevention plan.

<sup>13</sup> These discharges are consistent with the allowable classes of non-storm water discharges to municipal separate storm sewer systems (40 CFR 122.26(d)(iv)(D)). This permit would authorize such discharges consistent with the terms and conditions of the permit.

### *G. Pollution Prevention Plan Requirements*

The pollution prevention plans required by today's permit focus on two major tasks: (1) Providing a site description that identifies sources of pollution to storm water discharges associated with industrial activity from the facility; and (2) identifying and implementing appropriate measures to reduce pollutants in storm water discharges to ensure compliance with the terms and conditions of this permit. All storm water pollution prevention plans shall be developed in accordance with good engineering practices.

In developing this permit, the Agency reviewed a significant number of existing State and local sediment and erosion control and storm water management requirements. State and local data were reviewed for a wide range of climates and varying types of construction activities.

#### 1. Deadlines for Plan Preparation

Today's proposed permits would require that the storm water pollution prevention plan must be completed prior to the submittal of an NOI to be covered under this permit and updated as appropriate, including certifications;

#### 2. Signature and Plan Review

Signature and plan review requirements are as follows:

- The plan must be signed by all permittees for a site in accordance with the signatory requirements in the Standard Permit Conditions section of the permit, and must be retained on site at the facility that generates the storm water discharge. If the site is inactive or does not have an onsite location adequate to store the pollution prevention plan, the location of the plan, and the phone number of a contact person shall be posted on site indicating where the plan can be viewed at reasonable times during regular business hours (advance notice by the public of the desire to view the plan may be required, not to exceed two working days). The permit does not require that free copies of the plan be provided to interested members of the public, only that they have reasonable access to view the document and copy it at their own expense. A brief description of the project shall also be posted at the construction site in a prominent and safe place for public viewing during regular business hours (alongside the building permit if the building permit is required to be displayed).

- EPA may notify the permittee at any time that the plan does not meet one or

more of the minimum requirements. The notification shall identify those provisions of the permit which are not being met by the plan, and identify which provisions of the plan require modification in order to meet the requirements of the permit. Within seven calendar days of receipt of such notification from EPA (or as otherwise requested by EPA), the permittee must make the required changes to the plan and submit to EPA a written certification that the requested changes have been made.

#### 3. Making Plans Available

The permittee must make plans available, upon request, to EPA, State, Tribal or local agencies approving sediment and erosion plans, grading plans, or storm water management plans; interested members of the public; local government officials; or to the operator of the municipal separate storm sewer which receives the discharge.

#### 4. Keeping Plans Current

The permittee must amend the plan whenever there is a change in design, construction, operation, or maintenance, that has a significant effect on the potential for the discharge of pollutants to waters of the United States or to municipal separate storm sewer systems. The plan must also be amended if inspections or investigations by site operators, local, State, Tribal, or Federal officials indicate the storm water pollution prevention plan is proving to be ineffective in eliminating or significantly minimizing pollutants in the storm water discharges from the construction activity. In addition, the plan shall be amended to identify any new contractor and/or subcontractor that will implement a measure of the storm water pollution prevention plan.

#### 5. Contents of the Plan

Storm water pollution prevention plans must include a site description; a description of controls that will be used at the site (e.g., erosion and sediment controls, storm water management measures); a description of maintenance and inspection procedures; and a description of pollution prevention measures for any non-storm water discharges that exist.

a. *Site Description:* Storm water pollution prevention plans must be based on an accurate understanding of the pollution potential of the site. The first part of the plan requires an evaluation of the sources of pollution at a specific construction site. The plan must identify potential sources of pollution that may reasonably be expected to affect the quality of storm

water discharges from the construction site. In addition, the source identification components for pollution prevention plans must provide a description of the site and the construction activities. This information is intended to provide a better understanding of site runoff and major pollutant sources. At a minimum, plans must include the following:

- A description of the nature of the construction activity. This would typically include a description of the ultimate use of the project (e.g., low-density residential, shopping mall, highway);
- A description of the intended sequence of major activities that disturb soils for major portions of the site (e.g., grubbing, excavation, grading);
- Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading, or other activities. Where the construction activity is to be staged, it may be appropriate to describe areas of the site that will be disturbed at different stages of the construction process;

- Estimates of the runoff coefficient of the site after construction activities are completed as well as existing data describing the quality of any discharge from the site or the soil. The runoff coefficient is defined as the fraction of total rainfall that will appear at the conveyance as runoff. Runoff coefficients can be estimated from site plan maps, which provide estimates of the area of impervious structures planned for the site and estimates of areas where vegetation will be precluded or incorporated. Runoff coefficients are one tool for evaluating the volume of runoff that will occur from a site when construction is completed. These coefficients assist in evaluating pollutant loadings, potential hydraulic impacts to receiving waters, and flooding impacts. They are also used for sizing of post-construction storm water management measures;

- A site map indicating drainage patterns and approximate slopes anticipated after major grading activities, areas of soil disturbance; an outline of areas that will not be disturbed; the location of major structural and nonstructural controls identified in the plan; the location of areas where stabilization practices are expected to occur; the location of surface waters (including wetlands); and locations where storm water is discharged to a surface water. Site maps should also include other major features and potential pollutant sources, such as the location of impervious structures

and the location of soil piles during the construction process;

- A description of any discharge associated with industrial activity other than construction (including storm water discharges from dedicated asphalt plants and dedicated concrete plants) and the location of that activity on the construction site;

- The name of the receiving water(s), and areal extent of wetland acreage at the site;

- Information on endangered and threatened species including whether any endangered species are in proximity to the storm water discharges and BMPs to be constructed to control storm water runoff; and

- Information on any properties listed or eligible for listing on the National Register of Historic Places under the National Historic Preservation Act that are located on the construction site.

b. *Controls to Reduce Pollutants:* The storm water pollution prevention plan must describe and ensure the implementation of practices that will be used to reduce the pollutants in storm water discharges from the site and assure compliance with the terms and conditions of the permit. Permittees are required to develop a description of four classes of controls appropriate for inclusion in the facility's plan, and implement controls identified in the plan in accordance with the plan. The description of controls must address erosion and sediment controls, storm water management, a specified set of other controls, and any applicable procedures and requirements of State, Tribal and local sediment and erosion plans or storm water management plans.

The pollution prevention plan must clearly describe the intended sequence of major activities and when, in relation to the construction process, the control will be implemented. Good site planning and preservation of mature vegetation are primary control techniques for controlling sediment in storm water discharges during construction activities as well as for developing a strategy for storm water management that controls pollutants in storm water discharges after the completion of construction activities. Properly staging major earth disturbing activities can also dramatically decrease the costs of sediment and erosion controls. The description of the intended sequence of major activities will typically describe the intended staging of activities on different parts of the site.

Permittees must develop and implement four classes of controls in the pollution prevention plan, each of which is discussed below.

i. *Erosion and Sediment Controls:* The requirements for erosion and sediment controls for construction activities in this permit have long and short term goals and criteria. This includes the following:

- Construction phase erosion and sediment controls should be designed with the objective to retain sediment on site;

- All control measures must be properly selected and installed in accordance with good engineering practices and manufacturers specifications;

- Off site accumulations of sediment must be removed at a frequency to minimize impacts;

- Sediment should be removed from sediment traps when the design capacity has been reduced by 50 percent;

- Litter shall be picked up prior to storm events or otherwise prevented from entering a receiving water; and

- Offsite material storage areas must be addressed in the pollution prevention plan. Erosion and sediment controls include both stabilization practices and structural practices.

ii. *Stabilization Practices.* Pollution prevention plans must include a description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. The plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized as quickly as possible. Stabilization practices are the first line of defense for preventing erosion; they include temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetative buffer strips, and other appropriate measures. Temporary stabilization practices can be the single most important factor in reducing erosion at construction sites.

Stabilization also involves preserving and protecting selected trees that were on the site prior to development. Mature trees have extensive canopy and root systems, which help to hold soil in place. Shade trees also keep soil from drying rapidly and becoming susceptible to erosion. Measures taken to protect trees can vary significantly, from simple measures such as installing tree fencing around the drip line and installing tree armoring, to more complex measures such as building retaining walls and tree wells.

Since stabilization practices play such an important role in preventing erosion, it is critical that they are rapidly employed in appropriate areas. This

permit provides that, except in three situations, stabilization measures be initiated on disturbed areas as soon as practicable, but no more than 14 days after construction activity on a particular portion of the site has temporarily or permanently ceased. The three exceptions to this requirement are the following:

- Where construction activities will resume on a portion of the site within 21 days from when the construction activities ceased;

- Where the initiation of stabilization measures is precluded by snow cover or frozen ground, in which case, stabilization measures must be initiated as soon as practicable; and

- In arid areas (areas with an average annual rainfall of 0 to 10 inches), semi-arid area (areas with an average annual rainfall of 10 to 20 inches), and areas experiencing droughts, where the initiation of stabilization measures is precluded by seasonal arid conditions, in which case, stabilization measures must be initiated as soon as practicable.

iii. *Structural Practices.* The pollution prevention plan must include a description of structural practices to the degree economically attainable, to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site. Structural controls are necessary because vegetative controls cannot be employed at areas of the site that are continually disturbed and because a finite time period is required before vegetative practices are fully effective. Options for such controls include silt fences, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, sediment traps, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural measures should be placed on upland soils to the degree possible. Placement of structural controls in flood plains should be avoided.

For sites with more than 10 disturbed acres at one time that are served by a common drainage location, a temporary or permanent sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures (such as suitably sized dry wells or infiltration structures), must be provided where attainable until final stabilization of the site has been accomplished. Flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization may be diverted around both the sediment basin and the disturbed area. The requirement to

provide 3,600 cubic feet of storage area per acre drained does not apply to such diverted flows.

For the drainage locations which serve more than 10 disturbed acres at one time and where a sediment basin providing storage or equivalent controls for 3,600 cubic feet per acre drained is not attainable, smaller sediment basins or sediment traps should be used. At a minimum, silt fences, or equivalent sediment controls are required for all downslope and appropriate sideslope boundaries of the construction area. Diversion structures should be used on upland boundaries of disturbed areas to prevent runoff from entering disturbed areas.

For drainage locations serving 10 or less acres, smaller sediment basins or sediment traps should be used and at a minimum, silt fences, or equivalent sediment controls are required for all downslope and appropriate sideslope boundaries of the construction area. Alternatively, the permittee may provide a sediment basin providing storage for 3,600 cubic feet of storage per acre drained. Diversion structures should be used on upland boundaries of disturbed areas to prevent runoff from entering disturbed areas.

iv. *Storm Water Management.* The plan must include a description of "storm water management" measures.<sup>14</sup> This permit addresses only the installation of storm water management measures and not the ultimate operation and maintenance of such structures after the construction activities have been completed and the site has undergone final stabilization. Permittees are responsible only for the installation and maintenance of storm water management measures prior to final stabilization of the site and are not responsible for maintenance after storm water discharges associated with construction activities have been eliminated from the site. However, discharges of pollutants from storm water management structures after construction ceases may in themselves, need to be authorized under an NPDES permit. The owner/operator of such discharges after construction may inquire with EPA if this requirement applies.

Land development can significantly increase storm water discharge volumes and peak velocities where appropriate storm water management measures are not implemented. In addition, storm

water discharges will typically contain higher levels of pollutants, including total suspended solids (TSS), heavy metals, nutrients, and oxygen demanding constituents.<sup>15</sup>

Storm water management measures that are installed during the construction process can control the volume of storm water discharged and peak discharge velocities, as well as reduce the amount of pollutants discharged after the construction operations have been completed. Reductions in peak discharge velocities and volumes can also reduce pollutant loads, as well as reduce physical impacts such as stream bank erosion and stream bed scour. Storm water management measures that mitigate changes to predevelopment runoff characteristics assist in protecting and maintaining the physical and biological characteristics of receiving streams and wetlands.

Structural measures should be placed on upland soils to the degree attainable. The installation of such devices may be subject to section 404 of the CWA if the devices are placed in wetlands (or other waters of the United States).

Options for storm water management measures that are to be evaluated in the development of plans include infiltration of runoff on site; flow attenuation by use of open vegetated swales and natural depressions; storm water retention structures and storm water detention structures (including wet ponds); and sequential systems that combine several practices.

The pollution prevention plan must include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels. The explanation of the technical basis for selecting practices should address how a number of factors were evaluated, including the pollutant removal efficiencies of the measures, the costs of the measure, site specific factors that will affect the application of the measures, whether the measure is economically achievable at a particular site, and other relevant factors.

Although not a limitation or performance standard in the permit, EPA anticipates that storm water management measures at many sites will be able to provide for the removal of at least 80 percent of total suspended solids (TSS).<sup>16</sup> A number of storm water

management measures can be used to achieve this level of control, including properly designed and installed wet ponds, infiltration trenches, infiltration basins, sand filter system, manmade storm water wetlands, and multiple pond systems. The pollutant removal efficiencies of various storm water management measures can be estimated from a number of sources, including "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices," U.S. EPA, 1992, and "A Current Assessment of Urban Best Management Practice," prepared for U.S. EPA by Metropolitan Washington Council of Governments, March 1992. Proper selection of a technology depends on site factors and other conditions.

In selecting storm water management measures, the permittee should consider the impacts of each method on other water resources, such as ground water. Although storm water pollution prevention plans primarily focus on storm water management, EPA encourages facilities to avoid creating ground water pollution problems. For example, if the water table is unusually high in an area or soils are especially sandy and porous, an infiltration pond may contaminate a ground water source unless special preventive measures are taken. Under EPA's July 1991 Ground Water Protection Strategy, States are encouraged to develop Comprehensive State Ground Water Protection Programs (CSGWPP). Efforts to control storm water should be compatible with State/Tribal ground water objectives as reflected in CSGWPPs.

The evaluation of whether the pollutant loadings and the hydrologic conditions (the volume of discharge) of flows exceed predevelopment levels can be based on hydrologic models which consider conditions such as the natural vegetation which is typical for the area.

Increased discharge velocities can greatly accelerate erosion near the outlet of onsite structural measures. To mitigate these effects, these permits would require that velocity dissipation devices be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive velocity flow from the structure to a water course. Velocity dissipation devices maintain and protect the natural physical and biological characteristics and functions of the watercourse, e.g., hydrologic conditions, such as the hydroperiod and hydrodynamics, that were present prior to the initiation of construction activities.

v. *Other Controls.* Other controls to be addressed in storm water pollution

<sup>14</sup> For the purpose of the special requirements for construction activities, the term "storm water management" measures refers to controls that will primarily reduce the discharge of pollutants in storm water from sites after completion of construction activities.

<sup>15</sup> See "Nationwide Urban Runoff Program," EPA, 1984.

<sup>16</sup> TSS can be used as an indicator parameter to characterize the control of other pollutants, including heavy metals, oxygen demanding pollutants, and nutrients, commonly found in storm water discharges.

prevention plans for construction activities require that nonsolid materials, including building material wastes shall not be discharged at the site, except as authorized by a Section 404 permit.

This proposed permit requires that offsite vehicle tracking of sediments and the generation of dust be minimized. For example, this may be accomplished by measures such as providing gravel or paving at access entrance and exit drives, parking areas, and unpaved roads on the site carrying significant amounts of traffic (e.g., more than 25 vehicles per day); providing entrance wash racks or stations for trucks; and/or providing street sweeping.

In addition, this permit requires that the plan shall ensure and demonstrate compliance with applicable State/Tribal and/or local sanitary sewer, septic system, and waste disposal regulations to the extent they apply to the permitted activity.<sup>17</sup> The plan must also include a narrative description of practices to reduce pollutants from construction related materials which are stored onsite. Including an inventory of construction materials, storage practices, and spill prevention and response. The plan should include a description of pollutant sources from areas other than construction and a description of controls and measures which will be implemented in those areas.

The plan must also include measures to protect listed endangered and threatened species and/or critical habitat (if applicable) including any terms or conditions that are imposed under the eligibility requirements of Part I.B.3.e and Addendum A of this permit to protect such species and/or critical habitat from storm water discharges or BMPs to control storm water runoff. Failure to include these measures will result in the storm water discharges from the construction activities being ineligible for coverage under this permit.

<sup>17</sup> In rural and suburban areas that are served by septic systems, malfunctioning septic systems can contribute pollutants to storm water discharges. Malfunctioning septic tanks may be a more significant surface runoff pollution problem than a ground water problem. This is because a malfunctioning septic system is less likely to cause ground water contamination where a bacterial mat in the soil retards the downward movement of wastewater. Surface malfunctions are caused by clogged or impermeable soils, or when stopped up or collapsed pipes force untreated wastewater to the surface. Surface malfunctions can vary in degree from occasional damp patches on the surface to constant pooling or runoff of wastewater. These discharges have high bacteria, nitrate, and nutrient levels and can contain a variety of household chemicals. This permit does not establish new criteria for septic systems, but rather addresses existing State or local criteria.

The plan must also include measures to protect properties that are listed or eligible for listing under the National Historic Register including any measures agreed to through written agreements with the SHPO or THPO. Failure to include these measures will result in the storm water discharges from the construction activities being ineligible for coverage under this permit.

vi. *State/Tribal and Local Controls.* Many municipalities, States and Tribes have developed sediment and erosion control requirements for construction activities. A significant number of municipalities and States/Tribes have also developed storm water management controls. This general permit requires that storm water pollution prevention plans for facilities that discharge storm water associated with industrial activity from construction activities include procedures and requirements of State/Tribal and local sediment and erosion control plans or storm water management plans. Permittees are required to provide a certification that their storm water pollution prevention plan reflects requirements related to protecting water resources that are specified in State/Tribal or local sediment and erosion plans or storm water management plans.<sup>18</sup> In addition, permittees are required to amend their storm water pollution prevention plans to reflect any change in a sediment and erosion site plan or site permit or storm water management site plan or site permit approved by State/Tribal or local officials for which the permittee receives written notice. Where such amendments are made, the permittee must provide a recertification that the storm water pollution prevention plan has been modified. This provision does not apply to provisions of master plans, comprehensive plans, nonenforceable guidelines, or technical guidance documents, but rather to site-specific State/Tribal or local permits or plans.

c. *Maintenance:* Erosion and sediment controls can become ineffective if they are damaged or not properly maintained. Maintenance of controls has been identified as a major part of effective erosion and sediment programs. Plans must contain a

<sup>18</sup> Operators of storm water discharges from construction activities which, based on an evaluation of site specific conditions, believe that State/Tribal and local plans do not adequately represent BAT and BCT requirements for the facility may request to be excluded from the coverage of the general permit by submitting to the Director an individual application with a detailed explanation of the reasons supporting the request, including any supporting documentation showing that certain permit conditions are not appropriate.

description of prompt and timely maintenance and repair procedures addressing all erosion and sediment control measures (e.g., sediment basins, traps, silt fences), vegetation, and other measures identified in the site plan to ensure that such measures are kept in good and effective operating condition.

d. *Inspections:* Procedures in a plan must provide that specified areas on the site are inspected by qualified personnel provided by the discharger a minimum of once every fourteen calendar days, before anticipated storm events (or series of storm events such as intermittent showers over one or more days) expected to cause a significant amount of runoff and within 24 hours after any storm event of greater than 0.5 inches. Areas of the site that must be observed during such inspections include disturbed areas, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site. Where sites have been temporarily or finally stabilized, or during seasonal arid periods in arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (with an average annual rainfall of 10 to 20 inches) the inspection must be conducted at least once every month.

Disturbed areas and areas used for storage of materials that are exposed to precipitation must be inspected for evidence of, or the potential for, pollutants entering the runoff from the site. Erosion and sediment control measures identified in the plan must be observed to ensure that they are operating correctly. Observations can be made during wet or dry weather conditions. Where discharge locations or points are accessible, they must be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. This can be done by inspecting receiving waters to see whether any signs of erosion or sediment are associated with the discharge location. Locations where vehicles enter or exit the site must be inspected for evidence of offsite sediment tracking.

Based on the results of the inspection, the site description and the pollution prevention measures identified in the plan must be revised as soon as possible after an inspection that reveals inadequacies. The inspection and plan review process must provide for timely implementation of any changes to the plan within seven calendar days following the inspection.

An inspection report that summarizes the scope of the inspection, name(s) and qualifications of personnel conducting



the inspection, the dates of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken must be retained as part of the storm water pollution prevention plan for at least three years after the date that the site is finally stabilized. The report shall identify incidents of non-compliance. When the report does not contain an incident of non-compliance, the report shall contain a certification that the facility is in compliance with the pollution prevention plan and this permit. The report must be signed in accordance with the signatory requirements in the Standard Conditions section of this permit.

Diligent inspections are necessary to ensure adequate implementation of onsite sediment and erosion controls, particularly in the later stages of construction when the volume of runoff is greatest and the storage capacity of the sediment basins has been reduced.<sup>19</sup>

e. *Non-Storm Water Discharges:* The plan must identify and ensure the implementation of appropriate pollution prevention measures for each of the non-storm water component(s) of the discharge.<sup>20</sup> Such discharges include discharges from firefighting activities, fire hydrant flushings, waters used to wash vehicles or control dust in accordance with efforts to minimize offsite sediment tracking, potable water sources including waterline flushings, irrigation drainage from watering vegetation, routine exterior building wash down that does not use detergents, pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used, air conditioning condensate, springs, uncontaminated ground water (including dewatering ground water infiltration), and foundation or footing drains where flows are not contaminated with process materials such as solvents, provided the non-storm water component of the discharge is specifically identified in the pollution prevention plan.

EPA believes that where these classes of non-storm water discharges are identified in a pollution prevention plan and where appropriate pollution prevention measures are evaluated, identified, and implemented, they

generally pose low risks to the environment. The Agency also notes that it can request individual permit applications for such discharges where appropriate. The Agency is not requiring that flows from fire-fighting activities be identified in plans because of the emergency nature of such discharges coupled with their low probability and the unpredictability of their occurrence.

#### 6. Additional Requirements

These proposed permits would authorize a storm water discharge associated with industrial activity from a construction site that is mixed with a storm water discharge from an industrial source other than construction, only under the following conditions:

- The industrial source other than construction is located on the same site as the construction activity; and
- Storm water discharges from where the construction activities are occurring are in compliance with the terms of this permit.

#### 7. Contractors/Subcontractors

The storm water pollution prevention plan must clearly identify for each measure identified in the plan, the contractor(s) and/or subcontractor(s) that will implement the measure. All contractors and subcontractors identified in the plan must sign a copy of the certification statement contained in the proposed permit (Part IV.F) before conducting any professional service at the site identified in the pollution prevention plan:

All certifications must be included in the storm water pollution prevention plan. The certification must also include the name and title of the person providing the signature, the name address and telephone number of the contracting firm; the name and address of the site; and the date of certification.

The permittee must insure that contractors and subcontractors who do not meet the definition of "operator," but will be conducting activities which may impact the effectiveness of any control measure identified in the plan sign a certification statement before conducting any professional service on site. The certification must include the name and title of the person providing the signature; the name, address and telephone number of the contracting firm; the address identifying the site, and the date the certification is made.

#### H. Retention of Records

The permittee is required to retain records or copies of all reports required by this permit, including storm water

pollution prevention plans and records of all data used to complete the NOI to be covered by the permit, for a period of at least three years from the date of final stabilization. This period may be extended by request of the Director.

The permittee shall retain a copy of the storm water pollution prevention plan required by the permit at the construction site from the date of project initiation to the date of final stabilization. All permittees with day to day operational control of the plan's implementation shall have a copy of the plan available for their use when they are on the construction site. The copy of the plan may be a single plan kept at a central location for all of the operators on site. Where no location is available at the construction site to store the plan when no personnel are on site, notice of the location of the plan must be posted at the construction site. A copy of the plan must be readily available to inspectors during normal business hours.

#### I. Notice of Termination Requirements

A discharger must submit a Notice of Termination (NOT) to EPA in two sets of circumstances: after a site has undergone final stabilization and the facility no longer discharges storm water associated with industrial activity from a construction site or when the permittee has transferred operational control to another permittee and is no longer an operator for the site. A permittee cannot submit an NOT without final stabilization unless another party has agreed to assume responsibility for final stabilization of the site. NOTs must be submitted using the form provided by the Director (or a photocopy thereof). A copy of the NOT form is in Addendum C and can be photocopied for use. NOTs will assist EPA in tracking the status of the discharger.

Today's proposed permits would define final stabilization for the purpose of submitting an NOT as occurring when all soil disturbing activities are completed and a uniform perennial vegetative cover with a density of 70 percent for the unpaved areas and areas not covered by permanent structures has been established or equivalent stabilization measures have been employed. Equivalent stabilization measures include permanent measures other than establishing vegetation, such as the use of rip-rap, gabions, and/or geotextiles. In some parts of the country, background native vegetation will cover less than 100% of the ground (e.g. arid areas). Establishing at least 70% of the natural cover of native vegetation meets the vegetative cover criteria for final

<sup>19</sup> "Performance of Current Sediment Control Measures at Maryland Construction Sites," January 1990, Metropolitan Washington Council of Governments.

<sup>20</sup> This is consistent with the allowable types of non-storm water discharges to municipal separate storm sewer systems (40 CFR 122.26(d)(2)(iv)(A)). These discharges are still subject to NPDES requirements.

stabilization. For example, if the native vegetation covers 50% of the ground, 70% of 50% would require 35% total cover for final stabilization.

A copy of the NOT, and instructions for completing the NOT, are provided in Addendum C of today's notice. The NOT form requires the following information:

- The street (description of location if not street address is available) address of the construction site for which the notification is submitted;
- The name, address, and telephone number of the permittee submitting the NOT.
- The NPDES permit for the storm water discharge identified by the NOT.
- An indication of whether the storm water discharges associated with construction activity have been eliminated or the operator of the discharge has changed;
  - For changes in operators, the name, address, and phone number of the new operator; and
  - The following certification: "I certify under penalty of law that either (a) all storm water discharges associated with construction activity from the portion of the identified facility where I was an operator have ceased or have been eliminated or (b) I am no longer an operator at the construction site and a new operator has assumed operational control for those portions of the construction site where I previously had operational control. I understand that by submitting this notice of termination, I am no longer authorized to discharge storm water associated with construction activity under this general permit, and that discharging pollutants in storm water associated with construction activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this notice of termination does not release an operator from liability for any violations of this permit from the Clean Water Act."

Notices of Termination are to be sent to the address specified on the form.

The NOT must be signed by the appropriate individual in accordance with the signatory requirements of the permit. A description of these signatory requirements is provided in the instructions accompanying the NOT, and this permit.

Submittal of a NOT, by itself, does not relieve permittees from the obligations of the permit, such as the requirement to stabilize the site. Appropriate enforcement actions may still be taken for permit violations where a permittee submits a NOT but the permittee has not

transferred operational control to another permittee or the site has not undergone final stabilization.

#### J. Regional Offices

For questions or further information regarding this proposed permit, please contact the EPA Storm Water Coordinator at the locations below.

Other submittals of information required under these permits or individual permit applications or other written correspondence concerning discharges in any State, Indian land, or from any Federal Facility covered, should also be sent to the appropriate EPA Regional Office listed below:

#### CT, MA, ME, NH, RI, VT

United States EPA, Region I, Office of Ecosystem Protection, John F. Kennedy Federal Building, CMU, Boston, MA 02203, Storm water coordinator—Thelma Hamilton (617) 565-3569, or Beverly Guertin (617) 565-3600

#### NJ, NY, PR, VI

United States EPA, Region II, Division of Environmental Planning and Protection, (2DEPP-WPB), Water Programs Branch, 290 Broadway, New York, NY 10007-1866, Storm Water Coordinator—Sergio Bosques (212) 637-3717, or Jose Rivera (809) 729-6951

#### DE, DC, MD, PA, VA, WV

United States EPA, Region III, Water Protection Division, (3WP13), Storm Water Staff, 841 Chestnut Building, Philadelphia, PA 19107, Storm Water Coordinator—Elaine Harbold (215) 566-5744

#### AR, LA, NM (except see Region IX for Navajo lands and see Region VIII for Ute Mountain Ute Reservation land), OK, TX

United States EPA, Region VI, Storm Water Staff, Enforcement and Compliance Assurance Division (GEN-WC), EPA SW Construction GP, P.O. Box 50625, Dallas, TX 75205, Storm Water Coordinator—Brent Larsen (214) 665-7523

#### IA, KS, MO, NE

United States EPA, Region VII, Water, Wetlands, and Pesticides Division, NPDES and Facilities Management Branch, Storm Water Staff, 726 Minnesota Avenue, Kansas City, KS 66101, Storm Water Coordinator—Ralph Summers (913) 551-7418

#### CO, MT, ND, SD, WY, UT (except see Region IX for Goshute Reservation and Navajo Reservation lands)

United States EPA, Region VIII, Office of Ecosystems Protection and Remediation (8EPR-EP), Storm Water Staff, 999 18th Street, Denver, CO 80202-2466, Storm Water Coordinator—Vern Berry

(303) 312-6234

**Note**—For Montana Indian Lands, please use the following address:

United States EPA, Region VIII, Montana Operations Office, Federal Office Building, Drawer 10096, 301 South Park, Helena, MT 59626-0096, Storm Water Coordinator—Vern Berry (303) 312-6234

AZ, CA, HI, NV, American Samoa, Guam, Commonwealth of the Northern Mariana Islands, the Goshute Reservation in UT and NV, the Navajo Reservation in UT, NM, and AZ, the Duck Valley Reservation in ID, Fort McDermitt Reservation in OR, Johnston Atoll, Midway and Wake Island

United States EPA, Region IX, Water Management Division, (WTR-5), Storm Water Staff, 75 Hawthorne Street, San Francisco, CA 94105, Storm Water Coordinator—Eugene Bromley (415) 744-1906,

AK, ID (except see Region IX for Duck Valley Reservation lands), OR, WA

United States EPA, Region X, Office of Water OW-130, Storm Water Staff, 1200 6th Avenue, Seattle, WA 98101, Storm Water Coordinator—Joe Wallace (206) 553-8399.

#### Part V—Cost Estimates

The two major costs associated with pollution prevention plans for construction activities include the costs of sediment and erosion controls (see Table 1) and the costs of storm water management measures (see Table 2). Today's permits would provide flexibility in developing controls for construction activities. Typically, most construction sites will employ several types of sediment and erosion controls and storm water management controls, but not all the controls listed in Tables 1 and 2. In general, sites that disturb a large area will incur higher pollution prevention costs.

TABLE 1.—SEDIMENT AND EROSION CONTROL COSTS

Temporary seeding ...	\$1.00 per square foot.
Permanent seeding ...	\$1.00 per square foot.
Mulching .....	\$1.25 per square foot.
Sod stabilization .....	\$4.00 per square foot.
Vegetative buffer strips.	\$1.00 per square foot.
Protection of trees .....	\$30.00 to \$200.00 per tree set.
Earth dikes .....	\$5.50 per linear foot.
Silt fences .....	\$6.00 per linear foot.
Ddrainage swales-grass.	\$3.00 per square yard.
Drainage swales-sod	\$4.00 per square yard.
Ddrainage swales-riprap.	\$45.00 per square yard.

TABLE 1.—SEDIMENT AND EROSION CONTROL COSTS—Continued

Drainage swales-asphalt.	\$35.00 per square yard.
Drainage swales-concrete.	\$65.00 per square yard.
Check dams-rock .....	\$100 per dam.
Check dams-covered straw bales.	\$50 per dam.
Level spreader-earth-en.	\$4.00 per square yard.
Level spreader-concrete.	\$65.00 per square yard.
Subsurface drain .....	\$2.25 per linear foot.
Pipe slope drain .....	\$5.00 per linear foot.
Temporary storm drain diversion.	Variable.
Storm drain inlet protection.	\$300 per inlet.
Rock outlet protection	\$45 per square yard.
Sediment traps .....	\$500 to \$7,000 per trap.
Temporary sediment basins.	\$5,000 to \$50,000 per basin.
Sump pit .....	\$500 to \$7,000.
Entrance stabilization	\$1,500 to \$5,000 per entrance.
Entrance wash rack ..	\$2,000 per rack.
Temporary waterway crossing.	\$500 to \$1,500.
Wind breaks .....	\$2.50 per linear foot.

Practices such as sod stabilization and tree protection increase property values and satisfy consumer aesthetic needs.

Sources: "Means Site Work Cost Data," 9th edition, 1990, R.S. Means Company. "Sediment and Erosion Control, An Inventory of Current Practices," prepared by Kamber Engineering for U.S. EPA, April 1990.

TABLE 2.—ANNUALIZED COSTS OF SEVERAL STORM WATER MANAGEMENT OPTIONS FOR CONSTRUCTION SITES

	Annualized cost for 9-acre developed area	Annualized cost for 20-acre developed area
Wet Ponds .....	\$5,872	\$9,820
Dry Ponds .....	3,240	5,907
Dry Ponds with Extended Detention	3,110	5,413
Infiltration Trenches	4,134	6,359

Estimates based on methodology presented in "Cost of Urban Runoff Quality Controls," Wiegand, C., Schueler, T., Chittenden, W., and Jellick, D., Urban Runoff Quality-Impact and Quality Enhancement Technology, Proceedings of an Engineering Foundation Conference, ASCE, 1986, edited by B. Urbanas and L.A. Roesner.

Costs are presented in 1992 dollars. Annualized costs are based on a 10 year period and 10 percent discount rate. Estimates include a contingency cost of 25 percent of the construction cost and operation and maintenance costs of 5 percent of the construction cost. Land costs are not included.

### Part VI—Economic Impact (Executive Order 12866)

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this re-issued general permit is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to formal OMB review prior to proposal.

### Part VII—Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104-4, generally requires Federal agencies to assess the effects of their "regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (See, e.g., UMRA section 201, "Each agency shall \* \* \* assess the effects of Federal regulatory actions \* \* \* (other than to the extent that such regulations incorporate requirements specifically set forth in law)" (emphasis added)). UMRA section 102 defines "regulation" by reference to section 658 of Title 2 of the U.S. Code, which in turn defines "regulation" and "rule" by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law \* \* \*".

As discussed in the RFA section of this notice, NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to

publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide "an opportunity for a hearing." Thus, NPDES general permits are not "rules" for RFA or UMRA purposes.

Nevertheless, EPA has considered the draft general permit in light of UMRA's requirements. As noted elsewhere in today's notice, the draft general permit is virtually the same as the NPDES general permits for construction that many construction operators have used over the past five years. EPA has determined that the draft permit would not contain a Federal requirement that may result in expenditures of \$100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year.

The Agency also believes that the draft general permit would not significantly nor uniquely affect small governments. For UMRA purposes, "small governments" is defined by reference to the definition of "small governmental jurisdiction" under the RFA. (See UMRA section 102(1), referencing 2 U.S.C. section 658, which references section 601(5) of the RFA.) "Small governmental jurisdiction" means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency establishes an alternative definition.

Under existing regulations, a permit application is not required until August 7, 2001, for a storm water discharge associated with construction activity where the construction site is owned or operated by a municipality with a population of less than 100,000. 40 CFR 122.26(e)(1)(ii)&(g). In any event, the requirements of the draft general permit would not significantly affect small governments because most State laws already provide for the control of sedimentation and erosion in a similar manner as today's proposed general permit. The draft permit's requirements also would not uniquely affect small governments because compliance with the proposed permit conditions affects small governments in the same manner as any other entities seeking coverage under the permit.

### Part VIII—Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this proposed general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* In a separate **Federal Register** notice, EPA is proposing a

revision to the current Information Collection Request (ICR) document for today's permit (Approved by the Office of Management and Budget (OMB) OMB No. 2040-0086, expiration date of August 31, 1998) to account for the increased information requirements proposed in the new Notice of Intent (NOI) for the construction general permit. EPA will publish the proposed ICR revisions in a separate **Federal Register** notice EPA and will submit the revision to OMB for approval prior to issuance of the final permit. EPA estimates a slight increase in the burden associated with filling out the Notice of Intent (NOI) form for coverage under this permit due to the added requirements under the Endangered Species Act and the National Historic Preservation Act. EPA also anticipates a small increase in the time due to the requirement to submit a notice of termination (NOT) upon completion of construction activities.

#### **Part IX—Section 401 and Coastal Zone Management Act Certifications**

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the State/Tribal in which the discharge originates certifies that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA. The section 401 certification process has been initiated for all States, Indian lands and Federal facilities covered by today's general permits. Any additional State/Tribal permit conditions will be contained in the final permit.

The Coastal Zone Management Act (CZMA) requires that all Federal licensing and permitting actions be reviewed for consistency with each approved State coastal zone management plan. EPA has also initiated this review.

#### **Part X—Regulatory Flexibility Act**

Section 603(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603(a), provides that "[w]henver an agency is required by section 553 [of the Administrative Procedures Act (APA)], or any other law, to publish general notice of proposed rulemaking for any proposed rule," the agency must conduct an initial regulatory flexibility analysis for the proposed rule. Section 605(b) of the RFA provides an exemption from this requirement for a proposed rule that the agency head certifies "will not, if promulgated, have

a significant economic impact on a substantial number of small entities."

The Agency takes the position that NPDES general permits are not subject to rulemaking requirements under APA section 553 or any other law. The requirements of APA section 553 apply only to the issuance of "rules," which the APA defines in a manner that excludes permits. See APA section 551 (4), (6) and (8). The CWA also does not require publication of a general notice of proposed rulemaking for general permits. EPA issues draft NPDES general permits for public comment in the **Federal Register** in order to meet the applicable CWA procedural requirement to provide "an opportunity for a hearing." See CWA section 402(a), 33 U.S.C. 1342(a).

Nevertheless, the Agency has considered and addressed the potential impact of the draft general permit on small entities in a manner that meets the requirements of the RFA. EPA took such action based on the likelihood that a large number of small entities may seek coverage under the general permit if finalized as proposed. Specifically, EPA has analyzed the potential impact of the draft general permit on small entities and determined that the permit will not have a significant economic impact on a substantial number of small entities. Like the existing general permit it will replace, the draft general permit would make available to many small entities, particularly operators of construction sites, a streamlined process for obtaining authorization to discharge. Of the possible permitting mechanisms available to dischargers subject to the CWA, NPDES general permits are designed to reduce the reporting and monitoring burden associated with NPDES permit authorization, especially for small entities with discharges having comparatively less potential for environmental degradation than discharges regulated under individual NPDES permits. Thus, general permits like the existing and draft permit at issue here provide small entities with a permitting application option that is much less burdensome than NPDES individual permit applications.

Beyond that, the draft general permit is virtually identical to the existing general permit for construction that under which many construction operators have operated over the past five years. Moreover, there are other, new provisions of the proposed permit were designed to minimize burdens on small entities, including provisions in the proposal related to subcontractor obligations related to pollution prevention plans required by the permit.

Under the prior general permit for construction site discharges, affected subcontractors expressed concern to EPA about the need to prepare their own pollution prevention plan to address discharges related to subcontractor activities at a construction site. The subcontractors perceived this obligation to be redundant, particularly if a general contractor had prepared a pollution prevention plan that addressed the activities of subcontractors. Today's proposed permit would address this by allowing subcontractors to certify that they have reviewed and comply with the pollution prevention plan prepared by the general contractor (where the general contractor's pollution prevention plan addresses activities of subcontractors). EPA believes this modification from the prior permit should reduce adverse economic impacts on subcontractors who, in many instances, are small entities. In view of the foregoing, the Regional Administrators find that the proposed general permit will not have a significant economic impact on a substantial number of small entities.

#### **Part XI—Official Signatures**

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this proposed permit will not have a significant impact on a substantial number of small entities.

**Authority:** Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: May 22, 1997.

**John DeVillars,**

*Regional Administrator, Region I.*

#### **Part XI—Official Signatures**

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this proposed permit will not have a significant impact on a substantial number of small entities.

**Authority:** Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: May 21, 1997.

**Jeanne M. Fox,**

*Regional Administrator, Region 2.*

#### **Part XI—Official Signatures**

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this proposed permit will not have a significant impact on a substantial number of small entities.

**Authority:** Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: May 22, 1997.

**Stanley L. Laskowski,**

*Acting Regional Administrator, Region III.*

#### Part XI—Official Signatures

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this proposed permit will not have a significant impact on a substantial number of small entities.

**Authority:** Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: May 21, 1997.

**Myron O. Knudsen, P.E.,**

*Acting Regional Administrator, Region 6.*

#### Part XI—Official Signatures

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this proposed permit will not have a significant impact on a substantial number of small entities.

**Authority:** Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: May 21, 1997.

**U. Gale Hutton,**

*Acting Regional Administrator, Region 7.*

#### Part XI—Official Signatures

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this proposed permit will not have a significant impact on a substantial number of small entities.

**Authority:** Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: May 20, 1997.

**Patricia D. Hull,**

*Acting Regional Administrator, Region VIII.*

#### Part XI—Official Signatures

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this proposed permit will not have a significant impact on a substantial number of small entities.

**Authority:** Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: May 20, 1997.

**Alexis Strauss,**

*Acting Regional Administrator, Region 9.*

#### Part XI—Official Signatures

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this proposed permit will not have a significant impact on a substantial number of small entities.

**Authority:** Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: May 20, 1997.

**Jane S. Moore,**

*Acting Regional Administrator, Region X.*

#### Storm Water General Permit for Construction Activities

Cover Page

*Permit No. [See Part I.A.]*

#### Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.* the Act), except as provided in Part I.B.3 of this permit, operators of storm water discharges from construction activities, located in an area specified in Part I.A., are authorized to discharge in accordance with the conditions and requirements set forth herein.

Only those operators of storm water discharges from construction activities in the general permit area who submit a Notice of Intent in accordance with Part II of this permit are authorized under this general permit.

This permit shall become effective on [insert the date of publication of the final permit in the **Federal Register**].

This permit and the authorization to discharge shall expire at midnight, [insert the date five years after the date of publication of the final permit in the **Federal Register**].

Signed and issued this     day of     , 1997.

(Signature of Water Management Director or Regional Administrator)

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the corresponding State, Reservation, or other area.

#### NPDES General Permits for Storm Water Discharges From Construction Activities

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#### Part I. Coverage Under This Permit

##### A. Permit Area

The permit language is structured as if it were a single permit, with area-specific conditions specified in Part XI. Permit coverage is actually provided by legally separate and distinctly numbered permits covering each of the following areas:

##### Region 1:

CTR10\*#I: Indian Country Lands in the State of Connecticut

MAR10\*##I: Commonwealth of Massachusetts, except Indian Country Lands

MAR10\*##I: Indian Country Lands in the Commonwealth of Massachusetts

MER10\*##I: State of Maine, except Indian Country Lands

MER10\*##I: Indian Country Lands in the State of Maine

NHR10\*##I: State of New Hampshire, except Indian Country Lands

NHR10\*##I: Indian Country Lands in the State of New Hampshire  
 RIR10\*##I: Indian Country Lands in the State of Rhode Island  
 VTR10\*##I: Indian Country Lands in the State of Vermont  
 VTR10\*##F: Federal Facilities in the State of Vermont  
 Region 2:  
 NYR10\*##I: Indian Country Lands in the State of New York  
 PRR10\*##I: The Commonwealth of Puerto Rico

#### Region 3:

DCR10\*##I: The District of Columbia  
 DER10\*##F: Federal Facilities in the State of Delaware

#### Region 4:

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

#### Region 5:

Coverage Not Available.

#### Region 6:

LAR10\*##I: Indian Country Lands in the State of Louisiana  
 NMR10\*##I: The State of New Mexico, except Indian Country Lands  
 NMR10\*##I: Indian Country Lands in the State of New Mexico, except Navajo Reservation lands (see Region 9) and Ute Mountain Ute Reservation lands (see Region 8)  
 OKR10\*##I: Indian Country Lands in the State of Oklahoma  
 TXR10\*##I: The State of Texas, except Indian Country Lands  
 TXR10\*##I: Indian Country Lands in the State of Texas

#### Region 7:

IAR10\*##I: Indian Country Lands in the State of Iowa  
 KSR10\*##I: Indian Country Lands in the State of Kansas  
 NER10\*##I: Indian Country Lands in the State of Nebraska, except Pine Ridge Reservation lands (see Region 8)

#### Region 8:

COR10\*##F: Federal Facilities in the State of Colorado  
 COR10\*##I: Indian Country Lands in the State of Colorado, including the portion of the Ute Mountain Ute Reservation located in New Mexico  
 MTR10\*##I: Indian Country Lands in the State of Montana  
 NDR10\*##I: Indian Country Lands in the State of North Dakota, including that portion of the Standing Rock Reservation located in South Dakota (except for the Lake Traverse

Reservation which is covered under the permit areas for South Dakota).  
 SDR10\*##I: Indian Country Lands in the State of South Dakota, including the portion of the Pine Ridge Reservation located in Nebraska and the portion of the Lake Traverse Reservation located in North Dakota (except for the Standing Rock Reservation which is covered under the permit areas for North Dakota).  
 UTR10\*##I: Indian Country Lands in the State of Utah, except Goshute and Navajo reservation lands (see Region 9)  
 WYR10\*##I: Indian Country Lands in the State of Wyoming

#### Region 9:

ASR10\*##I: The Island of American Samoa  
 AZR10\*##I: The State of Arizona, except Indian Country Lands  
 AZR10\*##I: Indian Country Lands in the State of Arizona, including Navajo Reservation lands in New Mexico and Utah  
 CAR10\*##I: Indian Country Lands in the State of California  
 GUR10\*##I: The Island of Guam  
 JAR10\*##I: Johnston Atoll  
 MWR10\*##I: Midway Island and Wake Island  
 NIR10\*##I: Commonwealth of the Northern Mariana Islands  
 NVR10\*##I: Indian Country Lands in the State of Nevada, including the Duck Valley Reservation in Idaho, the Fort McDermitt Reservation in Oregon and the Goshute Reservation in Utah

#### Region 10

AKR10\*##I: The State of Alaska, except Indian Country Lands  
 AKR10\*##I: Indian Country Lands in Alaska  
 IDR10\*##I: The State of Idaho, except Indian Country Lands  
 IDR10\*##I: Indian Country Lands in the State of Idaho, except Duck Valley Reservation lands (see Region 9)  
 ORR10\*##I: Indian Country Lands in the State of Oregon except Fort McDermitt Reservation lands (see Region 9)  
 WAR10\*##F: Federal Facilities in the State of Washington  
 WAR10\*##I: Indian Country Lands in the State of Washington

#### B. Eligibility

1. This permit authorizes discharges of storm water from construction activities as defined in 40 CFR 122.26(b)(14)(x) and those construction site discharges designated by the Director as needing a storm water permit under 122.26(a)(1)(v) or under

122.26(a)(9) and 122.26(g)(1)(i), except for discharges identified under paragraph I.B.3. Any discharge authorized by a different NPDES permit may be commingled with discharges authorized by this permit.

2. This permit also authorizes storm water discharges from support activities related to a construction site (e.g. concrete or asphalt batch plants, equipment staging yards, material storage areas, etc.) from which there otherwise is a storm water discharge from a construction activity provided:

- a. The support activity is not a commercial operation serving multiple unrelated construction projects, and does not operate beyond the completion of the construction activity; and
- b. Appropriate controls and measures are identified in the storm water pollution prevention plan for the discharges from the support activity areas.

#### 3. Limitations on Coverage

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

a. *Post Construction Discharges.* Storm water discharges that originate from the site after construction activities have been completed and the site has undergone final stabilization.

b. *Discharges Mixed with Non-storm Water.* Discharges that are mixed with sources of non-storm water other than discharges which are identified in Part III.A.2. of this permit and which are in compliance with Part IV.D.5 (non-storm water discharges) of this permit. Any discharge authorized by a different NPDES permit may be commingled with discharges authorized by this permit.

c. *Discharges Covered by Another Permit.* Storm water discharges associated with construction activity that have been issued an individual permit or required to obtain coverage under an alternative general permit in accordance with paragraph VI.L;

d. *Discharges Threatening Water Quality.* Storm water discharges from construction sites that the Director (EPA) determines will cause, or have the reasonable potential to cause, excursions above water quality standards. (Where such determinations have been made, the discharger will be notified by the Director that an individual permit application is necessary.);

e. *Discharges that are not Protective of Endangered and Threatened Species.*

(1) A discharge of storm water associated with construction activity is covered under this permit only if the applicant certifies that it meets at least one of the following criteria. Failure to

continue to meet one of these criteria during the term of the permit will result in the storm water discharges associated with construction being ineligible for coverage under this permit.

(a) The storm water discharge(s), and the construction and implementation of Best Management Practices (BMPs) to control storm water runoff, are not likely to adversely affect species identified in Addendum A of this permit or critical habitat for a listed species; or

(b) The applicant's activity has received previous authorization under section 7 or section 10 of the Endangered Species Act (ESA) and that authorization addressed storm water discharges and/or BMPs to control storm water runoff (e.g., developer included impact of entire project in consultation over a wetlands dredge and fill permit under Section 7 of the Endangered Species Act); or

(c) The applicant's activity was considered as part of a larger, more comprehensive assessment of impacts on endangered and threatened species under section 7 or section 10 of the Endangered Species Act that which accounts for storm water discharges and BMPs to control storm water runoff (e.g., where an area-wide habitat conservation plan and section 10 permit is issued which addresses impacts from construction activities including those from storm water, or a National Environmental Policy Act (NEPA) review is conducted which incorporates ESA section 7 procedures); or

(d) Consultation under section 7 of the Endangered Species Act is conducted for the applicant's activity which results in either a no jeopardy opinion or a written concurrence on a finding of no likelihood of adverse effects; or

(e) The applicant's activity was considered as part of a larger, more comprehensive site-specific assessment of impacts on endangered and threatened species by the owner or other operator of the site and that permittee certified eligibility under item (a), (b), (c), or (d) above (e.g. owner was able to certify no adverse impacts for the project as a whole under item (a), so the contractor can then certify under item (e)). Utility companies applying for permit coverage for the entire permit area of coverage as defined under Part I.A. may certify under item (e) since authorization to discharge is contingent on a principal operator of a construction project having been granted coverage under this, or an alternative NPDES permit for the areas of the site where utilities installation activities will occur.

(2) All applicants must follow the procedures provided at Addendum A of this permit when applying for permit coverage.

(3) The applicant must comply with any terms and conditions imposed under the eligibility requirements of paragraphs (1)(a), (b), (c), (d), or (e) above to ensure that storm water discharges or BMPs to control storm water runoff are protective of listed endangered and threatened species and/or critical habitat. Such terms and conditions must be incorporated in the applicant's storm water pollution prevention plan.

(4) For the purposes of conducting consultation to meet the eligibility requirements of paragraph (1)(d) above, applicants are designated as non-Federal representatives. See 50 CFR 402.08. However, applicants who choose to conduct consultation as a non-Federal representative must notify EPA and the appropriate Service office in writing of that decision.

(5) This permit does not authorize any "take" (as defined under section 9 of the Endangered Species Act) of endangered or threatened species unless such takes are authorized under sections 7 or 10 of the Endangered Species Act.

(6) This permit does not authorize any storm water discharges nor require any BMPs to control storm water runoff that are likely to jeopardize the continued existence of any species that are listed as endangered or threatened under the Endangered Species Act or result in the adverse modification or destruction of habitat that is designated as critical under the Endangered Species Act.

*f. Discharges Adversely Affecting Properties Eligible for Protection Under the National Historic Preservation Act.*

(1) To be eligible for coverage under this permit, all applicants must determine whether their storm water discharges or BMPs to control storm water runoff would affect a property that is listed or is eligible for listing in the National Historic Register maintained by the Secretary of Interior (also known as "historic properties" in the NHPA regulations at 36 CFR 800.2). Applicants must comply with all requirements in this permit (including those pertaining to the development of storm water pollution prevention plans and submission of NOIs) to protect historic properties. Coverage under this permit is available only if:

(a) The storm water discharges or BMPs to control storm water runoff do not affect a property that is listed or is eligible for listing in the National Historic Register maintained by the Secretary of Interior; or,

(b) The applicant consults with the State Historic Preservation Officer (SHPO) or the Tribal Historic Preservation Officer (THPO) on the potential for adverse effects which results in a no effect finding; or

(c) The applicant has obtained and is in compliance with a written agreement between the applicant and the SHPO/THPO that outlines all measures to be undertaken by the applicant to mitigate or prevent adverse effects to the historic property; or

(d) The applicant agrees to implement and comply with the terms of a written agreement between another owner/operator (e.g., subdivision developer, property owner, etc.) and the SHPO/THPO that outlines all measures to be undertaken by operators on the site to mitigate or prevent adverse effects to the historic property; or

(e) The applicant's activity was considered as part of a larger, more comprehensive site-specific assessment of effects on historic properties by the owner or other operator of the site and that permittee certified eligibility under items (a), (b), (c), or (d) above. Utility companies applying for permit coverage for the entire construction site may certify under item (d) since authorization to discharge is contingent on a principal operator of a construction project having been granted coverage under this, or an alternative NPDES permit for the areas of the site where utilities installation activities will occur.

(2) This permit does not authorize any storm water discharges or BMPs to control storm water runoff which are not in compliance with any applicable State or local historic preservation laws.

*C. Obtaining Authorization*

1. In order for storm water discharges from construction activities to be authorized to discharge under this general permit, a discharger must:

(a) First develop a Pollution Prevention Plan (covering either the entire site or all portions of the site for which they are operators—see definition in Part IX) according to the requirements in Part IV (preparation and implementation of the Plan may be a cooperative effort where there is more than one operator at a site), and then

(b) Submit a Notice of Intent (NOI) in accordance with the requirements of Part II, using an NOI form provided by the Director (or a photocopy thereof). The Pollution Prevention Plan must be implemented upon commencement of construction activities.

2. For construction sites where the operator changes, or where a new operator is added after the submittal of



an NOI under Part II, a new NOI must be submitted in accordance with Part II.

3. Unless notified by the Director to the contrary, dischargers who submit an NOI in accordance with the requirements of this permit are authorized to discharge storm water from construction activities under the terms and conditions of this permit two (2) days after the date that the NOI is postmarked. The Director may deny coverage under this permit and require submittal of an application for an individual NPDES permit based on a review of the NOI or other information (see Part VI.L of this permit).

#### *D. Terminating Coverage*

1. Operators wishing to terminate coverage under this permit must submit a notice of termination (NOT) in accordance with Part VIII of this permit.

2. All permittees must submit a NOT within thirty (30) days after completion of their construction activities and final stabilization of their portion of the site, or another operator taking over all of their responsibilities at the site. A permittee cannot submit an NOT without final stabilization unless another party has agreed to assume responsibility for final stabilization of the site. Appropriate enforcement actions may be taken for permit violations where a permittee submits a NOT but the permittee has not transferred operational control to another permittee or the site has not undergone final stabilization. Project-by-project NOTs are not required to be submitted by utility company operators for installation of utilities at construction sites if the utility company operator has been authorized to discharge in the full area of coverage for a given permit as defined in Part I.A. of this permit.

### **Part II. Notice of Intent Requirements**

#### *A. Deadlines for Notification*

1. Except as provided in Parts II.A.3, II.A.4, II.A.5, or II.A.6, parties with operational control over project specifications, (e.g., owner or developer), must submit an initial Notice of Intent (NOI) in accordance with the requirements of this Part at least two (2) days prior to the commencement of construction activities (i.e., the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities);

2. Except as provided in Parts II.A.3, II.A.4., or Part II.A.5, parties defined as operators solely due to their day-to-day operational control over those activities at a project site which are necessary to

ensure compliance with the storm water pollution prevention plan or other permit conditions (e.g., general contractor, erosion control contractor, etc.) must submit an NOI at least two (2) days prior to commencing work at the site.

3. For storm water discharges from construction sites where the operator changes, (including projects where an operator is added after an NOI has been submitted under Parts II.A.1 or II.A.2) an NOI in accordance with the requirements of this Part shall be submitted at least 2 days prior to when the new operator assumes operational control over site specifications or commences work at the site.

4. Utility Companies (i.e., telephone, electric, gas, water, sewer, cable TV, etc. companies that provide service to the public) whose involvement in an individual construction project is limited to installation of underground or above-ground service lines and associated equipment to provide connections from a main transmission line to individual customers (e.g., homes, apartments, businesses, etc.) or a location where the site operator's utility subcontractor will tap in (e.g., public water utility installs a stub with a tap into the main trunk line and developer's utility contractors run the distribution lines), may file a single NOI to obtain coverage for all such activities in the permit areas defined in Part I.A. Permit coverage obtained in this manner is limited to the utility company's activities on sites where:

a. An operator of the individual construction project has obtained permit coverage under this or an alternative general permit or under an individual permit;

b. The pollution prevention plan for the site identifies control measures for utilities installation activities; and

c. The party responsible for implementation of each control measure for utilities installation is clearly identified.

Where a utility company is constructing a main transmission line, or other project for themselves, the utility company must obtain permit coverage on a site-by-site basis.

**Note:** Utility contractors hired by a utility company or other site operator and not meeting the definition of "operator" are considered subcontractors and are covered by the subcontractor certification requirements of Part IV.F.

5. Dischargers are not prohibited from submitting late NOIs. When a late NOI is submitted, authorization is only for future discharges. The Agency reserves the right to bring appropriate

enforcement actions for any unpermitted activities that may have occurred between the time construction commenced and authorization of future discharges.

6. Permittees with construction projects authorized to discharge under the previous general permit issued in 1992 and now replaced by this permit must:

a. Submit a new NOI within thirty (30) days of the effective date of this permit in order to continue authorization to discharge after [insert date 30 days after effective date of permit]. If the permittee will be eligible to submit a Notice of Termination (NOT) (e.g., construction finished and final stabilization complete) before the 30th day, no NOI is required.

b. During the time between the effective date of this permit and [insert date 30 days from the effective date of the permit], comply with the terms and conditions of the 1992 baseline general permit they were previously authorized under and submitted an NOI for extended coverage as described under the Administrative Procedures Act before termination of the 1992 baseline general permit.

c. Update their current pollution prevention plan to comply with the requirements of Part IV no later than [insert date 30 days from the effective date of the permit].

#### *B. Contents of Notice of Intent*

##### **1. Notice of Intent for Individual Construction Projects**

The Notice(s) of Intent shall be signed in accordance with Part VI.G of this permit and shall include the following information:

a. The street address (description of location if no street address is available), county, and the latitude and longitude of the approximate center of the construction site/project for which the notification is submitted;

b. The name, address, and telephone number of the operator(s) filing the NOI for permit coverage and operator status as a Federal, State, Tribal, private, or other public entity;

c. Whether or not the construction project is located on Indian Lands;

d. The name, address, and telephone number of the construction site owner and owner's status as a Federal, State, Tribal, private, or other public entity;

e. The name of the receiving water(s), or if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the receiving water(s);

f. The permit number of any NPDES permit(s) for any discharge(s) (including

any storm water discharges or any non-storm water discharges) from the site, to the extent available.

g. An estimate of project start date and completion dates, estimates of the number of acres of the site on which soil will be disturbed, and

h. A certification that a storm water pollution prevention plan, including both construction and post-construction controls, has been prepared for the site in accordance with Part IV of this permit, and such plan provides compliance with approved State/Tribal and/or local sediment and erosion plans or permits and/or storm water management plans or permits in accordance with Part IV.D.2.d of this permit. (A copy of the plans or permits should not be included with the NOI submission).

i. Whether, based on the instruction in Addendum A, any species identified in Addendum A are in proximity to the storm water discharges covered by this permit or the BMPs to be used to comply with permit conditions.

j. Under which section(s) of Part I.B.3.e.(1)(Endangered Species) and Part I.B.3.f. (Historical Preservation) the applicant is certifying eligibility.

k. The following certifications shall be signed in accordance with Part VI.G.

I certify under penalty of law that I have read and understand the Part I.B. eligibility requirements for coverage under the general permit for storm water discharges from construction activities, including those requirements relating to the protection of endangered species identified in Addendum A.

I further certify that I have followed the procedures found in Addendum A to protect listed endangered and threatened species and designated critical habitat and that the discharges covered under this permit and BMPs to control storm water runoff meet one of the eligibility requirements of Part I.B.3.e.(1) of this permit. Check the box(es) corresponding to that part of Part I.B.3.e.(1) under which you claim compliance with the eligibility requirements of the permit—(a), (b), (c), (d), or (e).

I further certify, to the best of my knowledge, that such discharges, and implementation of BMPs to control storm water runoff, do not have an effect on properties listed or eligible for listing on the National Register of Historic Places under the National Historic Preservation Act, or are otherwise eligible for coverage, in accordance with Part I.B.3.f. of the permit, due to a previous agreement under the National Historic Preservation Act.

I understand that continued coverage under this storm water general permit is contingent upon maintaining eligibility as provided for in Part I.B.

## 2. Notice of Intent for Permit Issuance Area-wide Coverage of Utility Companies While Installing Utility Service

The Notice(s) of Intent for utility companies filing for area-wide coverage in accordance with Part II.A.4. shall be signed in accordance with Part VI.G of this permit and shall include the following information:

a. The name, address, and telephone number of the utility company filing the NOI for permit coverage and operator status as a Federal, State, Tribal, private, or other public entity;

b. The State or other area for which coverage is being requested and whether or not any construction projects will be located on an Indian reservation;

c. The name, address, and telephone number of the utility company's point of contact for the utility company's compliance with the area-wide coverage granted by the permit;

d. A certification that a storm water pollution prevention plan with standard operating procedures for the limited utility company construction activities related to installation of service connections has been prepared in accordance with Part IV of this permit, and such plan provides compliance with approved State/Tribal and/or local sediment and erosion plans or permits and/or storm water management plans or permits in accordance with Part IV.D.2.d of this permit. (A copy of the plans or permits should not be included with the NOI submission.)

e. Under which sections of Part I.B.3.e.1. (Endangered Species) and Part I.B.3.f. (Historical Preservation) the applicant is certifying eligibility.

f. The following certifications shall be signed in accordance with Part VI.G.

I certify under penalty of law that I have read and understand the Part I.B. eligibility requirements for coverage under the general permit for storm water discharges from construction activities, including those requirements relating to the protection of endangered species identified Part I.B.3.e.

I further certify that I understand that authorization to discharge is contingent on a principal operator of a construction project having been granted coverage under this, or an alternative NPDES permit for the areas of the site where utilities installation activities will occur and that a pollution prevention plan including appropriate control measures for activities related to installation of utility service has been prepared and will be implemented.

I further certify that I have followed the procedures found in Addendum A to protect listed endangered and threatened species and designated critical habitat and that the discharges covered under this permit and BMPs to control storm water runoff meet one of the eligibility requirements of Part

I.B.3.e.(1) of this permit. Check the box(es) corresponding to that part of Part I.B.3.e.(1) under which you claim compliance with the eligibility requirements of the permit—(a), (b), (c), (d), or (e).

I further certify, to the best of my knowledge, that such discharges, and implementation of BMPs to control storm water runoff, do not have an effect on properties listed or eligible for listing on the National Register of Historic Places under the National Historic Preservation Act, or are otherwise eligible for coverage, in accordance with Part I.B.3.f. of the permit, due to a previous agreement under the National Historic Preservation Act.

I understand that continued coverage under this storm water general permit is contingent upon maintaining eligibility as provided for in Part I.B.

## C. Where to Submit

1. NOIs, signed in accordance with Part VI.G of this permit, are to be submitted to the Director at the address: Storm Water Notice of Intent (4203), U.S. EPA 401 M Street, SW., Washington, DC 20460.

2. A copy of the Director's acknowledgment of coverage under the general permit and assignment of a permit number; a local contact telephone number/address for public access to view the pollution prevention plan at reasonable times during regular business hours (advance notice by the public of the desire to view the plan may be required, not to exceed two working days). The permit does not require that free copies of the plan be provided to interested members of the public, only that they have reasonable access to view the document and copy it at their own expense. A brief description of the project shall also be posted at the construction site in a prominent and safe place for public viewing during regular business hours (alongside the building permit if the building permit is required to be displayed).

## Part III. Special Conditions, Management Practices, and Other Non-Numeric Limitations

### A. Prohibition on Non-Storm Water Discharges

1. Except as provided in paragraph I.B.2 or 3 and III.A.2, all discharges covered by this permit shall be composed entirely of storm water.

2. Discharges of material other than storm water that are in compliance with a NPDES permit (other than this permit) issued for that discharge may be mixed with discharges authorized by this permit.

3. The following non-storm water discharges are authorized by this permit provided the non-storm water

component of the discharge is in compliance with paragraph IV.D.5: discharges from fire fighting activities; fire hydrant flushings; waters used to wash vehicles or control dust in accordance with Part IV.D.2.c.(2); potable water sources including waterline flushings; routine external building washdown which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

#### *B. Releases in Excess of Reportable Quantities*

The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. This permit does not relieve the permittee of the reporting requirements of 40 CFR 117 and 40 CFR 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 117 or 40 CFR 302, occurs during a 24 hour period:

1. The permittee is required to notify the National Response Center (NRC) (800-424-8802; in the Washington, DC metropolitan area 202-426-2675) in accordance with the requirements of 40 CFR 117 and 40 CFR 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 the appropriate EPA Regional Office at the address provided in Part V.C (addresses) of this permit; and

3. The storm water pollution prevention plan required under Part IV of this permit must be modified within 14 calendar days of knowledge of the release to: provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

#### *C. Spills*

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

#### *D. Discharge Compliance With Water Quality Standards*

Dischargers seeking coverage under this permit shall not be causing or have the reasonable potential to cause or contribute to a violation of a water quality standard. Where a discharge is already authorized under this permit and is later determined to cause or have the reasonable potential to cause or contribute to the violation of an applicable State, Tribal or Federal Water Quality Standard, the permitting authority will notify the operator 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 document these actions in the pollution prevention plan. If violations remain or re-occur, then coverage under this permit will be terminated by the permitting authority and an alternative permit may be issued. Compliance with this requirement does not preclude any enforcement activity as provided by the Clean Water Act for the underlying violation.

#### *E. Responsibilities of Operators*

1. *Developer/Owner Operator*—The permittee(s) with operational control over project specifications (including the ability to make modifications in specifications) (e.g. developer or owner) must:

- a. Ensure the project specifications for the portion of the site for which they are operators meet the minimum requirements of Part IV (Pollution Prevention Plan Development) and all other applicable conditions;

- b. Ensure that the pollution prevention plan indicates which areas of the project they have operational control over and ensure that if modifications are made to the pollution prevention plan, where other operators are implementing portions of the plan, that these other operators be immediately notified of such modifications.

- c. Ensure that the pollution prevention plan for the portion of the site for which they are operators indicates the name and NPDES permit number for parties with day to day operational control of those activities necessary to ensure compliance with the storm water pollution prevention plan or other permit conditions. If these parties have not been identified at the time the pollution prevention plan is

initially developed, the permittee with operational control over project specifications shall be considered to be the responsible party until such time as the authority is transferred to another party (e.g. general contractor hired) and the plan updated;

- d. Ensure that the pollution prevention plan complies with measures to identify and protect listed threatened and endangered species and/or critical habitat as specified in Part I.B.3.e., Addendum A of this permit and as may be required as a result of consultation; and

- e. Ensure that the pollution prevention plan complies with measures to protect properties eligible for protection under the National Historic Preservation Act as specified in Part I.B.3.f. of this permit.

2. *Full Site Operator*—The permittee(s) with day-to-day operational control of those activities at a project site which are necessary to ensure compliance with the storm water pollution prevention plan or other permit conditions (e.g. general contractor) must:

- a. Ensure the pollution prevention plan for the portion of the site for which they are operators meets the minimum requirements of Part IV (Pollution Prevention Plan Development) and identifies the parties responsible for implementation of control measures identified in the plan;

- b. Ensure that the pollution prevention plan indicates which areas of the project they have operational control over and ensure that if modifications are made to the pollution prevention plan, where other operators are implementing portions of the plan, that these other operators be immediately notified of such modifications;

- c. Ensure that the pollution prevention plan for the portion of the site for which they are operators indicates the name and NPDES permit number of the party with operational control over project specifications (including the ability to make modifications in specifications);

- d. Ensure that the pollution prevention plan complies with measures to identify and protect listed threatened and endangered species and/or critical habitat as specified in Part I.B.3.e., Addendum A of this permit and as may be required as a result of consultation; and

- e. Ensure that the pollution prevention plan complies with measures to protect properties eligible for protection under the National Historic Preservation Act as specified in Part I.B.3.f. of this permit.

3. *Partial Site Operators.* Permittees with operational control over only a portion of a larger construction site (e.g., one of four homebuilders in a particular subdivision, utility companies, etc.) are responsible for compliance with all applicable terms and conditions of this permit as it relates to their activities on their portion of the construction site, including protection of endangered species, protection of historic properties and implementation of pollution prevention plan measures. Partial site operators shall ensure (either directly or through coordination with another permittee) that their activities do not render another party's pollution controls ineffective. Partial site operators must either implement their portions of a common pollution prevention plan developed by a full site operator or develop and implement their own pollution prevention plan.

#### **Part IV. Storm Water Pollution Prevention Plans**

A storm water pollution prevention plan shall be developed for each construction site covered by this permit (at least one per permit area for utility company service connection permit coverage). For more effective coordination of BMPs and opportunities for cost sharing, a cooperative effort by the different operators at a site to prepare and participate in a comprehensive pollution prevention plan is encouraged. Individual operators at a site may, but are not required, to develop separate pollution prevention plans that cover only their portion of the project provided reference is made to other operators at the site. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction site. The plan shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges associated with construction activity at the construction site and to assure compliance with the terms and conditions of this permit. When developing pollution prevention plans, applicants must follow the procedures in Addendum A of this permit to determine whether endangered and threatened species would be affected by the applicant's storm water discharges or BMPs to control storm water runoff. Any information on whether endangered and threatened species and their critical habitat are found in proximity to the construction site must be included in

the pollution prevention plan. Any terms or conditions that are imposed under the eligibility requirements of Part I.B.3.e and Addendum A of this permit to protect endangered and threatened species and/or critical habitat from storm water discharges or BMPs to control storm water runoff must be incorporated into the pollution prevention plan. Permittees must implement the applicable provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

##### **A. Deadlines for Plan Preparation and Compliance**

The plan shall:

1. Be completed (including certifications required under Part IV.F) prior to the submittal of an NOI to be covered under this permit and updated as appropriate; and
2. The plan shall provide for compliance with the terms and schedule of the plan beginning with the initiation of construction activities.

##### **B. Signature, Plan Review and Making Plans Available**

1. The plan shall be signed in accordance with Part VI.G, and be retained on-site at the facility which generates the storm water discharge in accordance with Part V (retention of records) of this permit. If the site is inactive or does not have an onsite location adequate to store the pollution prevention plan, the location of the plan, along with a contact phone number, shall be posted on site. If the plan is located offsite, reasonable local access to the plan, during normal working hours, must be provided as described below.
2. The permittee shall make plans available upon request to the Director; a State, Tribal or local agency approving sediment and erosion plans, grading plans, or storm water management plans; interested members of the public; local government officials; or to the operator of a municipal separate storm sewer receiving discharges from the site. Viewing by the public shall be at reasonable times during regular business hours (advance notice by the public of the desire to view the plan may be required, not to exceed two working days). The permit does not require that free copies of the plan be provided to interested members of the public, only that they have reasonable access to view the document and copy it at their own expense. The copy of the plan required to be kept onsite (or locally available) must be made available to the Director (or authorized

representative) for review at the time of an onsite inspection.

3. The Director, or authorized representative, may notify the permittee (co-permittees) at any time that the plan does not meet one or more of the minimum requirements of this Part. Such notification shall identify those provisions of the permit which are not being met by the plan, and identify which provisions of the plan require modifications in order to meet the minimum requirements of this Part. Within 7 calendar days of receipt of such notification from the Director, (or as otherwise provided by the Director), or authorized representative, the permittee shall make the required changes to the plan and shall submit to the Director a written certification that the requested changes have been made. The Director may take appropriate enforcement action for the period of time the permittee was operating under a plan that did not meet the minimum requirements of the permit.

##### **C. Keeping Plans Current**

The permittee must amend the plan whenever:

1. There is a change in design, construction, operation, or maintenance, which has a significant effect on the discharge of pollutants to the waters of the United States and which has not otherwise been addressed in the plan;
2. Inspections or investigations by site operators, local, State, Tribal or federal officials indicate the storm water pollution prevention plan is proving ineffective in eliminating or significantly minimizing pollutants from sources identified under Part IV.D.2 of this permit, or is otherwise not achieving the general objectives of controlling pollutants in storm water discharges associated with construction activity; and
3. The plan shall be amended to identify any new contractor and/or subcontractor that will implement a measure of the storm water pollution prevention plan (see Part IV.F). The plan must also be amended to address any measures necessary to protect endangered and threatened species or historic properties. Amendments to the plan may be reviewed by EPA in the same manner as Part IV.B above.

##### **D. Contents of Plan**

The storm water pollution prevention plan shall include the following items:

###### **1. Site Description**

Each plan shall provide a description of pollutant sources and other information as indicated:

- a. A description of the nature of the construction activity;
- b. A description of the intended sequence of major activities which disturb soils for major portions of the site (e.g., grubbing, excavation, grading, utilities and infrastructure installation, etc);
- c. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading, or other activities;
- d. An estimate of the runoff coefficient of the site after construction activities are completed and existing data describing the soil or the quality of any discharge from the site;
- e. A general location map (e.g. portion of a city or county map or similar scale) and a site map indicating drainage patterns and approximate slopes anticipated after major grading activities, areas of soil disturbance, an outline of areas which are not to be disturbed, the location of major structural and nonstructural controls identified in the plan, the location of areas where stabilization practices are expected to occur, surface waters (including wetlands), and locations where storm water is discharged to a surface water;
- f. A description of any discharge associated with industrial activity other than construction (including storm water discharges from dedicated asphalt plants and dedicated concrete plants) covered by the permit; and the location of that activity;
- g. The name of the receiving water(s), and areal extent of wetland acreage at the site;
- h. A copy of the permit requirements (may simply attach copy of permit language);
- i. Information on whether listed endangered or threatened species and/or critical habitat are found in proximity to the construction activity and whether such species are adversely affected by the applicant's storm water discharges or BMPs to control storm water runoff as required under Addendum A of the permit; and
- J. Information on whether the storm water discharges from the construction activities, and the construction and implementation of BMPs, would have an affect on a property that is listed or eligible for listing under the National Historic Register and, where effects may occur, any written agreements with the SHPO or THPO to mitigate these effects.

## 12. Controls

Each plan shall include a description of appropriate controls and measures that will be implemented at the construction activity. The plan must

clearly describe for each major activity identified in Part IV.D.1.b: (a) appropriate control measures and the timing during the construction process that the measures will be implemented and (b) which permittee is responsible for implementation (e.g., perimeter controls for one portion of the site will be installed by Contractor A after the clearing and grubbing necessary for installation of the measure, but before the clearing and grubbing for the remaining portions of the site. Perimeter controls will be actively maintained by Contractor B until final stabilization of those portions of the site upward of the perimeter control. Temporary perimeter controls will be removed by Owner after final stabilization). The description and implementation of controls shall address the following minimum components:

- a. *Erosion and Sediment Controls.*
  - (1) Short and Long Term Goals and Criteria:
    - (a) The construction-phase erosion and sediment controls should be designed to retain sediment on site to the maximum extent practicable.
    - (b) All control measures must be properly selected, installed, and maintained in accordance with the manufacturers specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the permittee must replace or modify the control for site situations.
    - (c) If sediments escapes the construction site, off-site accumulations of sediment must be removed at a frequency sufficient to minimize offsite impacts (e.g., fugitive sediment in street could be washed into storm sewers by the next rain and/or pose a safety hazard to users of public streets).
    - (d) Sediment must be removed from sediment traps or sedimentation ponds when design capacity has been reduced by 50%.
    - (e) Litter, construction debris, and construction chemicals exposed to storm water shall be picked up prior to anticipated storm events (e.g. forecasted by local weather reports), or otherwise prevented from becoming a pollutant source for storm water discharges (e.g. screening outfalls, picked up daily, etc.).
    - (f) Offsite material storage areas (also including overburden and stockpiles of dirt, etc.) used solely by the permitted project are considered a part of the project and shall be addressed in the pollution prevention plan.
  - (2) Stabilization Practices:
    - A description of interim and permanent stabilization practices, including site-specific scheduling of the

implementation of the practices. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized. Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures. Use of impervious surfaces for stabilization should be avoided. A record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated shall be included in the plan. Except as provided in paragraphs IV.D.2.(a).(1).(a), (b), and (c) below, stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased.

(a) Where the initiation of stabilization measures by the 14th day after construction activity temporary or permanently cease is precluded by snow cover or frozen ground conditions, stabilization measures shall be initiated as soon as practicable.

(b) Where construction activity on a portion of the site is temporarily ceased, and earth disturbing activities will be resumed within 21 days, temporary stabilization measures do not have to be initiated on that portion of site.

(c) In arid areas (areas with an average annual rainfall of 0 to 10 inches), semi-arid areas (areas with an average annual rainfall of 10 to 20 inches), and areas experiencing droughts where the initiation of stabilization measures by the 14th day after construction activity has temporarily or permanently ceased is precluded by seasonal arid conditions, stabilization measures shall be initiated as soon as practicable.

### (3) Structural Practices:

A description of structural practices to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable. Such practices may include silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Placement of Structural practices in floodplains should be avoided to the degree attainable. The installation of these

devices may be subject to section 404 of the CWA.

(a) For common drainage locations that serve an area with 10 or more acres disturbed at one time, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. The 3,600 cubic feet of storage area per acre drained does not apply to flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin. For drainage locations which serve 10 or more disturbed acres at one time and where a temporary sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent controls is not attainable, smaller sediment basins and/or sediment traps should be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all downslope boundaries of the construction area and for those side slope boundaries deemed appropriate as dictated by individual site conditions.

(b) For drainage locations serving less than 10 acres, sediment basins and/or sediment traps should be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all downslope boundaries (and those side slope boundaries deemed appropriate as dictated by individual site conditions) of the construction area unless a sediment basin providing storage for 3,600 cubic feet of storage per acre drained is provided.

b. *Storm Water Management.* A description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. Structural measures should be placed on upland soils to the degree attainable. The installation of these devices may be subject to section 404 of the CWA. This permit only addresses the installation of storm water management measures, and not the ultimate operation and maintenance of such structures after the construction activities have been completed and the site has undergone final stabilization. Permittees are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with construction activity have been eliminated from the site. However, post-

construction storm water BMPs that discharge pollutants from point sources once construction is completed, may in themselves, need authorization under a separate NPDES permit.

(1) Such practices may include: storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems (which combine several practices). The pollution prevention plan shall include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels.

(2) Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel for the purpose of providing a non-erosive velocity flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g., no significant changes in the hydrological regime of the receiving water).

c. *Other Controls.*

(1) No solid materials, including building materials, shall be discharged to waters of the United States, except as authorized by a section 404 permit.

(2) Off-site vehicle tracking of sediments and the generation of dust shall be minimized.

(3) The plan shall ensure and demonstrate compliance with applicable State, Tribal and/or local waste disposal, sanitary sewer or septic system regulations to the extent these are located within the permitted area.

(4) The plan shall include a narrative description of practices to reduce pollutants from construction related materials which are stored onsite including an inventory of construction materials (including waste materials), storage practices to minimize exposure of the materials to storm water, and spill prevention and response.

(5) A description of pollutant sources from areas other than construction (including storm water discharges from dedicated asphalt plants and dedicated concrete plants), and a description of controls and measures that will be implemented at those sites.

(6) The plan shall include measures to protect listed endangered and threatened species and/or critical habitat (if applicable) including any terms or conditions that are imposed under the eligibility requirements of Part I.B.3.e and Addendum A of this permit to protect such species and/or critical habitat from storm water discharges or BMPs to control storm

water runoff. Failure to include these measures will result in the storm water discharges from the construction activities being ineligible for coverage under this permit.

(7) The plan shall include measures to protect properties that are listed or eligible for listing under the National Historic Register including any measures agreed to through written agreements with the SHPO or THPO. Failure to include these measures will result in the storm water discharges from the construction activities being ineligible for coverage under this permit.

d. *Approved State, Tribal or Local Plans.*

(1) Permittees which discharge storm water associated construction activities must include in their storm water pollution prevention plan procedures and requirements specified in applicable sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State or local officials. Permittees shall provide a certification in their storm water pollution prevention plan that their storm water pollution prevention plan reflects requirements applicable to protecting surface water resources in sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State, Tribal or local officials. Permittees shall comply with any such requirements during the term of the permit. This provision does not apply to provisions of master plans, comprehensive plans, non-enforceable guidelines or technical guidance documents that are not identified in a specific plan or permit that is issued for the construction site.

(2) Storm water pollution prevention plans must be amended to reflect any change applicable to protecting surface water resources in sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State, Tribal or local officials for which the permittee receives written notice. Where the permittee receives such written notice of a change, the permittee shall provide a recertification in the storm water pollution plan that the storm water pollution prevention plan has been modified to address such changes.

(3) Dischargers seeking alternative permit requirements shall submit an individual permit application in accordance with Part VI.L of the permit at the address indicated in Part V.C of this permit for the appropriate Regional Office, along with a description of why requirements in approved State, Tribal or local plans or permits, or changes to

such plans or permits, should not be applicable as a condition of an NPDES permit.

### 3. Maintenance

A description of procedures to ensure the timely maintenance of vegetation, erosion and sediment control measures and other protective measures identified in the site plan in good and effective operating condition. Maintenance needs identified in inspections or by other means shall be accomplished before the next anticipated storm event, or as necessary to maintain the continued effectiveness of storm water controls. If maintenance prior to the next anticipated storm event is impracticable, maintenance must be scheduled and accomplished as soon as practicable.

### 4. Inspections

Qualified personnel (provided by the permittee or cooperatively by multiple permittees) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site at least once every fourteen calendar days, before anticipated storm events (or series of storm events such as intermittent showers over one or more days) expected to cause a significant amount of runoff and within 24 hours of the end of a storm event of 0.5 inches or greater. Where sites have been finally or temporarily stabilized, runoff is unlikely due to winter conditions (e.g. site covered with snow, ice, or frozen ground), or during seasonal arid periods in arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (areas with an average annual rainfall of 10 to 20 inches) such inspection shall be conducted at least once every month.

a. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.

b. Based on the results of the inspection, the site description

identified in the plan in accordance with paragraph IV.D.1 of this permit and pollution prevention measures identified in the plan in accordance with paragraph IV.D.2 of this permit shall be revised as appropriate, but in no case later than 7 calendar days following the inspection. Such modifications shall provide for timely implementation of any changes to the plan within 7 calendar days following the inspection.

c. A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan (including the location(s) of discharges of sediment or other pollutants from the site and of any control device that failed to operate as designed or proved inadequate for a particular location), and actions taken in accordance with paragraph IV.D.4.b of the permit shall be made and retained as part of the storm water pollution prevention plan for at least three years from the date that the site is finally stabilized. Such reports shall identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VI.G of this permit.

### 5. Non-Storm Water Discharges

Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A.2 of this permit that are combined with storm water discharges associated with construction activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

#### *E. Contractor and Subcontractor Certifications*

#### 1. Contractors and Subcontractors Implementing Storm Water Control Measures

The storm water pollution prevention plan must clearly identify for each control measure identified in the plan, the party that will implement the measure. The Permittee(s) shall insure all contractors and subcontractors identified in the plan as being responsible for implementing storm water control measures sign a copy of the following certification statement, in accordance with Part VI.G of this

permit, before performing any work in the area covered by the storm water pollution prevention plan. All certifications must be included with the storm water pollution prevention plan.

I certify under penalty of law that I understand the terms and conditions of the National Pollutant Discharge Elimination System (NPDES) general permit that authorizes storm water discharges associated with construction activity from the construction site identified as part of this certification.

The certification must include the name and title of the person providing the signature in accordance with Part VI.G of this permit; the name, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

#### 2. Contractors and Subcontractors Impacting Storm Water Control Measures

The permittee shall insure contractor(s) and/or subcontractor(s) that will conduct activities that may impact the effectiveness of control measures identified in the plan, but who do not meet the definition of "operator" (Part IX), sign a copy of the following certification statement, in accordance with Part VI.G of this permit, before beginning work on site. All certifications must be included with the storm water pollution prevention plan.

I certify under penalty of law that I will coordinate, either through the general contractor, owner, or directly, with the contractor(s) and/or subcontractor(s) identified in the pollution prevention plan having responsibility for implementing storm water control measures to minimize any impact my actions may have on the effectiveness of these storm water controls measures.

The certification must include the name and title of the person providing the signature in accordance with Part VI.G of this permit; the name, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

#### 3. Utility Companies

The storm water pollution prevention plan must clearly identify, for each control measure identified in the plan relating to the installation of utility service, the party that will implement the measure. The Permittee(s) shall provide to the site operator(s) responsible for maintenance of the pollution prevention plan addressing impacts of utilities installation, a copy of the following certification statement, signed in accordance with Part VI.G of



this permit, before performing any work in the area covered by the storm water pollution prevention plan. All certifications must be included with the storm water pollution prevention plan.

I certify under penalty of law that I understand the terms and conditions of the National Pollutant Discharge Elimination System (NPDES) general permit that authorizes storm water discharges associated with construction activity from the portion of the construction site that will be disturbed during my installation of utility service.

The certification must include the name and title of the person providing the signature in accordance with Part VI.G of this permit; the name, address and telephone number of the permittee; the address (or other identifying description) of the site; and the date the certification is made.

## Part V. Retention of Records

### A. Documents

The permittee shall retain copies of storm water pollution prevention plans and all reports required by this permit, and records of all data used to complete the Notice of Intent to be covered by this permit, for a period of at least three years from the date that the site is finally stabilized. This period may be extended by request of the Director at any time.

### B. Accessibility

The permittee shall retain a copy of the storm water pollution prevention plan required by this permit (including a copy of the permit language) at the construction site (or other local location accessible to the Director and the public) from the date of project initiation to the date of final stabilization. The permittees with day to day operational control over pollution prevention plan implementation shall have a copy of the plan available at a central location onsite for the use of all operators and those identified as having responsibilities under the plan whenever they are on the construction site.

### C. Addresses

Except for the submittal of NOIs (see Part II.C of this permit), all written correspondence concerning discharges in any State, Indian land or from any Federal Facility covered under this permit and directed to the U.S. Environmental Protection Agency, including the submittal of individual permit applications, shall be sent to the address of the appropriate Regional Office listed below:

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

United States EPA, Region I, Office of Ecosystem Protection, Municipal Assistance Unit, John F. Kennedy Federal Building—CMU, Boston, MA 02203

Region 2: NJ, NY, PR, VI

United States EPA, Region II, Division of Environmental Planning and Protection, (2DEPP-WPB), Water Programs Branch, 290 Broadway, New York, NY 10007-1866

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

United States EPA, Region III, Water Management Division, (3WM55), Storm Water Staff, 841 Chestnut Building, Philadelphia, PA 19107

Region 6: AR, LA, NM (Except See Region IX for Navajo Lands, and See Region VIII for Ute Mountain Ute Reservation Lands), OK, TX

United States EPA, Region VI, Storm Water Staff, Enforcement and Compliance Assurance Division (GEN-WC), EPA SW Construction GP, P.O. Box 50625, Dallas, TX 75205

Region 7: IA, KS, MO, NE (Except See Region VIII for Pine Ridge Reservation Lands)

United States EPA, Region VII, Water, Wetlands, and Pesticides Division, NPDES and Facilities Management Branch, Storm Water Staff, 726 Minnesota Avenue, Kansas City, KS 66101

Region 8: CO, MT, ND, SD, WY, UT (Except See Region IX for Goshute Reservation and Navajo Reservation Lands)

United States EPA, Region VIII, Office of Ecosystems Protection, and Remediation (8EPR-EP), Storm Water Staff, 999 18th Street, Denver, CO 80202-2466

**Note**—For Montana Indian Lands, please use the following address: United States EPA, Region VIII, Montana Operations Office, Federal Office Building, 301 South Park, Drawer 10096, Helena, MT 59626-0096

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

United States EPA, Region IX, Water Management Division, WTR-5, Storm Water Staff, 75 Hawthorne Street, San Francisco, CA 94105

Regions 10: AK, ID (Except See Region IX for Duck Valley Reservation Lands), OR (Except See Region IX for Ft. McDermitt Reservation), WA

United States EPA, Region X, Office of Water OW-130, Storm Water Staff, 1200 6th Avenue, Seattle, WA 98101

## Part VI. Standard Permit Conditions

### A. Duty To Comply

1. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. Penalties for Violations of Permit Conditions.

The Director will adjust the civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (**Federal Register**: December 31, 1996, Volume 61, Number 252, pages 69359-69366, as corrected, March 20, 1997, Volume 62, Number 54, pages 13514-13517) as mandated by the Debt Collection Improvement Act of 1996 for inflation on a periodic basis. This rule allows EPA's penalties to keep pace with inflation. The Agency is required to review its penalties at least once every four years thereafter and to adjust them as necessary for inflation according to a specified formula. The civil and administrative penalties listed below were adjusted for inflation starting in 1996.

#### a. Criminal

(1) *Negligent Violations*. The CWA provides that any person who negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(2) *Knowing Violations*. The CWA provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(3) *Knowing Endangerment*. The CWA provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject

to a fine of not more than \$250,000, or by imprisonment for not more than 15 years, or both.

(4) *False Statement.* The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than four years, or by both. (See section 309.c.4 of the Clean Water Act).

#### b. Civil Penalties

The CWA provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed \$27,500 per day for each violation.

#### c. Administrative Penalties

The CWA provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

- (1) *Class I penalty.* Not to exceed \$11,000 per violation nor shall the maximum amount exceed \$27,500.
- (2) *Class II penalty.* Not to exceed \$11,000 per day for each day during which the violation continues nor shall the maximum amount exceed \$137,500.

#### B. Continuation of the Expired General Permit

This permit expires five years after the effective date. However, an expired general permit may continue in force and effect. To retain coverage under the continued permit, permittees should provide notice of their intent to remain covered under this permit at least 2 days prior to the expiration date. The notice must be signed in accordance with Part VI.G.1. of this permit and must contain the following information:

1. Name, address and telephone number of the operator.
2. The existing storm water construction permit number.

This information may be submitted on a post card or in a letter and shall be submitted to the EPA Storm Water

Notice of Intent Center at: Storm Water Notice of Intent (4203), US EPA, 401 M Street, SW, Washington, D.C. 20460.

#### 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 in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

#### E. Duty to Provide Information

The permittee shall furnish to the Director or an authorized representative of the Director any information which is requested to determine compliance with this permit or other information.

#### F. Other Information

When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, he or she shall promptly submit such facts or information.

#### G. Signatory Requirements

All Notices of Intent, storm water pollution prevention plans, reports, certifications or information either submitted to the Director or the operator of a large or medium municipal separate storm sewer system, or that this permit requires be maintained by the permittee, shall be signed as follows:

1. All Notices of Intent shall be signed as follows:

- a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: 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 the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000 (in second-quarter 1980 dollars) if 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 section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

2. All reports required by the permit and other information requested by the Director or authorized representative of the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- a. The authorization is made in writing by a person described above and submitted to the Director.

- 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 manager, operator, superintendent, or 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).

- c. *Changes to authorization.* If an authorization under paragraph II.B.3. is no longer accurate because a different operator has responsibility for the overall operation of the construction site, a new notice of intent satisfying the requirements of paragraph II.B must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

- d. *Certification.* Any person signing documents under paragraph VI.G 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.

#### H. Penalties for Falsification of Reports

Section 309(c)(4) of the Clean Water Act provides that any person who knowingly makes any false material

statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years, or by both.

#### *I. 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).

#### *J. 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.

#### *K. 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.

#### *L. Requiring an Individual Permit or an Alternative General Permit*

1. The Director may require any person authorized by this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the Director to take action under this paragraph. Where the Director requires a discharger authorized to discharge under this permit to apply for an individual NPDES permit, the Director shall notify the discharger in writing that a permit application is required. This notification shall include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for the discharger to file the application, and a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. Applications shall be submitted to the appropriate Regional Office indicated in

Part V.C of this permit. The Director may grant additional time to submit the application upon request of the applicant. If a discharger fails to submit in a timely manner an individual NPDES permit application as required by the Director under this paragraph, then the applicability of this permit to the individual NPDES permittee is automatically terminated at the end of the day specified by the Director for application submittal.

2. Any discharger authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. In such cases, the permittee shall submit an individual application in accordance with the requirements of 40 CFR 122.26(c)(1)(ii), with reasons supporting the request, to the Director at the address for the appropriate Regional Office indicated in Part V.C of this permit. The request may be granted by issuance of any individual permit or an alternative general permit if the reasons cited by the permittee are adequate to support the request.

3. When an individual NPDES permit is issued to a discharger otherwise subject to this permit, or the discharger is authorized to discharge under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Director.

#### *M. 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 State/Tribal law or regulation under authority preserved by section 510 of the Act.

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

#### *N. Proper Operation and Maintenance*

The permittee 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 and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

#### *O. Inspection and Entry*

The permittee shall allow the Director or an authorized representative of EPA, the State/Tribe, or, in the case of a construction site which discharges through a municipal separate storm sewer, an authorized representative of the municipal operator or the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

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

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

3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment).

#### *P. 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.

#### **Part VII. Reopener Clause**

A. If there is evidence indicating that the storm water discharges authorized by this permit cause, have the reasonable potential to cause or contribute to, a violation of a water quality standard, the discharger may be required to obtain individual permit or an alternative general permit in accordance with Part I.C of this permit or the permit may be modified to include different limitations and/or requirements.

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

## Part VIII. Termination of Coverage

### A. Notice of Termination

Where a site has been finally stabilized and all storm water discharges from construction activities that are authorized by this permit are eliminated, or where the operator of all storm water discharges at a facility changes, the permittee must submit a Notice of Termination that is signed in accordance with Part VI.G of this permit. The Notice of Termination shall include the following information:

1. The street (description of location if no street address is available) address of the construction site for which the notification is submitted;
2. The name, address and telephone number of the permittee submitting the Notice of Termination;
3. The NPDES permit number for the storm water discharge identified by the Notice of Termination;
4. An indication of whether the storm water discharges associated with construction activity have been eliminated or the operator of the discharges has changed;
5. For changes in operators, the name, address, and phone number of the new operator, and
6. The following certification signed in accordance with Part VI.G (signatory requirements) of this permit:

I certify under penalty of law that either:  
(a) all storm water discharges associated with construction activity from the portion of the identified facility where I was an operator have ceased or have been eliminated or (b) I am no longer an operator at the construction site and a new operator has assumed operational control for those portions of the construction site where I previously had operational control. I understand that by submitting this notice of termination, I am no longer authorized to discharge storm water associated with construction activity under this general permit, and that discharging pollutants in storm water associated with construction activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this notice of termination does not release an operator from liability for any violations of this permit or the Clean Water Act.

For the purposes of this certification, elimination of storm water discharges associated with construction activity means that all disturbed soils at the portion of the construction site where the operator had control have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time to insure final stabilization is maintained, or that all storm water discharges associated with

construction activities from the identified site that are authorized by a NPDES general permit have otherwise been eliminated from the portion of the construction site where the operator had control.

### B. Addresses

All Notices of Termination are to be sent, using the form provided by the Director (or a photocopy thereof), to the address specified on the NOT form.

## Part IX. Definitions

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

*"Control Measure"*—As used in this permit, refers to any Best Management Practice or other method used to prevent or reduce the discharge of pollutants to waters of the United States.

*"Commencement of Construction"*—The initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

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

*"Director"* means the Regional Administrator of the Environmental Protection Agency or an authorized representative.

*"Discharge of Storm Water Associated with Construction Activity"*—As used in this permit, refers to storm water "point source" discharges from areas where soil disturbing activities (e.g., clearing, grading, or excavation, etc.), construction materials or equipment storage or maintenance (e.g., fill piles, concrete truck washout, fueling, etc.), or other industrial storm water directly related to the construction process (e.g., concrete or asphalt batch plants, etc.) are located.

*"Final Stabilization"* means that all soil disturbing activities at the site have been completed, and that 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

geotextiles) have been employed. In some parts of the country, background native vegetation will cover less than 100% of the ground (e.g. arid areas). Establishing at least 70% of the natural cover of native vegetation meets the vegetative cover criteria for final stabilization. For example, if the native vegetation covers 50% of the ground, 70% of 50% would require 35% total cover for final stabilization.

*"Flow-weighted composite sample"* means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

*"Large and Medium municipal separate storm sewer system"* means all municipal separate storm sewers that are either:

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

*"NOI"* means notice of intent to be covered by this permit (see Part II of this permit.)

*"NOT"* means notice of termination (see Part VIII of this permit).

*"Operator"* means any party associated with the construction project that meets either of the following 2 criteria: (1) The party has operational control over project specifications (including the ability to make modifications in specifications), or (2) the party has day-to-day operational control of those activities at a project site which are necessary to ensure compliance with the storm water pollution prevention plan or other permit conditions (e.g., they are authorized to direct workers at the site to carry out activities identified in the storm water pollution prevention plan or comply with other permit conditions).

*"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 discharges. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

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

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

*"Storm Water Associated with Industrial Activity"* is defined at 40 CFR 122.26(b)(14) 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.

*"Waters of the United States"* means:

(a) 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;

(b) All interstate waters, including interstate "wetlands";

(c) All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;

(f) The territorial sea; and

(g) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. Waters of the United States do not include 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.

#### Part X. State/Tribal Specific Conditions

The provisions of this Part provide modifications or additions to the applicable conditions of Parts I through IX of this permit to reflect specific additional conditions identified as part of the State Section 401 or CZMA certification process or as otherwise established by the permitting authority. The additional revisions and requirements listed below are set forth in connection with particular State, Indian lands and Federal facilities and only apply to the States, Indian lands and Federal facilities specifically referenced.

#### Other conditions to be added as result of 401/CZMA certifications:

(To be added upon completion of certification processes. Added conditions will be specific to each State/Tribal area.)

#### Note on Addendum A

Proposed Addendum A is a set of instructions for applicants to follow, including a State/County listing of endangered species that applicants can refer to, to ensure compliance with the eligibility terms and conditions of this proposed permit. The proposed instructions are included in this notice, however, the State/County listing of species of Addendum A is not included in this notice, but can be found in Addendum H to the Multi-Sector Storm Water General Permit published in the **Federal Register** on September 29, 1995 (60 FR 50804). EPA will prepare a final Addendum A species listing to accompany the issuance of the final permit after the public comment period. Reviewers wishing to make comment on the species listing in Addendum A for today's proposed permit may do so by reviewing the species listing in Addendum H of the Multi-Sector Permit.

#### Addendum A—Endangered Species Guidance

##### I. Instructions

Below is a list of endangered and threatened species that EPA has determined may be affected by the activities covered by the baseline construction general permit (BCGP). These species are listed by county. In order to get BCGP coverage, applicants must:

- Indicate in box provided on the NOI whether any species listed in this Addendum

or critical habitat are in proximity to the facility.

- Certify pursuant to Section I.B.3.e that they have followed the procedures found in Addendum A to protect listed endangered and threatened species and designated critical habitat and that the storm water discharges and BMPs to control storm water run off covered under this permit meet one or more of the eligibility requirements of Part I.B.3.e.(1) of this permit, while checking the box(es) that correspond to paragraph (a), (b), (c), (d), or (e) of Part I.B.3.e.(1) for which eligibility is claimed.

To do this, please follow steps 1 through 6 below when developing the pollution prevention plan below.

Step 1: Determine if the Construction Site Is Found Within Designated Critical Habitat for Listed Species

Some (but not all) listed species have designated critical habitat. Exact locations of such habitat is provided in the Service regulations at 50 CFR part 17 and part 226. To determine if their construction site occurs within (also known as "in proximity to") critical habitat, applicants should either review those regulations or contact the nearest Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) Office. FWS has offices in every state. NMFS has regional offices in: Gloucester, Massachusetts; St. Petersburg, Florida; Long Beach, California; Portland, Oregon; and Juneau, Alaska.

If the construction site is not located in designated critical habitat, then the applicant need not consider impacts to critical habitat when following steps 2 through 5. If the applicant's site is located within (i.e. in proximity to) critical habitat then the applicant must look at impacts to critical habitat when following steps 2 through 6.

(EPA notes that many measures imposed to protect listed species under steps 2 through 6 will also protect critical habitat. However, obligations to ensure that an action is not likely to result in the destruction or adverse modification of critical habitat are separate from those of ensuring that an action is not likely to jeopardize the existence of threatened and endangered species. Thus, meeting the eligibility requirements of this permit may require measures to protect critical habitat that are separate and distinct from those to protect listed species.)

Step 2: Review the County Species List To Determine if any Species Are Located in the County Where the Construction Activities Occurs

If no species are listed in a facility's county or if a facility's county is not found on the list, an applicant is eligible for BCGP coverage and may indicate in the NOI that no species are found in proximity and certify that it is eligible for BCGP coverage under Part I.B.3.e.(1)(a) of the permit by marking box a. in the certification provisions of the NOI. Where a facility is located in more than one county, the lists for all counties should be reviewed. If species are located in the county, follow step 3 below.

**Step 3: Determine if any Species May Be Found "In Proximity" to the Construction Activity's Storm Water Discharges**

A species is in proximity to a construction activity's storm water discharge when the species is:

- Located in the path or immediate area through which or over which contaminated point source storm water flows from construction activities to the point of discharge into the receiving water.
- Located in the immediate vicinity of, or nearby, the point of discharge into receiving waters.
- Located in the area of a site where storm water BMPs are planned or are to be constructed.

The area in proximity to be searched/surveyed for listed species will vary with the size and structure of the construction activity, the nature and quantity of the storm water discharges, and the type of receiving waters. Given the number of construction activities potentially covered by the BCGP, no specific method to determine whether species are in proximity is required for permit coverage under the BCGP. Instead, applicants should use the method or methods which best allow them to determine to the best of their knowledge whether species are in proximity to their particular construction activities. These methods may include:

- *Conducting visual inspections:* This method may be particularly suitable for construction sites that are smaller in size or located in non-natural settings such as highly urbanized areas or industrial parks where there is little or no natural habitat, or for construction activities that discharge directly into municipal storm water collection systems.
- *Contacting the nearest State or Tribal Wildlife Agency or U.S. Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS) offices.* Many endangered and threatened species are found in well-defined areas or habitats. That information is frequently known to State, Tribal, or Federal wildlife agencies.
- *Contacting local/regional conservation groups.* These groups inventory species and their locations and maintain lists of sightings and habitats.
- *Conducting a formal biological survey.* Larger construction sites with extensive storm water discharges may choose to conduct biological surveys as the most effective way to assess whether species are located in proximity and whether there are likely adverse effects.
- *Conducting an Environmental Assessment Under the National Environmental Policy Act (NEPA).* Some construction activities may require environmental assessments under NAPA. Such assessments may indicate if listed species are in proximity. (BCGP coverage does not trigger NAPA because it does not regulate any dischargers subject to New Source Performance Standards under section 306 of the Clean Water Act. See CWA § 511(c). However, some construction activities might require review under NEPA because of Federal funding or other Federal nexus.)

If no species are in proximity, an applicant is eligible for BCGP coverage and may

indicate that in the NOI and certify that it is eligible for BCGP coverage under Part I.B.3.E.(1)(a) of the permit by marking box a. in the certification provisions of the NOI.

If listed species are found in proximity to a facility, applicants must indicate the location and nature of this presence in the Pollution Prevention Plan and follow step 4 below.

**Step 4: Determine if Species or Critical Habitat Could Be Adversely Affected by the Construction Activity's Storm Water Discharges or by BMPs To Control Those Discharges**

Scope of Adverse Effects: Potential adverse effects from storm water include:

- *Hydrological.* Storm water may cause siltation, sedimentation or induce other changes in the receiving waters such as temperature, salinity or pH. These effects will vary with the amount of storm water discharged and the volume and condition of the receiving water. Where a storm water discharge constitutes a minute portion of the total volume of the receiving water, adverse hydrological effects are less likely.
- *Habitat.* Storm water may drain or inundate listed species habitat.
- *Toxicity.* In some cases, pollutants in storm water may have toxic effects on listed species.

The scope of effects to consider will vary with each site. Applicants must also consider the likelihood of adverse effects on species from any BMPs to control storm water. Most adverse impacts from BMPs are likely to occur from the construction activities. However, it is possible that the operation of some BMPs (for example, larger storm water retention ponds) may affect endangered and threatened species.

If adverse effects are not likely, then the applicant should certify that it is eligible for BCGP coverage under Part I.B.3.e(1)(a) of the permit by marking box a. in the certification provisions of the NOI. If adverse effects are likely, applicants should follow step 5 below.

**Step 5: Determine if Measures Can Be Implemented To Avoid any Adverse Effects**

If an applicant determines that adverse effects are likely, it can receive coverage if appropriate measures are undertaken to avoid or eliminate any actual or potential adverse effects prior to applying for permit coverage. These measures may involve relatively simple changes to construction activities such as re-routing a storm water discharge to bypass an area where species are located, relocating BMPs, or limiting the size of construction activity that will be subject to storm water discharge controls.

At this stage, applicants may wish to contact the FWS and/or NMFS to see what appropriate measures might be suitable to avoid or eliminate adverse impacts to listed species and/or critical habitat. (See 50 CFR 402.13(b)). This can entail the initiation of informal consultation with the FWS and/or NMFS which is described in more detail below at Step Six.

If applicants adopt measures to avoid or eliminate adverse effects, they must continue to abide by them during the course of permit coverage. These measures must be described in the pollution prevention plan and may be enforceable as permit conditions.

If appropriate measures to avoid the likelihood of adverse effects are not available to the applicant, the applicant should follow Step 6 below.

**Step 6: Determine if the Eligibility Requirements of Part I.B.3.E.(1) (b)–(e) Can Be Met**

Where adverse effects are likely, the applicant must contact the EPA and FWS/NMFS. Applicants may still be eligible for BCGP coverage if any likelihood of adverse effects are addressed through meeting the criteria of Part I.B.3.e.(1)(b)–(e) of the permit. To do so the applicant may:

- I.B.3.e.(1)(b). The applicant's activity has received previous authorization through an earlier section 7 consultation or issuance of a ESA section 10 permit (incidental taking permit) and that authorization addressed storm water discharges and/or BMPs to control storm water runoff. (e.g., developer included impact of entire project in consultation over a wetlands dredge and fill permit under Section 7 of the Endangered Species Act). If the applicant is eligible for coverage under this criteria, it should indicate this by marking box (b) of the certification provisions.
- I.B.3.e.(1)(c). The applicant's activity was considered as part of a larger, more comprehensive assessment of impacts on endangered and threatened species and/or critical habitat under section 7 or section 10 of the Endangered Species Act that which accounts for storm water discharges and BMPs to control storm water runoff (e.g., where a area-wide habitat conservation plan and section 10 permit is issued which addresses impacts from construction activities including those from storm water or a NEPA review is conducted which incorporates ESA section 7 procedures). If the applicant is eligible for coverage under this criteria, it should indicate this by marking box (c) of the certification provisions.

- I.B.3.e.(1)(d). Enter section 7 consultation with the FWS and/or NMFS for the applicant's storm water discharges and BMPs to control storm water runoff.

In such cases, EPA automatically designates the applicant as a non-federal representative. See I.B.3.e.(4). When conducting section 7 consultation as a non-federal representative, applicants should follow the procedures found in 50 CFR 402 the ESA regulations. Applicants must also notify EPA and the appropriate FWS/NMFS office of its intention to conduct consultation as a non-federal representative.

Coverage by the BCGP is permissible under Part I.B.3.E.(1)(b) if the consultation results in either: (1) FWS/NMFS written concurrence with a finding of no likelihood of adverse effects (see 50 CFR 402.13) or (2) issuance of a biological opinion in which FWS and/or NMFS finds that the action is not likely to jeopardize the continued existence of listed endangered threatened species or result in the adverse modification or destruction of adverse habitat (see 50 CFR 403.14(h)).

Any terms and conditions developed through consultations to protect listed species and critical habitat must be incorporated into the pollution prevention

plan. As noted above, applicants may, if they wish, initiate consultation during Step Five above (upon becoming aware that endangered and threatened species are in proximity to the facility).

If the applicant is eligible for coverage under this criteria, it should indicate this by marking box (d) of the certification provisions.

- I.B.3.e.(1)(e). The applicant's activity was considered as part of a larger, more comprehensive site-specific assessment of impacts on endangered and threatened species by the owner or other operator of the site when it developed a SWPPP and that permittee certified eligibility under items I.B.3.e.(1)(a), (b), (c), or (d) of the permit (e.g. owner was able to certify no adverse impacts for the project as a whole under item (a), so contractor can then certify under item (e)). Utility companies applying for area-wide permit coverage may certify under item (e) since authorization to discharge is contingent on a principal operator of a construction project having been granted coverage under

this, or an alternative NPDES permit for the areas of the site where utilities installation activities will occur.

If the applicant is eligible for coverage under this criteria, it should indicate this by marking box (e) of the certification provisions.

The applicant must comply with any terms and conditions imposed under the eligibility requirements of paragraphs I.B.3.e.(1)(a), (b), (c), (d), (e) to ensure that storm water discharges or BMPs to control storm water runoff are protective of listed endangered and threatened species and/or critical habitat. Such terms and conditions must be incorporated in the applicant's storm water pollution prevention plan.

If the eligibility requirements of Part I.B.3.e.(1)(a)-(e) cannot be met then the applicant may not receive coverage under the BCGP. Applicants should then consider applying to EPA for an individual permit.

This permit does not authorize any "taking" (as defined under section 9 of the Endangered Species Act) of endangered or

threatened species unless such takes are authorized under sections 7 or 10 the Endangered Species Act. Applicants who believe their construction activities may result in takes of listed endangered and threatened species should be sure to get the necessary coverage for such takes through an individual consultation or section 10 permit.

This permit does not authorize any storm water discharges or BMPs to control storm water runoff that are likely to jeopardize the continued existence of any species that are listed as endangered or threatened under the Endangered Species Act or result in the adverse modification or destruction of designated critical habitat.


## II. Endangered Species County-by-County List

(See Addendum H to the Multi-Sector Storm Water General Permit published in the **Federal Register** on September 29, 1995 (60 FR 50804).

BILLING CODE 6560-50-P



## ADDENDUM B

THIS FORM REPLACES PREVIOUS FORM 2040 0086 See Reverse for Instructions		Form Approved. OMB No. 2040-0086 Approval Expires: 0/0/00
NPDES FORM		United States Environmental Protection Agency Washington, DC 20460 Notice of Intent (NOI) for Storm Water Discharges Associated with <b>CONSTRUCTION ACTIVITY Under a NPDES General Permit</b>
Submission of this Notice of Intent constitutes notice that the party identified in Section I of this form intends to be authorized by a NPDES permit issued for storm water discharges associated with construction activity in the State identified in Section II of this form. Becoming a permittee obligates such discharger to comply with the terms and conditions of the permit. IN ORDER TO OBTAIN AUTHORIZATION, ALL REQUESTED INFORMATION MUST BE PROVIDED ON THIS FORM. SEE INSTRUCTIONS ON BACK OF FORM.		
<b>I. Facility Owner/Operator Information</b> Name: _____ Phone: _____ Address: _____ Status of Owner/Operator: <input type="checkbox"/> City: _____ State: _____ Zip Code: _____		
<b>II. Site Information</b> Name of the Project: _____ Location of Project: _____ City: _____ State: _____ Zip Code: _____ Latitude: _____ Longitude: _____ County: _____		Is the facility located on Indian Lands? <input type="checkbox"/> Yes <input type="checkbox"/> No
Is Pollution Prevention Plan (PPP) developed? <input type="checkbox"/> Yes <input type="checkbox"/> No Address of location of PPP for viewing: <input type="checkbox"/> Address in I. above <input type="checkbox"/> Address in II. above <input type="checkbox"/> Other, please specify below PPP Address: _____ Phone: _____ City: _____ State: _____ Zip Code: _____ Other Operator NPDES Permit Number: _____		
Name of Receiving Water: _____ Construction Start Date: _____ Completion Date: _____ Estimated area to be disturbed (to nearest acre): _____ Is the Storm Water Pollution Prevention Plan in compliance with all other applicable local sediment and erosion plans? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> None Estimate of Likelihood of Discharge (choose only one): 1. <input type="checkbox"/> Unlikely 2. <input type="checkbox"/> Once per month 3. <input type="checkbox"/> Once per week 4. <input type="checkbox"/> Once per day 5. <input type="checkbox"/> Continual		Based on the instructions provided in Addendum A of the permit, are any species identified in Addendum A in proximity to the storm water discharges to be covered under this permit, or the areas of BMP construction to control those storm water discharges? <input type="checkbox"/> Yes <input type="checkbox"/> No Will Construction (land disturbing activities) be conducted for storm water controls? <input type="checkbox"/> Yes <input type="checkbox"/> No Is application subject to a written historic preservation agreement? <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>III. Certification</b> I certify under penalty of law that I have read and understand the Part I.B. eligibility requirements for coverage under the general permit for storm water discharges from construction activities, including those requirements relating to the protection of endangered species identified in Part I.B.3.e. I further certify that I have followed the procedures found in Addendum A to protect listed endangered and threatened species and designated critical habitat and that the discharges covered under this permit and BMPs to control storm water runoff meet one or more of the eligibility requirements of Part I.B.3.e.(1) of this permit. Check the box(es) corresponding to that part of Part I.B.3.e.(1) under which you claim compliance with the eligibility requirements of the permit. (a) <input type="checkbox"/> (b) <input type="checkbox"/> (c) <input type="checkbox"/> (d) <input type="checkbox"/> (e) <input type="checkbox"/> I further certify, to the best of my knowledge, that such discharges, and construction of BMPs to control storm water runoff, do not have an effect on properties listed or eligible for listing on the National Register of Historic Places under the National Historic Preservation Act, or are otherwise eligible for coverage, in accordance with Part I.B.3.f. of the permit, due to a previous agreement under the National Historic Preservation Act. I understand that continued coverage under this permit is contingent upon maintaining eligibility as provided for in Part I.B. <input type="checkbox"/> Utility Companies check here if applying for coverage as described in Section II(A)(4). The following certification statement additionally applies: I certify that I understand that authorization to discharge is contingent upon a principal operator of the construction project being granted coverage under this, or an alternative NPDES permit. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system design to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage this 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. Print Name: _____ Date: _____ Signature: _____		



**Instructions - EPA Form xx Notice of Intent (NOI) for Storm Water Discharges  
Associated with Construction Activity To Be Covered Under a NPDES Permit**

Form  
Approved.

OMS No. 2040-0086  
Approval Expires: 0/0/00

### Who Must File A Notice Of Intent Form

Under the provisions of the Clean Water Act, as amended, (33 U.S.C. . .1251 et seq....the Act), except as provided by part I.B.3 the permit, federal law prohibits discharges of storm water from construction activities without a National Pollutant Discharge Elimination System Permit. The operator of a construction site that has such a storm water discharge must submit a NOI to obtain coverage under a NPDES Storm Water General Permit. If you have questions about whether you need a permit under the NPDES Storm Water program, or if you need information as to whether a particular program is administered by EPA or a state agency, write to or telephone the Notice of Intent Processing Center at (703) 931-3230.

### Where to File NOI Form

NOIs must be sent to the following address:

Storm Water Notice of Intent (4203)  
USEPA  
401 M Street, SW  
Washington, D.C. 20460

Please do not send copies of Pollution Prevention Plans (PPPs) to the above address.

### Completing The Form

You must type or print, using upper-case letters, in the appropriate areas only. Please place each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. If you have any questions on this form, call the Notice of Intent Processing Center at (703) 931-3230.

### Section I. Facility Owner/Operator Information

Provide the legal name, mailing address, and telephone number of the person, firm, public organization, or any other entity that either individually or taken together meet the following two criteria: (1) they have operational control over the site specifications (including the ability to make modifications in specifications); and (2) they have the day-to-day operational control of those activities at the site necessary to ensure compliance with plan requirements and permit conditions. Do not use a colloquial name.

Enter the appropriate letter to indicate the legal status of the operator of the facility: F = Federal; S = State; M = Public (other than federal or state); P = Private

### Section II. Site Information

Enter the Project's official or legal name and complete street address, including city, county, state, ZIP code and phone number. If the site lacks a street address, indicate with a general statement the location of the site (e.g., Intersection of state highways 61 and 34). The applicant must also provide the latitude and longitude of the facility in degrees, minutes, and seconds to the nearest 15 seconds.

The latitude and longitude of your facility can be located on USGS quadrangle maps. The quadrangle maps can be obtained at 1-800 USA MAPS. Longitude and latitude may also be obtained at the Census Bureau Internet site: <http://www.census.gov/cgi-bin/gazetteer>

Indicate whether the facility is on Indian Lands.

Indicate if the Pollution Prevention Plan (PPP) has been developed. Also indicate if the PPP has been implemented. Refer to Part IV of the General Permit for Information on PPPs. ☐ Yes ☐ means the PPP is ready to be implemented upon notification of coverage or that the PPP is ready to be implemented at the time the NOI form is submitted.

Provide the address and phone number where the PPP can be viewed, if different from addresses previously given. Check appropriate box.

Enter the name of the receiving water body. If no water body exists on site, enter name of closest predominant receiving water body. Contact the appropriate state (or EPA regional) office to obtain more information on water bodies.

Enter the construction start and completion dates using four digits for the year.

Enter the estimated area to be disturbed including but not limited to: grubbing, excavation, grading, and utilities and infrastructure installation. Indicate to the nearest acre.

Indicate if the PPP is in compliance with all other applicable local sediment and erosion plans.

Indicate if any species listed in Addendum A of the General Permit is in proximity to the storm water discharges or BMP construction associated with the discharges and requirements to be covered by this permit.

Indicate if land disturbing activities will be conducted for the construction of storm water controls.

Indicate if applicant is subject to and in compliance with a written historic preservation agreement.

Indicate only one estimate of likelihood of discharge.

### Section III. Certification

Indicate under which criteria the applicant claims compliance with the Endangered Species Act. Refer to Part I.B.3.e.(1) of the General Permit.

If applicant is a Utility Company, indicate if applying for coverage as described in Section II (A) (4) of the General Permit.

Federal Statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means: (i) 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, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship: by a general partner of the proprietor, or;

For a municipality, state, Federal, or other public facility: by either a principal executive or ranking elected official.

### Paperwork Reduction Act Notice

Public reporting burden for this application is estimated to average 1.75 hours per application, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Chief, Information Policy Branch, 2136, U.S. Environmental Protection Agency, 401 M Street, SW Washington, D.C. 20460, or Director, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

PLEASE MAKE SURE YOU ACQUIRE A COPY OF THIS PERMIT AND READ ALL TERMS AND CONDITIONS.

## ADDENDUM C

<b>THIS FORM REPLACES PREVIOUS FORM 3510-7 (8-92)</b> <b>Please See Instructions Before Completing This Form</b>		Form Approved. OMB No. 2040-0086 Approval expires: 8-31-98		
<b>NPDES FORM</b>		United States Environmental Protection Agency Washington, DC 20460 <b>Notice of Termination (NOT) of Coverage Under a NPDES General Permit for Storm Water Discharges Associated with Industrial Activity</b>		
Submission of this Notice of Termination constitutes notice that the party identified in Section II of this form is no longer authorized to discharge storm water associated with industrial activity under the NPDES program. ALL NECESSARY INFORMATION MUST BE PROVIDED ON THIS FORM.				
<b>I. Permit Information</b> NPDES Storm Water General Permit Number: _____ Check Here If You are No Longer the Operator of the Facility: <input type="checkbox"/> Check Here if the Storm Water Discharge is Being Terminated: <input type="checkbox"/>				
<b>II. Facility Operator Information</b> Name: _____ Phone: _____ Address: _____ City: _____ State: _____ ZIP Code: _____				
<b>III. Facility/Site Location Information</b> Name: _____ Address: _____ City: _____ State: _____ ZIP Code: _____ Latitude: _____ Longitude: _____ Quarter: _____ Section: _____ Township: _____ Range: _____				
<b>IV. Certification:</b> I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by a NPDES general permit have been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this Notice of Termination, I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this Notice of Termination does not release an operator from liability for any violations of this permit or the Clean Water Act. Print Name: _____ Date: _____ Signature: _____				
<div style="text-align: center;"><b>Instructions for Completing Notice of Termination (NOT) Form</b></div> <table style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top; padding: 5px;"> <b>Who May File a Notice of Termination (NOT) Form</b>  <p>Permittees who are presently covered under an EPA-issued National Pollutant Discharge Elimination System (NPDES) General Permit (including the 1995 Multi-Sector Permit) for Storm Water Discharges Associated with Industrial Activity may submit a Notice of Termination (NOT) form when their facilities no longer have any storm water discharges associated with industrial activity as defined in the storm water regulations at 40 CFR 122.26(b)(14), or when they are no longer the operator of the facilities.</p> <p>For construction activities, elimination of all storm water discharges associated with industrial activity occurs when disturbed soils at the construction site have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, or that all storm water discharges associated with industrial activity from the construction site that are authorized by a NPDES general permit have otherwise been eliminated. Final stabilization means that all soil-disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.</p> </td> <td style="width: 50%; vertical-align: top; padding: 5px;"> <b>Where to File NOT Form</b>  <p>Send this form to the following address:</p> <p style="margin-left: 20px;">Storm Water Notice of Termination (4203) 401 M Street, S.W. Washington, DC 20460</p> <p><b>Completing the Form</b></p> <p>Type or print, using upper-case letters, in the appropriate areas only. Please place each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use only one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. If you have any questions about this form, telephone or write the Notice of Intent Processing Center at (703) 931-3230.</p> </td> </tr> </table>			<b>Who May File a Notice of Termination (NOT) Form</b> <p>Permittees who are presently covered under an EPA-issued National Pollutant Discharge Elimination System (NPDES) General Permit (including the 1995 Multi-Sector Permit) for Storm Water Discharges Associated with Industrial Activity may submit a Notice of Termination (NOT) form when their facilities no longer have any storm water discharges associated with industrial activity as defined in the storm water regulations at 40 CFR 122.26(b)(14), or when they are no longer the operator of the facilities.</p> <p>For construction activities, elimination of all storm water discharges associated with industrial activity occurs when disturbed soils at the construction site have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, or that all storm water discharges associated with industrial activity from the construction site that are authorized by a NPDES general permit have otherwise been eliminated. Final stabilization means that all soil-disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.</p>	<b>Where to File NOT Form</b> <p>Send this form to the following address:</p> <p style="margin-left: 20px;">Storm Water Notice of Termination (4203) 401 M Street, S.W. Washington, DC 20460</p> <p><b>Completing the Form</b></p> <p>Type or print, using upper-case letters, in the appropriate areas only. Please place each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use only one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. If you have any questions about this form, telephone or write the Notice of Intent Processing Center at (703) 931-3230.</p>
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**Instructions - EPA Form 3510-7**  
**Notice of Termination (NOT) of Coverage Under The NPDES General Permit**  
**for Storm Water Discharges Associated With Industrial Activity**

**Section I Permit Information**

Enter the existing NPDES Storm Water General Permit number assigned to the facility or site identified in Section III. If you do not know the permit number, telephone or write your EPA Regional storm water contact person.

Indicate your reason for submitting this Notice of Termination by checking the appropriate box:

If there has been a change of operator and you are no longer the operator of the facility or site identified in Section III, check the corresponding box.

If all storm water discharges at the facility or site identified in Section III have been terminated, check the corresponding box.

**Section II Facility Operator Information**

Give the legal name of the person, firm, public organization, or any other entity that operates the facility or site described in this application. The name of the operator may or may not be the same name as the facility. The operator of the facility is the legal entity which controls the facility's operation, rather than the plant or site manager. Do not use a colloquial name. Enter the complete address and telephone number of the operator.

**Section III Facility/Site Location Information**

Enter the facility's or site's official or legal name and complete address, including city, state and ZIP code. If the facility lacks a street address, indicate the state, the latitude and longitude of the facility to the nearest 15 seconds, or the quarter, section, township, and range (to the nearest quarter section) of the approximate center of the site.

**Section IV Certification**

Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

*For a corporation:* by a responsible corporate officer, which means: (i) 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, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

*For a partnership or sole proprietorship:* by a general partner or the proprietor; or

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

**Paperwork Reduction Act Notice**

Public reporting burden for this application is estimated to average 0.5 hours per application, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Chief, Information Policy Branch, 2136, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or Director, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

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