NPDES General Permit for Stormwater Discharges From Construction Activities – Fact Sheet

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I. Introduction

The United States Environmental Protection Agency (EPA) is reissuing the general permit that authorizes the discharge of pollutants in stormwater discharges associated with construction activity (also known as the "construction general permit" or "CGP"). The CGP, upon reissuance, covers stormwater discharges associated with both small and large construction activity. Small construction activity is added in response to the Phase II Stormwater Regulations promulgated on December 8, 1999 (64 FR 68722). Specifically, the Phase II regulations add permitting requirements for stormwater discharges from construction activities that disturb from one to five acres. Phase I Stormwater Regulations promulgated on November 16, 1990 (55 FR 47990) established permitting requirements for stormwater discharges from construction activities that disturb five acres or more. As used in this permit, "stormwater associated with large construction activity" refers to the disturbance of five or more acres, as well as disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more (40 CFR §122.26(b)(14)(x)). "Stormwater associated with small construction activity," as defined in 40 CFR §122.26(b)(15), refers to the disturbance of equal to or greater than one and less than five acres of land for construction or the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres.

Appendix B contains a list of areas eligible for coverage under the CGP. Individual permit numbers exist for each eligible area, as noted in Appendix B. However, the CGP is written as if it was a single permit rather than a number of legally separate and individually numbered general permits it is comprised of. Unless otherwise noted, references to the "permit" or the "CGP" apply to the common language of each of the separate general permits.

This permit replaces the permit issued in 2003 (68 FR 39087, July 1, 2003), including the modification made to that permit in 2004 (69 FR 76743, December 22, 2004). EPA public noticed a draft CGP on May 16, 2008 (73 FR 28454). This final CGP is based on that draft, taking into account comments received. Details of comments received and EPA response to those comments are provided in the administrative record.

The most significant changes from the 2003 CGP include:

- Limited the period of time during which this permit is effective to two years.
- Modified permit to include all areas in the country for which EPA is the permitting authority, except for Region 4 that continues to operate under a Regional-specific permit. This included removal of certain areas for which EPA is no longer the permitting authority (e.g., the States of Maine, including Indian Country in Maine, and Arizona are now authorized to administer the NPDES permitting program). In addition, because certifications required by Section 401 of the Clean Water Act, and for a few states certifications required by the Coastal Zone Management Act, were not received in time, coverage is not yet available

for new projects and unpermitted ongoing projects in certain areas. These areas are noted in Appendix B of the permit. EPA will announce the availability of coverage under the CGP for these areas in a separate **Federal Register** notice as soon as possible after the certifications are received.

- Limited eligibility of permit to new projects and to unpermitted ongoing projects.
- Added new options for authorization procedures and NOI submission deadlines to accommodate new seven-day reviews of NOIs by U.S. Fish & Wildlife Service and National Marine Fisheries Service.
- Modified information required on NOI form to require:
  - NOI preparer under Certification Information (if the NOI was prepared by someone other than the certifier)
- Updated NOI submission deadlines to account for ongoing projects.
- Reorganized permit provisions relating to control measures, inspections, and SWPPP documentation requirements to clarify and highlight the differences. Added two new requirements: (1) a requirement to educate employees or subcontractors as necessary so that they understand their role in implementing stormwater controls (Part 3.6), and (2) a requirement to remove sediment from silt fences before the deposit reaches fifty percent of the above-ground fence height.
- Clarified procedure for operator to delineate on the SWPPP areas of the project where no further requirements apply following final stabilization.
- Clarified documentation requirements for ESA eligibility, and added documentation requirements for permit eligibility for waters that have an established TMDL.
- Modified inspection provisions to include option for weekly site inspections and guidelines for inspection of utility line installation, pipeline construction, and other linear construction activities.
- Provided further clarification on stabilization requirements for project areas where construction has temporarily ceased.

The final CGP contains individual permit numbers for the following areas:

Region 1: The State of Massachusetts; New Hampshire; Indian Country in the States of Rhode Island and Connecticut; Federal facilities in Vermont.

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

Region 3: The District of Columbia and Federal facilities in the State of Delaware.

Region 5: Indian Country in the States of Michigan, Minnesota, and Wisconsin, except the Sokaogon Chippewa (Mole Lake) Community.

Region 6: The State of New Mexico; Indian Country in the States of Louisiana, Oklahoma, Texas, and New Mexico (except Navajo Reservation Lands [see Region 9]

and Ute Mountain Reservation Lands [see Region 8]); discharges in the State of Oklahoma that are not under the authority of the Oklahoma Department of Environmental Quality, including activities associated with oil and gas exploration, drilling, operations, and pipelines (includes SIC Groups 13 and 46, and SIC codes 492X and 5171) and point source discharges associated with agricultural production, services, and silviculture Includes SIC Groups 01, 02, 07, 08, and 09), and discharges in the State of Texas that are not under the authority of the Texas Commission on Environmental Quality (formerly the Texas Natural Resource Conservation Commission), including activities associated with the exploration, development, or production of oil or gas or geothermal resources, including transportation of crude oil or natural gas by pipeline.

Region 7: Indian Country in the States of Iowa, Kansas and Nebraska (except Pine Ridge Reservation Lands [see Region 8]).

Region 8: Federal facilities in Colorado; Indian Country in Colorado (as well as the portion of the Ute Mountain Reservation located in New Mexico), Montana, North Dakota (as well as that portion of the Standing Rock Reservation located in South Dakota and excluding the lands within the former boundaries of the Lake Traverse Reservation which is covered under the permit for areas of South Dakota), South Dakota (as well as the portion of the Pine Ridge Reservation located in Nebraska and the portion of the lands within the former boundaries of the Lake Traverse Reservation located in North Dakota and excluding the Standing Rock Reservation which is covered under the permit for areas of North Dakota), Utah (except Goshute and Navajo Reservation lands [see Region 9]) and Wyoming.

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

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

EPA has noted in Appendix B, where these permit numbers are listed, which permits are not yet available due to the pending receipt of required Section 401 and Coastal Zone Management Act certifications. Where applicable, the affected permits include the following notice: "coverage not yet available". This notice will be removed as soon as EPA issues these permits.

Economic Impacts of the 2008 CGP: EPA has committed to operate in accordance with the Regulatory Flexibility Act (RFA) framework and requirements during the Agency's

issuance of Clean Water Act general permits.[1] EPA has concluded that the issuance of the 2008 CGP could affect a substantial number of small entities. In the areas where the CGP is effective an estimated 4,000 construction projects per year were authorized under the 2003 CGP, a substantial number of which could be operated by small entities. However, EPA has concluded that the issuance of the 2008 CGP is unlikely to have an adverse economic impact on small entities. The 2008 CGP includes substantially the same requirements as those of the 2003 CGP. EPA intends to include an updated economic screening analysis with the issuance of the next CGP. EPA concludes that this action will not have a significant economic impact on a substantial number of small entities.

II. Coverage Provided by General Permits

Section 402(p) of the Clean Water Act (CWA) provides that stormwater discharges associated with industrial activity that discharge to waters of the United States must be authorized by an NPDES permit. The term "discharge" when used in the context of the NPDES program means the discharge of pollutants (40 CFR §122.2).

On November 16, 1990, EPA published regulations under the NPDES program that defined one facet of the phrase "stormwater discharges associated with industrial activity" as including discharges from construction activity (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)). These are commonly referred to as Phase I construction activities or "large" construction activities.

The regulation entitled "National Pollution Discharge Elimination System - Regulations for Revision of the Water Pollution Control Program Addressing Stormwater Discharges" (64 FR 68722) was published by EPA on December 8, 1999. This regulation, known as Phase II of the stormwater program, expands the existing NPDES stormwater program to address discharges that result in land disturbance of: equal to or greater than one and less than five acres; less than one acre if part of a larger common plan of development or sale that disturbs between one and five acres; and other construction activities designated by EPA based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the United States (40 CFR §122.26(b)(15)(ii)). However, the Phase II rule allows for the exclusion of certain sources from permit coverage based on a demonstration of the lack of impact on water quality, as well as the inclusion of others based on a higher likelihood of localized adverse impact on water quality. Exclusion from the program is available through waivers to operators of small construction activity who certify for one of the available waivers.

[1] For more information, see RFA section of the **Federal Register** notice announcing the availability of today's final permit.

All large construction activities, regulated under 40 CFR §122.26(b)(14)(x), are required to obtain coverage under a stormwater permit including sites disturbing less than five acres that are part of a larger common plan of development or sale that has the potential to disturb five or more acres collectively. A similar permit requirement exists for small construction activities, regulated under 40 CFR §122.26(b)(15)(i), that disturbs less than one acre but are part of a larger common plan of development or sale having the potential to disturb at least one, but less than five acres collectively. Examples of these would be lots in a subdivision or industrial park.

To help clarify what projects must be addressed as part of a "common plan of development or sale" and what projects can be considered on their own merit, EPA is addressing the issue of non-contiguous construction activities. Where discrete construction projects within a larger common plan of development or sale are located at least 1/4 mile apart and the area between the projects is not being disturbed, each individual project can be treated as a separate plan of development or sale provided any interconnecting road, pipeline or utility project that is part of the same "common plan" is not concurrently being disturbed. For example, oil and gas well pads separated by 1/4 mile could be treated as separate "common plans." However, if the same two well pads and an interconnecting access road were all under construction at the same time, they would generally be considered as part of a single "common plan" for permitting purposes. If a utility company was constructing new trunk lines off an existing transmission line to serve separate residential subdivisions located more than 1/4 mile apart, the two trunk line projects could be considered to be separate projects.

For situations where a common plan of development or sale exists and a single SWPPP is developed for an entire site, the requirements and burdens associated with maintaining permit compliance can be commensurately reduced as portions of the site are stabilized. For example, BMPs may be removed and inspections ceased for a stabilized area, as long as the threat of pollutants in any discharges from the area resulting from construction or construction-related activities no longer exists. It is not necessary to revise the NOI in this situation. Instead, the construction operator must thoroughly document all activities leading up to and including final stabilization, so that an inspector will understand that BMPs and regular inspections are no longer needed in that area.

The NPDES regulations, at 40 CFR §122.44(s) provide for the incorporation of qualifying State, Tribal or local erosion and sediment control program requirements by reference into the CGP for both small and large construction activities. Under that provision, the CGP would require compliance with the qualifying local program rather than with two different sets of requirements (i.e., CGP and the qualifying program). EPA has opted not to include any qualifying State, Tribal or local erosion and sediment control program requirements in the CGP at this time, but may modify the permit at a later date to include approved qualified local programs.

Federal regulations, at 40 Part 125, Subpart M, establish guidelines for issuance of NPDES permits for the discharges into the territorial seas, the contiguous zone, and the oceans. The regulations specify that EPA shall determine whether a discharge will cause

unreasonable degradation of the marine environment based on consideration of a number of factors (see 40 CFR §125.122(a)). EPA has made the determination that the CGP is designed to control discharges such that these discharges that are in compliance with the terms and conditions of this permit will not cause unreasonable degradation of the marine environment. As such, this permit is consistent with provisions specified in 40 CFR §125.123(a).

EPA issued the first round of the Phase I construction general permit on two dates: September 9, 1992, for certain States and territories, and September 25, 1992, for the other States and territories where EPA was the Permitting Authority. The Phase I permit was commonly referred to as the Baseline Construction General Permit. The second-round permit (also known as the "national construction general permit"), issued February 17, 1998, was for use in the states, territories and Indian country in EPA Regions 1, 2, 3, 7, 8, 9, and 10 where EPA was the NPDES permitting authority. EPA Region 4 issued its permit on March 31, 1998 (63 FR 15621) that was modified on April 28, 2000 (65 FR 25122). EPA Region 6 issued its permit on July 6, 1998 (63 FR 36490). Today's permit replaces the permit issued in 2003 (68 FR 39087, July 1, 2003), as modified in 2004 (69 FR 76743, December 22, 2004), and reflects changes under Phase II of the stormwater program, and is for use in all states, territories, and Indian country where EPA is the NPDES permitting authority, except in EPA Region 4. Operators of construction projects in EPA Region 4 should continue to seek coverage under the appropriate permit, either the Region 4 CGP, another applicable EPA permit, or a state permit.

III. Summary of Stormwater Controls to Meet Effluent Limits

EPA is providing the following information on controlling pollutants in stormwater discharges to assist permittees in meeting effluent limits and preparing SWPPPs that will document the stormwater controls used to meet those effluent limits. Most stormwater controls for construction activities can be categorized in either of two groups: (1) erosion and sediment controls and (2) stormwater management measures.

Control measures ordinarily address pollutants in stormwater generated from the site during active construction-related work. Stormwater management measures are customarily installed before, and coincident with, completion of construction activities, but primarily result in reductions of pollutants in stormwater discharged from the site after the construction has been completed. Additional measures that should be employed throughout a project include housekeeping BMPs, such as materials management and litter control.

A. Erosion and Sediment Controls

Erosion controls provide the first line of defense in preventing off-site sedimentation and are designed to prevent erosion through protection and preservation of soil. Sediment controls are designed to remove sediment from runoff before the runoff is discharged from the site. Control measures can be further divided into two major classes of controls: stabilization practices and structural practices. Typically, a combination of stabilization

practices and structural practices (as well as stormwater management and housekeeping measures) are necessary throughout the site to provide adequate water quality protection. Major types of erosion and sediment practices are summarized below. A more thorough description of these practices is given in "Stormwater Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices," U.S. EPA, 1992 (www.epa.gov/npdes/pubs/owm0307.pdf). Information on erosion and sediment controls can also be found in EPA's Menu of BMPs (www.epa.gov/npdes/menuofbmps). Permittees should also consider the construction of new projects in phases to minimize the amount of bare soil which is exposed at one time and the amount of stabilization or structural controls that would be required.

1. Stabilization Practices

Stabilization refers to covering or maintaining an existing cover over soil. Vegetative cover includes grass, trees, vines, shrubs, etc. Stabilization measures can also include non-vegetative controls such as geotextiles, riprap or gabions (wire mesh boxes filled with rock). Mulches such as straw or bark can be somewhat effective at stabilization in stand-alone fashion but are most effective when used in conjunction with vegetation.

Stabilization of exposed soil is one of the foremost means to minimize pollutant discharge during construction activities. Stabilization reduces erosion potential by 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 already being carried. Stabilization provides large reductions in the levels of suspended sediment in discharges and receiving waters. Examples of stabilization measures are summarized below.

- Temporary Seeding. Seeding of temporary vegetation provides stabilization by establishing vegetative cover at areas of the site where earth disturbing activities have temporarily ceased, but will resume later in the construction project. Without temporary stabilization, soil can be exposed to precipitation for an extended period leaving it vulnerable to erosion, even though earth-disturbing activities are not occurring on these areas. Temporary seeding practices have been found to be up to 95 percent effective in reducing erosion. [2]
- Permanent Seeding. Establishing a permanent and sustainable ground cover at a site stabilizes the soil and hence reduces sediment in runoff. Permanent seeding is typically required at most sites for aesthetic reasons.
- Mulching. Mulching is often coupled with permanent and temporary seeding. Where temporary or permanent seeding is not feasible, exposed soil can be stabilized by spreading plant residues or other suitable materials on the soil surface. Although generally not as effective as vegetation, mulching by itself provides a measure of temporary erosion control. Mulching in conjunction with seeding provides erosion protection prior to the onset of plant growth. In addition, mulching protects newly-applied seeds, providing a higher likelihood of

[2] Guidelines for Erosion and Sediment Control in California; USDA, Soil Conservation Service, Davis, CA; revised 1985.

successful vegetation. To maintain its effectiveness, mulch should be anchored to resist wind displacement.

- Sod Stabilization. Sod stabilization involves establishing long-term stand of grass by planting sod on exposed surfaces. When maintained properly, sod can be more than 99 percent effective in reducing erosion, and is the most immediately effective vegetation method available. However, the cost of sod stabilization (relative to other vegetative controls) typically limits its use to situations where a quick vegetative cover is desired (e.g., steep or erodible slopes) and sites which can be maintained with ground equipment. Sod is also sensitive to climate and may require intensive watering and fertilization. [3]
- Vegetative Buffer Strips. Vegetative buffer strips are indigenous or replanted strips of vegetation located at the top and bottom of a slope, outlining property boundaries or adjacent to receiving waters such as streams or wetlands. Vegetative buffer strips can slow runoff at critical locations, decreasing erosion and allowing sedimentation. They can be especially useful for very narrow linear construction projects such as underground utilities or pipelines.
- Preservation of Trees. This practice involves preserving selected trees already on-site prior to development. Mature trees provide extensive canopy and root systems which protect and hold soil in place. Shade trees also keep soil from drying rapidly, decreasing the soil's susceptibility to erosion. Measures taken to protect trees can vary significantly, from simply installing tree armor and fences around the drip line, to more complex measures such as building retaining walls and tree wells. Along with the erosion benefits provided by trees, they can also add to the aesthetics and value of the property.
- Contouring and Protection of Sensitive Areas. Contouring refers to the practice of building in harmony with the natural flow and contour of the land. By minimizing changes in the natural contour of the land, existing drainage patterns are preserved as much as possible, thereby reducing erosion. Minimizing the amount of regrading done will also reduce the amount of soil being disturbed. The preservation of sensitive areas at a site such as steep slopes and wetlands should also be a priority. Disturbance of soil on steep slopes should be avoided due to vulnerability to erosion. Wetlands should be protected because they provide flood protection, pollution mitigation and an essential aquatic habitat.

2. Structural Practices

Structural practices involve the installation of devices to divert, store or limit runoff. Structural practices have several objectives. First, structural practices can be designed to prevent water from flowing onto disturbed areas where erosion may occur. This involves diverting runoff from undisturbed, up-slope areas through use of earth dikes, temporary swales, perimeter dikes or other diversions to stable areas. Another objective of structural practices may be to cause sedimentation before the runoff leaves the site. Methods for removing sediment from runoff include diverting flows to a trapping or storage device or filtering diffuse flows through on-site silt fences. All structural practices require proper

[3] Ibid.

maintenance (e.g., removal of collected sediment) to remain functional and should be designed to avoid presenting a safety hazard - especially in areas frequented by children.

- Earth Dikes. Earth dikes are temporary berms or ridges of compacted soil that channel water to a desired location. Earth dikes should be stabilized with vegetation or an equally efficacious method.
- Silt Fences. Silt fences are a barrier of geotextile fabric (filter cloth) used to intercept sediment in sheet flow runoff. They must be firmly anchored and may require additional support, such as reinforcing with wire mesh. Used alone, silt fences are usually inappropriate for flows of concentrated high volume or high velocity. They must be carefully maintained to ensure structural stability and be cleaned of excess sediment.
- Drainage Swales. A drainage swale is a channel lined with grass, riprap, asphalt, concrete or other materials. They are installed to convey runoff without causing erosion.
- Sediment Traps. Sediment traps are installed in drainage pathways, at storm drain inlets or other discharge points from disturbed areas. They are temporary structures designed to reduce water velocity and subsequently allow soil particles to settle.
- Check Dams. Check dams are small temporary dams constructed across a swale or drainage ditch to reduce the velocity of runoff, thereby reducing erosion in the swale or ditch. They should not be used in a permanent stream. More elaborate erosion controls in a flow conduit may be unnecessary if check dams are installed, due to the decrease in energy of the runoff.
- Level Spreaders. Level spreaders are outlets for dikes and flow channels consisting of an excavated depression constructed at zero grade across a slope. Level spreaders convert concentrated runoff into diffuse flow and release it onto areas stabilized by existing vegetation.
- Subsurface Drains. Subsurface drains transport runoff to an area where the water can be managed effectively. Drains can be made of tile, pipe, or tubing.
- Pipe Slope Drains. A pipe slope drain is a temporary runoff conveyance running down a slope to prevent erosion on the face of the slope.
- Temporary Storm Drain Diversions. Temporary storm drain diversions are used to re-direct flow in a storm drain for capturing sediment in a trapping device.
- Storm Drain Inlet Protection. Storm drain inlet protection reduces sediment entering storm drainage systems prior to permanent stabilization of disturbed areas. Examples include a sediment filter or an excavated detention area around a storm drain inlet.
- Rock Outlet Protection. Rock protection placed at the outlet of conduits can reduce the depth and velocity of water so the flow will not cause downstream erosion.
- Other Controls. Examples of other controls include temporary sedimentation basins, sump pits, entrance stabilization, waterway crossings and wind breaks.

B. Stormwater Management Measures

Stormwater management measures are usually installed before, and coincident with, completion of construction activities. The measures primarily result in reductions of pollutants in stormwater discharged from the site after cessation of construction activities. Stormwater management may also be needed for compliance with flood control requirements (that may be unrelated to NPDES requirements).

Construction frequently causes significant alterations in the characteristics of the affected land. One such change is an increase in the overall imperviousness of the site, which can dramatically affect the site's flow patterns. An increase in runoff may increase the amount of pollutants carried by the runoff. In addition, some activities (e.g., automobile travel on newly-built roads) can result in higher pollutant concentrations in runoff compared to pre-construction levels. Traditional stormwater management controls attempt to limit increases in the amount of runoff and pollution discharged from land impacted by construction.

Stormwater management measures include, but are not limited to, on-site infiltration of runoff, flow attenuation by vegetation or natural depressions, outfall velocity dissipation devices, stormwater retention basins and artificial wetlands, and stormwater detention structures. For many sites, a combination of these controls may be appropriate. A summary of stormwater management controls is provided below. A more complete description of stormwater management controls is found in "Stormwater 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.

On-Site Infiltration. Inducing infiltration, through infiltration trenches or basins, can reduce the volume and pollutant loadings of stormwater discharges from a site. Infiltration measures tend to mitigate impacts to an area's natural hydrologic characteristics. Properly designed and installed infiltration constructs can reduce peak discharges, facilitate recharging of the groundwater, augment low flow conditions in receiving streams, reduce stormwater discharge volumes and pollutant loads, and inhibit downstream erosion.

Infiltration measures are particularly effective in permeable soils and where the water table and bedrock are well below the surface. Infiltration basins can also double as sediment basins during construction. Infiltration trenches can be easily incorporated into less active areas of a development and are appropriate for small sites and in-fill developments. However, trenches may require regular maintenance to prevent clogging, particularly where grass inlets or other sedimentation measures are not used. In some situations, such as low density areas of parking lots, porous pavement can provide for infiltration.

Flow Attenuation by Vegetation or Natural Depressions. Flow attenuation caused by vegetation or natural depressions can facilitate pollutant removal and infiltration and can reduce the erosivity of runoff. Use of vegetative flow attenuation measures can protect

habitats and enhance the appearance of a site. These measures include grass swales and filter strips as well as trees that are either preserved or planted during construction. Given their limited capacity to accept large volumes of runoff (and the concomitant erosivity), vegetative controls should usually be used in combination with other stormwater devices. Incorporating check dams into flow paths can provide additional infiltration and flow attenuation. 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 system. In general, the costs of vegetative controls are less than for other stormwater measures.

Outfall Velocity Dissipation Devices. Outfall velocity dissipation devices include riprap and stone or concrete flow spreaders. They slow the flow of water discharged from a site thereby reducing erosion.

Retention Structures/Artificial Wetlands. Retention structures are ponds and artificial wetlands that are designed to maintain a permanent pool of water. Properly installed and maintained retention structures (also known as wet ponds) and artificial wetlands can achieve a high removal rate of sediment, biochemical oxygen demand (BOD), organic nutrients and metals, and are most cost-effective when used to control runoff from larger, intensively developed site. These constructs rely on settling and biological processes to remove pollutants. Retention ponds and artificial wetlands can also become wildlife habitats, recreation, and landscape amenities, and increase local property values. While the Agency believes artificial wetlands can be one of the most effective long-term stormwater management measures, EPA also recognizes the potential problems to which wetlands may contribute at certain sites. This could be the case at airports where bird populations drawn to wetlands proximate to runways/taxiways may endanger moving aircraft. EPA recommends that structures that maintain continuous habitat for wildlife not be constructed within 10,000 feet of a public-use airport serving turbine-powered aircraft, or within 5,000 feet of a public-use airport serving piston-powered aircraft. EPA, as always, stresses public safety and sound engineering judgment in the implementation of any stormwater measure, control or BMP.

Water Quality Detention Structures. Stormwater detention structures, which include extended detention ponds, control the rate at which water drains after a storm event. Extended detention ponds are usually designed to completely drain in about 24 to 48 hours and to remain dry at other times. They can provide pollutant removal efficiencies similar to those of retention pond. Extended detention systems are typically designed to provide both water quality and water quantity (flood control) benefits.

C. Housekeeping Best Management Practices (BMPs)

Pollutants that could be discharged in stormwater from construction sites because of poor housekeeping include oil, grease, paints, gasoline, concrete truck chute washdown, raw materials used in the manufacture of concrete (sand, aggregate, and cement), solvents, litter, debris and sanitary wastes. Construction site SWPPPs should address the following to prevent the discharge of pollutants:

- Designate and control areas for equipment maintenance and repair;

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

IV. Summary of Permit Conditions

This section has been written in an informal style and follows the structure of the CGP, but does not reflect verbatim the actual language used in the permit. It is intended to help the regulated community and members of the public understand the intent and basis of the actual permit language. If any confusion or conflicts exist between this summary and the actual CGP language, the permittee must comply with the CGP as written.

The permit has been reorganized from the 2003 CGP and the proposal to clarify the difference between effluent limits (now in Part 3), inspection requirements (now in Part 4), and SWPPP documentation requirements (now in Part 5). Prior to these changes, it was unclear to at least one commenter what effluent limits applies to construction operators covered by this permit. In the 2003 CGP, the requirements for controlling pollutant discharges were combined with the SWPPP documentation and inspection requirements, making it more difficult to understand EPA's intentions with respect to the permit's performance objectives. These changes do not alter the bottom-line expectations of the permittee. Rather, they more clearly articulate the permit's requirements. For instance, whereas the 2003 CGP indicated in the SWPPP section that "litter, construction debris, and construction chemicals that could be exposed to stormwater must be prevented from becoming a pollutant source in stormwater discharges", this permit rephrases this requirement in Part 3.1.F to require the permittee to "prevent litter, construction debris, and construction chemicals that could be exposed to stormwater from becoming a pollutant source in stormwater discharges." All of these narrative performance-based limits are now included in Part 3 of the permit.

A. Coverage Under This Permit

1. Introduction (CGP Part 1.1)

This Construction General Permit (CGP) authorizes stormwater discharges from large and small construction-related activities that result in a total land disturbance of equal to or greater than one acre, where those discharges enter surface waters of the United States or a Municipal Separate Storm Sewer System (MS4). EPA is also making this permit available, consistent with 40 CFR §122.26(b)(15(ii)), for stormwater discharges from any other construction activity designated by EPA based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters

of the United States. Importantly, this permit limits eligibility to dischargers not previously authorized to discharge under the 2003 CGP. These discharges could be from new projects or unpermitted ongoing projects. This permit presents permit language in a more reader-friendly, plain language format. In several places in the CGP, EPA has replaced the terms "operator", "applicant", and "permittee" with the easier-to-understand terms of "you" or "your." As such, once an operator requests coverage under the CGP, the CGP is worded to speak directly to that operator, who is now the permittee.

Similar to the 1998 and 2003 CGPs, the goal of this permit is to reduce or eliminate stormwater pollution from construction activity through implementation of appropriate control measures.

2. Permit Area (CGP Part 1.2)

As noted above, the CGP is actually a compilation of numerous identical permits, each with its own NPDES permit number. Each separate CGP is individually numbered and only makes available coverage to construction activities in the permit's designated area or category (e.g., State, Federal facility within a State, Indian Country, etc.). A list of each of these areas, along with the associated NPDES permit number, is provided in Appendix B of the permit. Each permittee will be assigned a tracking number associated with the appropriate NPDES permit number when his or her Notice of Intent (NOI) is received and processed by EPA.

This permit modifies the area of available coverage from the February 1998 and 2003 CGPs and is now available for all areas, except those within EPA Region 4, for which EPA is the permitting authority. Specifically, this permit includes those activities previously covered by the EPA Region 6 CGP (63 FR 36489, July 6, 1998), adds Indian Country in EPA Region 5, and clarifies those oil and gas related activities in Oklahoma for which EPA remains the permitting authority. This permit excludes those areas that have recently been authorized to administer the NPDES Permitting Program (i.e., the State of Maine and the State of Arizona). EPA will continue to be the permitting authority for Indian Lands in the State of Arizona.

Because certifications required by Section 401 of the Clean Water Act, and for a few states certifications required by the Coastal Zone Management Act, were not received in time, new and unpermitted ongoing construction projects in the following areas are not yet eligible for coverage under this permit:

- The State of New Hampshire;
- Indian country within the State of New York;
- The Commonwealth of Puerto Rico;
- Indian country within the State of Michigan;
- Indian country within the State of Minnesota;
- Indian country within the State of Wisconsin, except the Sokaogon Chippewa (Mole Lake) Community;
- Indian country within the State of Oklahoma;
- Indian country within the State of New Mexico;

- Oil and gas, or geothermal energy, operations in Texas;
- Oil and gas operations, or certain point source discharges associated with agriculture and silviculture in Oklahoma;
- Federal Facilities in the State of Colorado, except those located on Indian country;
- Indian country within the State of Colorado, as well as the portion of the Ute Mountain Reservation located in New Mexico; and
- Indian country within the State of Montana.

EPA will announce the availability of coverage under the CGP for these areas in a separate **Federal Register** notice as soon as possible after the certifications are received.

3. Eligibility (CGP Part 1.3)

This section of the permit describes those requirements that are a pre-condition to obtaining coverage under this CGP. Specifically, only construction activities that meet the eligibility conditions in Part 1.3 can be covered by this permit. As such, if an operator is not eligible for coverage under this CGP, but files an NOI requesting coverage, then any discharges are considered to be unpermitted and in violation of the Clean Water Act. However, once eligibility has been attained, if the operator does not comply with the requirements of the CGP, the operator may be in violation of the CGP for otherwise eligible discharges.

CGP Part 1.3.A Allowable Stormwater Discharges. This permit authorizes all discharges of stormwater from new or unpermitted ongoing construction activities except those excluded under Limitations on Coverage (Part 1.3.C) in the CGP. Eligibility for coverage under this permit is limited to "new projects" and "unpermitted ongoing projects" as defined in Appendix A. Coverage under the CGP is authorized for:

- Stormwater discharges associated with construction activities from either large or small construction sites (including stormwater discharges from operators disturbing less than one acre that are part of a larger common plan of development or sale that, combined, disturbs one acre or more);
- Stormwater discharges from sites disturbing less than one acre, but designated by EPA as needing coverage under the CGP;
- Stormwater discharges from construction site support activities given that these support activities are directly related to the construction site with NPDES CGP coverage; and
- Any discharge authorized by a different NPDES permit commingled with discharges authorized by this permit.

As noted above, activities that occur on-site in support of construction activity are covered under the CGP. Specifically, the permit authorizes discharges from construction support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, etc.) for local project(s) with which an operator is currently involved (e.g., a concrete batch plant providing concrete to several different highway projects in the same county). Authorization of this discharge is contingent upon (1) the

support activity not being a commercial operation serving multiple, unrelated construction projects and not operating beyond the completion of the last related construction project it serves; and (2) pollutant discharges from support activity areas are minimized in compliance with Part 3.1.G.

CGP Part 1.3.B Allowable Non-Stormwater Discharges. This permit authorizes certain non-stormwater discharges associated with construction activity, provided that the non-stormwater component is in compliance with Part 3.2 of the permit. Allowable non-stormwater discharges include those listed in Part 1.3.B of the CGP.

CGP Part 1.3.C Limitations on Coverage. Not all stormwater discharges from construction sites are authorized by this permit. Specifically excluded are:

CGP Part 1.3.C.1 Post Construction Discharges. Stormwater discharges originating from a site after construction activities have ceased, the site has achieved final stabilization, and a Notice of Termination has been submitted. If there will be a discharge of stormwater associated with industrial activity, or some other regulated discharge from the completed project (e.g., wastewater from a newly-constructed chemical plant), coverage under another permit(s) must be obtained for those discharges.

CGP Part 1.3.C.2 Prohibition on Discharges Mixed With Non-Stormwater. Stormwater discharges that are mixed with non-stormwater sources, other than those identified in and complying with the permit. Non-stormwater discharges that are authorized under a different NPDES permit may be commingled with discharges authorized under this permit.

CGP Part 1.3.C.3 Discharges Covered by Another Permit. Stormwater discharges associated with construction activity that are covered under an individual permit or discharges required to be covered under an alternative general permit.

CGP Part 1.3.C.4 Attainment of Water Quality Standards. Federal regulations at 40 CFR §122.4(d) provide that no permit may be issued if the "conditions cannot ensure compliance with the applicable water quality requirements." Unlike individual permits that include requirements tailored to site-specific considerations, general permits, while tailored to specific industrial processes or types of discharges (e.g. offshore oil and gas or stormwater), do not contain site-specific requirements that address the water quality conditions of the waters receiving the discharge. Therefore, general permits rely on permittees to certify that they meet the eligibility conditions and implement requirements that will ensure compliance with the conditions of the permit. The permit requirements are intended to ensure that those seeking coverage under this general permit select, install, implement, and maintain control measures at their construction site that will be adequate and sufficient to meet water quality standards for all pollutants of concern.

For the CGP, eligibility provisions do not hinge on the operator making a determination of compliance with applicable water quality standards. Rather, the permit limits operators from obtaining coverage under this permit if EPA makes such a determination. In those

instances when EPA does make such a determination, EPA may require the operator to obtain coverage under an individual permit or may allow coverage under the CGP provided that the operator includes appropriate controls and implementation procedures in its SWPPP. As is required in Part 3.4 of the CGP, operators are required to select, install, implement, and maintain control measures that minimize pollutants in the discharge. Except where specifically required by EPA to perform additional measures, these control measures will be considered as stringent as necessary to ensure that discharges do not cause or contribute to an excursion above any applicable state water quality standard. As such, EPA expects that compliance with the terms of the general permit will ensure compliance with water quality standards.

CGP Part 1.3.C.5 Discharging into Receiving Waters With an EPA Approved or Established Total Maximum Daily Load (TMDL) Analysis. A Total Maximum Daily Load (TMDL) is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. Under current regulations and EPA program guidance (40 CFR §130.2 and §130.7), states establish TMDLs that include wasteload allocations from point sources, and load allocations from non-point sources and natural background conditions. Wasteload allocations are defined as the portion of a receiving water's loading capacity that is allocated to point sources dischargers. TMDLs are established at levels necessary to attain and maintain the applicable narrative and numerical water quality standards with seasonal variations and a margin of safety that take into account any lack of knowledge concerning the relationship between effluent limitations and water quality. TMDLs are developed on a pollutant- and waterbody-specific basis. In some instances, TMDLs may combine multiple pollutants into one set of TMDL documents; however, the specific TMDL wasteload and load allocations are to be pollutant-specific. States are responsible for establishing TMDLs, which EPA approves. In some instances, EPA establishes the TMDLs. Once established or approved by EPA, TMDLs are implemented through water quality management plans and through NDPES permits. NPDES regulations, at 40 CFR §122.44(d)(1)(vii)(B), require that EPA ensure that NPDES permit limits are consistent with the assumptions and requirements of any available wasteload allocation pursuant to 40 CFR §130.7. Generally, this requires EPA to ensure that NPDES permits incorporate applicable assumptions and requirements detailed in TMDLs approved or established by EPA.

Those seeking coverage under the CGP are responsible for determining whether specific conditions, over and above other requirements of the CGP, have been identified by the TMDL authority as necessary to ensure consistency with the assumptions and requirements of TMDLs approved or established by EPA. There may be documents accompanying the TMDL (e.g., an implementation plan) or other documents that indicate the TMDL writer's intent to allocate a load for an individual discharger or for a class of dischargers. To the extent such documents are available, the operator should consider these materials when determining whether his/her discharge will be consistent with the TMDL. EPA encourages the operator to contact the authority that established the TMDL -- in most cases, the states -- to seek clarification if significant concerns exist over whether its activity will be consistent with a TMDL.

Consistent with EPA regulations and guidance, the CGP requires that the operator determine whether an EPA approved or established TMDL exists that specifically addresses its discharge and if so, take necessary actions to be consistent with the assumptions and requirements of that approved TMDL. To make this determination, the operator will need to (1) determine the waterbody into which it discharges, (2) identify if there is an EPA approved or established TMDL for that waterbody, (3) determine if that TMDL includes specific requirements (e.g., wasteload allocation or load allocation) applicable to its construction site, and (4) if so implement necessary steps to comply with them. EPA generally agrees that construction activities should not be delayed because the TMDL authority failed to specify all sources of loading in the TMDL. EPA is not requiring that construction activities be delayed until such time as a TMDL can be revised. EPA has utilized a framework that allows the construction site operator to obtain clarification from the TMDL authority on discharge provisions that would allow authorization under the CGP. EPA established a website at www.epa.gov/npdes/stormwater/cgp that includes links to state TMDL information and contacts. EPA expects that permittees can access that website and identify either (1) the steps needed to be consistent with the assumptions and requirements of the TMDL or (2) a state or regional contact for making this determination. The operator may access that site or contact their state environmental agency or EPA region directly to make this determination. For construction activity authorized by EPA Region 8, TMDL information and contacts are available at: www.epa.gov/region08/water/stormwater/index.html. For more information on EPA's National TMDL program, including state and regional contacts, state maps showing impaired waterbodies, and example TMDLs, visit: www.epa.gov/owow/tmdl/.

EPA recognizes that TMDLs vary in the complexity of their assumptions and quantification. In the process of determining whether or not an operator is consistent with the TMDL, the state or regional TMDL contact may request additional information. The TMDL may include details regarding recommended implementation activities that include certain narrative provisions such as implementation of specific BMPs; specified inspection, discharge monitoring or characterization, education, tracking or reporting requirements; or some combination of these or other conditions. In addition, some States may include implementation provisions in their TMDLs, although EPA regulations do not require this, and EPA does not approve or disapprove TMDLs based on these implementation provisions. However, any implementation language included in the TMDL that applies to construction general permit discharges should be considered part of the TMDL for the purposes of determining consistency of the control measures implemented at the site with the TMDL. Further, EPA is clarifying that if the TMDL includes load allocations that the permitting jurisdiction later determines is for a discharge subject to this permit, then the load allocation is considered to be a wasteload allocation, and the construction operator needs to implement control measures that are consistent with any specific requirements implementing this load allocation.

As described in the permit, EPA will begin with the general assumption that where EPA has approved a TMDL that does not include a specific allocation for stormwater

discharges, or where the TMDL authority clarifies that it did not include a specific allocation for stormwater or for construction activities, selection, installation, and maintenance of control measures that meet the effluent limits in Part 3 of the permit will be consistent with the assumptions and requirements of such TMDLs. Inferring that the TMDL authority did not intend to make it impossible to permit stormwater discharges in the absence of any discussion on this topic in the TMDL is reasonable because both construction activity and rainfall are so ubiquitous that it is unlikely that a policymaker would make such a significant decision consciously through silence. EPA will generally assume that such discharges were accounted for by the author of the TMDL, even if such discharges are not addressed specifically. Therefore, in the situation where an EPA approved or established TMDL has not specified a wasteload allocation for construction stormwater discharges, but has not specifically excluded these discharges, compliance with the effluent limits in Part 3 of the permit will generally be assumed to be consistent with the approved TMDL. Similarly, where an EPA approved or established TMDL has specified a general wasteload allocation for construction stormwater discharges, but no specific requirements for individual construction sites have been identified, either in the TMDL, a watershed plan, or other similar document, then compliance with the effluent limitations in Part 3 will generally be assumed to be consistent with the approved TMDL. If the EPA approved or established TMDL specifically precludes such discharges, the operator is not eligible for coverage under the CGP. In selecting this approach, EPA is trying to balance the need to include permit conditions consistent with TMDLs with the need to clearly define permittee responsibilities.

CGP Part 1.3.C.6 Endangered and Threatened Species and Critical Habitat Protection. Before submitting an NOI, the operator must ensure and document that discharges are not likely to jeopardize the continued existence of any Federally-listed endangered or threatened species or result in the adverse modification or destruction of habitat that is Federally-designated as critical under the Endangered Species Act (ESA).
The U. S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) are responsible for administration of the ESA and as such are responsible for maintaining a list of protected species and critical habitat. Once listed as endangered or threatened, a species is afforded the full range of protections available under the ESA, including prohibitions on killing, harming or otherwise taking a species. In certain instances, FWS or NMFS may establish a critical habitat for a threatened or endangered species as a means to further protect those species. Critical habitat includes areas determined to be essential for the conservation of a species and may not necessarily be in an area currently occupied by the species. Some, but not all, listed species have designated critical habitat. Exact locations of such critical habitat are provided in the Services regulations at 50 CFR Parts 17 and 226.

EPA has developed a four-step process (Appendix C) to make this determination. The project "owner" or developer performs the endangered species analysis during the planning stages of a project (i.e., before construction is scheduled to begin). By design, this effort should not have to be repeated by the contractors, homebuilders, utilities, etc., whose involvement in the project will not happen until later. See Appendix C of the permit for the ESA Review Procedures to determine eligibility prior to submittal of the

NOI. EPA strongly recommends that the operator follow the Appendix C procedures at the earliest possible stage to ensure that measures to protect listed threatened and endangered species and designated critical habitat are incorporated early in the planning process. At a minimum, the operator must document fully the procedures used to determine eligibility prior to submittal of the NOI.

This permit provides for the possibility of multiple permittees at a construction site. Operators should be aware that in many cases they can meet the CGP eligibility requirements by relying on another operator's certification of eligibility as specified in Criterion F under Part 1.3.C.6 of the CGP.

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

The project area will vary with the size and structure of the construction activity, the nature and quantity of the stormwater discharges, the stormwater discharge-related activities and the type of receiving water. Given the number of construction activities potentially covered by the CGP, no specific method to determine whether listed species may be located in the project area is required for coverage under the CGP.
It is important to note that discussion or formal or informal consultation with FWS and/or NMFS should begin prior to submission of Notice of Intent if the construction operator is unclear about whether he or she can satisfy Appendix C without FWS and/or NMFS input.

The operator also has an independent ESA obligation to ensure that its activities do not result in any prohibited "take" of listed species.[4] Many of the measures required in the CGP and in these instructions to protect species may also assist operators in ensuring that their construction activities do not result in a prohibited take of species in violation of

[4] Section 9 of the ESA prohibits an person from "taking" endangered wildlife (e.g., harassing or harming it). See ESA Sec 9: 16 U.S.C. §1538. The FWS has extended generally that prohibition to threatened wildlife by regulation 50 CFR §17.31. This prohibition applies generally to all entities including private individuals, businesses, and governments. Section 9(a)(2) details the prohibited acts relating to endangered plants, which primarily apply on federal lands or to actions prohibited by State law.

section 9 of the ESA. Operators who plan construction activities in areas that harbor endangered and threatened species are advised to ensure that they are protected from potential takings liability under ESA section 9 by either an ESA section 10 permit or by requesting formal consultation under ESA section 7 (as described in more detail in Step Four of the ESA Review Procedures in Appendix C of the CGP). Operators who seek protection from takings liability should be aware that it is possible that some specific construction activities may be too unrelated to stormwater discharges to be afforded incidental take coverage through an ESA section 7 consultation that is performed to meet the eligibility requirements for CGP coverage. In such instances, operators should apply for an ESA section 10 permit. Where operators are not sure whether to pursue a section 10 permit or a section 7 consultation for takings protection, they should confer with the appropriate FWS or NMFS office.

This permit controls stormwater discharges from small construction activities in addition to continuing to cover large construction activities. As noted earlier, the permit requires the development and implementation of a SWPPP to control pollutants in the discharges. This SWPPP must protect water quality in the affected waters, including designated aquatic life uses in those waters. Since the SWPPPs adequately protect water quality, including aquatic life, EPA has determined that the permit issuance will not adversely affect EFH. As such, in accordance with 50 CFR §600.920, EPA is not consulting with NMFS concerning this action.

CGP Part 1.3.C.7 Historic Properties. [Reserved] Operators are reminded that they must comply with applicable state, tribal, and local laws concerning the protection of historic properties and places. EPA is continuing discussions with the Advisory Council on Historic Preservation and may modify the CGP at a later date based on those discussions.

4. Waivers for Small Construction Activities (CGP Part 1.4)

Phase II extends the requirements of the stormwater program from construction sites disturbing five or more acres (large construction) to sites disturbing between one and five acres (small construction), although EPA may also waive small construction sites that do not have adverse water quality impacts. To receive a waiver, the operator of a small construction activity must certify to a low predicted rainfall erosivity or lack of water quality impacts. See Part V.B. of the fact sheet for more information on waivers.

An operator can qualify for the rainfall erosivity waiver when, for the period of construction activity, the value of the rainfall erosivity factor (R-Factor) is less than 5. If the construction activity extends past the dates specified in the waiver certification, the operator must recalculate the waiver using the original start date and a new ending date. If the R-Factor is still under 5, a new waiver certification form must be submitted. If the recalculated R-Factor is greater than 5, an NOI must be submitted prior to the end of the waiver period for the operator to be covered by the permit. Details of procedures for determining eligibility for the rainfall erosivity waiver are provided in Appendix D.

A determination that stormwater controls are not necessary may also be based on a total maximum daily load (TMDL) approved or established by EPA that addresses the

pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. The operator must certify that the construction activity and the drainage area are addressed by the TMDL or equivalent analysis. Details of procedures for determining eligibility for these waivers are provided in Appendix D.

B. Authorizations for Discharges of Stormwater From Construction Activity

1. How to Obtain Authorization (CGP Part 2.1)

Operators of construction sites greater than one acre, or those designated by EPA, are required to submit Notices of Intent (NOI) to obtain permit coverage (40 CFR §122.28(b)(2)). Submission of a complete and accurate NOI eliminates the need to apply for an individual permit for a regulated discharge, unless EPA specifically notifies the discharger that an individual permit application must be submitted.

Each entity considered an operator of a new or unpermitted ongoing construction activity, must submit an NOI. EPA encourages such operators to file NOIs using the Agency's electronic NOI ("eNOI") system, available at http://www.epa.gov/npdes/stormwater/cgp. The definition of "operator" and the existing regulatory definitions of "owner or operator" and "facility or activity" have been included in the permit.

EPA believes there exist situations where a utility company installing service lines meets the definition of operator and must get permit coverage, although most of the time a utility would be considered a "subcontractor" (i.e., non-permittee). If a utility company is constructing a project for itself (e.g., main transmission line, transformer station) it must obtain permit coverage. Otherwise, as a non-permittee working at a construction site, EPA encourages utility companies (as it does any subcontractor) to abide by the site's SWPPP provisions and minimize its impacts on stormwater controls.

2. How to Submit Your NOI (CGP Part 2.2)

The permit requires operators to either use EPA's electronic NOI system (accessible at www.epa.gov/npdes/eNOI or use a paper form (included in Appendix E) and then submit that paper form to the NOI processing center.

EPA emphasizes that submitting an NOI via EPA's electronic filing system will be the easiest and quickest way to obtain permit coverage because the system will automatically process the information, disallow incomplete submissions, and flag certain entries as possibly incorrect. Shortly after transmission of an eNOI to EPA, the database can be accessed to verify receipt and posting of information. The 7-day NOI review period will typically begin the day a complete eNOI is transmitted.

3. Authorization to Discharge Date (CGP Part 2.3)

This permit is considered to be issued on the date it is noticed in the Federal Register and will be effective for two years from that date, ending at midnight on the anniversary of publication. Operators are authorized to discharge stormwater from construction activities under the terms and conditions of this permit seven days after acknowledgment of receipt that your complete NOI is posted on EPA's NPDES website http://www.epa.gov/npdes/enoi. The 7-day waiting period provides EPA, FWS and NMFS an opportunity to evaluate NOIs, and possibly delay authorization, for potential permit eligibility concerns (see Part 1.3), as part of a commitment to increase oversight of dischargers.

During the 7-day NOI review period following NOI posting in the NOI database, EPA may notify the NOI submitter that additional action must be taken before discharge authorization is obtained, based on concerns regarding eligibility as described in Part 1.3. All notifications of delays will be posted on the website by the seventh day, and will be followed by a mailed notification. For non-eNOI submissions, EPA will attempt to contact the NOI submitter directly with information about delays as soon as possible (telephone, fax, email), in addition to the database posting, but it is the submitter's responsibility to ensure that authorization has been granted.

Actions to be taken depend on the nature of the eligibility concerns (e.g. water quality, impaired receiving waters, endangered species). Additional actions may include a request to review the SWPPP, endangered species documentation or other information; the need for consultation with FWS or NMFS; a requirement to make revisions to the SWPPP; or having to submit an application for an individual permit as per Part 2.6. For sake of expediency in obtaining coverage, any requests should be complied with as soon as possible. When so notified that additional actions must be taken, discharges are not authorized until notified of such by EPA.

4. Submission Deadlines (CGP Part 2.4)

a. Operators of new projects (i.e., construction activity commenced after the effective date of this permit) must submit an NOI form at least seven days prior to commencement of construction activities. The 7-day waiting period provides EPA, FWS and NMFS with the opportunity to scrutinize NOIs for potential permit eligibility concerns, as part of these Agencies' commitment to increase oversight of dischargers. Operators are still responsible for submitting complete and accurate NOIs (including eligibility of permit coverage) and are not authorized if the NOI is incomplete or inaccurate. An informal review of existing state NPDES construction general permits found that a large number of states do have a delay established in the NOI review process. This leads EPA to believe that construction activities can, in fact, operate successfully under a regulatory review process that will delay permit coverage by a period of seven days or more.

   During the 7-day NOI review period following posting in the NOI database, EPA may notify an applicant that some additional action must be taken before

discharge authorization is obtained, based on eligibility concerns. Actions to be taken depend on the nature of the concerns (e.g. water quality, impaired receiving waters, endangered species, historic property). Additional actions may include a request to review an applicant's SWPPP, endangered species documentation or other information; the need for individual consultation with FWS or NMFS; making revisions to the SWPPP; or having to submit an application for an individual permit as per Part 2.6. For the sake of expediency in obtaining coverage, the applicant should comply with any request as soon as possible. When notified that authorization to discharge will be delayed, an applicant cannot discharge until given explicit notice by EPA that the delay has been lifted.

b. Operators of permitted ongoing projects, who received authorization under the 2003 CGP, are not eligible for coverage under the 2008 CGP. Such operators will be automatically continued under the 2003 CGP until the expiration of this permit and the issuance of a new CGP, or the termination of coverage by you under the 2003 CGP, whichever is earlier.

c. EPA is requiring operators of unpermitted ongoing projects (those existing projects that previously did not receive authorization to discharge under the 2003 CGP) to submit an NOI within 90 days of the issuance date of this permit.

   In any of the above situations, permit coverage may be delayed past the 7-day waiting period upon notification as per Part 2.3.

d. If an NOI is submitted after construction activity has begun, the operator is authorized for discharges consistent with the authorization to discharge and submission deadlines detailed in Parts 2.3 and 2.4 of the CGP but in no cases less than seven days after submission of a complete and accurate NOI to EPA. The Agency may seek enforcement action for any unpermitted discharges or permit non-compliance that occurs between the time construction begins and discharge authorization.

5. Continuation of the Expired General Permit (CGP Part 2.5)

The permit specifies procedures for continued coverage under a general permit if the permit expires prior to a replacement permit being issued. In short, the expired permit would remain in full force and effect in accordance with the Administrative Procedures Act. Any permittee granted coverage prior to the permit's expiration date will automatically remain covered by the continued permit until the earliest of:

- The permit being reissued or replaced;
- The permittee terminating coverage by submitting a Notice of Termination;
- Issuance of an individual permit for the permittee's discharges; or
- A formal decision by EPA not to reissue the general permit, at which time the permittee must seek coverage under an alternative general permit or an individual permit.

However, should the permit expire prior to a replacement permit being issued, the existing permit will only cover those operators that submitted a complete and accurate NOI and met all the eligibility requirements prior to the expiration date of the permit. New construction projects requiring permit coverage after the expiration date of this permit are not eligible for coverage until a replacement permit is issued.

6. Requiring Coverage Under an Individual Permit or an Alternative General Permit (CGP Part 2.6)

Based upon a number of different situations (e.g., applicable numeric effluent limitations resulting from a TMDL, or a determination that the operator has the potential to cause or contribute to a water quality standard excursion), EPA may determine that coverage under an individual permit is necessary. If a permittee is currently discharging under this general permit and EPA determines that individual coverage is required, written notification of this required change in permit coverage, including reasoning for this decision, an application form, and a deadline for filing the application, will be provided to the permittee by EPA.

Additionally, any permittee may apply for an individual permit rather than apply for coverage under this general permit. An individual application must be submitted for coverage under such a permit with reasoning supporting the request. If such reasoning is considered adequate by EPA, the request will be granted and an individual permit issued. If an individual permit is issued to the permittee currently covered under this general permit, or coverage under an alternative general permit is obtained, coverage under the general permit is terminated on the effective date of the new permit. Alternatively, if a permittee, currently covered under the general permit, seeks coverage under an individual or alternative NPDES permit and is denied, coverage under the general permit is terminated on the date of such denial, unless otherwise specified by EPA.

C. Effluent Limits

Background to the Use of Non-Numeric Effluent Limits

This permit contains non-numeric effluent limitations that correspond to required levels of technology-based and water quality-based control for discharges under the CWA. Where EPA has not yet issued an effluent limitation guideline, as is the case for the construction industry, EPA determines the appropriate technology-based level of control based on best professional judgment. CWA section 402(a)(1); 40 CFR § 125.6. The CWA authorizes EPA to use non-numeric, or "narrative," effluent limits in NPDES permits.[5] Control measures may be used as effluent limitations under EPA regulations.

[5] *Natural Res. Def. Council, Inc. v. EPA, 673 F.2d 400, 403 (D.C. Cir. 1982)* (noting that "*section 502(11)* defines 'effluent limitation' as '*any* restriction' on the amounts of pollutants discharged, not just a numerical restriction"; holding that section 509(b)(1)(E) of CWA authorizing courts of appeals to review promulgation of "any effluent limitation or other limitation" did not confine the court's review to the EPA's establishment of numerical limitations on pollutant discharges, but instead authorized review of other limitations under the definition) (emphasis added). Natural Res. Def. Council, Inc. v. EPA, 673 F.2d 400, 403 (D.C.Cir.1982) noting that "section 502(11) [of the CWA] defines 'effluent limitation' as '*any* restriction' on the amounts of pollutants discharged, not just a numerical restriction."

40 C.F.R. §122.44(k). The 2008 CGP, like previous CGPs, includes non-numeric effluent limits, including BMPs.

Use of Control Measures to Meet Effluent Limits

EPA generally does not mandate the specific control measures operators must select, design and implement to meet non-numeric effluent limitations. It is up to the operator to determine what must be done to meet the applicable effluent limits. Control measures can be actions (including processes, procedures, schedules of activities, prohibitions on practices and other management practices), or structural or installed devices to prevent or reduce water pollution. They can be just about anything that "does the job" of preventing deleterious substances from entering the environment, and of meeting applicable limits. In this permit, construction site operators are required to select, design, implement and maintain site-specific control measures to meet these limits. The permit along with this fact sheet provide examples of control measures, but construction sites operators must tailor these to their sites as well as improve upon them as necessary to meet permit limits. The examples emphasize prevention over treatment.

Definition of the Term "Minimize"

The 2003 CGP did not include a definition of the term "minimize." However, that permit used the term frequently, in addition to the terms "eliminate or reduce" and "prevent." The permit also used phrases such as "where practicable" and "to the extent feasible," without providing a consistent definition of those terms. In response to comments, EPA determined that it was beneficial to use these terms consistently, especially where the Agency intended that these words be used inter-changeably, moreover to reflect the applicable levels of control – "BPT," "BAT" and "BCT." The first level of control, "best practicable control technology currently available," or "BPT" applies to all pollutants. CWA section 304(b)(1)(B); 33 U.S.C. § 1314(b)(1)(B). BPT represents the initial stage of pollutant discharge reduction, designed to bring all sources in an industrial category up to the level of the average of the best source in that category. See *EPA v. National Crushed Stone Ass'n*, 449 U.S. 64, 75-76 (1980). In the second level of control, all point sources are required to meet effluent limitations based on "best conventional pollutant control technology," or "BCT" CWA section 304(b)(4)(B); 33 U.S.C. § 1314(b)(4)(B) or "best available technology economically achievable," or "BAT" CWA section 301(b)(2)(A); 33 U.S.C. § 1311(b)(2)(A), depending on the types of pollutants discharged. BCT applies to conventional pollutants, listed at 40 C.F.R. § 401.16 (biological oxygen demand (BOD), pH, fecal coliform, and oil and grease). BAT applies to toxic and non-conventional pollutants.

Consistent with the control level requirements of the CWA, in this final permit EPA is clarifying that the term "minimize" means to reduce and/or eliminate to the extent achievable using control measures (including best management practices) that are technologically available and economically achievable and practicable in light of best industry practice. Therefore, wherever this term is used in Part 3, the permittee now has a consistent definition for what EPA intends by this requirement.

Installation of Control Measures to Meet Effluent Limits

The construction operator is required to select, install, and maintain control measures (e.g., Best Management Practices ("BMPs"), controls, practices, etc.) for each major construction activity, identified in the project description of the SWPPP, in order to meet the Part 3 effluent limits. All control measures must be properly selected, installed, and maintained in accordance with any relevant manufacturer specifications and good engineering practices. You must implement the erosion and sediment controls from commencement of construction activity until final stabilization is complete. These requirements were moved to this section from Parts 3.4.A and 3.13.A of the 2003 CGP and proposed permit.

1. Effluent Limits to Reduce Pollutants in Stormwater Discharges (CGP Part 3.1)

All construction operators are requirement to implement control measures to minimize pollutants in stormwater discharges. This requirement is modified from the proposed SWPPP provision that required operators to "include a description of all pollution control measures (i.e., BMPs) that will be implemented as part of the construction activity to control pollutants in stormwater discharges." See proposed Part 3.4.A. Inherent in this proposed requirement (which was also included in the 2003 CGP) is that operators implement control measures to "minimize" discharges of pollutants from construction sites.

CGP Part 3.1.A - Sediment Controls

Construction operators are required to implement certain sediment controls based on the amount of land being disturbed by the project. These controls were proposed as Part 3.13.E as SWPPP requirements, but have been moved to the effluent limits section to emphasize that these are performance-based effluent limitations of the permit, not to be confused with documentation requirements. The requirements are as follows:

1. Sediment Basins: For common drainage locations that serve an area with 10 or more acres disturbed at one time, a temporary (or permanent) sediment basin that provides storage for a calculated volume of runoff from the drainage area from a 2-year, 24-hour storm, or equivalent control measures, must be provided where attainable until final stabilization of the site. Where no such calculation has been performed, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, must be provided where attainable until final stabilization of the site. When computing the number of acres draining into a common location, it is not necessary to include flows from offsite areas and flows from on-site areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin. In determining whether installing a sediment basin is attainable, the operator may consider factors such as site soils, slope, available area on-site, etc. In any event, the operator must consider public safety, especially as it relates to children, as a design factor for the sediment

basin, and alternative sediment controls must be used where site limitations would preclude a safe design.

2. For drainage locations which serve 10 or more disturbed acres at one time and where a temporary sediment basin or equivalent controls is not attainable, smaller sediment basins and/or sediment traps should be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions).

3. For drainage locations serving less than 10 acres, smaller sediment basins and/or sediment traps should be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions) of the construction area unless a sediment basin providing storage for a calculated volume of runoff from a 2-year, 24-hour storm or 3,600 cubic feet of storage per acre drained is provided.

CGP Part 3.1.B - Off-Site Sediment Tracking and Dust Control

Construction operators are required to minimize vehicular tracking of soil off-site to paved surfaces and the generation of dust. Dust and dirt-tracking can be minimized by measures such as providing gravel or paving at entrance/ exit drive paths, parking areas and unpaved transit ways on the site carrying significant amounts of traffic; providing entrance wash racks or stations for trucks; and performing street sweeping. This provision was moved from language proposed as Part 3.4.G. The proposed provision (also included in the 2003 CGP) required operators to include a description in the SWPPP of measures to minimize tracking of sediment. Inherent to describing measures to minimize sediment tracking is the implementation of measures to accomplish the same objective. The requirement in Part 3.1.B regarding the removal of sediment that escapes the site was originally in Part 3.13.B of the proposed permit; the language used in the final permit is identical to the proposal.

CGP Part 3.1.C - Runoff Management

Construction operators are required to minimize runoff and the discharge of pollutants from exposed areas of the site. Structural controls may be necessary because vegetative controls cannot be employed where soil is continually disturbed and because of the lag time before vegetation becomes 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. Placement of structural controls in flood plains should be avoided. Language in the final provision was originally found in the proposed permit at Part 3.4.D. EPA considers this change to be non-substantive in nature given that inherent in describing measures to minimize runoff from exposed areas is the implementation of control measures to accomplish the same objective. The language in Part 3.1.C was modified slightly to emphasize that the

placement of structural practices in floodplains must be avoided "to the degree technologically and economically practicable and achievable" consistent with the definition of "minimize".

CGP Part 3.1.D - Erosive Velocity Control

Land development can significantly increase stormwater runoff volume and peak velocity if appropriate stormwater management measures are not implemented. In addition, post-development stormwater discharges will typically contain higher levels of pollutants, including total suspended solids (TSS), heavy metals, nutrients and high oxygen-demand components.

The evaluation of whether the pollutant loadings and the hydrologic conditions (the volume of discharge) of flows exceed pre-development levels can be based on hydrologic models that consider conditions such as the natural vegetation endemic to the area.

Increased discharge velocities can greatly accelerate erosion near the outlet of structural measures. To mitigate these effects, velocity dissipation devices should be placed at discharge points and along the length of a runoff conveyance, as necessary, to provide a non-erosive flow. Velocity dissipation devices help protect a water body's natural, pre-construction physical and biological uses and characteristics (e.g., hydrologic conditions such as the hydro period and hydrodynamics).

The language in Part 3.1.D was moved from Part 3.13.F of the proposed permit. No significant changes were made to the proposed language.

CGP Part 3.1.E - Post-Construction Stormwater Management

Construction operators are required to comply with applicable federal, state, tribal, or local requirements regarding the design and installation of post-construction stormwater controls. This requirement was proposed as Part 3.4.E and had required operators to include a description in the SWPPP of any post-construction stormwater management measures. The modified requirement in the final permit simply emphasizes the requirement to comply with any such federal, state, tribal, or local post-construction requirements. The requirement to describe such control measures is still found in Part 5.3 of the final permit.

This permit addresses only the installation of these measures; not the ongoing operation and maintenance of them after cessation of construction activities and final stabilization. Permittees are responsible only for the installation and maintenance of stormwater management measures until final stabilization of the site. When selecting stormwater management measures, the operator should consider the amount of required maintenance and whether there will be adequate resources for maintaining them over the longer term. Some discharges of pollutants from post-construction stormwater management structures may need to be authorized under an NPDES permit (e.g., the construction project was an industrial facility in a sector covered by the NPDES multi-sector general permit). The owner/operator of such discharges may ask EPA if this requirement applies to them.

Stormwater management measures installed during the construction process can control the volume and velocity of runoff, as well as reduce the quantity of pollutants discharged post-construction. Reductions in peak discharge velocity and volume can reduce pollutant loads as well as diminish physical impacts such as stream bank erosion and stream bed scour. Stormwater management measures that mitigate changes to pre-development runoff characteristics assist in protecting and maintaining the physical and biological characteristics of receiving streams and wetlands.

Structural measures should be installed on upland areas to the extent feasible. The installation of such measures may be subject to section 404 of the CWA if they will be located in wetlands or other waters of the United States.

Options for stormwater management measures include:

- On-site infiltration of precipitation;
- Flow attenuation by use of open vegetated swales and natural depressions;
- Stormwater retention/detention structures (including wet ponds); and
- Sequential systems using multiple methods.

The SWPPP should include an explanation of the technical basis used to select post-construction control measures, where flows exceed pre-development levels. This explanation should address how a number of factors were evaluated, including the pollutant removal efficiencies of the measures, costs of the measures, site-specific factors that will affect the utility of the measures, whether the measure is economically achievable at a particular site and any other relevant factors.

Stormwater control measures should be designed in accordance with any requirements established by the appropriate local, state, or tribal authority. EPA also strongly encourages operators to use low impact development or green infrastructure practices that promote infiltration and reduce stormwater volumes after development. Additional information on green infrastructure practices can be found at www.epa.gov/npdes/greeninfrastructure.

The pollutant removal efficiencies of various stormwater management measures can be estimated from a number of sources, including "Stormwater 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" prepared for U.S. EPA by Metropolitan Washington Council of Governments, March 1992. Additional information on BMPs is available from EPA in an on-line document entitled, "National Menu of Best Management Practices for Stormwater Phase II" and found on the Internet at www.epa.gov/npdes/menuofbmps/menu.htm, EPA's Urban Stormwater BMP Performance Tool (www.epa.gov/npdes/urbanbmp), and from an on-line database entitled, "National Stormwater Best Management Practices (BMP) Database" sponsored by EPA and the American Society of Civil Engineers (ASCE) and available on the Internet at www.bmpdatabase.org.

In selecting stormwater management measures, the permittee should consider the impacts of each method on other water resources, such as ground water. Although SWPPPs focus primarily on stormwater management of construction activity flow, EPA encourages sites to avoid creating groundwater pollution problems. For example, if the water table is high in an area or soils are especially porous, an infiltration pond may contaminate the groundwater unless special preventive measures are taken. In fact, certain stormwater control practices may meet EPA's definition of underground injection, triggering responsibilities under the Safe Drinking Water Act, as codified in 40 CFR Parts 144-146. Stormwater controls, such as wet ponds, should also be designed to have minimal safety risks, especially to children.

CGP Part 3.1.F - Construction and Waste Materials

Construction operators are required to prevent the discharge of solid materials to waters of the U.S. (except where authorized by a Section 404 CWA permit), to minimize exposure of construction and waste materials to stormwater and the occurrence of spills, and to prevent litter, construction debris, and construction chemicals that could be exposed to stormwater from becoming a pollutant source in stormwater discharges. This language was moved from Parts 3.4.F, 3.4.H, and 3.13.C. The changes made were non-substantial, and were intended to clarify EPA's intent that not only are operators required to describe control measures that minimize discharges, but also that operators are required to achieve such objectives. In response to a comment, EPA included some examples of what the Agency means by "construction chemicals." The examples provided include diesel fuel, hydraulic fluids, and other petroleum products.

CGP Part 3.1.G - Non-Construction Wastes

Construction operators are required to minimize pollutant discharges from areas other than construction. This requirement was proposed as Part 3.4.J. The meaning was unchanged other than to clarify what was always EPA's intent that not only is the operator required to describe sources of non-construction pollutants and control measuresto be implemented, but also that the operator is required to implement such control measures.

CGP Part 3.1.H – Erosion Control and Stabilization

The permit requires operators to stabilize disturbed portions of the site, and to initiate such measures within required timeframes. The language in Part 3.1.H was moved from Parts 3.4.B and 3.13.D. No substantive changes that alter the operator's bottom-line requirements were made other than to emphasize what was always EPA's intent that not only must operators describe stabilization measures, but that also they must be implemented.

Stabilization practices are critical to preventing erosion. The permittee must ensure that existing vegetation is preserved wherever possible and that disturbed portions of the site are stabilized as quickly as practicable. Stabilization practices include seeding of temporary vegetation, seeding of permanent vegetation, mulching, geotextiles, sod

stabilization, vegetative buffer strips, preservation of trees and mature vegetative buffer strips, and other appropriate measures. Temporary stabilization can be the single most important factor in reducing erosion at construction sites.

Stabilization also involves preserving and protecting selected trees 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 ones such as installing tree armoring and fencing around the drip line, to more complex measures such as building retaining walls and tree wells.

It is imperative that stabilization be employed as soon as practicable in critical areas. The CGP requires that, except in three situations, stabilization measures must be instituted on disturbed areas as soon as practicable, but no more than 14 days after construction activity has temporarily or permanently ceased on any portion of the site. The three exceptions to this requirement are the following:

- When construction activities will resume on a portion of the site within 14 days from suspension of previous construction activities;
- When the initiation of stabilization measures is precluded by snow cover or frozen ground, in which case they must be initiated as soon as practicable; and
- In arid areas (areas with an average annual rainfall of 0 to 10 inches), semi-arid areas (10 to 20 inches) and areas experiencing droughts; where the initiation of perennial vegetative stabilization measures is precluded by seasonal arid conditions. In this instance, stabilization measures must be initiated as soon as practicable.

CGP Part 3.1.I - Spills / Releases in Excess of Reportable Quantities

Construction operators are not authorized to discharge hazardous substances or oil resulting from on-site spills. Permittees are subject to federal reporting requirements of 40 CFR Part 110, Part 117, and Part 302 relating to spills or other releases of oils or hazardous substances. The construction site must have the capacity to control, contain, and remove such spills if they are to occur. Spills in excess of reportable quantities must still be reported. Also Section 311 of the CWA and certain provisions of Sections 301 and 402 of the CWA are also applicable. These requirements were proposed as Parts 4.3 and 4.4, and have been combined into one provision in the final permit. No substantive changes that alter the permittee's bottom line requirements were made in reorganizing these provisions.

2. Effluent Limits to Reduce Pollutants in Non-Stormwater (CGP Part 3.2)

Construction operators are required to minimize any non-stormwater discharges authorized by this permit. This provision was proposed as Part 3.5. No substantive changes were made that alter the permittee's bottom line requirements in moving the provision to Part 3.2 in the final permit.

3. Effluent Limits Related to Endangered Species (CGP Part 3.3)

Construction operators are required to protect federally-listed endangered or threatened species, or federally designated critical habitat to maintain eligibility under Part 1.3.C.6. This provision was derived from the proposed SWPPP requirement (Part 3.7.A) to document the rationale supporting eligibility relating to endangered species protection. The final provision simply clarifies that permittees are required, where applicable, to continue to protect species and/or critical habitat during permit coverage in order to maintain their eligibility under Part 1.3.C.6. This provision does not apply to those dischargers that certify under Part 1.3.C.6.A that there are no listed species or designated critical habitat in their project areas.

4. Attainment of Water Quality Standards (CGP Part 3.4)

NPDES regulations at 40 CFR §122.44(d) state that permits must contain conditions to achieve water quality standards. When EPA determines a discharge will cause or contribute to an excursion above WQS, including failure to protect and maintain existing designated uses of receiving waters, EPA will require the operator to take one of three actions:

- Modify control measures to address the identified water quality concerns;
- Submit to EPA valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining WQS; or
- Cease discharges from construction activity and apply for an individual permit.

If additional control measures are required, EPA expects the operator to vigilantly and in-good-faith follow and document the process for BMP selection, installation, implementation and maintenance, and cooperate to eliminate the identified problem within a time frame stipulated by EPA.

EPA does not typically review information and data about specific discharges prior to authorization under the CGP. Instead, a general permittee determines whether its discharges are eligible for authorization under the general permit and, if so, certifies to that determination and implements control measures to achieve the effluent limits in Part 3. The permit language is included to ensure that those seeking coverage under this general permit select, install, implement, and maintain control measures at their construction site that will be adequate and sufficient to meet water quality standards for all pollutants of concern. Based on EPA's 1996 Interim Permitting Approach for Water Quality-Based Effluent Limitations in Stormwater Permits (EPA 833-D-96-001), EPA has determined that BMPs, when properly selected, installed, implemented, and maintained do provide effluent quality that can meet WQS. However, because proper selection, installation, implementation, and maintenance are so critical to the success of BMP effectiveness, simply "installing BMPs" at a construction site will often not provide adequate water quality protection. Therefore, the CGP requires operators to select, install, implement, and maintain BMPs that minimize pollutants in the discharge. Unless notified otherwise by EPA, compliance with this permit requirement will be assumed to be as stringent as necessary to ensure that discharges do not cause or contribute to an excursion above any applicable water quality standard.

The language in Part 3.4 was moved from the proposed SWPPP section. No substantive changes that would affect the permittee's bottom line requirements were made in relocating this language to Part 3.

5. Consistency with Total Maximum Daily Loads (CGP Part 3.5)

Part 1.3.C.5 of the CGP requires that operators determine if discharges from the site are consistent with the assumptions and requirements of applicable EPA established or approved TMDLs for the receiving water into which they discharge. To make such a determination, operators can access EPA's NPDES website at www.epa.gov/npdes/stormwater/cgp or contact the state environmental agency directly. Part 3.5 of the permit requires the permittee to implement control measures necessary to be consistent with the assumptions and requirements of such TMDL. In certain instances, the TMDL may specifically identify each discharger contributing (or that will be contributing) pollutants to the receiving stream and the controls that are necessary for each discharger to meet the established waste load allocation. More likely for construction activities, the TMDL will identify a category of dischargers (e.g., construction activity or new development) and will identify the types of controls necessary to meet the cumulative waste load allocation for the group of dischargers. If the TMDL specifically identifies measures or controls, the operator must implement these. If specific measures or controls are not required in the TMDL, the operator should continue to achieve the effluent limits in Part 3. If necessary, EPA may notify the operator that additional requirements are necessary to be consistent with the assumptions and requirements of the TMDL, or that an individual permit is required. Operators should access EPA's website at www.epa.gov/npdes/stormwater/cgp to find CGP-specific TMDL information for all states and EPA regions covered by the CGP. This approach should identify any BMPs and/or other controls that ensure those discharges will be consistent with the provisions of the EPA approved or established TMDL.

The language in Part 3.5 was proposed at 3.14. EPA modified the language to emphasize the importance of implementing control measures required to be consistent with the assumptions and requirements of the TMDL, where applicable. This was not a substantive change from the proposal that altered the bottom line requirements of the operator. EPA considers it to be inherent in a requirement to document measures taken to ensure that the discharge is consistent with the assumptions and requirements of a TMDL that such measures actually be implemented.

6. Maintenance of Control Measures (CGP Part 3.6)

Erosion and sediment controls can become ineffective if they are damaged or not properly maintained. The permit requires all erosion and sediment control to be maintained in effective operating condition. If site inspections identify control measures that are not operating effectively, maintenance must be performed before the next storm event whenever practicable. If maintenance before the next storm event is impracticable, maintenance must be completed as soon as practicable. The permit also requires that the operator remove sediment from sediment traps or sedimentation ponds when design capacity of that device has been reduced by 50 percent or more. In addition, construction

operators are required to remove trapped sediment from a silt fence before the deposit reaches 50 percent of the above-ground fence height (or before it reaches a lower height based on manufacturer's specifications). This silt fence maintenance requirement was adopted in response to a comment that requested a specific threshold for maintenance. The commenter recommended that 50 percent of the above-ground fence height be used as the threshold. EPA agreed with the concept of adding in a specific threshold, but ultimately adopted the one-third requirement out of deference to other State requirements and current EPA recommendation.

Parts 3.6.A, B, and C were left relatively unchanged from the proposal. Slight modifications were made to clarify that it is the action taken to maintain control measures and implement any additional BMPs if needed that is important in Part 3. EPA added the provision relating to silt fences in response to a recommendation received by an industry commenter.

7. Training of Employees (CGP Part 3.7)

Construction operators are required to train employees and subcontractors as necessary to make them aware of the applicable control measures implemented at the site so that they follow applicable procedures. This is a new requirement that was added at the recommendation of an industry commenter. The commenter indicated that as a subcontractor, it is not always evident what procedures are to be followed when operating at a site that is permitted by the CGP. The particular commenter gave the example of concrete trucks subcontracted by the permittee, and the confusion that sometimes results when the driver does not know where it is acceptable to wash out the concrete chute. The addition of this provision should clarify that it is the permittee's responsibility to inform such subcontractors of their responsibilities while operating at a permitted site.

8. Applicable State, Tribal, or Local Programs (CGP Part 3.8)

Many states, tribes, municipalities and counties have developed control measure requirements for construction activities. A significant number have also developed stormwater management requirements. The CGP requires that stormwater controls for sites that discharge stormwater from construction activities be consistent with procedures and requirements of state/tribal and local control measure plans and stormwater management plans. The construction site's stormwater control practices may incorporate portions of a state, tribe, or local program's requirements if these requirements are at least as strict as the CGP. If a construction site is located in an area covered by such a local program, then compliance with various aspects of the local program would constitute compliance with these aspects of the CGP.

This provision was originally proposed as part of the SWPPP section as Part 3.9. No substantive changes that would affect the operator's bottom line requirements were made in moving this provision to the effluent limits section of the final permit.

D. Inspections

EPA moved the inspection requirements out of the SWPPP section in order to clarify that inspections are a required function of the permit, not of the SWPPP, which is a tool to be

used by the operator to describe its control measures and stormwater control procedures. The inspection provisions were not substantively altered in such a way that the bottom line requirements applicable to permittees has changed. Each provision, and any changes made to the proposed language, is discussed below.

1. Inspection Frequency (CGP Part 4.A)

Permittees must inspect designated areas on the site regularly. For purposes of this part, EPA defines "regularly" to mean either (1) at least once every 7 calendar days or (2) at least once every 14 calendar days and within 24 hours after any storm event of 0.5 inches or greater. EPA also recommends that permittees perform a "walk through" inspection of the construction site before anticipated storm events (or series of events such as intermittent showers over a period of days) that could potentially yield a significant amount of runoff. Depending on local rainfall patterns, it is possible that either more or fewer inspections would be required under the option described in Part 4.A.1 as compared to the option provided in Part 4.A.2. In exchange for committing to more frequent inspections, the operator could plan and budget for one inspection per week and would not have to deal with uncertainties associated with an unknown number of additional inspections triggered by rain events and the need to have inspectors on standby. This flexibility would be especially valuable for unmanned locations. Proper operation and maintenance of stormwater BMPs is independently required by Part 3.6 of the permit, so either inspection schedule is expected to provide adequate environmental protection.

2. Case-by-Case Reductions in Inspection Frequency (CGP Part 4.B)

For sites that have undergone stabilization (temporary or final) or experience seasonal aridity (average annual rainfall of 0 to 10 inches) or semi-aridity (annual rainfall of 10 to 20 inches), inspections must be conducted at least once a month. Where construction activity has been halted due to frozen conditions, regular inspections are not required until one month before thawing is expected (i.e., snowmelt runoff would commence).

3. Inspection Waiver (CGP Part 4.C)

In areas of the country where frozen conditions are anticipated to continue for extended periods of time (i.e., more than one month), and land disturbance activities are suspended during these times, the inspection requirements are waived. This waiver is granted until one month before thawing conditions are expected to result in a stormwater discharge from the site. The beginning and ending dates of the waiver period must be documented in the SWPPP.

4. Qualified Personnel (CGP Part 4.D)

Inspections must be performed by qualified personnel; either the operator's own personnel or consultants hired to perform the inspections. The inspectors must be knowledgeable and possess the skills to assess conditions at the construction site that could impact stormwater quality and assess the effectiveness of sedimentation and erosion control measure chosen to control the quality of the sites stormwater discharges. EPA is not specifying any inspector license or certification requirements at this time.

5. Scope of Inspections (CGP Part 4.E)

Site inspections must comprise, at a minimum:

- Disturbed areas;
- Areas used for storage of materials exposed to precipitation;
- Evidence of, or the potential for, pollutants entering the stormwater conveyance system;
- Discharge locations;
- Control measures; and
- Locations where vehicles enter or exit the site.

Where discharge points are accessible, they must be inspected to ascertain whether control measures are effective in preventing impacts to waters of the U.S. This can be done by inspecting the waters for evidence of erosion or sediment introduction. If discharge points are inaccessible, the permit requires that nearby downstream locations be inspected, if practicable.

Inspectors must determine whether control measures are effective in preventing impacts to the receiving water and look for evidence of or the potential for pollutants entering the drainage system.

6. Reductions in Scope of Inspections for Stabilized Areas (CGP Part 4.F)

The permit clarifies that once a definable area of the site has been finally stabilized, no further inspection requirements apply to that portion of the site. The permittee is required to implement stormwater controls during construction activity, which EPA defines as from commencement of construction activity until final stabilization. EPA defines both of these terms in Appendix A of the CGP. This requirement was proposed in Part 3.1.C; no substantive changes were made in moving this language to the inspection requirements section that alter in any way the permittee's bottom line requirements from the proposal.

7. Utility Line Inspections (CGP Part 4.G)

For linear construction activities (e.g., utility line installation, pipeline construction), representative inspections are acceptable and allow for inspection of the project 0.25 miles above and below each access point where a roadway, undisturbed right-of-way, or other similar feature intersects the construction site and allows access to the construction site. This is to limit additional disturbance to soils that may increase the erosion potential resulting from vehicles compromising stabilized areas.

8. Inspection Report (CGP Part 4.H)

Once an inspection has been performed, the permittee is required to prepare an inspection report and retain it for up to three years after the permit expires or is terminated. The report must include:

- The inspection date,
- Name, title, and qualifications of personnel conducting the inspection,

- Weather information for the period since the last inspection (or since commencement of construction activity if the first inspection performed) including a best estimate of the beginning of each storm event, the duration of each storm event, and the approximate amount of rainfall for each storm event (in inches),
- Weather information and a description of any discharges occurring at the time of the inspection,
- Location(s) of discharges of sediment or other pollutants from the site;
- Location(s) of BMPs that need to be maintained;
- Location(s) of BMPs that failed to operate as designed or proved inadequate for a particular location;
- Location(s) where additional BMPs are needed that did not exist at the time of the inspection; and
- Corrective action required including implementation dates.

Finally, the report must be signed in accordance with the signatory requirements in section 11 of Appendix G of the CGP.

E. Stormwater Pollution Prevention Plans (SWPPPs)

As discussed above in Section IV, EPA restructured the permit from the proposal to clearly identify those requirements that are non-numeric effluent limitations, from those that are inspection and SWPPP documentation requirements. The clarified SWPPP section of the permit includes those requirements that apply to the preparation of the SWPPP prior to discharge authorization. Specific provisions are discussed below, as well as any changes made to such provisions from the proposal.

1. Stormwater Pollution Prevention Plan Framework (CGP Part 5.1)

The permit requires the construction operator to develop a SWPPP that documents how he/she intends to implement stormwater controls. The SWPPP must contain: (1) A site description that identifies sources of pollutants to stormwater discharges associated with construction activity on site; and (2) a description of stormwater control measures used at the site to reduce pollutants in stormwater discharges to ensure compliance with the effluent limits in Part 3. Recognizing that much of the plan will likely be very similar from project to project, EPA recommends use of model plans or templates that can be easily adapted for individual projects to minimize the burden of plan preparation. For coverage under this permit, the SWPPP must be prepared before commencement of construction and then updated as appropriate. EPA has published guidance on construction SWPPP development available at www.epa.gov/npdes/swpppguide. Developing Your Stormwater Pollution Prevention Plan: A Guide for Construction Sites describes the SWPPP development process and includes customizable SWPPP templates and sample inspection reports. Example SWPPPs are also included on this web page.

The permit clarifies that the SWPPP does not contain effluent limitations; the technology and water quality-based effluent limitations are contained in Part 3 of this permit. EPA emphasizes in Part 5.1 that the SWPPP is intended to document the selection, design,

installation, and implementation of control measures that are being used to comply with the effluent limitations set forth in Part 3.

2. Pollution Prevention Plan Contents: Site and Activity Description (CGP Part 5.2)

CGP Part 5.2.A - Construction Site Operators

The SWPPP must identify all operators of the project site, and the areas of the site over which each operator has control. This information should clearly identify the boundaries of each operator's responsibility.

CGP Part 5.2.B - Nature of Construction Activity

The SWPPP must be based on an accurate assessment of the potential for generating and discharging pollutants from the site. Hence, the permit requires a description of the site and intended construction activities in the SWPPP (to provide a better understanding of site runoff characteristics). At a minimum, the SWPPP must describe the nature of the construction activity, including:

- The function of the project (e.g., low-density residential, shopping mall, highway, etc.);
- The intended significant activities, presented sequentially, that disturb soil over 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, including off-site borrow/fill areas. It may be preferable to separately describe portions of the site as they are disturbed at different stages of the construction process; and
- A general location map able to identify the location of the activity and the waters of the United States within one mile of the activity.

CGP Part 5.2.C - Site Map

The SWPPP must contain a legible site map indicating: (1) Anticipated drainage patterns and slopes after grading activities; (2) areas of soil disturbance and areas that will not be disturbed; (3) locations of major structural and nonstructural controls identified in the plan; (4) locations of planned stabilization measures; (5) off-site locations of equipment storage, material storage, waste storage and borrow/fill areas; (6) locations of surface waters (including wetlands); and (7) locations of discharge points to surface waters; and (8) if applicable, locations where final stabilization has been accomplished and no further construction-phase permit requirements apply. Site maps should also include other major features and potential pollutant sources, such as locations of impervious structures and soil storage piles.

EPA included as a parenthetical clarification that it is acceptable to include a statement that all areas of the site will be disturbed unless otherwise noted. This was added to clarify what is considered acceptable for indicating areas of soil disturbance and areas that will not be disturbed on the site map. This clarification was added in response to a comment received by a construction company.

CGP Part 5.2.D - Construction and Waste Materials
The SWPPP must include a description of the construction and waste materials expected to be stored on-site with updates as appropriate.

CGP Part 5.2.E - Locations of Other Industrial Stormwater Discharges
The SWPPP must provide a description of any discharge associated with industrial activity other than construction (including stormwater discharges from dedicated asphalt plants, concrete plants, etc.) and the location of that activity on the construction site.

3. Description of Control Measures to Reduce Pollutant Discharges (CGP Part 5.3)
EPA modified this section of the proposed permit to emphasize the requirement to describe control measures being implemented to achieve the limits in Part 3. This requirement is streamlined due to the movement of implementation activities to the effluent limits section.

CGP Part 5.3.A - Control Measures
The SWPPP must include a documentation of the control measures that will be implemented to reduce the pollutants in stormwater discharges from the site and assure compliance with the effluent limits in Part 3.

The SWPPP must describe the intended sequence of major stormwater controls and when, in relation to the construction process, they will be implemented. EPA recognizes that many factors can impact the actual construction schedule, so the permittee need not include specific dates (e.g. plan could say install silt fence for area "A" before rough grading, rather than put up silt fences on August 15). Good site planning and preservation of mature vegetation are imperative for controlling pollution in stormwater discharges both during and after construction activities. Properly staging major earth disturbing activities can also dramatically decrease the costs of control measures.

CGP Part 5.3.B - Stabilization
The SWPPP must include a description of interim and permanent stabilization practices for the site, including a schedule of when the practices will be implemented.

CGP Part 5.3.C - Post-Authorization Records
The SWPPP requires that specific construction dates be documented and maintained as a way for the construction operator as well as EPA to determine applicability and implementation status. Important dates include when grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated.

4. Non-Stormwater Discharges (CGP Part 5.4)
The SWPPP must identify appropriate pollution prevention measures for each of the eligible non-stormwater components of the discharge covered by this permit when combined with stormwater discharges associated with construction activity. The SWPPP

must also include a description of the pollution prevention measures used to eliminate or reduce non-stormwater discharges consistent with Part 3.2

5. Documentation of Permit Eligibility Related to Endangered Species (CGP Part 5.5)

An operator's SWPPP must contain documentation of permit eligibility regarding the protection of endangered species and critical habitat. Documentation must include:

- information on whether federally-listed or endangered or threatened species or critical habitat are located near the site;
- whether such species or habitat may be adversely affected by the stormwater discharges or related activities coming from the site;
- the results of the screening determination from Appendix C of the permit;
- confirmation of delivery of NOI to EPA or to EPA's electronic NOI system. This may include an overnight, express or registered mail receipt acknowledgment, or electronic acknowledgment from EPA's electronic NOI system;
- any correspondence for any stage of project planning between the operator and FWS, EPA, or NMFS regarding listed species and critical habitat, including any notification that delays authorization to discharge; and
- a description of any stormwater measures necessary to protect endangered or threatened species or critical habitat. Failure to implement these measures will result in ineligibility of coverage under this permit.

6. Documentation of Permit Eligibility Related to Total Maximum Daily Loads (CGP Part 5.6)

The SWPPP must include documentation supporting a determination of permit eligibility with regard to waters that have an EPA-established or approved TMDL.

7. Copy of Permit Requirements (CGP Part 5.7)

Copies of the CGP, the signed and certified NOI submitted to EPA, and a copy of the letter from EPA's Stormwater Notice Processing Center indicating that a complete NOI has been received must be included in the SWPPP. This condition in the permit is intended to stress the importance of these documents for operators to understanding permit responsibilities.

8. Applicable State, Tribal, or Local Programs (CGP Part 5.8)

Many states, tribes, municipalities and counties have developed control measure requirements for construction activities. A significant number have also developed stormwater management requirements. The CGP requires that stormwater controls for sites that discharge stormwater from construction activities be consistent with procedures and requirements of state/tribal and local control measure plans and stormwater management plans. The construction site's stormwater control practices may incorporate portions of a state, tribe, or local program's requirements if these requirements are at least as strict as the CGP. If a construction site is located in an area covered by such a local program, then compliance with various aspects of the local program would constitute compliance with these aspects of the CGP.

Part 5.8 of the permit requires the SWPPP to be updated as necessary to reflect any revisions to applicable federal, state, tribal, or local requirements that affect the stormwater controls implemented at the site. The ability to reference other programs in the SWPPP is intended to reduce confusion between overlapping and similar requirements, while still providing for both local and national regulatory coverage of the construction site.

9. Inspections (CGP Part 5.9)

Construction operators are required to retain with the SWPPP a record of each inspection for at least three years from the date that permit coverage expires or is terminated. The report must also identify any actions taken in accordance with the Part 4 inspection requirements and must identify any incidents of non-compliance with permit conditions. If no incidents of non-compliance were found, the report must contain a certification that the site is in compliance with the permit.

10. Maintaining an Updated Plan (CGP Part 5.10)

Stormwater pollution prevention plans must be revised whenever stormwater controls are modified in response to a change in design, construction method, operation, maintenance procedure, etc., may cause a significant effect on the discharge of pollutants to surface waters or municipal separate storm sewer systems.

The plan must also be amended if inspections or investigations by site staff, or by local, state, tribal, or federal officials determine that the existing stormwater controls are ineffective in eliminating or significantly minimizing pollutants in stormwater discharges from the construction site.

Also, if an inspection reveals inadequacies, the site description and control measures identified in the SWPPP must be revised. All necessary modifications to the SWPPP must be made within seven calendar days following the inspection.

11. Signature, Plan Review, and Making Plans Available (CGP Part 5.11)

CGP Part 5.11.A - Retention of SWPPP

A copy of the SWPPP must be kept at the construction site from the date of project initiation to the date of final stabilization. Permittees with day-to-day operational control over the plan's implementation must keep a copy of the plan readily available whenever they are on site (a central location accessible by all on-site operators is sufficient). If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the plan's location must be posted near the main entrance at the construction site. A copy of the SWPPP must be readily available to authorized inspectors during normal business hours.

CGP Part 5.11.B - Main Entrance Signage

A notice about the permit and SWPPP must be posted conspicuously near the main entrance of the site. If display near the main entrance is infeasible, the notice can be posted in a local public building such as the town hall or public library. For linear

projects, the notice must be posted at a publicly accessible location near the active part of the construction project (e.g., where a pipeline project crosses a public road). The permit notice must include the following information:

- A copy of the completed Notice of Intent as submitted to EPA;
- The current location of the SWPPP (if different than that submitted to EPA in the NOI)
- The current contact person and telephone number for scheduling times to view the SWPPP (if different than that submitted to EPA in the NOI).

The permit does not require that the general public have access to the construction site nor does it require that copies of the plan be available or mailed to members of the public. However, EPA strongly encourages permittees to provide public access to SWPPPs at reasonable hours. Upon request, EPA intends to assist members of the public in obtaining access to permitting information, including SWPPPs. EPA believes this approach will create a balance between the public's need for information on projects potentially impacting their water bodies and the site operator's need for safe and unimpeded work conditions.

CGP Part 5.11.C - Availability of SWPPP
Permittees must make SWPPPs available, upon request, to EPA, state, tribal or local agencies approving sediment and erosion plans, grading plans or stormwater management plans; local government officials; the operator of a MS4 receiving discharges from the site; and representatives of the FWS or the NMFS. Also, the operator must make SWPPPs available to EPA or its authorized representative for review and copying during any on-site inspection.

CGP Part 5.11.D - Signature and Certification
The SWPPP must be signed and certified in accordance with the signatory requirements in the Standard Permit Conditions section of the permit (Appendix G).

12. Requirements for Different Types of Operators (CGP Part 5.12)

The term “operator” is defined as one with operational control over construction plans and specifications or one with control over the day-to-day activities of the site. Operators may also only have control over a portion of a larger project and several operators are then responsible for separate portions of the entire construction project.

a. Operators with Operational Control Over Construction Plans and Specifications.

If an operator falls within this category, he or she must ensure that the SWPPP indicates the areas of the project where operational control over project specifications, including the ability to make modifications to plans and specifications occur. The operator must ensure that all other permittees implementing their respective stormwater controls in the portion of the site over which they have control are notified of any modifications in a timely manner and ensure that the SWPPP contains the appropriate information indicating who has operational control.

b. Operators with Control Over Day-to-Day Activities.

If an operator is responsible for the day-to-day operational control of the activities at a project site necessary to ensure compliance with the SWPPP, he or she must ensure the SWPPP meets the minimum requirements of Part 5 of the permit. The operator must also identify those responsible for implementation of control measures documented in the SWPPP, ensure the SWPPP indicates areas of the project where operational control of day-to-day activities are maintained, and identify the parties responsible for implementation of control measures identified in the plan.

c. Operators with Control Over a Portion of a Larger Project

If an operator is responsible for only a portion of a larger construction project he or she must maintain compliance with all applicable effluent limits and conditions of this general permit for that portion of the project. This includes protection of endangered species and historic properties as well as implementation of control measures documented in the SWPPP. Operators have the option of developing and implementing either a comprehensive SWPPP, that covers all operators at the construction site, or an individual SWPPP, covering only an individual operator's portion of the site (provided reference is made to the other operators of the site). Operators are encouraged to develop a comprehensive SWPPP to enhance cost sharing and coordination of BMPs. If operators choose to develop individual plans, cooperation between the permittees is encouraged to ensure stormwater discharge controls are consistent between the sites. Regardless of development of an individual or comprehensive SWPPP, operators must ensure that individual activities do not negatively impact another operator's ability to achieve the effluent limits in Part 3 of the permit.

F. Termination of Coverage

1. Submitting a Notice of Termination (CGP Part 6.1)

Permittees must submit a completed Notice of Termination (NOT) either electronically (strongly encouraged) or by completing the paper Notice of Termination form included in Appendix F of this permit and submitting that form to the address listed in Part 2.2.

The NOT includes:

- Your NPDES permit tracking number for the stormwater discharge;
- Your basis for submission of the NOT, including: final stabilization has been achieved on all portions of the site for which you are responsible; another operator/permittee has assumed control over all areas of the site that have not been finally stabilized; coverage under an alternative NPDES permit has been obtained; or, for residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner;
- Your name, address, telephone number and U.S. Internal Revenue Service (IRS) Employer Identification Number (EIN);

- The name of the project and street address (or a description of location if no street address is available) of the construction site for which the notification is submitted; and
- A certification statement, signed and dated by an authorized representative as defined in Appendix G, Section 11 and the name and title of that authorized representative.

The NPDES permit tracking number is not the same number that was reported on the NOI form. The NOI contains the NPDES permit number as identified in the CGP (e.g., NHR100000) while the NPDES permit tracking number is that number provided by the EPA Stormwater Notice Processing Center acknowledging receipt of a complete NOI. The permit tracking numbers are assigned sequentially as NOIs are received by the EPA Stormwater Notice Processing Center (e.g., NHR1000001, NHR1000002, etc).

2. When to Submit a Notice of Termination (CGP Part 6.2)

The NOT must be filed within 30 days after cessation of construction activities and final stabilization of the permittee's portion of the site (or temporary stabilization for residential construction where a homeowner is assuming control of a property). You must submit an NOT within 30 days after another operator assumes your liabilities. That new operator must submit an NOI for coverage. If you submit and are covered by a low erosion potential or TMDL waiver, continued compliance with the permit is not necessary nor is submittal of an NOT. You may face enforcement action if an NOT is submitted without meeting one of the requirements unless there has been authorization under an alternative permit or a waiver for coverage under this permit has been approved.

G. Retention of Records

The permit requires that all records and reports required by the CGP be retained, including SWPPPs and information used to complete the NOI, for at least three years from the termination of coverage or expiration of the permit. This period may be extended by request of EPA.

H. Re-opener Clause

This permit contains a re-opener clause allowing the permit to be re-opened and modified during the term of the permit consistent with the Federal regulations at 40 CFR §122.62, §122.63, §122.64, and §124.5. Generally, this would be triggered by a water quality concern, a change in NPDES statutes, or to incorporate new procedures or requirements developed by the EPA regarding such things as endangered and threatened species and critical habitat protection (e.g., based on consultation with FWS or NMFS) or historic preservation requirements to provide for additional consideration of effects to properties either listed or eligible for listing in the National Register of Historic Places. Indication that a permittee is contributing to a water quality concern or generally not fulfilling his or her obligations under this permit, may result in a review of the permit and requirement to obtain an individual permit or alternative general permit, or have the limitations and/or requirements under this permit be modified.

I. Standard Permit Conditions

The Federal regulations require all NPDES permits to contain the standard conditions specified at 40 CFR §122.41. This section of the permit references those conditions in Appendix G of the CGP.

J. Permit Conditions Applicable to Specific States, Indian Country or Territories

Section 401 of the CWA (See also 40 CFR §122.44(d)(3) and §124.53(a)) 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/Tribe 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 completed for this permit. Similarly, the Coastal Zone Management Act (CZMA) (See 40 CFR §122.49(d)) requires that all Federal licensing and permitting actions be reviewed for consistency with each approved State coastal zone management plan. This permit also includes the results of that effort.

Permit conditions that apply only to construction projects located in a specific state, Indian country or other area are in Part 10 of the permit. These conditions are modifications or additions to analogous conditions in Parts 1 through 9 of the CGP, and reflect additional requirements arising from the state section 401 or CZMA certification processes.

EPA notes that because certifications required by Section 401 of the Clean Water Act, and for a few states certifications required by the Coastal Zone Management Act, were not received in time, new and unpermitted ongoing construction projects in the following areas are not yet eligible for coverage under this permit:

- The State of New Hampshire;
- Indian country within the State of New York;
- The Commonwealth of Puerto Rico;
- Indian country within the State of Michigan;
- Indian country within the State of Minnesota;
- Indian country within the State of Wisconsin, except the Sokaogon Chippewa (Mole Lake) Community;
- Indian country within the State of Oklahoma;
- Indian country within the State of New Mexico;
- Oil and gas, or geothermal energy, operations in Texas;
- Oil and gas operations, or certain point source discharges associated with agriculture and silviculture in Oklahoma;
- Federal Facilities in the State of Colorado, except those located on Indian country;
- Indian country within the State of Colorado, as well as the portion of the Ute Mountain Reservation located in New Mexico; and
- Indian country within the State of Montana.

EPA will announce the availability of coverage under the CGP for these areas in a separate **Federal Register** notice as soon as possible after the certifications are received.

V. Appendices

A. Definitions and Acronyms (CGP Appendix A)

The permit contains definitions of statutory, regulatory and other terms important for understanding the permit and its requirements. The permit also contains a list of acronyms found in the permit which aids in the understanding of the permit and its requirements.

B. Permit Areas Eligible for Coverage (CGP Appendix B)

As discussed in section IV.A.2 of this fact sheet, the CGP is actually a compilation of numerous identical permits, each with its own NPDES permit number. Appendix B includes the individual permits numbers for each of the areas eligible for coverage under this CGP.

C. Endangered Species Act Review Procedures (CGP Appendix C)

As discussed in section IV.A.3 of this fact sheet, an operator must ensure and document that discharges are not likely to jeopardize the continued existence of any Federally-listed endangered or threatened species or result in the adverse modification or destruction of habitat that is Federally-designated as critical under the Endangered Species Act (ESA). Appendix C contains a four-step process that must be followed for determining whether a construction project is eligible for permit coverage, prior to submittal of the NOI. In order to become eligible for this permit, each operator must determine its compliance with one of six criteria (A – F). The four-step process for determining eligibility is summarized as:

Step 1. In this step, operators determine whether listed species / critical habitat are present in the "action area." If there are or may be listed species / critical habitat in the action area, operators are required to do one or more of the following to verify the existence or absence of such species or habitat: conduct a visual inspection of the action area, conduct a formal biological survey, or conduct an environmental assessment under the National Environmental Policy Act.

Step 2. If species and/or critical habitat exist in your action area, the operator must assess whether stormwater discharges or stormwater discharge related activities is likely to adversely affect listed threatened or endangered species or designated critical habitat that are present on or near the project area. Where the operator is able to determine that adverse effects are not likely, then he/she may certify eligibility under Criterion E. If the operator cannot yet make a determination that the discharge is not likely to adversely affect species and/or critical habitat, he/she would proceed to Step 3.

Step 3. In step 3, the operator determines whether appropriate measures might be put into place to avoid or eliminate the likelihood of adverse effects prior to applying for CGP coverage.

Step 4. This step provides the methodology for operators intending to certify eligibility under Criteria B, C, D or F.

If operators cannot determine if they meet one of the endangered species eligibility criteria, the operator cannot submit an NOI to gain coverage under the CGP. In these instances, the operator may consider applying to EPA for an individual NPDES permit.

D. Small Construction Waivers and Instructions (CGP Appendix D)

As described in section II of this fact sheet, the Phase II regulation allowed waivers from permitting requirements for some construction projects in the 1-5 acre range that do not pose a potential threat to water quality. [6]

EPA has adopted three types of waivers construction operators may qualify for in lieu of needing to obtain coverage under this general permit. The first waiver, the Rainfall-Erosivity Waiver at 40 CFR §122.26(b)(15)(i)(A), is based on the "R" factor from the Revised Universal Soil Loss Equation (RUSLE) and applies to projects where (and when) negligible rainfall/runoff-erosivity is expected (e.g., the rainfall-erosivity factor is less than 5). EPA has developed an online rainfall erosivity calculator to help small construction operators determine potential eligibility for the waiver. The rainfall erosivity waiver calculator is available at www.epa.gov/npdes/stormwater/lew. If the operator of the construction activity is eligible for a waiver based on low erosivity potential, the operator may submit the rainfall erosivity waiver electronically via EPA's eNOI system (www.epa.gov/npdes/eNOI) or submit a paper copy of the form to one of the addresses listed in Appendix D. The waiver certification form is available at www.epa.gov/npdes/pubs/construction_waiver_form.pdf.

The next two waivers are water quality waivers at 40 CFR §122.26(b)(15)(i)(B) that are essentially based on an analysis that stormwater discharges from small construction activities would not be expected to cause or contribute to exceedances of WQS. As described in Appendix D, operators may use these water quality waivers, where it is anticipated that the analysis would demonstrate that control measures for small construction activity were not needed based on: 1) a Total Maximum Daily Load for impaired waters addressing pollutant(s) of concern; or 2) for non-impaired waters, an equivalent analysis that either determines pollutant load allocations for small construction or determines that such load allocations were not necessary to protect water quality.

[6] For more background on designation of small construction activity and available waivers, see discussion on "Discharges Associated with Small Construction Activity" starting on page 68771 of the December, 8 1999 Federal Register (64 FR 68771)

E. Notice of Intent Form and Instructions (CGP Appendix E)

The Notice of Intent (NOI) Form is largely unchanged from the 2003 CGP. In the proposed CGP and this final permit, EPA added under section VII (Certification Information) requirements for the NOI preparer (if the NOI was completed by someone other than the certifier) to submit their contact information. This information on the NOI preparer is already required when certifiers use the eNOI system, so this change makes the paper NOI form consistent with the eNOI requirements.

F. Notice of Termination Form and Instructions (CGP Appendix F)

The Notice of Termination (NOT) form is unchanged from the 2003 CGP. A copy of the form is included in Appendix E.

G. Standard Permit Conditions (CGP Appendix G)

Duty To Comply
The operator must comply with all conditions of this permit. An operator not fulfilling his or her obligations, as agreed upon by signing the NOI, is considered in violation of the Clean Water Act and is grounds for injunctive relief, substantial monetary penalties, incarceration, changes or terminations to the permit, or denial of permit renewal.

Duty to Reapply
The operator, after expiration of the permit, must reapply for and obtain a new permit to continue activities. For general permit coverage, this requires the operator to comply with the terms of the reissued permit regarding follow-on permit coverage.

Need to Halt or Reduce Activity Not a Defense
The operator may not use as a defense for an enforcement action the reasoning that compliance could only be achieved by halting or reducing the permitted activity.

Duty to Mitigate
The operator must take all reasonable steps to prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

Proper Operation and Maintenance
The operator must properly operate and maintain all equipment and treatment systems used for compliance with the terms of the permit. This includes control measures installed at the site used to achieve compliance with the terms of the permit and the SWPPP. The operator must provide appropriate laboratory controls and quality assurance procedures as necessary. Backup systems are required when needed to ensure compliance.

Permit Actions
The permit may be modified, revoked and reissued, or terminated for cause. Filing of a request for a permit modification, revocation, reissuance, termination, or a notification of planned changes or anticipated noncompliance does not halt any permit condition.

Property Rights
The operator does not convey any property rights or privileges through issuance of this permit or coverage of activity under this permit. Injury to private property or invasion of personal rights are also not authorized under this permit nor any infringement of Federal, State, or local laws or regulations.

Duty to Provide Information
The operator must transmit any information needed to determine compliance with the permit or to modify the permit.

Inspection and Entry
The operator must, upon presentation of valid credentials by EPA or its representative, allow entry into the premises where the regulated activity and/or records are present. EPA must have access to view and to be able to make copies of any required records, inspect facilities, practices, operations, and equipment, and sample or monitor at reasonable times.

Monitoring and Records
Samples must be representative of the monitored activity. Records must be retained for 3 years subject to extension by EPA. Monitoring records must identify the sampling dates and personnel, the sample location and time, the analytical techniques used, and corresponding results. Wastewater and sludge measurements must be conducted in accordance with 40 CFR Parts 136 or 503 or other specified procedures. Falsification of results is a violation.

Signatory Requirements
Applications, reports, NOIs, NOTs, or other information submitted to EPA must be signed and certified by a responsible officer, a general partner or proprietor of a partnership, or a principal executive officer or ranking elected official for a municipality, state, federal, or other public agency. Knowingly making false statement, representations, or certifications is subject to penalties. Other than for applications and NOIs, these reports may be signed by a duly authorized representative. A person is considered a duly authorized representative only if the authorization is made in writing by such person and submitted to EPA. A duly authorized representative may be either a named individual or any individual occupying a named position. The duly authorized representative is not the same as an operator, but the legally bound representative of the operator.

Reporting Requirements
- Planned changes. Notice must be given to EPA as soon as possible of any planned physical alterations and/or additions to the site. This notice is required if the site

changes to meet the criteria for a new source or the nature and concentration of pollutants are affected.

- Anticipated noncompliance. The operator must give advance notice of any conditions that may result in noncompliance.
- Permit Transfers. The permit is not transferable except after written notice to EPA. EPA may require modification or revocation and reissuance as necessary.
- Monitoring reports. Reports must be submitted on a DMR or on an EPA-specified form. In addition, more frequent monitoring must be reported. Calculations requiring averaging must use an arithmetic mean, except for fecal coliform. Monitoring results must be reported at the frequency specified in the permit.
- Compliance schedules. Reports required by a compliance schedule in the permit must be submitted within 14 days of the due date.
- Twenty-four hour reporting. The operator must report any noncompliance that may endanger human health or the environment within 24 hours after becoming aware of the circumstance. Within 5 days, you must provide a written submission containing the information outlined in 40 CFR §122.41(l)(6)(ii) unless the requirement is waived by EPA.
- Other noncompliance. The operator must report all instances of noncompliance not reported under other specific reporting requirements at the time monitoring reports are submitted.
- Other information. Where the operator becomes aware of a failure to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to EPA, the operator must promptly submit such facts or information.

Bypass

Intentional diversions of untreated waste streams from any portion of a treatment facility are prohibited unless (1) the bypass does not cause effluent to exceed limits, and (2) the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage, and there was no feasible alternative, and the proper notification was submitted.

Upset

An upset can be used as an affirmative defense in actions brought to the permittee for noncompliance. The operator (who has the burden of proof) must have operational logs or other evidence that shows (1) when the upset occurred and its cause, (2) that the facility was being operated properly, (3) proper notification was made, and (4) remedial measures were taken.