FACT SHEET FOR NDPDES PERMIT NDR10-0000

STORMWATER DISCHARGES FROM CONSTRUCTION ACTIVITIES
NORTH DAKOTA POLLUTANT DISCHARGE ELIMINATION SYSTEM (NDPDES)
GENERAL PERMIT NDR10-0000

DATE OF THIS FACT SHEET – March 2015

INTRODUCTION

The Federal Clean Water Act (FCWA, 1972, and later amendments in 1977, 1981, and 1987, etc.) established water quality goals for the navigable (surface) waters of the United States. One mechanism for achieving the goals of the Clean Water Act is the National Pollutant Discharge Elimination System (NPDES), by which the United States Environmental Protection Agency (US EPA) has oversight authority. In 1975 the State of North Dakota was delegated primacy of the NPDES program by EPA. The state governor accepted the delegation and the state legislature assigned the power and duty for conducting NPDES permitting and enforcement to the North Dakota Department of Health (NDDH). The legislature defined North Dakota Department of Health’s authority and obligations for the wastewater discharge permit program in North Dakota Administrative Code (NDAC) 33-16, which was promulgated pursuant to North Dakota Century Code (NDCC) 61-28. The NDDH uses North Dakota Pollutant Discharge Elimination System (NDPDES) as its permitting title.

The following regulations apply to NDPDES permits:

- Procedures NDDH follows for issuing NDPDES permits (NDAC 33-16-01),
- Water quality criteria for waters of the state (NDAC 33-16-02.1).

These rules require any treatment facility operator to obtain an NDPDES permit before discharging wastewater to state waters. They also define the basis for limits on each discharge and for other requirements imposed by the permit.

According to the NDAC 33-16-01-08 the NDPDES permit program must prepare a draft permit and accompanying fact sheet. These documents must be made available for public review. The NDDH must issue a public notice which notifies the public where a copy of the draft permit may be obtained and where to submit written views. In accordance with NDAC 33-16-01-07 public notice periods are to be not less than thirty days, in which interested persons may submit their written views. For more details on preparing and filing comments about these documents, please see Appendix A – Public Involvement. After the public comment period ends, the NDDH may make changes to the draft NDPDES permit. The NDDH will summarize the responses to comments and any changes to the permit in Appendix C - Response to Comments.
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BACKGROUND INFORMATION

General Information

<table>
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<tr>
<th>Permit Number:</th>
<th>NDR10-0000</th>
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<tr>
<td>Permit Type:</td>
<td>General Permit, Renewal</td>
</tr>
<tr>
<td>Type of Treatment:</td>
<td>Best Available Technology Economically Achievable (BAT); Best Practicable Control Technology Currently Available (BPT); Best Professional Judgment (BPJ)</td>
</tr>
<tr>
<td>Discharge Location:</td>
<td>Waters of the State of North Dakota</td>
</tr>
</tbody>
</table>

Figure 1: Map of North Dakota with Tribal Boundaries outlined in blue.
General permits streamline the processes for dischargers to obtain authorization to discharge, setup permit requirements for dischargers covered by the permit, and to reduce administrative workloads for NPDES permitting authorities. General permits are used to cover similar discharges that are subject to Section 402 of the Clean Water Act (CWA). General permits must meet the conditions set forth in 40 CFR 122.28. This stormwater construction general permit meets the criteria of 40 CFR 122.28(a)(2)(i), which authorizes a general permit to be issued for discharges in the subcategory for stormwater point sources.

Dischargers seeking coverage under a general permit submit a Notice of Intent (NOI) to the permitting authority. With the submittal of a NOI, the discharger acknowledges that they are eligible for coverage under the permit and they agree to the conditions of the permit. A NOI is not a permit or a permit application, it is a notification that the discharger will be operating under the general permit and will implement the requirements of general permit. Permitting authorities may require an individual permit to address specific water quality concerns.

NPDES permits, including general permits, are required to include effluent limitations under Section 301 and 306 of the CWA. Effluent limitations may either be numeric, non-numeric, or water quality based. Dischargers are subject to the requirements of the NDPDES permitting program requirements and enforcement in accordance with Section 402 of the Clean Water Act as delegated under NDCC 61-28 and NDAC 33-16.

This general permit is for stormwater discharges associated with industrial activity defined in 40 CFR 122.26(b)(14)(x), and stormwater discharges associated with small construction activities as defined in 40 CFR 122.26(b)(15). The current general permit for stormwater discharges from construction activity expired on September 30, 2014. It is currently under administrative extension until the proposed general permit is reissued pursuant 40 CFR 122.6(d). The permit was developed in response to the stormwater permit application requirements promulgated by the U.S. Environmental Protection Agency on November 16, 1990. The reissued permit will continue to cover stormwater discharges from construction activity. Currently, there are approximately 4,000 construction projects or operations covered by the existing permit for the discharge of stormwater from construction activities.

**SIGNIFICANT PERMIT CHANGES**

The following additions or changes to this general permit were made:
- SWPPPs are no longer required to be submitted as part of the Notice of Intent,
- Site map requirements,
- SWPPP must include a narrative section,
- Wash water from tools and concrete wash out requirements,
- Dewatering requirements,
- Erosion and sediment control design factors,
- Temporary and permanent erosion protection requirements,
- Inspection requirements,
- Records location,
- Erosion and sediment control, and stabilization requirements,
- Maintenance requirements, and
COVERAGE UNDER THIS PERMIT

Applicability of General Permit

This permit applies to all areas within the state of North Dakota, except for those areas defined as Indian Country. Construction activity located within Indian Country within the state of North Dakota must obtain a permit through the United States Environmental Protection Agency. Projects which are within the jurisdiction of both the State and U.S. EPA must apply for and obtain coverage from both entities.

Under this general permit, authorization to discharge relatively uncontaminated stormwater from construction activities into the waters of the state of North Dakota may be granted. This permit applies to stormwater discharges associated with construction activity and small construction activity as defined in Title 40 of the Code of Federal Regulations (CFR), Parts 122.26(b)(14)(x) and (b)(15), respectively. The reference to construction activity in this permit includes both large construction activity and small construction activity as described below.

- Large construction activity includes clearing, grading and excavation, that disturbs land of equal to or greater than five (5) acres and includes the disturbance of less than five (5) 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 (5) acres or more.

- Small construction activity includes clearing, grading and excavation, that disturbs land of equal to or greater than one (1) acre, and includes the disturbance of less than one (1) 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 that one and less than five (5) acres.

- Stormwater discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) may be covered by this permit as part of a related construction site. Similar facilities that will serve multiple projects or are commercial in nature must be covered by a different permit. In many cases it will be appropriate for construction support facilities to be covered under general permit NDR32-0000; stormwater discharges from mining, extraction or paving material preparation activities.

- Discharges of stormwater from oil and gas exploration, production, processing or treatment operations, or transmission facilities composed of contaminated runoff by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.¹

¹ This paragraph was added in response to NDPC comment 1.
Facilities covered under the present permit shall be retained, provided renewal request is made by submitting the renewal form(s) provided by the North Dakota Department of Health (department) or other written request for renewal of permit coverage for an active project. If deemed necessary, the department may require the submittal of a new Notice of Intent.

*Basis:* This section provides for the geographic extent which this permit is applicable and the type of discharges which may obtain coverage under this permit. This is the implementation of NDAC 33-16-01-26.1(1)(a), 40 CFR 122.26 and 40 CFR 122.28.

**Discharges Not Covered**

There are other types of discharges which also may not be appropriately regulated through this permit and other limitations on what activities this permit can authorize. The following discharges are not eligible for coverage under this permit:

1. Stormwater discharges associated with industrial activity from any source other than construction activities described in Part I(A).

2. Post-construction discharges from industrial activity that originate from the site after construction activities have been completed at the site. Industrial and post-construction stormwater discharges may need to be covered by a separate stormwater permit.

3. The placement of fill into waters of the state requiring local, state, or federal authorizations (such as U.S. Army Corps of Engineers Section 404 permits).

4. This permit does not substitute for obligations under the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), Wild and Scenic Rivers Act, or National Historic Preservation Act (NHPA), it is your responsibility to ensure the project and resulting discharges comply with the respective requirements.

5. Discharges to waters for which there is a total maximum daily load (TMDL) allocation for sediment and/or parameters associated with sediment transport are not covered unless you develop a Stormwater Pollution Prevention Plan (SWPPP) that is consistent with the assumptions and requirements in the approved TMDL. To be eligible for coverage under this general permit, the SWPPP must incorporate the conditions applicable to the discharge necessary for consistency with the assumptions, allocations and requirements of the TMDL. If a specific numeric wasteload allocation has been established that would apply to discharges from construction activity, the permittee must incorporate that allocation into the SWPPP and implement necessary steps to meet that allocation. Information about TMDL allocations may be found at the following website: [www.ndhealth.gov/WQ/SW/Z2_TMDL/default.htm](http://www.ndhealth.gov/WQ/SW/Z2_TMDL/default.htm).

6. Stormwater discharges that the department determines will cause, or have the reasonable potential to cause or contribute to a violation of the standards for quality for waters of the state NDAC 33-16-02.1.

7. Discharges from hydrostatic testing, well points, water line disinfection and treatment of
gasoline or diesel contaminated groundwater.

8. Discharges of wash water using detergents, wastewater, or sanitary waste.

*Basis:* This section describes what discharges are authorized under this permit. This permit is for the discharge of stormwater associated with construction activity and certain non-stormwater discharges associated with construction activity.

**Request for Authorization**

Construction activities covered under the 2009 General Construction Permit (GCP) shall be retained, provided an acceptable request was made under the re-notification provisions of the permit. Upon the request being accepted, construction activities covered under the 2009 GCP shall come into compliance with this re-issued permit amend and implement Stormwater Pollution Prevention Plan (SWPPP) which meets the requirements of this re-issued permit within 90 days from the effective date of this permit. If deemed necessary, the department may require the submittal of a new Notice of Intent (NOI).

For operators of new construction activities wishing to obtain coverage, an application should be submitted at least seven (7) days prior to starting any activity subject to regulation as a stormwater discharge associated with industrial activity. Permit coverage will become effective seven (7) days after submittal of a complete application unless otherwise notified by the department. Compliance with this permit Projects which have obtained coverage under this permit shall amend and implement a SWPPP which meets the requirements of this permit be within 90 days from the effective date of this permit for new construction activities.

The application requirements for general permits have in the past, and may be more appropriately referred to under NPDES permit regulations, as a NOI to obtain coverage. However, to simplify permit language the department will use the term “application” in place of “Notice of Intent” in reference to the process of obtaining coverage under the general permit. The application may be on a form provided by the department or other form containing the required information. The current NOI form will be acceptable.

*Basis:* Construction activities covered under the currently administratively extended 2009 General Construction Permit (2009 GCP) and new construction activities will have a grace period of 90 days from the effective date of this permit to become compliant. The grace period is based upon the time requirement for the reissuance of a permit as outlined in NDAC 33-16-01-26.1(3), 40 CFR 122.21(C)(1), 40 CFR 122.28(b)(2)(iii), and 40 CFR 122.28(b)(2)(iv).

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2 This change was made in response to NDDOT comment 11.
3 These changes were made to provide consistency between the permit requirements and the fact sheet, and to maintain the intent of the permit. The in-consistency was found due to the NDDOT comment on Section 1.A.6. of the permit. Please refer to Appendix C.
4 Refer to footnote 1.
Application Process

A separate application must be submitted for each project meeting the definition of construction activity. The owner or the owner jointly with the operator (usually the general contractor) shall submit a completed application for this permit. The owner is responsible for compliance with all terms and conditions of this permit. The operator has day to day supervision of construction activities and is jointly responsible with the owner for compliance with the permit for construction activities performed.

The application for coverage under the general permit shall contain, at a minimum, the following information:

1. Owner name, mailing address and phone number;
2. Project contact name and phone number
3. Project/site name;
4. Project/site location (street address; section, township, range; or latitude and longitude), county;
5. A brief description of the construction activity;
6. The anticipated starting date and the anticipated completion date for the project;
7. The estimated total area of disturbance in acres;
8. Name of receiving water(s) or the name of the municipal storm sewer system and receiving water(s);
9. The signature of the applicant(s), owner (and operator if co-applicants) signed in accordance with NDPDES permit signatory requirements.

A SWPPP (Part II(C)) for the project must be prepared and available for review, upon request, by the department at the time of application. A partially complete plan is acceptable when it clearly identifies the item(s) to be completed, the person(s) responsible for completing the item(s) and the deadline for completing the item(s). The SWPPP must be completed prior to the start of construction (or the applicable construction phase). You are not required to submit the SWPPP with the application unless otherwise notified by the department.

For residential construction activity occurring within a development or subdivision subject to the permit requirements, coverage may be obtained by the following:

a. The owner of the lot(s) shall submit one (1) NOI for all of the owner’s construction activity within the common plan of development, or

b. The operator, such as a homebuilder who may represent one (1) or more lot owners, shall submit one (1) NOI for all of the operator’s construction activity within each addition of the common plan of development.

In addition, a SWPPP must be developed and implemented for the permittee’s activities within the common plan of development. Additional phases of the common plan of development may be included under the initial application and permit coverage provided the SWPPP is amended to include the additional area or phases.
c. Discharges of stormwater discharges from oil and gas exploration, production, processing or treatment operations, or transmission facilities composed of contaminated runoff by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

For oil and gas exploration, production, processing, and treatment operations or transmission facilities, coverage under this permit is not required for small construction activity which discharge contaminated stormwater. For oil and gas related large construction activity, permit applications may be submitted for individual project sites or for an area of operations such as well field or county.\(^5\)

_Basis:_ The 2009 GCP required the submittal of the SWPPP if the project is 50 acres or more; or if the project has a discharge point within 2,000 feet of, and flows to, a water body listed as impaired under section 303(d) of the Federal Clean Water Act due to sediment, suspended solids or turbidity. This requirement was removed because the department does not approve SWPPPs. Stormwater Pollution Prevention Plans are reviewed during compliance inspections to ensure they meet the requirements of the permit. Applicants must still provide a copy of the SWPPP upon request of the department. The minimum application information is the implementation of 40 CFR 122.28(b)(ii).

**Notice of Termination (NOT)**

Permittees wishing to terminate coverage under this permit must submit a Notice of Termination (NOT) or other written request identifying the facility and the reason why the permit is no longer needed. The NOT must be signed in accordance with the standard NDPDES permit signatory requirements. Compliance with the conditions of this permit is required until a NOT is submitted.

Typically, permittees may only submit a NOT after final stabilization (see definitions in permit) has been achieved on all portions of the site for which the permittee is responsible. In some cases a NOT may be appropriate when another operator/permittee has assumed control over all areas of the site that has not been finally stabilized in accordance with the transfer provisions of the permit.

For residential construction only, a NOT is not required for each lot that is sold, transferred, or has achieved final stabilization. The permittee must modify their SWPPP to indicate that permit coverage is no longer required for that lot. The SWPPP shall indicate the reason why coverage is no longer needed and the date the lot was sold, transferred, or achieved final stabilization. In order to terminate coverage, all lots under the control of the owner or operator must be sold, transferred, or achieved final stabilization (Part II(E)).

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\(^5\) This sub-paragraph was added due to comment 1 on the permit from the North Dakota Petroleum Council and to provide clarification on what circumstances oil and gas exploration, production, processing or treatment operations, or transmission facilities would require a permit.
FACT SHEET FOR NDPDES PERMIT NDR10-0000
STORMWATER DISCHARGES FROM CONSTRUCTION ACTIVITIES
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Basis: This section describes the conditions that need to be met and the procedures for permit termination. This section is the implementation of 40 CFR 122.28 (b)(2)(iv).

Transfer of Ownership or Control

When the owner or operator of a construction project changes the new owner/operator must submit a written request for permit transfer/modification within fourteen (14) days of assuming control of the site or commencing work on-site, or of the legal transfer, sale or closing on the property. Late submittals will not be rejected; however, the department reserves the right to take enforcement for any unpermitted discharges or permit noncompliance. For stormwater discharges from construction activities where the owner or operator changes, the new owner or operator can implement the original SWPPP created for the project or develop and implement their own SWPPP. Permittee(s) shall ensure either directly or through coordination with other operators that their SWPPP meets all terms and conditions of this permit and that their activities do not interfere with another party’s erosion and sediment control practices.

A permit transfer/modification request is not required for the legal transfer, sale or closing on a property between permittees covered by this permit. Examples include the sale of a property parcel from a developer to a builder, or the transfer of an easement from a developer to a local government authority. If the new party is not covered by this permit at the time of transfer or sale, then the new owner/operator must submit a completed application/NOI within fourteen (14) days of assuming control of the site.

Basis: This section allows for a permit to be transferred to a new owner or operator as specified in 40 CFR 122.63(d). Permit transfers/modifications must be requested in writing. This section implements 40 CFR 122.61(a) and 40 CFR 122.63(d).

STORMWATER DISCHARGE REQUIREMENTS

Prohibition of Non-Stormwater Discharges

The discharge of wastewater is not authorized by this permit. The following sources of non-stormwater discharges are allowed if they are not a significant source of pollution and are identified in the SWPPP: fire-fighting, fire hydrant flushing, potable water line flushing, equipment wash down without detergents or hazardous cleaning products, uncontaminated foundation drains, springs, surface water, lawn watering, chemical treatment of stormwater and air conditioning condensate. Impervious surface wash water may not be directed into any surface water or storm drain inlet unless appropriate pollution prevention measures have been implemented. Discharges may not come into contact with oil and grease deposits or any other toxic or hazardous materials (unless cleaned up using dry clean-up methods). The SWPPP must include a description of the pollution prevention measures to be implemented while non-stormwater discharges are occurring.

If chemical treatment for sediment removal is intended to be used on-site, the permittee shall provide the department with the information outlined in Appendix 1(A)(14) of this permit for approval prior to use. This information shall be provided to the department no later than sixty (60) days prior to use.
Basis: Wastewater discharges not outlined in this section are not authorized under this permit. If other wastewater is to be discharged, a different NDPDES permit is required. Specific information is needed for the use of chemical treatment for sediment removal. This information is the same information required by the general dewatering permit (NDG07-0000).

Release in Excess of Reportable Quantities

This permit does not relieve the permittee of the reporting requirements of 40 CFR 110, 40 CFR 117, and 40 CFR 302, nor the reporting requirements found in Chapter 33-16-02.1 of the North Dakota Administrative Code. Any releases which meet any reporting requirement, must be reported to the agencies identified in Part IV(A)(7).

Basis: This section implements spill/release regulations, so that any potential release does not impact waters of the state. Spills/releases or pollutants which meet the reporting requirements in 40 CFR 110, 40 CFR 117, 40 CFR 302, and NDAC 33-16-02.1 must be reported.

Stormwater Pollution Prevention Plans

All permittees shall implement a SWPPP for any construction activity requiring this permit until final stabilization is achieved. The SWPPP and revisions are subject to review by the department. The objectives of the SWPPP is to identify potential sources of sediment and other sources of pollution associated with construction activity, and to ensure practices are implemented and maintained to reduce the contribution of pollutants in stormwater discharges from the construction site to waters of the state and storm sewer systems. Stormwater management documents developed under other regulatory programs may be included or incorporated by reference in the SWPPP, or used in whole as a SWPPP if it meets the requirements of this part.

The SWPPP may identify more than one permittee and may specify the responsibilities of each permittee by task, area, and/or timing. Permittees may coordinate and prepare more than one SWPPP to accomplish this. However, in the event there is a requirement under the SWPPP for which responsibility is ambiguous or is not included in the SWPPP, each permittee shall be responsible for implementation of that requirement. Each permittee is responsible for assuring that their activities do not render another permittee’s controls ineffective.

Basis: This section establishes the minimum requirements that SWPPPs must contain. The requirement implements 40 CFR 122.44(s), which requires state programs to require the development and implementation of a SWPPP. This is required per 40 CFR 123.25.

The SWPPP must incorporate the requirements provided in Appendix 1 and shall include the following information.

1. Site Description. Each plan shall provide a description of the construction activity and potential sources of pollution as indicated below:

   a. A description of the overall project and the type of construction activity;
b. Estimates of the total area of the site and the total area that is expected to be disturbed by excavation, grading, grubbing, or other activities during the life of the project;

c. A proposed timetable/schedule, or chart, of activities that includes major phases/stages, BMP implementation, BMP removal, disturbances, and stabilization for major portions of the site;

d. A description of the soil within the disturbed area(s);

e. The name of the surface water(s) or municipal storm sewer systems at or near the disturbed area that may receive discharges from the project site; and

f. A site map which indicates the following items as applicable (more than one (1) map may be needed). If an item is not applicable, provide rationale describing why the item is not applicable to the construction activity:

1) Project boundaries;
2) Areas of ground disturbance during each phase/stage of the project;
3) Areas where disturbance will not occur, such as avoidance areas (e.g. wetlands, critical habitat, Threatened and Endangered Species, etc);
4) Drainage patterns including: flow direction (run-on and runoff);
5) Dividing lines, discharge points, and storm sewer system inlets which the site drains to or may be affected by the activity;
6) Pre-existing and final grades;
7) Location of all temporary and permanent sediment and erosion controls during each particular phase;
8) Location of any stormwater conveyances such as: retention ponds, detention ponds, ditches, pipes, swales, stormwater diversions, culverts, and ditch blocks;
9) Location of potential sources of pollution (e.g. portable toilets, trash receptacles, etc.);
10) Location of soil stockpiles;
11) Identify steep slopes;
12) Surface waters, including an aerial extent of wetland acreage;
13) Location of surface water crossings;
14) Locations where stormwater is discharged to surface waters;
15) Location of dewatering discharge points;
16) Locations of where chemical treatment of stormwater will be performed, including discharge points;
17) Fueling locations, vehicle and equipment maintenance areas, designated wash water collection site, lubricant and chemical storage, paint storage, material storage, staging areas, and debris collection area;
18) Location of any impervious surfaces upon completion of construction; and
19) Where included as part of the project, the site maps for off-site concrete/asphalt batch plants, equipment staging areas, borrow sites or excavated fill material disposal sites. Site maps must show items 1 through 18 of this section.
g. Projects that discharge stormwater which flows to a water body listed as impaired under section 303(d) of the Federal Clean Water Act due to sediment, suspended solids or turbidity must identify the water body and impairment in the SWPPP. The Department’s 303(d) list may be found at the following website under Integrated Reports: www.ndhealth.gov/WQ/SW/Z2_TMDL/Integrated_Reports/B_ Integrated_Reports.htm."

h. For water bodies which have a TMDL, the SWPPP must describe and conform to the Waste Load Allocations (WLA) of the water body as per Part II(C)(4)(g) of this permit. Information about TMDL allocations may be found at the following website: www.ndhealth.gov/WQ/SW/Z2_TMDL/default.htm.

**Basis:** This section provides information for the nature of the construction activities which will take place at the site. The additional map requirements were added to provide further clarification of what needs to be shown on a site map and to assist in identifying potential sources of pollution. The map shows where specific BMPs are being used and communicates to other responsible parties the location of the BMPs. These requirements were obtained from the 2012 United States Environmental Protection Agency (2012 US EPA) Construction General Permit (CGP) Part 7.2.6. Some requirements listed in the 2012 US EPA CGP Part 7.2.6 were broken down to provide clarification.

Impaired bodies of water and water bodies with a listed TMDL were broken out because a water body can be listed as impaired, but not have a developed TMDL. These items are two separate items which need to be reviewed. Permittee’s need to consider the potential for stormwater drainage to enter impaired bodies of water and impacts their site could have on the water body, even if the discharge is directly to the impaired water body. If an impaired body of water is down gradient, the permittee needs to determine and identify the specified pollutant(s) of concern and determine if the potential pollutant(s) could be discharged from the construction site. The permittee needs to specifically address and identify BMPs which will be used on-site which will adequately address the pollutant(s) of concern.

2. **Narrative.** The SWPPP must include a narrative description of the selected operational controls and sediment and erosion controls as outlined in Part II(C)(3), Part II(C)(4), and Appendix 1 of this permit. When applicable, a description of the requirements for any additional environmental regulations (federal) and local requirements related to the project, as it relates to waters of the state, must also be included or incorporated by reference (e.g. The Wild and Scenic Rivers Act, The National Historic Preservation Act, The Endangered Species Act, Fish and Wildlife Coordination Act, National Environmental Policy Act, Section 404 of the Clean Water Act, etc.).

The narrative shall include at a minimum:

a. The installation, removal (if applicable), and maintenance requirements of selected Best

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6 This paragraph was revised due to comment 24 from the NDDOT.
7 This paragraph was revised due to comment 24 from the NDDOT and to separate out impaired bodies of water from TMDL water bodies.
8 This explanation was added due to revision made to the permit from comment 24 from the NDDOT.
9 This was changed in response to comment 25 received by NDDOT and to incorporate the applicability of permanent BMPs.
Management Practices (BMPs) for each phase/stage of construction activity;
b. The rationale for the selection of all BMPs (calculations should be included if appropriate);
c. Whether selected BMPs are temporary or permanent;
d. Any descriptions of infeasibility or explanations as required in Part II, Part III(A), and Appendix 1 of this permit.

_Basis_: This requirement is the implementation of 40 CFR 122.44(s), which requires the SWPPP to include a description of appropriate controls measures, maintenance procedures, inspection procedures and identification of non-stormwater discharges. The 2009 GCP required descriptions for site activities, but the requirements were not readily found. This permit provides clarification on what descriptions need to be provided in the SWPPP and brings the items to the forefront instead of being spread throughout the permit. This requirement is based on 2012 US EPA CGP Part 7.2.5 and that the permittee needs to provide rationale for decision making pertaining to pollution reduction on site.

3. **Operational Controls.** The SWPPP shall describe the BMPs used in day to day operations on the project site that reduce the contribution of pollutants in stormwater runoff.

a. The plan must identify a person knowledgeable and experienced in the application of erosion and sediment control BMPs who will oversee the implementation of the SWPPP, and the installation, inspection and maintenance of the erosion and sediment control BMPs before and during construction, until final stabilization is achieved. A knowledgeable and experienced person is someone who meets the requirements of Part II(C)(3)(f)(e)¹⁰ of this permit.

The owner shall develop a chain of responsibility with all operators on the site to ensure that the SWPPP will be implemented and stay in effect until the construction project is complete, the entire site has undergone final stabilization, and a NOT has been submitted to the department.

b. The SWPPP must include a description of good housekeeping practices used to maintain a clean and orderly site. The SWPPP shall describe how litter, debris, chemicals and parts will be handled to minimize exposure to stormwater. The SWPPP also shall describe what measures will be used to reduce and remove sediment tracked off-site by vehicles or equipment. In addition, the SWPPP shall describe methods which will be used to reduce the generation of dust.

c. The SWPPP shall describe preventative maintenance practices used to ensure the proper operation of erosion and sediment control devices (e.g., fiber rolls, erosion control blankets and silt fences) and equipment used or stored on site. The SWPPP shall describe proper inspection procedures for ensuring proper operation of erosion and sediment control devices.

¹⁰ This was changed in response to comment 27 received from the NDDOT and to make a grammatical correction.
d. The SWPPP shall describe spill prevention and response procedures where potential spills can occur. Specific handling procedures, storage requirements, spill containment, cleanup procedures, and disposal must be identified. Storage structures for petroleum products and other chemicals shall have adequate leak and spill protection to prevent any spilled materials from entering waters of the state or storm sewer systems.

The potential discharge of hazardous substances in stormwater discharges shall be minimized by including measures onsite, detailed in the SWPPP to prevent and respond to releases of hazardous substances. If a reportable quantity release occurs, the SWPPP shall be revised to prevent the reoccurrence of such a release\(^\text{11}\).

e. The SWPPP shall outline how employees and responsible parties shall be trained on the implementation of the SWPPP. Training must be provided at least annually, as new employees or responsible parties are hired or as necessary to ensure compliance with the SWPPP and the general permit. Employees and responsible parties include individuals who are responsible for design, installation, maintenance and repair of stormwater controls and conducting inspections.

1) On-site personnel must understand the requirements of this permit as it pertains to their role in implementing the SWPPP. On-site personnel must know\(^\text{12}\):

a. The purpose of the SWPPP, requirements of the SWPPP, and how the SWPPP will be implemented;

b. The location of all BMPs identified in the SWPPP; and

c. Correct installation, function, and maintenance and removal (if applicable)\(^\text{13}\) of BMPs identified in the SWPPP.

2) Personnel responsible for performing site inspections must understand when inspection (Part III(A)), what must be inspected (Part II(C)(7)), how to record findings, when to initiate corrective actions, and properly document corrective actions.\(^\text{14}\)

3) Maintenance personnel must understand when maintenance must be performed on BMPs in order to maintain properly functioning BMPs and what needs to be recorded for corrective actions/maintenance records in accordance with Part III(A)(5) of this permit.

f. The SWPPP must describe how concrete grindings and slurry will be managed. Wastewater from concrete washout, cleanout or washout from: stucco, paint, joint compound, and other building materials shall not be discharged to waters of the state, storm sewer systems or curb and gutter systems.

\(^{11}\) This change was made in response to comment 34 received from the NDDOT.

\(^{12}\) This change was made in response to comment 36 received from the NDDOT.

\(^{13}\) Change made in response to comment 37 received from NDDOT and to provide consistency with other updated sections of the permit.

\(^{14}\) The additional language was added in response to comment 39 received from the NDDOT and to correct grammatical errors.
1) Wash water must be collected in leak-proof containers or leak-proof pits. Containers or pits must be designed and maintained so that overflows cannot occur due to inadequate sizing, precipitation events, or snowmelt.

g. The SWPPP shall describe any dewatering activities planned at the site. Dewatering or basin draining (e.g., pumped discharges, trench/ditch cuts for drainage) related to the permitted activity must be managed with appropriate BMPs, such that the discharge does not adversely affect the receiving water. The following conditions apply to dewatering activities:

1) Dewatering is limited to un-contaminated stormwater, surface water, and groundwater that may collect on site and those sources identified in Part II(A), if they are not a significant source of pollution. A separate permit must be obtained to discharge water from other sources such as hydrostatic testing of pipes, tanks, or other similar vessels; disinfection of potable water lines; pump testing of water wells; and the treatment of gasoline or diesel contaminated groundwater or surface water.

2) The permittee(s) must operate the discharge to minimize the release of sediment and provide adequate BMPs where necessary to minimize erosion due to the discharge. Discharges must not lead to the deposition of sediment within stormwater conveyance systems or surface waters. Discharges must not cause or potentially cause a visible plume within a surface water body.

3) When dewatering, utilize structures or BMPs which allow for draw down to occur from the surface of the water, unless infeasible. If infeasible, documentation must be provided in the SWPPP. In addition, you must describe what BMP(s) will be used in its place.

4) In addition to the inspection requirements in Part III, dewatering activities shall be inspected daily. The inspection must include the dewatering site, areas where BMPs are being implemented and the discharge location. A record shall be maintained to document the inspections of the dewatering operation and actions taken to correct any problems that may be identified.

a. Records shall contain at a minimum:

   i. Date and time of the inspection,
   ii. Inspector name,
   iii. Approximate volume of water discharged,
   iv. Findings of the inspection, including recommendations and schedule for corrective actions;
   v. Corrective actions taken (including dates, times, and party completing maintenance activities); and

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15 Change made in response to comment 42 received from the NDDOT and to provide clarification on the intent of this requirement.
vi. Documentation that the SWPPP has been amended when substantial changes are made to the dewatering activity in response to inspections.

5) Local authorities may require specific BMPs for discharges affecting their storm sewer system.

**Basis:** Permittees/operators implementing the SWPPP need have knowledge of erosion and sediment controls, and understand the permit requirements so it can be implemented effectively. Descriptions of the operational controls are required in order to communicate what operational controls are being used on-site to other responsible parties. The descriptions will also notify appropriate parties of maintenance activities that need to be performed in order to reduce the potential for the discharge of pollutants and to maintain controls in effective operating conditions as required by this permit.

The department has received questions on training requirements pertaining to the permit. Training requirements provided in Part II(3)(e) of this permit were added to provide clarification on who should be trained pertaining to the general permit and what the training should entail. This requirement comes from the 2012 US EPA CGP Part 6 and the implementation of 40 CFR 122.44(s) as required by 40 CFR 123.25.

The 2009 GCP the requirement that concrete wash water, grindings, and slurry could not to be discharged to waters of the state, storm sewer systems or be allowed to drain onto adjacent properties. The permit did not address how wash water should be handled so that the wastewater would not leave the site. Wash water is considered to be a wastewater and is not covered under this permit unless specified in Part II(A) of the permit. This requirement comes from the 2012 US EPA CGP Part 2.3.3.4 and the implementation of 40 CFR 122.44(s)(1)(ii) as required by 40 CFR 123.25.

The 2009 GCP did not provide a requirement for where water must be drawn from in collection/sediment basins for dewatering activities. Drawing water from the surface assures that the cleanest water is being removed from the site and limits re-suspending settled out solid while dewatering activities are occurring. This requirement is the implementation of 40 CFR 122.44(s) as required by 40 CFR 123.25.

4. **Erosion and Sediment Controls.** Erosion and sediment controls and stabilization requirements must be implemented for each major phase of site activity (e.g., clearing, grading, building, and landscaping phases). A description of the erosion and sediment controls and site stabilization methods must be provided in accordance with Part II(C)(2) of this permit. Erosion and sediment controls, and site stabilization must conform to the requirements provided in Appendix 1. The description and implementation of controls shall address the following minimum components:

a. The selection of erosion and sediment controls, and site stabilization shall consider the following:

   1. The expected amount, frequency, intensity, and duration of precipitation events;

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16 Change made in response to comment 44 received from the NDDOT and to remove ambiguity caused by the term “substantial.”
2. The nature of stormwater run-on and runoff from the site as well as changes during, and as a result of, construction activity. This includes changes to impervious surfaces, slopes, seasonal changes, and drainage features on-site;

3. Channelized flow, must be handled in order to minimize erosion at outlets and to minimize impacts to downstream receiving waters;

4. Soil types (wind and water erodibility, and settling time); and

5. Seasonal conditions.

b. Sediment basins, or an appropriate combination of equivalent sediment controls such as smaller sediment basins and/or sediment traps, silt fences, fiber logs, vegetative buffer strips, berms, etc., are required for all down slope boundaries of the disturbance area and for those side slope boundaries as may be appropriate for site conditions.

c. Temporary or permanent erosion protection and stabilization (such as cover crop planting or mulching) must be initiated immediately, as described in Appendix 1(A), for all exposed soil areas where activities have been completed or temporarily ceased.

d. All control measures must be properly selected, installed and maintained in accordance with the manufacturer’s specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately or incorrectly, the permittee must replace or modify the control for site situations. Corrective actions must be made prior to the next anticipated rainfall event of within 24 hours of discovery (whichever comes first) or as soon as field conditions allow.  

The permittee may deviate from the manufacturer’s specifications and erosion and sediment control requirements in Appendix 1 if they provide justification for the deviation and documentation the rationale for the deviation in the SWPPP. Any deviation must provide equivalent erosion and sediment control.

e. If sediment escapes from the site, off-site accumulations of sediment must be removed in a manner and frequency sufficient to minimize off-site impacts as outlined in Appendix 1(B). The SWPPP must be modified to prevent further sediment deposition off-site.

f. Stormwater controls are expected to withstand and function properly during precipitation events of up to the 2-year, 24-hour storm event. Visible erosion and/or off-site sediment deposition from such storm events should be minimal. The 2-year, 24-hour rainfall event in North Dakota ranges from about 1.9 inches in the west to 2.3 inches in the east.

g. For projects that discharge stormwater which flows to waters that have a TMDL allocation for sediment, suspended solids or turbidity and/or parameters associated with sediment transport, the plan SWPPP must be consistent with the assumptions, allocations and requirements of the approved TMDL. If a TMDL specifies certain BMPs

17 This addition was in response to comment 50 received from the NDDOT and to maintain consistency with Appendix 1 of the permit.
FACT SHEET FOR NDPDES PERMIT NDR10-0000
STORMWATER DISCHARGES FROM CONSTRUCTION ACTIVITIES
NORTH DAKOTA POLLUTANT DISCHARGE ELIMINATION SYSTEM (NDPDES)
GENERAL PERMIT NDR10-0000
EXPIRATION DATE: MARCH 31, 2020
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or controls to meet a wasteload allocation (WLA) applicable to the project’s discharges, the BMPs or controls must be incorporated into the plan SWPPP. Information about TMDL allocations may be found at the following website


Basis: Design considerations were added to Part II(C)(4) in order to provide clarification on what factors need to be considered while designing and selecting proper BMPs for construction sites. These considerations were provided by the 2012 US EPA GCP Part 2.1.1.2. The 2009 GCP Part II(C)(4)(c) included stabilization requirements, but did not specify any time frames for starting stabilization of the site. This resulted in many sites with exposed soils during inactive periods. Stabilization needs to take place to reduce the amount exposed soil while any portion of the site is no longer being worked. This requirement provides clarification for when stabilization should begin. The requirement comes from the 2012 US EPA GCP Part 2.2 and the implementation of 40 CFR 122.44(s) as required by 40 CFR 123.25.

Erosion and sediment controls need to be described in order to communicate to responsible parties what practices are being used on-site, where they are located, and how they need to be maintained so they function properly. The 2009 GCP required descriptions of erosion and sediment controls, but the requirements were not brought to the forefront.

5. **Stormwater Management.** The SWPPP must identify permanent practices incorporated into the project to control pollutants in stormwater discharges occurring after construction operations have been completed.

   a. Identify stormwater ponds; flow reduction methods; infiltration of runoff on-site; sequential systems which combine several practices or other post-construction stormwater management features.

   b. Identify velocity / energy dissipation devices placed at discharge locations and appropriate erosion protection for outfall channels and ditches.

   c. Maintenance for on-site stormwater management features is the responsibility of the permittee until the NOT is submitted or the feature is accepted by the party responsible for long term maintenance.

   d. The design, installation and use of stormwater management features must comply with applicable local, state or federal requirements.

   **Basis:** The SWPPP needs to identify stormwater management practices which will remain on location after the completion of the project. Control measures need to be identified along with maintenance procedures for the control. This requirement is the implementation of 40 CFR 122.44(s) as required by 40 CFR 123.25.

6. **Maintenance.** All erosion and sediment control measures and other protective measures identified in the plan must be maintained in accordance to Appendix 1. The plan must

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18 These changes were made in response to comment 55 received from the NDDOT and to maintain consistency with Part I of the permit.
indicate, as appropriate, the maintenance or clean out interval for sediment controls. If site inspections, required in Part III of this permit, identify BMPs that are not operating effectively, maintenance shall be arranged and accomplished in accordance to Appendix 1 or as soon as practicable.

Basis: All BMPs need to be maintained in order to ensure proper function to reduce the discharge of pollutants. This requirement is the implementation of 40 CFR 122.44(s) as required by 40 CFR 123.25.

7. Inspections. The SWPPP must provide for site inspections as outlined in Part III. The permittee shall ensure that personnel conducting site inspections are familiar with permit conditions and the proper installation and operation of control measures. Inspectors must be knowledgeable in their role of the SWPPP, as outlined in Part II(C)(3)(e) of this permit. The erosion and sediment control measures and stabilized areas identified in the SWPPP shall be observed to ensure they are operating correctly and in serviceable condition. Inspections shall include areas used for storage of materials, permanent stormwater control measures and vehicle maintenance areas. These areas shall be inspected for evidence of, or the potential for, pollutants entering a drainage system. If necessary, the plan shall be revised based on the observations and deficiencies noted during the inspection.

Basis: Inspectors conducting the required inspections in accordance with Part III of this permit must meet the minimum training requirements as outlined in Part II(C)(2)(e) of this permit. This ensures that inspectors understand the permit requirements, understand of what needs to be inspected, recorded, and what maintenance and corrective actions need to take place on-site. This implements 40 CFR 122.48, which requires recording and reporting of monitoring results.

8. SWPPP Review and Revisions.

a. The SWPPP shall be signed in accordance with the Signatory Requirements, Part IV(A)(6), and retained on-site for the duration of activity as outlined in Part III(B).

b. The permittee shall make the SWPPP available upon request to the department, EPA, or, in the case of discharges to a municipal storm sewer system, the operator of the municipal system.

c. The permittee shall amend the SWPPP whenever there is a change in design, construction, operation, maintenance, or BMPs. The SWPPP shall be amended if the plan is found to be ineffective in controlling pollutants present in stormwater. The SWPPP shall be amended as soon as practicable. ¹⁹

Basis: The SWPPP must be signed in accordance with the Signatory Requirements as required by 40 CFR 122.22(d). Stormwater Pollution Prevention Plans must be made available upon request by the Department, EPA, or the operator of a municipal system.

¹⁹ The additional sentence was added in response to comment 61 received from the NDDOT.
Stormwater Pollution Prevention Plans must be amended to reflect site changes and changes in BMPs in order to have continued communication amongst responsible parties.

This requirement is the implementation of 40 CFR 122.44(s) as required by 40 CFR 123.25. Signatory requirements are the implementation of 40 CFR 122.22(d).

Local Requirements

All stormwater discharges must comply with the requirements, policies, or guidelines of municipalities and other local agencies as applicable to the construction site. Any discharges to a storm sewer, ditch or other water course under the jurisdiction of a municipality must comply with any specific conditions or BMPs required by the municipality or agency.

The local stormwater requirements may be established by ordinance or stormwater management programs developed to comply with a separate NDPDES permits issued to the municipality.

*Basis:* If local municipalities or agencies have more stringent stormwater requirements, the permittee must follow the most stringent requirements. By following the more stringent requirements, the permittee would automatically be in compliance of this permit.

Final Stabilization

The permittee(s) must ensure final stabilization of the site. The permittee(s) should submit a NOT within 30 days after final stabilization has been achieved, or another owner/operator (permittee) has assumed control according to Part I(F) for all areas of the site that have not undergone final stabilization. Final stabilization can be achieved in one of the following ways.

1. All soil disturbing activities at the site have been completed and all soils must be stabilized by a uniform perennial vegetative cover with a density of 70 percent of the pre-existing cover over the entire pervious surface area, or other equivalent means necessary to prevent soil failure under erosive conditions and;

   a. All drainage ditches, constructed to drain water from the site after construction is complete, must be stabilized to preclude erosion;

   b. All temporary, synthetic, and structural 20 erosion prevention and sediment control BMPs (such as silt fence) must be removed as part of the site final stabilization; and

   c. The permittee(s) must remove all sediment from conveyances and temporary sedimentation basins that will be used as permanent water quality management basins. Sediment must be stabilized to prevent it from being washed into basins, conveyances or drainage ways discharging off-site or to surface waters. The cleanout of permanent basins must be sufficient to return the basin to design capacity.

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20 This change was made in response to comment 65 received from the NDDOT.
2. For areas of the state where the average annual rainfall is less than 20 inches, all soil disturbing activities at the site have been completed and temporary erosion control measures (e.g., degradable rolled erosion control product) and stabilization methods are selected, designed, and installed along with an appropriate seed base to provide erosion control for at least three years and achieve 70 percent of the pre-existing vegetative cover within three (3) years without active maintenance. Sites must meet the criteria outlined in items 1(a), (b), and (c) above.

3. For soil disturbing activities on land used for agricultural purposes, final stabilization may be accomplished by returning the disturbed land to its pre-disturbance agricultural use. Pasture lands must be returned to pre-disturbance vegetative cover and cropland must be seeded. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to waters of the state, and Disturbed areas on land used for agricultural purposes that are restored to their pre-construction agricultural use are not subject to these final stabilization criteria. If the construction activity removed standing crop, the area must be restored in accordance with the landowner. Areas which are not being returned to their pre-disturbance use must meet the final stabilization criteria in (1) or (2) above.

4. For residential construction only, final stabilization may be achieved when soil is stabilized (see Appendix 1(A)(3)) and down gradient perimeter control for individual lots has been implemented and the residence has been transferred to the homeowner. Additionally, the permittee must distribute a "homeowner fact sheet" to the homeowner to inform the homeowner of the need for, and benefits of, final stabilization. The permittee also must demonstrate that the homeowner received the fact sheet.

Basis: Parts 2 and 3 above were moved to this section from the definition of stabilization. Though in the 2009 GCP, these parts were listed in Part V of the 2009 GCP, few permittees were aware of the two conditions which counted as final stabilization. In order to increase awareness, they were added to this section of the permit. The definition of final stabilization was removed from Part V of this permit.

SELF MONITORING AND REPORTING

Inspection and Maintenance Requirements

1. Inspections shall be performed by or under the direction of the permittee at least once every 14 calendar days and within 24 hours after any storm event of greater than 0.25 inches of rain per 24-hour period during active construction. Inspections are only required during normal working hours. The permittee shall use a rain gauge on-site or utilize the nearest National Weather Service precipitation gauge station. Rain gauge
locations or stations must be representative of the site.

a. “Within 24 hours after any storm event greater than 0.25 inches rain per 24-hour period” means that you are required to conduct an inspection within 24 hours once a storm event has produced 0.25 inches, even if the storm event is still continuing. If there is a storm event at your site that continues for multiple days, and each day of the storm produces 0.25 inches or more rain, you are required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm.

2. There may be times when a site inspection may not be practical at the specified time. Adverse climatic conditions, such as flooding, high winds, tornadoes, electrical storms, site access constraints, etc., may prohibit inspections. Storm events may also occur outside of normal working hours. The permittee must include a description of why the inspection(s) could not be performed at the designated time in the next inspection record. If a rain event occurs outside of normal working hours, an inspection must be conducted during the next working day. If an inspection is delayed due to adverse weather conditions or rain events outside normal working hours, an inspection must be conducted during the next working day, or as conditions allow.

3. Some erosion and sediment control measures may require more frequent inspection based on location (e.g., sensitive areas or waters of the state) or as a result of recurring maintenance issues. Erosion or sediment control measures found in need of maintenance between inspections must be repaired or supplemented with appropriate measures as soon as practicable. Erosion and sediment control measures which require more frequent inspection based on location or as a result of recurring maintenance issues must be identified in the SWPPP.

4. All inspections conducted during construction must be recorded in writing and these records must be retained in accordance with Part III(B). Records of each inspection activity shall include:

a. Date and time of inspections;

b. Name of person(s) conducting inspections;

c. Findings of inspections, including recommendations and schedule for corrective actions;

d. Date and amount of all rainfall events greater than 1/4 inch (0.25 inches) in 24 hours; and

e. Documentation that the SWPPP has been amended when changes are made to BMPs in response to inspections.

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24 This change was made in response to comment 74 received from the NDDOT and to provide clarification on how to handle situations when inspections are not practical at the specified time.
f. All inspection reports shall be signed in accordance with Part IV(A)(6) of this permit.

5. Corrective actions (maintenance activities) performed during construction must be recorded in writing and these records must be retained in accordance with Part III(B). Records for maintenance activity shall include:
   a. Best Management Practice corrected;
   b. Date and time of corrective action;
   c. Name of person(s) performing corrective actions;
   d. Corrective actions taken; and
   e. Corrective actions/maintenance records shall be signed in accordance with Part IV(A)(6) of this permit.

6. Completed areas that have been stabilized but do not meet the 70 percent perennial vegetative cover criteria for final stabilization may be inspected once per month. Inspections may be suspended for parts of the construction site that meet final stabilization requirements of Part II(E) of this permit. The SWPPP must update to identify any areas which meet this condition.

7. Inspections may be suspended where earthwork has been suspended due to frozen ground conditions. The required inspections and maintenance must resume as soon as runoff occurs or the ground begins to thaw at the site. The permittee must record freeze/thaw and runoff dates as part of the inspection records.

_Basis:_ The 2009 GCP required inspections every 14 calendar days and within 24 hours after any storm event of greater than 0.5 inches of rain per 24-hour period during active construction. The new requirement of conducting an inspection within 24 hours after any storm event of greater than 0.25 inches of rain per 24-hour period during active construction is based off of the 2012 US EPA CGP Part 4.1.2.2.

The requirements for inspection and maintenance records were broken out into separate items in order to provide clarification on documentation needed for maintenance activities.

This permit removed the alternative inspection plan option for long, narrow, linear construction projects. With the new stabilization requirements and site access constraints being added to times when a site inspection may not be practical at the specified time, the alternative inspection plans are no longer necessary. These requirements are for the implementation 40 CFR 122.48 and 40 CFR 122.41(j).
Records Location

A copy of the completed and signed NOI, coverage letter from the department, SWPPP, site inspection records, and this general permit shall be kept at the site of the construction activity in a field office, trailer, shed, or in a vehicle that is on-site during normal working hours. If the site does not have a reasonable on-site location, then the documents must be retained at a readily available alternative location; preferably with the individual responsible for overseeing the implementation of the SWPPP. Electronic copies of records are acceptable if the records can be accessed on-site. If the site is inactive, then the documents may be stored at a local office. Permittees should avoid using personal electronic devices for storing electronic records.

*Basis:* 40 CFR 122.41(h) requires that permittees must furnish information requested by the department within reasonable time in determining compliance with the permit. 40 CFR 122.41(i)(2) requires that inspectors have access to and copy, at reasonable times, and any records that must be kept under the conditions of the permit.

The 2009 GCP did not address electronic copies as being an acceptable form for records retention. Electronic storage of records is acceptable, but must be available on site via an electronic device. If the records cannot be pulled up, a hard copy of the records must be stored on location, except when the site is inactive. Documents may be stored at a local office when the site is inactive.
Appendix 1 – Erosion and Sediment Control Requirements

Requirements for designing, implementing and maintaining erosion and sediment controls.

*Basis*: The 2009 GCP incorporated Appendix 1, but was only a guideline. In this permit, Appendix 1 is now a requirement instead of guidelines. The requirements represent effluent limitations for construction sites which are operating under this permit.

**A. Erosion and Sediment Control Practices**

1. Sites using temporary (or permanent) sediment basins must meet the following requirements:
   a. Sediment basins shall be designed for a calculated volume of runoff from a 2-year, 24-hour storm per acre drained to the basin and provides not less than 1,800 cubic feet of sediment storage below the invert of the outlet pipe from each acre drained to the basin; or
   b. Basins shall be sized to provide 3,600 cubic feet of sediment storage below the invert of the outlet pipe per acre drained to the basin if calculations are not performed.
   c. Basin outlets must be designed to avoid short-circuiting and the discharge of floating debris. Basins must be designed with the ability to allow complete basin drawdown for maintenance activities. Basins must release the storage volume in at least 24 hours. Outlet structures must be designed to withdraw water from the surface, unless not practicable. If not practicable, rationale must be provided in the SWPPP. The basin must have a stabilized emergency overflow to prevent failure of pond integrity. Energy dissipation must be provided for the basin outlet.

*Basis*: The 2009 GCP required that sediment basins be used when 10 acres of more drained to a common location or if not practical a combination of measures which provide equivalent treatment must be provided. This permit removes the requirement of sediment basins, and sets requirements for sediment basins for sites that decide to use them.

The 2009 GCP did not include any requirements for where the water must be drawn from while discharging from a sediment basin. This permit requires that any outlet structure for a sediment basin must draw water from the surface. This allows the discharge of the cleanest water from the sediment basin, while allowing settling time for suspended solids. This requirement extends from the 2012 US EPA CGP Part 2.1.3.2.a.ii and is the implementation of 40 CFR 122.44(s) as required by 40 CFR 123.25.

2. Erosion, sediment, and stabilization practices shall be provided. Erosion, sediment and stabilization practices include such things as: silt fences, fiber logs, vegetative buffer strips, erosion control blankets, mulch, hydro-seeding combined with mulch or tackifiers,
etc.

*Basis:* The 2009 GCP required that sediment and erosion controls be provided for sites that do not use sediment basins. This permit will require all permittees to use erosion, sediment and stabilization on-site. This requirement comes from the 2012 US EPA CGP Part 2.1.

3. All exposed soil areas must be stabilized (see definitions). Stabilization must be initiated immediately where activities have been completed permanently\(^2\) or temporarily ceased on any portion of the site and will not resume for a period exceeding fourteen (14) calendar days. Stabilization must be completed as soon as practicable, but no later than fourteen (14) calendar days after the initiation of soil stabilization. Temporary stockpiles without significant silt, clay or organic components (e.g., clean aggregate stockpiles, demolition concrete stockpiles, sand stockpiles) are exempt from this requirement.

a. For slopes with a grade of 3:1 or greater, stabilization must be initiated immediately once activities have been completed or temporarily ceased. Stabilization must be completed as soon as practicable, but no later than seven (7) calendar days after the initiation of soil stabilization.

*Basis:* The 2009 GCP required stabilization of exposed soils, but did not include a time frame for beginning and completing soil stabilization. The sooner areas are stabilized; the less soil becomes dislodged, reducing the need for performing maintenance on sediment controls. By stabilizing the soil as soon as possible, the site can reach final stabilization sooner, reducing impacts to receiving waters of the state. This requirement comes from the 2012 US EPA CGP Part 2.2.

The addition of a more stringent time frame for slopes with a grade of 3:1 was added. The 2009 GCP had a requirement for breaking up slopes with a grade of 3:1 or greater every 75 feet. This requirement did not address slopes which had a grade of 3:1 or greater that was not 75 feet in length. This requirement encompasses all slopes with a grade of 3:1 or greater, no matter the length of the slope. Due to a large number of highly erodible soil types in North Dakota, this additional requirement was added to reduce the impact of sediment on waters of the state. This requirement is based on combination of the 2012 US EPA CGP Part 2.1.2.5 and Part 2.2.

These requirements are the implementation of 40 CFR 122.44(s) as required by 40 CFR 123.25.

4. Temporary soil stockpiles must have effective sediment controls, and cannot be placed in surface waters, including stormwater conveyances such as curb and gutter systems, or conduits and ditches. Temporary soil stockpiles must be stabilized within fourteen (14) calendar days.\(^3\)

\(^2\) Change made in response to comment 91 received from NDDOT and to provide consistency with other sections of the permit.

\(^3\) Change made in response to comment 94 received from NDDOT and to redundancy in the permit.
**Basis:** Temporary soil stockpiles need to have sediment controls around the stockpile to reduce sediment loss from the stockpile. Stockpiles cannot be placed in surface waters which would be a violation of NDCC 61-28 and NDAC 33-16-02.1. Effective sediment controls around soil stockpiles was required in the 2009 GCP. This item was broken out into a separate requirement in order to bring it to the forefront.

5. The normal wetted perimeter of any temporary or permanent drainage ditch that drains water from a construction site, or diverts water around a site, must be stabilized at least 200 linear feet from the property edge, or from the point of discharge to any surface water. Stabilization shall be completed within 24 hours of prior to connection connecting 22 to a surface water. Any remaining portion of the temporary or permanent drainage ditch must be stabilized within fourteen (14) calendar days for portions which construction activities have temporarily or permanently ceased.

**Basis:** This requirement addresses the issue of sites having a temporary or permanent drainage ditch with exposed soils. Exposed soils in a drainage ditch causes increased erosion within the ditch; resulting in the increased potential for sediment deposition into waters of the state or off-site. This requires that 200 feet from the point of discharge be stabilized within 24 hours of completion of the drainage ditch, and any remaining portion of the drainage ditch be stabilized within fourteen (14) calendar days.

6. If stabilization requirements cannot be met due to circumstances beyond the control of the permittee, the permittee may comply with following:

   a. If vegetative stabilization is to be used, immediately initiate, and within 14 calendars days complete, the installation of temporary non-vegetated stabilization; or

   b. Complete all methods of initiating stabilization as soon as conditions or circumstances allow.

If any conditions in parts a or b above are encountered, the permittee must document the circumstances which prevented you from meeting the stabilization requirements in the SWPPP of this paragraph and provide a schedule in the SWPPP which will be followed in order to meet the stabilization requirements.

Permittees are responsible for implementing winter stabilization methods during frozen ground conditions if the site was not stabilized prior to the ground freezing. 28

**Basis:** The department recognizes that circumstances outside of the permittee’s control may arise which would inhibit permittee’s from meeting the stabilization requirements of this permit. The basis of this paragraph is from the 2012 EPA CGP and is the implementation of 40 CFR 122.44(s).

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27 This change was made in response to comment 97 received from the NDDOT.

28 This paragraph was added in response to comment 93 received from the NDDOT and comment 11 received from the NDPC.
7. Stream diversions or any temporary or permanent drainage ditch or trench, which will have continuous flow, shall be stabilized with appropriate controls prior to connection with any surface water. The entire area (channel and bank) of the stream diversion or temporary or permanent drainage ditch, or trench, must be appropriately stabilized to bankfull height.

*Basis:* The 2009 GCP did not address how stream diversions or temporary or permanent drainage ditches, or trenches, with continuous flow should be handled. This requirement is to ensure that erosion does not occur within the channel of the stream diversion, drainage ditch, or trench, which would increase the discharge of unrecoverable sediment into waters of the state. This requirement is the implementation of 40 CFR 122.44(s) as required by 40 CFR 123.25.

8. While working in or around surface waters, sediment and erosion controls must be used above the anticipated level of the surface water. Floating silt curtain does not satisfy the down slope and side slope boundary requirements in Part II(C)(4)(b) of this permit, unless the construction activity is on or below the elevation of the surface water. The floating silt curtain must be placed as close to shore as possible. Sediment control must be installed where exposed soils drain to the surface water immediately after construction activity along the waterline has been completed.

*Basis:* The 2009 GCP did not address working in and around surface waters. Though silt curtains are an acceptable BMP, they should only be used as a secondary sediment control, except when working on the shoreline or below the waterline where it is the only viable option. BMPs need to be provided above the waterline. If only silt curtain is used in situations when work is not being conducted on the shoreline or below the waterline, the sediment has already been discharged to a water of the state. This requirement is the implementation of 40 CFR 122.44(s) as required by 40 CFR 123.25.

9. Pipe and culvert outlets must be provided with energy dissipation within 24 hours of connection to a surface water.

*Basis:* Pipe outlets must provide energy dissipation to reduce erosion/scouring at the outlet from concentrated water flows. This requirement is the implementation of 40 CFR 122.44(s) as required by 40 CFR 123.25.

10. Splash pads and/or downspout extensions must be provided for roof drains to prevent erosion from roof runoff.

*Basis:* By providing splash pads and/or downspout extensions the velocity of the concentrated flow is dissipated. This reduces soil erosion and the potential for sediment to be deposited in a curb and gutter system, storm sewer system or waters of the state.

11. All storm drain inlets in the immediate vicinity of the construction site must be protected by appropriate BMPs during construction until all disturbed areas and stockpiles with the potential to discharge to the inlet have been stabilized. This includes storm drain inlets which may be affected by sediment tracked onto paved surfaces by vehicles or
equipment.

*Basis:* Storm drain inlets need to have sediment control in order to stop sediment getting into the storm sewer system. Storm sewers are considered a water of the state under NDAC 33-16-02.1. This requirement is the implementation of 40 CFR 122.44(s) as required by 40 CFR 123.25 and is from the 2012 US EPA CGP Part 2.1.2.9.

12. Inlet protection devices are a last line of control – erosion and sediment control practices must be used on site. Inlet protection devices must conform to local ordinances or regulations. In general, inlet protection devices need to provide for adequate drainage to prevent excessive roadway flooding. Inlet protection may be removed for a particular inlet if a specific concern (i.e., street flooding/freezing, snow removal) has been identified and documented in the SWPPP. In this situation, additional erosion and sediment control practices, or stabilization methods must be used to supplement the loss of the inlet protection device to prevent sediment from entering the storm sewer system.

*Basis:* Sediment should not leave the construction site if erosion, sediment and stabilization practices are conducted properly. If sediment leaves the site and enters a storm sewer system, it would be a violation of NDAC 33-16-02.1. Inlet protection needs to be provided in case erosion, sediment and stabilization practices fail, then a supplemental BMP is in place so that sediment does not reach a water of the state. In this permit, it was moved out to a separate item in order to bring this requirement to the forefront.

13. Vegetated buffers must have a minimum width of one (1) foot for every five (5) feet of disturbed area that drains to the buffer. The width of the buffer shall have a slope of five (5) percent or less and the area draining to the buffer shall have a slope of six (6) percent or less. Concentrated flows should be minimized throughout the buffer.

Buffers shall consist of dense grassy vegetation, three (3) to twelve (12) inches tall with uniform coverage over 90 percent of the buffer. Woody vegetation shall not be counted for the 90 percent coverage. No more than ten (10) percent of the overall buffer may be comprised of woody vegetation.

*Basis:* The 2009 GCP addressed the minimum width for vegetative buffers, if used. The previous permit required a minimum width of 25 feet for every 125 feet of disturbed area which drained to the buffer; then an additional foot for every five (5) feet of additional disturbance which flowed to the buffer. In both scenarios the ratio of buffer width to area of disturbance is one (1) foot of buffer for every five (5) feet of disturbance which drains to the buffer. This revision is to provide clarification on vegetative buffer requirements and allow for smaller sites to utilize vegetative buffers if desired. This requirement is the implementation of 40 CFR 122.44(s) as required by 40 CFR 123.25.

14. A 50 foot natural buffer or equivalent erosion and sediment controls must be provided when a project is within 50 feet of a surface water and stormwater flows to the surface water. If equivalent erosion and sediment controls are used, rationale for using equivalent controls must be provided in the SWPPP.
If working within 100 feet of a surface water listed as impaired for sediment, suspended solids or turbidity, a 100 foot natural buffer or equivalent sediment and erosion controls must be provided. If equivalent erosion and sediment controls are to be used, rationale for using equivalent controls must be provided in the SWPPP.

*Basis:* The 2009 GCP did not include natural buffer requirements while working near surface waters. This requirement provides extra protection for surface waters, which limits the amount of exposed soil adjacent to surface waters, and provides natural sediment control. While working within 100 feet of an impaired surface water, a 100 foot natural buffer is to be provided. The extra 50 feet of buffer is required due to the surface water already being impaired and is to assist with not exceeding potential waste load allocations, if applicable, and to prevent further impairment of the surface water. This requirement is from the 2012 US EPA CGP Part 2.1.2.1 and is the implementation of 40 CFR 122.44(s) as required by 40 CFR 123.25.

15. If the permittee(s) intend to use chemical treatment for sediment removal, they must be used in accordance with the manufacturer’s specifications. Treatment chemicals must be selected appropriately for the anticipated soil particle size and characteristics of the stormwater (pH, turbidity, flow rate of stormwater flowing into the chemical treatment system, etc.). A description of the chemical treatment process must be included in the SWPPP.

a. To ensure selection and management of chemicals minimize the potential for harmful effects in the discharge, the permittee will be required to provide the department, for review and approval. Additional monitoring and reporting may be required as a condition for the approval to discharge.

A request to discharge chemically treated water shall include all of the following information and be provided sixty (60) days prior to use:

i. Material Safety Data Sheet/Safety Data Sheet (MSDS/SDS);
ii. Proposed water additive discharge concentration;
iii. Discharge frequency (i.e., number of hours per day and number of days per year);
iv. Monitoring point for product discharge;
v. Type of removal treatment, if any, that the water additive receives prior to discharge;
vii. Product function (e.g., coagulant, flocculant, etc.);
vii. A 48-hour LC$_{50}$ or EC$_{50}$ for a North American freshwater planktonic crustacean (Ceriodaphnia sp., Daphnia sp., or Simocephalus sp.); and
viii. Results for a toxicity test for one other North American freshwater aquatic species (other than a planktonic crustacean).

b. Discharges from the chemical treatment of stormwater must not cause a violation of the standards of quality for waters of the state (NDAC 33-16-02.1). The discharge must meet the dewatering or basin draining requirements provided in Part II(C)(3)(g)
Basis: The 2009 GCP did not address the use of chemical flocculants. Chemical flocculants are being used in other parts of the nation in order to remove sediment from stormwater. The department added this requirement in order to recognize that the chemical treatment of stormwater is an option, only if it is performed properly and does not result in a violation of a water quality standard.

The information required in part (a) of this section was added to ensure that chemical treatments are used properly. This permit does not restrict the use of cationic or anionic chemicals, but ensures that they will be used appropriately and will not harm the environment. The required information is from the NDG07-0000 permit. Based upon the information provided, the department may or may not give approval to discharge the treated water.

This requirement extends from the 2012 US EPA CGP Part 2.1.3.3 and is the implementation of 40 CFR 122.44(s) as required by 40 CFR 123.25.

16. The disturbance of steep slopes must be minimized. Minimize the duration of exposed soils on steep slopes.\(^{29}\)

Basis: The purpose of this requirement is to reduce amount of exposed soil on steep slopes in order to reduce the potential for soil erosion on the slope and sediment deposition down gradient. It is recognized that steep slopes may not be totally avoidable for certain construction activities. If the disturbance of a steep slope must occur, the work should be performed as quickly as possible and re-stabilized as soon as possible.

This requirement is from the 2012 US EPA CGP Part 2.1.2.6 and the implementation of 40 CFR 122.44(s) as required by 40 CFR 123.25.

B. Maintenance Requirements for Erosion and Sediment Controls

1. All erosion prevention and sediment control BMPs must be inspected to ensure integrity and effectiveness. All nonfunctional BMPs must be repaired, replaced, maintained or supplemented with functional BMPs. If a nonfunctioning BMP is supplemented, the nonfunctional BMP shall be removed. Corrective actions must be made prior to the next anticipated rainfall event or within 24 hours of discovery (whichever comes first), or as soon as field conditions allow access. Documentation must be provided in the maintenance records if field conditions do not allow access along with a plan of action for performing maintenance activities.

Permittee(s) must investigate and comply with the following inspection and maintenance requirements:

a. All control devices similar to, and including, silt fence or fiber rolls must be repaired, replaced, maintained or supplemented when they become nonfunctional (torn from

\(^{29}\) This was changed in response to comment 105 received from the NDDOT and comment 13 received from the NDPC.
posts, visible tears, etc.). Collected sediment must be removed as it approaches 1/2 of the above ground capacity of the control device. Repairs must be made prior to the next anticipated rainfall event or within 24 hours of discovery (whichever comes first), or as soon as field conditions allow access. Documentation must be provided in the maintenance records if field conditions do not allow access along with a plan of action for performing maintenance activities.

b. Fiber rolls must be replaced when 1/2 of the original above ground height of the device when it was installed has been lost as a result of flattening or other damage.

c. Sedimentation basins must be drained and the sediment removed when the depth of sediment collected in the basin reaches 1/2 the storage volume. Drainage and removal must be completed within 72 hours of discovery, or as soon as field conditions allow access. Documentation must be provided in the maintenance records if field conditions do not allow access along with a plan of action for performing maintenance activities.

d. Maintenance and cleaning of inlet protection devices must be performed when sediment accumulates, the filter becomes clogged, and/or performance is compromised.

*Basis:* The 2009 GCP was vague in defining how the height of the device should be measured. The height of the device should be measured from the above ground portion of the device, not from the bottom of the device or the trenched in portion. Controls must be repaired prior to the next anticipated rainfall event. The previous permit allowed for within 24 hours of discovery, of which a rainfall event could occur again prior to the end of the 24 hour period. The control devices would be non-functional during the next rainfall event, allowing sediment to escape the site.

Control devices must be cleaned out or maintained before ½ of its above ground capacity is attained. The 2009 GCP provided guidance that controls should be cleaned out at 1/3 the height of the device. This permit will allow for more sediment accumulation for controls, but it must be cleaned out/maintained before it reaches ½ of its above ground capacity. This requirement is from the 2012 US EPA CGP Part 2.1.2.2(b).

Inlet protection must also be maintained in effective operation. The 2009 GCP required maintenance for inlet protection in a timely manner. This permit provides clarification for when an inlet protection control needs to be repaired, replaced or maintained. Inlet protection controls are a last line of defense and should not have sediment accumulations, become clogged or have their performance compromised if on-site controls are functioning properly. This requirement is from the 2012 US EPA CGP Part 2.1.2.9(b).

These requirements are the implementation of 40 CFR 122.44(s) as required by 40 CFR 123.25.

2. Surface waters, including drainage ditches and conveyance systems, must be inspected for evidence of sediment deposited by erosion. Permittees must remove all deltas and

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30 Changes made to Appendix 1(B)(1) were in response to comment 59 received from the NDDOT and to meet the intent of the permit.
sedenment deposits in surface waters, drainage ways, catch basins, and other drainage systems. Areas where sediment removal results in exposed soil must be stabilized. Removal and stabilization must take place immediately, but no more than, seven (7) calendar days after the discovery unless precluded by legal, regulatory or physical access constraints. Permittees shall use all reasonable efforts to obtain access. If precluded, removal and stabilization shall take place immediately, but no more than, seven (7) calendar days after obtaining access. Permittees are responsible for contacting all local, regional, state, and federal authorities, and receiving any applicable permits prior to conducting any work.

*Basis:* Sediment should not be reaching surface waters, drainage ditches (unless installed as part of the SWPPP). Sediment deposition may occur due to storm events greater than a 2 year, 24-hour rain event. In the case of an event larger than a 2 year, 24-hour rainfall occurs and sediment leaves the site, the permittee must remove all deposited sediment and re-stabilize the area within 7 calendar days. If sediment is not recovered and the area re-stabilized, unless documentation of a preclusion is provided, it would be considered permit violation and a violation of NDAC 33-16-02.1 and NDCC 61-28. This requirement is the implementation of 40 CFR 122.44(s) as required by 40 CFR 123.25.

3. Vehicle tracking of sediment from the site must be minimized by BMPs. This may include having a designated egress with aggregate surfacing from the site or by designating off-site parking. Permittees are responsible for (or making the arrangements for) street sweeping and/or scraping if BMPs are not adequate to prevent sediment from being tracked onto the street from the site.

Construction site egress locations must be inspected for evidence of sediment being tracked offsite by vehicles or equipment onto paved surfaces. Accumulations of tracked and deposited sediment must be removed from all off-site paved surfaces by the end of the work day, shift or if applicable, within a shorter time specified by local authorities or the department.

*Basis:* The 2009 GCP provided a guideline for track out removal within 24 hours of discovery. This permit will require track out to be removed by the end of the work day, shift or if applicable, within a shorter time specified by local authorities or the department which the track out occurred. Sediment track out has been a large issue at construction sites and historically has not been addressed in a timely manner. This requirement is from the 2012 US EPA CGP Part 2.1.2.3 and is the implementation of 40 CFR 122.44(s) as required by 40 CFR 123.25.

4. If sediment escapes the construction site, off-site accumulations of sediment must be removed in a manner and at a frequency sufficient to minimize off-site impacts (e.g., fugitive sediment in streets could be washed into storm sewers by the next rain event and/or pose a safety hazard to users of public streets).

*Basis:* Sediment that escapes construction sites, must be recovered so that wastes are not placed where they could potentially cause pollution to waters of the state pursuant NDCC
5. Vegetative buffers must be inspected for proper distribution of flows, sediment accumulation and signs of rill formation. If a buffer becomes silt covered, contains rills, or is otherwise rendered ineffective, other control measures shall be implemented. Eroded areas shall be repaired and stabilized within 24 hours of discovery, or as soon as conditions allow access. Documentation must be provided in the maintenance records if field conditions do not allow access along with a plan of action for performing maintenance activities.

_Basis:_ The 2009 GCP required the inspection of vegetative buffers for proper flow distribution, but did not address the repair and re-stabilization of eroded areas. This permit will require that eroded areas be repaired and stabilized within 24 hours of discovery in order to reduce erosion in vegetative buffers to maintain proper function and to reduce potential sediment deposition off-site. This requirement is the implementation of 40 CFR 122.44(s) as required by 40 CFR 123.25.

C. Operational Controls

1. Properly handle construction debris and waste materials.

   a. Debris and waste must be handled appropriately until disposal. Litter and debris shall be collected and stored to reduce the potential for wind and water to carry the materials off-site or leachate discharging from a site. Collected material shall be taken to the appropriate facility for disposal or recycling.

   b. Liquid or soluble materials including oil, fuel, paint and any other hazardous substances must be properly stored, to prevent spills, leaks or other discharges. Restricted access to storage areas must be provided to prevent vandalism. Storage and disposal of liquid or soluble material must be in compliance with applicable regulations.

   _Basis:_ The requirement for properly handling debris and waste materials is to prevent any wastes to be blown or washed away and be deposited into water of the state. Construction debris or waste materials which are blown or washed away and deposited into waters of the state would be a violation of NDCC 61-28-06 and NDAC 33-16-02.1. This section was carried over from the 2009 GCP. This requirement is the implementation of 40 CFR 122.44(s) as required by 40 CFR 123.25.

2. Wash water containments must be cleaned out (solids and liquid) before 80 percent of storage capacity is attained.

   _Basis:_ The purpose of this requirement is to avoid any potential for the wash water containment to over flow and discharge to a water of the state. Wastewater discharges other than allowable and identified discharges in Part II(A) of this permit are allowed. Any other wastewater discharge would be in violation of NDCC 61-28 and NDAC 33-16-02.1. This requirement is the implementation of 40 CFR 122.44(s) as required by 40 CFR 123.25.
3. Best management practices used in surface waters must be cleaned immediately upon removal from surface waters\(^\text{31}\) to prevent the transfer of aquatic nuisance species.

*Basis:* The purpose of this requirement is to acknowledge that aquatic nuisance species have the possibility to be transferred by construction BMPs, if proper procedures for decontaminating re-used BMPs are not performed. Regulations pertaining to the transfer of aquatic nuisance species are covered under NDCC 20.1-17 and ND Admin Code 30-03-06\(^\text{32}\) and administered by the North Dakota Game and Fish Department.

\(^{31}\) Additional language was added in response to NDDOT Comment 112 and to maintain consistency with ND Admin. Code 30-03-06.

\(^{32}\) Reference added due to NDDOT Comment 112.
APPENDIX A – PUBLIC INVOLVEMENT

The department proposes to reissue a general permit for stormwater discharges associated with construction activity. The permit includes the use of best management practices, the development of a stormwater pollution prevention plan, monitoring requirements and other conditions. This fact sheet describes the type of facilities covered under the permit and the department’s reasons for requiring permit conditions.

The department will place a 30-day Public Notice on January 21, 2015 in the Bismarck Tribune, the official newspaper of the capital city, and in Regional Papers throughout the state to inform the public and to invite comment on the proposed draft North Dakota Pollutant Discharge Elimination System permit and fact sheet. The notice will also be mailed to the department's Public Notice mailing list.

The Notice –

- Indicates where copies of the draft Permit and Fact Sheet are available for public evaluation.
- Offers to provide assistance to accommodate special needs.
- Urges individuals to submit their comments before the end of the comment period.
- Informs the public that if there is significant interest, a public hearing will be scheduled.

You may obtain further information from the department by telephone, 701.328.5210 or by writing to the address listed below.

North Dakota Department of Health
Division of Water Quality
918 East Divide Avenue, 4th Floor
Bismarck, ND 58501

The author of the general permit and fact sheet is Patrick J. Schuett.
North Dakota Department of Health Public Notice
Issue of an NDPDES Permit

Public Notice Date: 1/21/2015  Public Notice Number: ND-2015-001

Purpose of Public Notice
The Department intends to issue the following North Dakota Pollutant Discharge Elimination System (NDPDES) Discharge Permit under the authority of Section 61-28-04 of the North Dakota Century Code.

Permit Information
Application Date: 10/1/2014  Application Number: NDR10

Applicant Name: NDPDES Construction Stormwater General Permit
Mailing Address: ND Dept of Health, Div of Water Quality, 918 East Divide Ave, Bismarck ND 58501-1947
Telephone Number: 701.328.5235

Proposed Permit Expiration Date: 3/31/2020

Description
The Department proposes to reissue NDPDES General Permit NDR10-0000 to authorize the discharge of stormwater associated with construction activity as defined in 40 CFR part 122.26(b)(14) (x) and small construction activity as defined in 40 CFR part 122.26(b)(15). The regulated construction activities include clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre. Construction activity also includes 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 acre.

The permit requires the implementation of a pollution prevention plan to reduce erosion and sediment impacts to surface waters. The permit includes discharge conditions based on prohibitions, best management practices, water quality standards, and other considerations applicable to the activities.

Tentative Determinations
Proposed effluent limitations and other permit conditions have been made by the Department. They assure that State Water Quality Standards and applicable provisions of the FWPCA will be protected.

Information Requests and Public Comments
Copies of the application, draft permit, and related documents are available for review. Comments or requests should be directed to the ND Dept of Health, Div of Water Quality, 918 East Divide Ave, Bismarck ND 58501-1947 or by calling 701.328.5210

All comments received by February 21, 2015 will be considered prior to finalizing the permit. If there is significant interest, a public hearing will be scheduled. Otherwise, the Department will issue the final permit within sixty (60) days of this notice. If you require special facilities or assistance relating to a disability, call TDD at 1.800.366.6666.
APPENDIX B – GLOSSARY

DEFINITIONS Permit Specific

1. “303(d) List” or “Section 303(d) List” means a list of North Dakota’s water quality-limited waters needing total maximum daily loads or TMDLs developed to comply with section 303(d) of the Clean Water Act. A copy of the latest integrated report is available on the state’s web site at: www.ndhealth.gov/WQ/SW/Z2_TMDL/Integrated_Reports/B_Integrated_Reports.htm.


3. “Bankfull” means the channel is filled to the top of one or both of its banks.

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

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

6. “Common Plan of Development or Sale” means a contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan. One plan is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land-disturbing activities may occur.

7. “Construction Activity” means construction activity as defined in 40 CFR part 122.26(b)(14)(x) and small construction activity as defined in 40 CFR part 122.26(b)(15). This includes a disturbance to the land that results in a change in topography, existing soil cover (both vegetative and non-vegetative), or the existing soil topography that may result in accelerated stormwater runoff, leading to soil erosion and movement of sediment into surface waters or drainage systems. Examples of construction activity may include clearing, grading, filling and excavating. Construction activity includes 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 one (1) acre or more. Construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

8. "Department" means the North Dakota Department of Health, Division of Water Quality.

9. "Energy Dissipation" means methods employed at pipe outlets to prevent erosion. Examples include, but are not limited to: concrete aprons, riprap, splash pads, and gabions that are designed to prevent erosion.
10. “Indian Country” means (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservations; (2) All dependent Indian communities within the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

11. “Infeasible” means not technologically possible or not economically practicable and achievable in light of best industry practices.

12. “Immediately” means as soon as practicable, but no later than the end of the next work day, following the day when the earth-disturbing activities have temporarily or permanently ceased.

13. “Large Construction Activity” means land disturbance of equal to or greater than five (5) acres. Large construction activity also includes 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 that five acres.

14. “Normal Wetted Perimeter” means the area of a conveyance, such as a ditch, channel, or pipe that is in contact with water during flow events that are expected to occur once every year.

15. “Non-Stormwater Discharges” means discharges other than stormwater. The term includes both process and non-process sources. Process wastewater sources that require a separate NDPDES permit include, but are not limited to industrial processes, domestic facilities and cooling water. Non-stormwater sources that may be addressed in this permit include, but are not limited to: fire-fighting, fire hydrant flushing, potable water line flushing, equipment wash down without detergents or hazardous cleaning products, uncontaminated foundation drains, springs, surface water, lawn watering, chemical treatment of stormwater and air conditioning condensate.

16. “Operator” means the person (usually the general contractor) designated by the owner who has day to day operational control and/or the ability to modify project plans and specifications related to the SWPPP. The person must be knowledgeable in those areas of the permit for which the operator is responsible and must perform those responsibilities in a workmanlike manner.

17. “Owner” means the person or party possessing the title of the land on which the construction activities will occur; or if the construction activity is for a lease holder, the party or individual identified as the lease holder; or the contracting government agency responsible for the construction activity.

18. “Permanently Ceased” means clearing and excavation within any area of your construction site that will not include permanent structures has been completed.
19. “Permanent Cover” means final stabilization. Examples include grass, gravel, asphalt, and concrete.

20. "Severe Property Damage" means substantial physical damage to property, damage to best management practices which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in construction.

21. "Significant Materials" includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; hazardous substances designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with stormwater discharges.

22. "Significant Spills" includes, but is not limited to: releases of oil or hazardous substances in excess of reportable quantities under Section 311 of the Clean Water Act (see 40 CFR 110.10 and CFR 117.21) or Section 102 of CERCLA (see 40 CFR 302.4).

23. “Small Construction Activity” means land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes 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.

24. "Stabilized" means the exposed ground surface has been covered by appropriate materials such as mulch, staked sod, riprap, erosion control blanket, or other material that prevents erosion from occurring. Grass seeding alone is not stabilization. Snow cover and frozen ground conditions are not considered stabilized.

25. “Steep Slopes” means slopes which are fifteen (15) percent or greater in grade.


27. “Stormwater Associated with Industrial Activity” means stormwater runoff, snow melt runoff, or surface runoff and drainage from industrial activities as defined in 40 CFR 122.26(b)(14).

28. “Stormwater Associated with Small Construction Activity” means the discharge of stormwater from:

   a. Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than once acre and less than five acres. Small construction activity also includes 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. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

b. Any other construction activity designated by EPA or the Department, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the state.

29. “Temporarily Ceased” means clearing, grading, and excavation within any area of the site that will not include permanent structures, will not resume (i.e., the land will be idle) for a period of 14 or more calendar days, but such activities will resume in the future.

30. "Temporary Erosion Protection" means methods employed to prevent erosion. Examples of temporary cover include; mulch, straw, erosion control blanket, wood chips, tackifiers, and erosion netting.

31. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with permit requirements because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed erosion and sediment controls or site stabilization methods, inadequate erosion and sediment controls or site stabilization methods, lack of preventive maintenance, or careless or improper operation.

32. “Waters of the State” means any and all surface waters that are contained in or flow in or through the state of North Dakota as defined in NDCC 61-28-02. This definition includes all water courses, even if they are usually dry.

33. “You” means the owner, operator or permittee as appropriate.
APPENDIX C – RESPONSE TO COMMENTS

Comment:

February 23, 2015

VIA CERTIFIED MAIL AND ELECTRONIC MAIL (krockema@nd.gov)

Mr. Karl Rockeman, P.E., Director
Division of Water Quality
North Dakota Department of Health
Gold Seal Center, 918 East Divide Ave
Bismarck, ND 58501-1947

Re: Request to Reopen and Extend Comment Period for the North Dakota Department of Health’s (“NDDoH”) Draft General Construction Permit NDR10-0000 (Stormwater Discharges Associated with Construction Activity) (the “Stormwater Permit”)

Dear Mr. Rockeman:

Continental Resources, Inc. (“CLR”) endorses the Stormwater Permit comments submitted earlier today by the North Dakota Petroleum Council (“NDPC”) and, like NDPC, respectfully requests NDDoH reopen and extend the comment period. Because NDDoH limited the Stormwater Permit comment period to only thirty days and neglected to provide sufficient notice to the public of the proposed rulemaking, we and other NDPC members were deprived of our respective rights to receive notice of the proposed Stormwater Permit and a legitimate opportunity to submit meaningful comments.

Thank you in advance for your consideration of our request.

Sincerely,

CONTINENTAL RESOURCES, INC.

J. Roger Kelley
Director of Regulatory Affairs
Response:

The comment period for the general permit to discharge stormwater associated with construction activity began on January 21, 2015 and ended on February 21, 2015, a period of thirty (30) days. North Dakota Administrative Code (N.D. Admin Code) 33-16-01-07(2) states:

“The department shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the national pollutant discharge elimination system application. All written comments submitted during the thirty-day comment period shall be retained by the department and considered in the formulation of its final determinations with respect to the national pollutant discharge elimination system application. The period for comment may be extended at the discretion of the department.”

In accordance with N.D. Admin Code 33-16-01-07(02) the department has met the requirement of a public comment period of “not less than thirty days.”

On the day of public notice, the department of health provided notification via electronic mail to the following companies/names:

Aecom -
Aggregate Industries/Sheree Elertson
Aland Enterprises
Diane Wizig - Alston + Bird LLP
Karen Otten
ALTUS Environmental
"ALTUS Environmental, LLC"
"Amber Waves Inc."
Mary Johnson
Antea Group / Richard Anderson Cravates -
New Century Press
Dale Wetzel
Apex Engineering Group
Aquionix -
Ark Environmental Consulting
John Alexander Roswech
Avanti Corporation
Barr Engineering Company / Adam Driscoll
Barr Engineering Company
"Barr Engineering Co."
Barr Engineering
Barr Engineering
Tony Widboom
Bd -
Benchmark Electronics
"B.enviroSAFE, Inc."
Dgc -
"Bionic Filter Solutions, Inc."

Self -
Curtis Steier
Martin R Slock
"Western Consulting Services, S.P."
Bna -
North Dakota Chapter of The Wildlife Society
Burns and McDonnell
"Carlson McCain, Inc./John McCain"
Tim Kuiken
CH2M Hill
Chemadvisor -
"Citation Technologies, Inc"
"City of Fargo, WTP"
Clean Coal Solution Services
Les Ashwood
Clean Harbors
Clean Harbors Environmental Services
Continental Resources
Stacy Aguirre
Robert Sasson
"Continental Resources, Inc."
Conveyall -
"Corval Group"
North Dakota Funeral Directors Association
American Crystal Sugar Company
Dakota Software
R D Reimers Cpa
City of Dickinson
Barb/Dakota Resource Council
Dakota Resource Council
Dakota Resource Council
Eapc -
Earth Systems
EOC Horizon/Castellano
Environmental Defense Fund
Jim Grijalva
Derek Senn
Enhesa -
Enhesa -
EG Resources
EOG Resources
Environmental Protection Agency
Epa -
Epa -
US EPA Office of Regional Counsel
Emilio Llamozas
Epa -
Epic Engineering
Epic Engineering
EP Minerals
"EP Minerals, LLC"
Environmental Resources Management
Dean Ritts
Erm -
Erm -
Erm -
Evoqua Water Technologies LLC
Fidelity Exploration
Fidelity E
"Optic Fuel Clean, Inc."
Brent -
Gei -
Stephanie Baker
"GeoSynthetics, INC"
"GeoStat Environmental, LLC"
FACT SHEET FOR NDPDES PERMIT NDR10-0000
STORMWATER DISCHARGES FROM CONSTRUCTION ACTIVITIES
NORTH DAKOTA POLLUTANT DISCHARGE ELIMINATION SYSTEM (NDPDES)
GENERAL PERMIT NDR10-0000
EXPIRATION DATE: MARCH 31, 2020
Page 45 of 173

"Groundwater Environmental Services, Inc."
Global Energy Decisions
WellCare Health
Astec -
Travailleur autonome
"Squire, Sanders"
"Kringstad Septic Srv."
caron P
JJ England
WellCare Health
Independent -
Septic Medic's
Sarah Keller
Dong Gia Group
Self -
Golder Associates
"Golder Associates Inc."
"Law Office of Douglas A. Goulding"
Early Childhood Tracking
Grand Forks AFB
US Air Force - Grand Forks Air Force Base
City of Grand Forks
City Grand Forks Water Utility
Grand Forks
Grand Forks Public Health
Graymont -
Great River Energy/Deb Nelson
Mary Jo Roth
Great River Energy/Jennifer Charles
Great River Energy
North Dakota Funeral Directors Association
Halcon -
HDR Engineering
American Heart Association
Heideman Consulting
Michael McCabe
Stetson Sannes
"HLN Consulting, LLC"
Hms -
Allen Johnson
Dennis Kost
City of Cooperstown
Lynn C Wolff
Michael Klebe
Barb Price
Houston Engineering Inc
Hunt Oil Company
Hunt Oil Company/Martin Wouch
Icarus Energy
Icm
"Industrial Reports Inc."
Integrated Water Services
Jeld-Wen -
IHD Solids Management
Smucker's/Brad Petersen
John Deere
John Deere Seeding Group Valley City
"KBM Inc."
Klj -
Klj -
"KLJ Solutions, Inc."
The department published the public notice in all regional newspapers in North Dakota. The following are copies of the public notices:
match hardly anyone noticed.
That should be expected, Jimmy Walker was involved.
He is becoming more difficult to ignore with each victory. Walker's nine-shot win at the Sony Open — the largest margin on the PGA Tour in 2014 — was his fourth victory in the last 15 months, the most of any American in that stretch. His world ranking is No. 3, the highest ranking of his career, moving him closer to his goal of playing in the Olympics.

More work remains, starting with his manager and Walker knows this. Last year was his first time playing

has shone to be a quick study and a hard worker.
Of all the new experiences from 2014, though, what stood out was Sunday at Glenelg.
The Ryder Cup long had been decided when Walker won his singles against Lee Westwood by making eight birdies in 16 holes.

With key wins early from Europe's two major champions, Rory McIlroy and Martin Kaymer, there was no reason for television to pay much attention to a match that affected only the final score.
But it was a big deal for Walker.

the Ryder Cup in so many ways, though it caused him to reconsider the way he never let up until it was over.

"That was huge, that Sunday match against Lee," Walker said.
"That was another day where I didn't want to let him have anything. After the Ryder Cup I said, I need to figure out how to get in that mode, where every shot means so much. That's how it felt. I was so engaged in every shot. I tried to figure out how to do that week in and week out. And that's how I felt today."

PUBLIC NOTICE

REQUEST FOR QUOTES

United Bids Technical College (UTC), herein referred to as the Owner, is requesting proposals to remove and replace the shower enclosures for the north and south shower areas of the new School Center. The Owner reserves the right to allow the lowest bid for the work. Proposals shall be received by UTC in accordance with the instructions set forth in this notice.

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Affidavit of Publication

Colleen Park, being duly sworn, states as follows:

1. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.

2. The newspapers listed on the exhibits published the advertisement of: ND Health Department – Issue of an NDPDES Permit; 1 time(s) as required by law or ordinance.

3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

Signed: [Signature]

State of North Dakota
County of Burleigh

Subscribed and sworn to before me this 28 day of January, 2015.

[Signature]

SHARON L. PETERSON
Notary Public
State of North Dakota
My Commission Expires Nov. 8, 2017
FACT SHEET FOR NDPDES PERMIT NDR10-0000
STORMWATER DISCHARGES FROM CONSTRUCTION ACTIVITIES
NORTH DAKOTA POLLUTANT DISCHARGE ELIMINATION SYSTEM (NDPDES)
GENERAL PERMIT NDR10-0000
EXPIRATION DATE: MARCH 31, 2020
Page 49 of 173
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GENERAL PERMIT NDR10-0000
EXPIRATION DATE: MARCH 31, 2020
Page 55 of 173

North Dakota Department of Health
Public Notice
STORMWATER DISCHARGE PERMIT NDR10-0000

The Department of Health, North Dakota Department of Health, Public Notice: Stormwater Discharge Permit NDR10-0000,

VIVIAN VOGEL, Assistant Director, Water Quality, Public Notice: Stormwater Discharge Permit NDR10-0000,

North Dakota Department of Health
Public Notice
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The Department of Health, North Dakota Department of Health, Public Notice: Stormwater Discharge Permit NDR10-0000,

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State of North Dakota
County of Burleigh

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Signed: Allen Park

State of North Dakota
County of Burleigh

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Sharon L. Peterson

SHARON L. PETERSON
Notary Public
State of North Dakota
My Commission Expires Nov. 8, 2017
North Dakota Department of Health

Public Notice
Issue of an NPDES Permit

Public Notice Date: 12/19/2015

Purpose of Public Notice
The Department intends to issue the following North Dakota Pollutant Discharge Elimination System (NPDES) Permit under the authority of Section 01-08-04 of the North Dakota Century Code.

Permit Information
Public Notice Number: ND-0315-001
Application Date: 9/10/2015
Application Number: NDR-10

Applicant Name: NDPDES
Application Type: General Permit
Proposed Permit Duration: 3 years

1. Background
The Department proposes to issue the following North Dakota Pollutant Discharge Elimination System (NPDES) Permit (NDR-10-0000) to authorize the discharge of construction activity as defined in 40 CFR part 122.26(b)(15) and small construction activity as defined in 40 CFR part 122.26(b)(15). The regulated construction activities include clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre. Construction activity also includes the disturbance of less than one acre of land if a portion of a larger construction project or development site; or, if the larger common plan development site has a disturbed area of greater than one acre. The permit requires implementation of a pollution prevention plan to reduce erosion and sediment impacts to surface waters. The permit includes discharge conditions based on prohibitions, best management practices, and other controls applicable to the activities.

2. Tentative Determination
The Department proposes the following conditions, limitations, and other permit conditions have been made by the Department. They are as follows:
- Stormwater Quality Standards
- Nonpoint source pollution
- The permit includes discharge conditions based on prohibitions, best management practices, and other controls applicable to the activities.

3. Public Notice
The Department will issue the final permit on or before March 31, 2020. Comments or requests should be directed to the North Dakota Department of Health, Div of Water Quality, 916 East Second Ave, Bismarck ND 58501-1947, or by calling 701-328-5510. All comments received by February 21, 2016, will be considered prior to finalizing the permit. If there is significant interest, a public hearing will be scheduled.

4. Valentis City
North Dakota Department of Health
Affidavit of Publication

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NORTH DAKOTA POLLUTANT DISCHARGE ELIMINATION SYSTEM (NDPDES)
GENERAL PERMIT NDR10-0000
EXPIRATION DATE: MARCH 31, 2020
Page 65 of 173

PUBLIC NOTICE
NOTICE OF MORTGAGE FORECLOSURE SALE
NOTICE IS HEREBY GIVEN that this facility has occurred in the conditions of the following described property:

DATE OF MORTGAGE: MAY 10, 1997
ORIGIN: PRINCIPAL AMOUNT OF MORTGAGE: $15,889.73
MORTGAGEE: Farmers Lending, a single person
MORTGAGEE: Credible Financial Services, Inc.
LEGAL DESCRIPTION OF PROPERTY: The South Half of Lot 80 of Section 14, Township 111 North, Range 12 West, Glouster, Wood County, Ohio
SUCCESSION AT £1.00, AND CLAIMED TO BE DUE AS OF DATE OF NOTICE: 6/28/1997

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North Dakota Department of Health
In accordance with the provisions of North Dakota Century Code, Chapter 102, Section 10, all public notices of this nature shall be published in accord with the laws and regulations governing such notices.

Please note: This is a digital representation of a document. For the full and accurate version, please refer to the original source material.
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County of Burleigh

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The department provided notification to all companies which have an active permit. The reapplication letters which were sent to the companies listed below specified the public comment period “…begins January 21, 2015 and ends February 21, 2015.” The following is a list of companies which were notified:

108 Lakeside Drive LLC
1105 Peters Road, LLC
16th Crossing LLC
1804 Operating, LLC
1804, Ltd.
2013 Bismarck LLC
2015 Grand Forks, LLC
2020 Properties LLC
26th Street Hospitality, LLC
28th Street Apartments, LLC
3PP Bottineau, LLC
3PP Dickinson LLC
3PP Stanley, LLC
3PP Watford City, LLC
4T Construction, LLC
5229 Properties LLC
55th Crossing LLC
5th Contracting Squadron
76th Street Holdings, LLC
Abercrombie City Of
Abraxas Petroleum Corporation
Absorbent & Safety Solutions
Acciona Wind Energy USA
Accrete LLC
Ackerman Acres
Ackerman Estvold Engineering Inc
Acme Tool
Adams Custom Contracting
Adjoint General
Adjoint General Department - Devils Lake
Air Liquide Industrial US, LP
Alan Netzer Construction
Alan Withrow
Alerus Center
Alexander Transport LLC
All Terrain Grounds Maintenance
Allte / Minnesota Power
Alliance Pipeline LLP
Allied Agronomy LLC
Allied Building
All-Terrain Grounds Maintenance
Alttru Health System
Alumni Suites LLC
Alverson Construction Inc
Alvin Leingang
Amanda Hoffman
Amber Ridge Investments, LLC
Amber Valley Apartments, LLC
American Crystal Sugar Company
American Crystal Sugar Hillsboro
American Eagle Energy Corporation
American Enterprises Inc
American General Contractors Inc
American Independent Remodelers
Ameri-Tech Buildings, LLC
Amity Technologies
Anchor Drilling Fluids USA
Anderson and Wood Construction
Annabell Homes LLC
Annunciation Priory/U Of Mary
Anschutz Exploration Corporation
Anton Gudajtes
Anyaleaks, Inc.
Apex Engineering Group
API Group Real Estate, LLC
APM, LLP
Apple Creek Developers LLP
Apple Creek LLC
Apple Creek Partners LLC
Applied Products Inc.
Aquasource Holdings LLC
Arbor Courts, LLC
Ardys Bahn Couch
Argusville City Of
Arista Development
Arnegard Lakeview Estates LLC
Arrow Head Development, LLC
Arrow Pipeline LLC
Arthur Companies
Arthur Greenberg Jr
ASC Construction Equipment USA Inc.
Ashley Municipal Airport
Aspens Williston LLC
Asplin Excavating Inc
Associated Builders
Associated Potato Growers, Inc.
ATCO Structures & Logistics (USA) Inc.
Autocore
Aux Sable Midstream LLC
AVERA Companies
Ayi Bree Real Estate Holdings, LLC
B & W Properties
B&B Dirtworks Inc
Bachmeier Custom Homes
Badlands Power Fuels, LLC
Baird Construction Inc
Baker Hughes
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Bakken Development Group Minot 1, LLC
Bakken Energy
Bakken Holdings, Inc.
Bakken Housing Partners
Bakken NW 58th Street LLC
Bakken Oil Express LLC
Bakken Oil Express Pipeline, LLC
Bakken Transload, LLC
Bakken Western Services LLC
BakkenLink Pipeline, LLC
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Baranko Brothers Construction
Barkman Construction ND LTD dba Landmark Homes
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Bames County Water Resource District
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Bismarck School District No. 1
Bismarck State College
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Stormwater Discharges from Construction Activities
North Dakota Pollutant Discharge Elimination System (NDPDES)
General Permit NDR10-0000
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FACT SHEET FOR NDPDES PERMIT NDR10-0000
STORMWATER DISCHARGES FROM CONSTRUCTION ACTIVITIES
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Eric Belanger
Evans Rentals LLC
Evenson Angus
Eventide Senior Living Communities
Excavating Inc Fargo
Expressway Suites
Faith Lutheran Church
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Fargo Clubhouse Ventures LLP
Fargo Country Club
Fargo Development
Fargo Hospitality LLC
Fargo Hotel Partners LLC
Fargo Housing and Redevelopment Authority
Fargo Lodging Associates ES, LLC
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Fidelity Exploration & Production Company
Fidelity Exploration and Production Company
Fifth Skaff Apartments of ND
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First Baptist Church
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ICON-KMP, LLC
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INREIT Properties, LLP
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Interstate Engineering - Jamestown
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IRET WRH 1, LLC
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Carroll Drilling
Ironman Enterprises LLC
Irons Landscaping
Ironwood Apartments, LLC
Ironwood Construction
Island Park Motel
J & L Harley Davidson
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J&L Construction / LTD Corporation
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James Hutton
James Valley Grain
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John Deere Seeding Valley City
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John Geving
John H. Holt
John Lawrence
John Plot Company, Inc.
John Weeda
John Wyman
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Bismarck
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Corp
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Katie Deutsch
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KC Harvey Environmental, LLC
KD Hoyt Inc
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Addition
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Kenny Stedman
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KTJ 211 LLC
KTJ 226 LLC
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Kum & Go LLC
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Partnership
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## FACT SHEET FOR NDPDES PERMIT NDR10-0000
### STORMWATER DISCHARGES FROM CONSTRUCTION ACTIVITIES
#### NORTH DAKOTA POLLUTANT DISCHARGE ELIMINATION SYSTEM (NDPDES)
### GENERAL PERMIT NDR10-0000
**EXPIRATION DATE:** MARCH 31, 2020

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| PKG Contracting Inc | Real Builders Inc | Rose Creek Development Corp |
| Plain All American Pipeline LP | Real Hardware North LLC | Rosewood on Broadway |
| PLC Investments, LLC | Red Door Homes | Ross City of |
| Plecisty - Kowalski Const Inc | RED LLC | Roughrider Electric Cooperative |
| Plote Construction ND, LLC | Red River Riparian Project | Roughrider Hotels, LLP |
| Plus Four Holdings (LLC) | Red River Rural Telephone Assn. | Rowe Farms, Inc. |
| Points North LLC | Red River Supply | Rudnick Construction |
| Polar Communications | Red River Valley Developments LLC | Ruedebush Development |
| Poplar Grove Township | Red River Zoological Society | Rugby City Of |
| Portland City Of | Redlands LLC | Rugby Municipal Airport |
| ProFuel Holdings | Relies Trucking & Delivery, Inc | Rush River Holdings, LLC |
| Prairie Aire Homes Inc | Reliant Asset Management | Rushville Township Ward Co. |
| Prairie Disposal, Inc. | Remington Seeds | Russell Thompson |
| Prairie Dog Development LLC | Remington Seeds, LLC | Rusty Goose Development |
| Prairie Gold Real Estate | Renaissance On Main L.P. | RW Bismarck, LLC |
| Prairie Grove LLC | Renewable Resources LLC | S & B Development, LLC |
| Prairie Grove, Inc. | Renville County | S & B Dickinson Apartments 1, LLC |
| Prairie Heights Community Church | Rescorn TLC | Sam Kuma |
| Prairie Housing Services | Reservation Telephone Cooperative | Samson Resources |
| Prairie Rose Dental | Retreat at Urban Plains LLC | Sand Source Services |
| Prairies Edge Properties | Reynolds United Coop | Sanford Health |
| Precision Plus Construction Inc | RHR Construction Inc | Sanford Health - Bismarck |
| Preferred Equities LLC | Richard A Anderson | Sanford Occupational Health Clinic |
| Prelude Partners LLP | Richardson City Of | Sargent County |
| Premiere Development 2, LLC | Richland County | Sargent County Water Resource |
| Premiere Development LLC | Richland County Emergency | District |
| Premiere Homes & Builders LLP | Management | Sargent Property Group, LLC |
| Premiere Pointe LLC | Richland County Water Resource | Sattler Homes |
| Pride, Inc. | Dist | Savage Services Corporation |
| Professional Choice Properties, LLC | Richland School District 44 | Sawtooth Capital Partners, LLC |
| Professional Contractors Inc | Rick Kleinsasser | SBB Energy Services |
| Progressive Homebuilders | Rick Samson Const Inc | Schatz Properties, LLC |
| ProInitiatives | Rick Slavik Construction Inc | Schurr Family, LLC |
| ProMark Services | Rick Sturm Farm | Schlosser Home Contracting Inc |
| Promenade Partners, LLC | Rick Waterworth Construction Inc | Schlumberger |
| Proteus On Demand | Ridgeview Hospitality | Schlumberger Technologies |
| ProWater | Riley Bros Construction Inc | Schmit Brothers Construction Inc |
| PTI Group, Inc. | Risto Mackovski | Schueller Properties |
| PTI USA Manufacturing | River Basin Contracting | Schwab-Messer Construction Inc |
| PV1 Development | River Oaks Development LLC | Schweigt Feedyards |
| QEP Energy Company | Rivers Bend Development Corp | Scott Lynch |
| Quadpro. LLC | Road Runner Investments | SD Tioga, LLC |
| R & T Real Estate Holdings, LLC | Roadrunner Investments LLC | SDB Construction Inc |
| R & R Investments | Robb Satller | Secure Energy Group USA, LLC |
| R & T Investments, LLC | Robert Plutoski | Select Energy Services |
| R & T Water Authority | Roberton Construction | Seths Services |
| R. DeYale | Robin Greenhagen | Setter Properties |
| Rachel Contracting, Inc. | Robins Greenhagen, Auto Property | Shadow Bay Apartments LLC |
| RAH Property Owner LLC | Solutions, LLC | Shadow Creek Development III, LLC |
| Raleigh Construction LLC | Robust Properties, Inc | Shadow Ridge Estates, LLC |
| Ralph Dupa | Rocky Heights LLC | Shane Hart |
| Ramsey County | Rocky Mountain Underground LLC | Shangcheng USA Corp |
| Ramsey County Highway Department | Rod Gorder | Sheridan Electric Cooperative |
| Rangeland Energy, LLC | Roddies Storage, LLC. | Sheyenne Villas, LLC |
| Ransom County | Roers Construction Inc | Shiloh Christian School |
| Ransom County Water Resource District | Roers Development | Shorestone Development |
| Rave Investments LLC | Roger Feist | Silver Springs Development Inc. |
| Ray City Of | Rokke Construction | Simonson Station Stores |
| Ray Farmers Union Elevator | Rolac Contracting Inc | Simplot Grower Solutions |
| RBB Building | Rolison Oil | Site-West Development, LLC |
| RC Development, LLC | Rolla City Of | Sky Logistics |
| RCD Holdings Inc | Roma Builders LLC | Skyport Development LLC |
| RCH Properties | Ron Knutson | Slope County |
| | Ron Morlock Construction Inc | Sloulin Field International Airport |
| | Ron Symington | SM Energy |
FACT SHEET FOR NDPDES PERMIT NDR10-0000
STORMWATER DISCHARGES FROM CONSTRUCTION ACTIVITIES
NORTH DAKOTA POLLUTANT DISCHARGE ELIMINATION SYSTEM (NDPDES)
GENERAL PERMIT NDR10-0000
EXPIRATION DATE: MARCH 31, 2020
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SM Energy Company
Smart Lease USA, LLC
Smoky Butte Environmental LLC
SNT Development, Inc
Somerset Regional Water Resources, LLC
Sonata Apartments LLP
Sonnet Heights Development Co.
Sonoma Apartments LLC
SoTo Holdings, LLP
Stacey Basin Transportation
South Dakota Wheat Growers
South Heart City Of
South Heart Rail Terminal LLC
South Minnewauken Township
South Prairie School District
South-40 Development
Southeast Cass Water Resource District
Southeast Water User District
SouthPoint LLC
Southview Crossing LLC
Southwest Crossing Partners LLC
Southwest Water Authority
Spunash
Specialized Contracting Inc
Spiritwood Energy Park Association
SRK Hospitality
SSGK LLP
St. Johns Parish
St. Josephs Hospital and Health Center
Stetsy & Amy Hoiberg
Stahl Architects
Stanley Blaisdell RV Park LLC
Stanley Square LLC
Stantec
Star Builders
Starion Financial
Stark County
State Bank & Trust
State Bank of Bottineau
State of North Dakota
State of North Dakota Facilities Management
Statoil
Staysharpe
StaySharpe West Fargo, LLC
Steele County Water Resource District
Steeple Apartments LLC
Stenehjem Development, LLP
Steve and Lois Mortenson
Steve Thilmony
Steven Grenier Farms
Steven Nelson
Stevenson Funeral Home
Stone Creek LLC
Stonebridge Villas II, LLC
StoneCrest Management, Inc
Strata Corporation
Streeter City Of
Strovus Contracts
Student Housing, LLC
Stutsman County
Stutsman County-Road Department
Stutsman Rural Water District
Stylemark Builders
Sullivan Construction Inc
Sullivan Properties
Sun Quest Investments
Sun Well Services Inc
Sundance Commons Limited Partnership
Sundance Coves LLC
Sundre Township
Super Homes Inc
Surrey City Of
Swanson Equipment
Swenson Hagen & Co
Symanowski Farms
Synergy Real Estate Investments, LLC
Syversen Cattle Company
T Lofts, LLC
T M Investments
Tanya Hammer
Targa Badlands, LLC
Targa Resources
Targa Resources LLC
Target Logistics Management, LLC
Target Logistics/Contractor Lodging Solutions
Terra Vallee LLP
Terry Becker Construction LLC
Terry Dishon
Terry Pitt Construction
Terry Welle Construction Inc
Tervita
Tervita LLC
Tesoro High Plains Pipeline Company
Tesoro Logistics Operations LLC
Tesoro Logistics Operations, LLC
Tesoro Technology Company
TF Powers Construction Company
Tharaldson Development
Tharaldson Ethanol Plant I
The Cathedral of St. Marys
The Church of Jesus Christ of Latter-Day Saints
The Coleman Group Inc
The Davis Group
The Galleria on Veterans, LLC
The Hub
The Norick Group, Inc.
The Petersen Group, Inc
The Shoppes at Osgood II, LLC
The Westmoreland Co Inc
Theodore Roosevelt Medora Foundation
Thermal Energy Products
Thomas Allen or Mary Jean Clement
Thomas Haustveit
Thompson City Of
Thomsen Homes, LLC
Three Forks Ventures LLC
Three M Inc
Tim Corwin
Tim Haglin
Timber Jamestown Properties, LP
Timberland Partners, Inc.
Timbers Development Holdings, LLC
Tioga City Of
Tioga Medical Center
Tioga Public Schools
Titan Homes Inc
Titan Machinery
TJ Real Estate 3
TK Builders
TK Homes Inc
Toay Livestock
Tobias Marman Construction
Toby & Stephanie Differding
Todd Harrington
Tollberg Homes
Tom Eil
Tom Kunz
Tom McNees
Toman Engineering Company
Torning Township
Towner County
Townhomes at Shadow Wood LLC
Townhomes at Stonebridge II, LLC
TPR LLP
TR Construction
Tractor and Equipment - T&E
Tractor Supply Company
Traffic Safety Services
Traill Co Water Resource District
Traill County Hwy Dept
Traill County
Traill Rural Water District
Treguboff Farms
Triangle Petroleum Corporation
Triangle USA Petroleum Corporation
Triland Holdings, LLC
Trinity Health
Truck Wash Express - Williston LLC
True North Equipment
True Oil LLC
True Style Homes LLC
TTT Development
Tuscany Villas LLC
Twete, Inc.
Twin Rivers Investment Group LLC
Twin Services
UC Property Owner LLC
Ulteig Engineering
Ulteig Engineering - Sioux Falls
Ultimate Construction Inc. of USA
UND Aerospace Foundation
UND Foundation
United Grain Corporation
United Grain Cooperative
United Grain Holdings, Inc.
United Grain Stockyard
United Grain Terminal
United States Air Force - Cavalier
United States Air Force - Minot
United States Customs and Border Protection
Universal Homes, Inc.
University Commons LLC
University of ND
University of North Dakota
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The department mailed notifications to the local health units throughout the state. The following are copies of the letters which were mailed to the local health units:
January 6, 2015

Renae Moch
Bismarck Burleigh Public Health
PO Box 5503
Bismarck, ND 58506-5503

RE: Public Notice for your North Dakota Pollutant Discharge Elimination System (NDPDES) Permit(s) to the Local/District Health Units

This Department is informing you of the pending Public Notice for the issuance/reissuance of the following NDPDES permit(s) within your health district or coverage area.

<table>
<thead>
<tr>
<th>Permit Number</th>
<th>Name</th>
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<tbody>
<tr>
<td>NDR10</td>
<td>NDPDES Construction Stormwater General Permit</td>
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Viewing and printing of the Public Notice(s) can be done on our website at: www.ndhealth.gov under Current Issues-Public Notices.

Note that any questions, comments, or suggestions concerning the public notice will be taken into consideration if they are received by our office on or before 2/21/2015. We have also arranged to have the public notice printed in either the permittees local, regional, or official county newspaper.

Should you have any questions concerning the public notice please contact the Division of Water Quality-NDPDES Permits Program at 701.328.5210. We will promptly provide you with any additional information.

North Dakota Dept of Health
Division of Water Quality
NDPDES Permits Program
January 6, 2015

Anton Sattler
Bismarck Environmental Health Division
1020 E Central Ave
Bismarck, ND 58501

RE: Public Notice for your North Dakota Pollutant Discharge Elimination System (NDPDES) Permit(s) to the Local/District Health Units

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January 6, 2015

Terri Gustafson
Cavalier County Health District
901 3rd St Suite 11
Langdon, ND 58249

RE: Public Notice for your North Dakota Pollutant Discharge Elimination System (NDPDES) Permit(s)
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North Dakota Dept of Health
Division of Water Quality
NDPDES Permits Program
January 6, 2015

Marcie Bata
Central Valley Health District
122 2nd St NW
Jamestown, ND 58401

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Division of Water Quality
NDPDES Permits Program
January 6, 2015

Theresa Will
City County Health District
230 4th St NW Rm 102
Valley City, ND 58072-2947

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Division of Water Quality
NDPDES Permits Program
January 6, 2015

Aaron Johnson
Custer Health
210 2nd Ave NW
Mandan, ND 58554

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North Dakota Dept of Health
Division of Water Quality
NDPDES Permits Program
January 6, 2015

Roxanne Holm
Dickey County Health District
PO Box 238
Ellendale, ND 58436

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Environmental Health Section Chief’s Office 701-328-5150
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Division of Waste Management 701-328-5166
Division of Water Quality 701-328-5210

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January 6, 2015

Bev Voller
Emmons County Public Health
PO Box 636
Linton, ND 58552-0636

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Grant Larson
Fargo Cass Public Health
401 3rd Ave N
Fargo, ND 58102-4839

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Jim Heckman
First District Health Unit
PO Box 1268
Minot, ND 58702-1268

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Lisa Solwey
Foster County Public Health
881 Main St
Carrington, ND 58421

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Javin Bedard
Grand Forks Public Health Dept
151 S 4th St Suite N301
Grand Forks, ND 58201-4735

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Janel Brousseau
Kidder County District Health Unit
422 2nd Ave NW
Steele, ND 58482

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Allen McKay
Lake Region District Health Unit
524 4th Ave NE Unit 9
Devils Lake, ND 58301

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Tony Hanson
Lamoure County Public Health Dept
PO Box 692
LaMoure, ND 58458

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Division of Municipal Facilities
Division of Waste Management
Division of Water Quality
January 6, 2015

Cheryl Reis-Schilling
McIntosh District Health Unit
511 3rd Ave NW
Ashley, ND 58413-7131

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Julie Ferry  
Nelson Griggs District Health Unit  
PO Box 365  
McVille, ND 58254

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Jeanna Kujava
Pembina County Health Dept
301 Dakota St W #2
Cavalier, ND 58220-4100

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Brenna Welton
Ransom County Public Health Dept
PO Box 89
Lisbon, ND 58504

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Debra Flack
Richland County Health Dept
413 3rd Ave N
Wahpeton, ND 58075

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Alison Perleberg
Sargent County District Health Unit
PO Box 237
Forman, ND 58032-0237

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Kevin Pavlish
Southwestern District Health Unit
2869 3rd Ave W
Dickinson, ND 58601

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North Dakota Dept of Health
Division of Water Quality
NDPDES Permits Program
January 6, 2015

Brittany Ness  
Steele County Public Health Dept  
PO Box 317  
Finley, ND 58230

RE: Public Notice for your North Dakota Pollutant Discharge Elimination System (NDPDES) Permit(s) to the Local/District Health Units

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Environmental Health  
Section Chief’s Office  
701-328-5150

Division of Air Quality  
701-328-5188

Division of Municipal Facilities  
701-328-5211

Division of Waste Management  
701-328-5166

Division of Water Quality  
701-328-5210

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January 6, 2015

Sherry Walters
Towne County Public Health District
PO Box 705
Cando, ND 58324-0705

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North Dakota Dept of Health
Division of Water Quality
NDPDES Permits Program
January 6, 2015

Brenda Stallman
Traill District Health Unit
PO Box 58
Hillsboro, ND 58045

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January 6, 2015

Laurie Kok
Upper Missouri District Health Unit
110 West Broadway Suite 101
Williston, ND 58801

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Wanda Kratochvil  
Walsh County Health District  
638 Cooper Ave Ste 3  
Grafton, ND 58237

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January 6, 2015

Karen Volk
Wells County District Health Unit
PO Box 6
Fessenden, ND 58438

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Division of Water Quality
NDPDES Permits Program
The department mailed notifications to federal agencies and other interested parties which had requested to be placed on the mailing list. The following are copies of the letters that were mailed:
January 6, 2015

Kelly McPhillips
Bureau of Reclamation
PO Box 1017
Bismarck, ND 58502-1017

RE: Public Notice for your North Dakota Pollutant Discharge Elimination System (NDPDES) Permit(s) to Government Entities, Border States/Provinces and Interested Parties

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NDPDES Permits Program
January 6, 2015

Don Morrison
Dakota Resource Council
1200 Missouri Ave Suite 102
Bismarck, ND 58504

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701-328-5210
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Al Grasser
Grand Forks City of
PO Box 5200
Grand Forks, ND 58206-5200

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January 6, 2015

Dwight Williamson
Manitoba Water Stewardship
200 Saulteaux Crescent
Winnipeg, MB R3J 3W3

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Tom Reid
Montana Dept of Env Quality
PO Box 200901
Helena, MT 59601-0901

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Will Haapala
MPCA-NW Region
714 Lake Avenue # 220
Detroit Lakes, MN 56501

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Ed Murphy
ND Geological Survey
600 East Boulevard
Bismarck, ND 58505

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January 6, 2015

Kathy Duttenhefner
ND Parks and Recreation
1600 East Century Ave Suite 3
Bismarck, ND 58503

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Sam Ferris  
Saskatchewan Ministry of Environment  
420-2365 Albert St  
Regina, SK S4P 4K1  

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Kelli Buscher
South Dakota Dept of Env/Nat Resources
523 E Capitol
Pierre, SD 57501

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Col Joel Cross
US Army Corps of Engineers Omaha District
Omaha, NE 68102

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Col Dan Koprowski
US Army Corps of Engineers St Paul District
St Paul, MN 55101-1678

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Jeff Towner
US Fish and Wildlife Service
3425 Miriam Ave
Bismarck, ND 58501

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Division of Water Quality
NDPDES Permits Program
It is also important to note that the department has not created any new laws. The department is reissuing a general permit as required by 40 CFR § 122.46. The North Dakota law which regulates the North Dakota Pollution Discharge Elimination System permits (N.D. Admin Code 33-16-01) has been in effect since 1975, when the state was granted primacy over the National Pollution Discharge Elimination System.

Comments from the North Dakota Petroleum Council

1. **Comment:**

Comment to North Dakota Department of Health, Division of Water on the 2015 proposed permit for stormwater discharges associated with construction activity, NDR10-0000:

We respectfully request the oil and gas permitting exemption be applied to both large and small oil and gas construction projects. We request this change as it is consistent with the Federal NPDES exemption. Additionally, EPA has stated about this exemption: “The CSW exemption at 402(l)(2) prohibits states from permitting these activities through a federally approved NPDES program” (August 2006).

The Energy Policy Act of 2005 (EPAct) extended the NPDES exemption to the construction of oil and gas facilities by defining the term "oil and gas exploration, production, processing, or treatment operations or transmission facilities" to mean "all field activities or operations associated with exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activity" (33 U.S.C. § 1362(24)). This definition applies to all construction activities, regardless of size.

The EPA’s 2006 rules implementing the EPAct expanded on it by creating a sediment rule. Even though the 9th Circuit Court of Appeals struck down the EPA’s regulations implementing and expanding the EP Act, the Court did not strike down the EPAct definition. Therefore, as the EPA’s current NPDES Stormwater website states:

“No that the 2006 rule has been vacated, the effective requirements are the regulations in place prior to the 2006 rule plus the additional Energy Policy Act clarification of the activities included in the CWA 402(l)(2) exemption.” (emphasis added)

EPA has continued to recognize the validity of the oil and gas exemption established by the EPAct. Therefore a state may not utilize a federally delegated NPDES program to require a permit for these exempt activities.
Response:

The department intends to continue requesting stormwater permit coverage for construction activity for oil and gas exploration, production, processing, or treatment operations or transmission facilities which discharge contaminated stormwater. The version of the federal rules incorporated by reference into North Dakota’s rules is the federal rules as they existed on October 1, 2002 (N.D. Admin. Code § 33-16-01-01(5)). EPA’s 2006 rule was vacated in November of 2008. With the rule rescinded, the permitting requirements were reverted back to the requirements in place prior to the 2006 rule, plus the Energy Policy Act’s amendment clarifying that construction activities are included in the CWA § 402(I)(2) exemption for uncontaminated discharges. This would require operators with contaminated discharges, including sediment, to submit a permit application. The term “contaminated” is not defined in the CWA or 1990 Rules. But 40 CFR § 122.26(c)(1)(iii) lists the circumstances that indicate a facility’s discharge may be contaminated and requires operators of such facilities to apply for a stormwater permit. Specifically, oil and gas facilities must apply for a stormwater permit if the facility has: (1) discharged stormwater “resulting in the discharge of a reportable quantity for which notification is or was required” under 40 CFR §110.6, 117.21, or 302.6; or (2) contributed to a water quality standard violation. These operators would be considered to be engaging in industrial activity.

North Dakota Administrative Code § 33-16-02.1-11(2) prohibits the discharge of untreated industrial waste to waters of the state. Waste is defined in N.D.C.C. § 61-28 as “all substances which cause or tend to cause pollution of any waters of the state, including, dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radiological materials, heat, wrecked or discarded equipment, rock, sand, and cellar dirt and industrial, municipal, and agricultural pollution discharged into any waters of the state.

Therefore, any sediment or industrial pollution discharged to a water of the state would constitute a water quality violation, which would trigger the operator to be considered an industrial activity, subject to NPDES permitting in the state of North Dakota.

In response to this comment, the department changed the following areas of the permit:

Added Part I(A)(2)(c), which reads:

Discharges of stormwater from oil and gas exploration, production, processing or treatment operations, or transmission facilities composed of contaminated runoff by

33 North Dakota Century Code § 61-28 defines a water of the state as “all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, and all other bodies or accumulations of water on or under the surface of the earth, natural or artificial, public or private, situated wholly or partly within or bordering upon the state, except those private waters that do not combine or effect a junction with natural surface or underground waters just defined.

34 North Dakota Administrative Code § 33-16-02.1-04(7) defines pollution as “contamination, or other alteration of the physical, chemical, or biological properties, of any water of the state, including change in temperature, taste, color, turbidity, or odor. Pollution includes discharge of any liquid, gaseous, solid, radioactive, or other substances into any waters of the state that will or is likely to create nuisance or render such waters harmful, detrimental, or injurious to public health, safety, or welfare; domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; or livestock, wild animals, birds, fish, or other aquatic biota.
contact with or that has come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

Part I(D)(4) to read:

For oil and gas exploration, production, processing, treatment operations, or transmission facilities, which discharge contaminated stormwater, permit applications may be submitted for individual project sites or for an area of operations such as well field or by county.

2. Comment:

Karl Rockeman
Division of Water Quality
North Dakota Department of Health
918 East Divide Ave-3rd Floor
Bismarck, ND 58501-1947

RE: Comments on NDR10-0000:

Dear Mr. Rockeman;

The North Dakota Petroleum Council (NDPC) is a trade association that represents more than 550 companies involved in all aspects of the oil and gas industry including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oil field service activities in North Dakota, South Dakota, and the Rocky Mountain Region. Petroleum Council members produced 98% of the oil produced in North Dakota in 2014.

NDPC members appreciate the time and effort that the North Dakota Department of Health put into the proposed rulemaking on NDDES. We recognize that robust rulemaking that will stand the test of time is no easy task.

The membership of NDPC appreciate the opportunity to provide comments on the document and would like to request a public hearing as an additional opportunity to enter into further discussion with the North Dakota Department of Health on this important topic. To formulate comments on behalf of the industry, the NDPC solicited input from our member companies but due to the short
timeframe atypical of the North Dakota rulemaking process, the oil and gas industry has not had sufficient time to provide comprehensive comments.

Rules governing this process lapsed on September 30th, 2014. Consequently, the North Dakota Department of Health has utilized five months to formulate a new rulemaking language on this subject for 30-23-10. Though the law states that 30 days is the minimum requirement for a comment period for new rules, ND DoH has consistently allowed longer comment periods. Most recently, the ND DoH allowed a sixty day comment period for a proposed rulemaking on TENORM with three public hearings across North Dakota, after which it extended the comment period an additional six weeks to allow for comprehensive public input.

The new SWPPP affects not only the oil and gas industry in North Dakota but all construction projects, homebuilders, general contractors and industry contractors across our state. Given the unprecedented construction ongoing in North Dakota, allowing more input from these entities would appear to be warranted.

The Energy Policy Act of 2005 (EP Act) extended an NPDES oil and gas exemption to the construction of oil and gas facilities by defining the term "oil and gas exploration, production, processing, or treatment operations or transmission facilities" to mean "all field activities or operations associated with exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activity" (33 U.S.C. § 1362(24)). This definition applies to all oil and gas construction activities, regardless of size.

Additionally, the EPA has stated about this exemption: “The CSW exemption at 402(l)(2) prohibits states from permitting these activities through a federally approved NPDES program” (August 2006).
NDPC requests the oil and gas permitting exemption be applied to both large and small oil and gas construction projects on the basis that an exemption is consistent with the Federal NPDES exemption.

The EPA’s 2006 rules implementing the EP Act expanded on it by creating a sediment rule. Even though the 9th Circuit Court of Appeals struck down the EPA’s regulations implementing and expanding the EP Act, the Court did not strike down the EP Act definition. Therefore, as the EPA’s current NPDES Stormwater website states:

“Now that the 2006 rule has been vacated, the effective requirements are the regulations in place prior to the 2006 rule plus the additional Energy Policy Act clarification of the activities included in the CWA 402(l)(2) exemption.”

EPA has continued to recognize the validity of the oil and gas exemption established by the EP Act. Therefore a state may not utilize a federally delegated NPDES program to require a permit for these exempt activities.
Thank you for your consideration of NDPC’s comments;

Kari Cutting
Vice President

**Response:**

Please refer to the response to Continental Resources, Inc and the response to comment 1.

3. **Comment:**

Part II(C)(4)(d)

Installation of erosion and sediment controls during periods of heavy snow contradict manufacturer and engineering principles associated with installation. Since installation of BMPs would not occur in accordance to good engineering practices, the permit indicates the operator will need to replace or modify the control. This places additional economic burden on the operator. First, installing BMPs ineffectively in winter and second, replacing BMPs once site conditions improve (see further related comments on page 26; Winter Sediment and Erosion Control Installation Examples).

**Response:**

In accordance with Part II(C)(4)(d) of the permit, the permittee may deviate from the manufacturer’s specifications. In addition, Part II(C)(4)(a)(5) requires that seasonal conditions should be considered while selecting erosion and sediment controls.

4. **Comment:**

Part III(A)(1)

It is recommended that the trigger for post-storm event inspections be restored to 0.5 inches of rain. The shrinking rain event inspections from 0.5 to 0.25 inches will increase the number of inspections required to comply with the new rule and is unnecessarily burdensome without providing appreciable incremental protection of the environment. Previously inspections were required every 14 days and within 24 hours of a .5” rainfall event, because 0.5” of rainfall is the threshold EPA has identified as the size of a storm event likely to cause erosion.

It is also recommended that the permit incorporate the option for an alternate inspection schedule allowed by EPA, which consists of performing inspections at least every 7 days but does not require post-storm event inspections. Under some circumstances, an operator might find it more practical to allocate manpower and ensure compliance by performing inspections on a routine basis as allowed by this alternative.

**Response:**

It is the intent of the permit to reduce erosion of exposed soils. To reduce the potential for pollutants to be discharged to a water of the state, sediment controls must be maintained so
they function properly to remove sediment, dislodged due to erosion, from stormwater runoff.

The department reviewed the rainfall data from the Watford City 2E weather station (the center of the Bakken and referenced in comment 5 below) for the years 2009 through 2014. During this period there were a total of 357 documented rainfall events. Based upon the 0.5 inch inspection trigger, only 13% of those rainfall events were covered. This left a significant number of rainfall events which could potentially have BMPs not functioning properly, resulting in an increased potential for pollutants to be discharged from the site. This would go against the intent of the permit. Moving the inspection trigger to 0.25 inches of rainfall would incorporate 27% of the rainfall events. For the number additional inspections triggered by this change please refer to our response for comment 5.

Dependent upon duration and intensity, rainfall events between 0.25 and 0.5 inches of rainfall have the potential to compromise BMPs on site. Given these circumstances, inspections would be warranted to ensure the proper function of the selected BMPs on-site. By increasing the inspection frequency, non-functional BMPs would be identified and corrected sooner, resulting in less pollutants being discharged from the site. The department intends to leave the current language.

The department intends to leave the current language for inspection schedules. With the proposed alternative of performing inspections at least every 7 days but not requiring post-storm events, it would not be consistent with the maintenance requirements of Appendix 1(B)(a). If multiple rain events were to occur between the scheduled inspections and BMPs became non-functional due to the first storm event, there would be an increased potential for sediment to be discharged during the subsequent storm events. This would be against the intent of the permit, which is to reduce the amount of pollutants discharged from construction sites to waters of the state. Providing the alternative inspection schedule would allow for potential permit and water quality violations.

5. **Comment:**

Part III(A)(1)(a)

Previous interpretation of this section indicated inspection as soon as practicable AFTER rainfall event had occurred (and stopped). The Fact Sheet for NDPDES Permit NDR 10-0000 indicates that the NDDH has modified the storm event frequency requirement to include all storms events of greater than 0.25 inches of rainfall per 24-hour period in order to follow monitoring requirements based in the 2012 US EPA CGP Part 4.1.2.2. The fact sheet for this permit indicated that EPA bases the increased inspection frequency on the percentage of storms included in a performance evaluation that is intended under the storm-based inspection schedule. This evaluation compared the number of 0.25 and 0.5 inch storm depths in three states and indicated that inspections would be required for 10-47 percent of all rainfall events depending on the state. EPA also indicated that this would require an additional 2.3 additional inspections per permittee each year.

Oil drilling and production activities in the Bakken include thousands of well locations that are covered under NDR 10-0000. Individual operators may have 500 or more locations that are either under active construction requiring a 14 day inspection schedule, or being
monitored on a monthly schedule until final stabilization is achieved. Well locations are often spread out across a large geographic area limiting the number of locations that could be inspected within 24 hours after a storm event. Conducting timely inspections within 24 hours for such a large number of well locations is not practicable due to factors including the availability of qualified inspectors, travel distance between well locations, and adverse road conditions that limit site access.

In order to quantify the increased storm event inspection requirement for the proposed CGP, data from the North Dakota Agricultural Weather Network for the Watford City 2E weather station was evaluated (http://ndawn.ndsu.nodak.edu/get-monthly-report.html). Data from the past 24 months available for this station documented a total of 120 rainfall events during the non-winter months (April to October). During this period, the proposed increased inspection requirement (0.25 inch rainfall compared to the 0.5 inch event) would increase the required inspections from 15 to 37 events for the period of record at this location. This represents a 147% increase in rainfall events that would require inspections. The distribution of storm events for the Watford City 2E station for each month during the 24 month period is presented in the following table.

Storm Events Data, Watford City 2E 0.25 inches of rainfall or greater (February 2013 to January 2014):

<table>
<thead>
<tr>
<th>Month</th>
<th>Events &gt; 0.25&quot; 24-Month Period</th>
<th>Annual Events/Month</th>
</tr>
</thead>
<tbody>
<tr>
<td>April</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>May</td>
<td>10</td>
<td>5</td>
</tr>
<tr>
<td>June</td>
<td>8</td>
<td>4</td>
</tr>
<tr>
<td>July</td>
<td>3</td>
<td>1.5</td>
</tr>
<tr>
<td>August</td>
<td>8</td>
<td>4</td>
</tr>
<tr>
<td>September</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>October</td>
<td>2</td>
<td>1</td>
</tr>
</tbody>
</table>

For the 2 year period based on data from the Watford City 2E weather station, inspections for an average of 18.5 storm events (0.25 inch) would be required during the non-winter months each year. A maximum of 4-5 inspections per month during May, June and August would be required as indicated above. This would result in additional cost for inspection above that for the 2007 CGP and the 14 day inspection schedule. Additional inspections would be required if multiday storms greater than 0.25 inches of rainfall occur further escalating cost for inspections and requiring additional resources. The Watford City 2E data presented above represents a small period of record for that specific area in the Bakken field and is presented to illustrate the increased inspection requirement relative to the proposed increased inspection requirement. Climate and rainfall will vary spatially across the state and from year to year.

**Response:**

It is the intent of the permit to reduce the amount of pollutants discharged to waters of the state. The department reviewed the daily rainfall amounts for the years of 2009 through 2014 from the North Dakota Agricultural Weather Network for the Watford City 2E weather
station. In accordance with this data, 52 additional inspections would be incurred over the 6 year period. This amounts to an average of 16 additional inspections per year or 1.38 additional inspections per month. This would only pertain to locations which use the Watford City 2E weather station as the designated rain gauge location. It is important to note that in the Bakken region final stabilization can be achieved when:

“[A]ll soil disturbing activities at the site have been completed and temporary erosion control measures . . . and stabilization methods are selected, designed, and installed along with an appropriate seed base to provide erosion control for at least three years and achieve 70 percent of the pre-existing vegetative cover within three (3) years” (please refer to Part II(E)(2) of the permit).

When locations meet the requirements of final stabilization, inspections can be suspended in accordance with Part III(A)(6) of the permit. It is recommended that site planning be adjusted so that locations meet the final stabilization requirements faster, thus reducing the number of inspections required by the permit. In accordance with Part III(A)(2) if site access constraints don’t allow for an inspection to be conducted at the specified time, documentation must be provided which describes why the inspection could not be performed at the specified time and must be recorded on the next inspection record.

6. **Comment:**

Section III(1)(a)
Completing multiple inspections during the same rainfall event is not practical nor is it productive. The draft permit would require repeat inspections during inclement weather. Any issue identified during a first inspection cannot not be corrected until site conditions allow access. Most, if not all, BMP installation cannot take place until a site is dry. Any dirt disturbance that occurred during the rainfall would need to be smoothed before installing erosion or sediment controls. Finally, as with winter installation of sediment and erosion controls, SWPP inspections during a storm may have an impact on worker safety. Many of these locations are remote and would require the inspectors to drive on potentially slick, dangerous roads.

**Response:**

Part III(A)(1)(a) of the permit states:

“If there is a storm event at your site that continues for multiple days, and each day of the storm produces 0.25 inches or more rain, you are required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm.”

This means that if a storm event meets these criteria, only two inspections would need to be conducted. The purpose for multiple inspections is to ensure that installed BMPs are function properly during the storm event as required in Part II(C)(4)(f) and Appendix 1(B)(1) of the permit.
Please refer to Part III(A)(2), Part III(A)(7) of the permit, and the response to the NDDOT comment 74, which discuss when inspections may not be practicable and when they may be suspended.

7. Comment:

Part III(A)(7)
The permit allows operators to suspend inspections in winter months as frozen ground conditions limit the amount of sediment leaving sites. If the permit contemplates frozen ground conditions as a natural form of stabilization, a strict 14 day window for implementation of erosion and sediment controls is unnecessary. Given this exemption, it is logical to conclude that the draft recommendations are not needed in the winter as sediment is at low risk to movement.

Response:

In accordance with the definition of “stabilized” in Part V of the permit, snow cover and frozen ground conditions are not considered to be stabilized. Due to the semi-arid climate in the western part of the state, there is a high potential for the lack of snow cover. Soils are susceptible to erosion due to wind and snow melt. Winter stabilization techniques must be utilized.

8. Comment:

Part V
Definition “stabilized” does not allow acknowledgement of winter conditions that prevent operators from continuing proper reclamation.

Response:

Please refer to the response to comment 7.

9. Comment:

Part V
Steep slopes are defined in the proposed permit as slope greater than 15 percent grade. This is less than a 6:1 slope angle and is not that steep compared to road cuts and fill slopes that may be constructed at much steeper angles. NDDH may consider removing the reference and definition to steep slopes from the CGP or to redefine steep slope as 3:1 or greater in order to provide consistency throughout the CGP.

Response:

Please refer to the response to comment 87 from the NDDOT.

10. Comment:
Appendix 1(A)(1)
The proposed inspection schedule for storm events exceeding 0.25 inches of rainfall should be waived for projects when sediment basins are included in the SWPPP. The volume of runoff anticipated for the 0.25 inches of rainfall would represent only a small volume of the basin capacity (likely less than 10%) and sediment discharge from the basin outfall would be highly unlikely.

Response:
In accordance with Part II(C)(7) of the permit, the erosion and sediment controls identified in the SWPPP must be inspected to ensure they are operating correctly and are in serviceable condition. This includes sediment basins.

11. **Comment:**

Appendix 1(A)(3)
Timetable requirements coupled with percent coverage on the vegetation stabilization is unreasonable. The draft permit requires operators to stabilize the site within 14 days of construction completion. A blanket 14 day stabilization requirement is overly broad as it does not consider seasonal differences in oil and gas operations. It is nearly impossible to execute proper reclamation during the winter months for a multitude of reasons (see Winter Sediment and Erosion Control Installation Examples).

First, an inflexible 14 day timetable has the potential to jeopardize worker safety. Operations may have “temporarily ceased” due to unsafe weather conditions. However, the stabilization requirement does not contemplate this possibility. Working in frozen conditions creates a higher risk for worker injury. Not only are slips, trips, and falls a concern, but heavy equipment cannot operate safely on frozen slopes.

Second, the draft permit would require operators to install erosion and sediment controls during periods of heavy snow. Not only would this be ineffective, it directly contradicts recommended manufacturer and engineering practices associated with installation. Specifically, the permit recommends mulch, staked sod, riprap, and erosion control blankets as good options when considering site stabilization. Manufacturer guidelines, however, dictate proper site conditions and appropriate weather for proper installation.

Response:
In accordance with Part V, “stabilized” is defined as:

"[E]xposed ground surface has been covered by appropriate materials such as mulch, staked sod, riprap, erosion control blanket, or other material that prevents erosion from occurring. Grass seeding alone is not stabilization. Snow cover and frozen ground conditions are not considered stabilized."
As provided in the definition of stabilized, percent coverage for vegetation is not part of the definition of “stabilized.” In addition, in response to NDDOT comment 93, the department has added a paragraph which addresses circumstances for when stabilization requirements of the permit cannot be met (refer to NDDOT comment 93).

The permittee needs to take into consideration seasonal conditions while selecting appropriate BMPs as per Part II(C)(4)(1) of the permit. If construction is to occur during the winter months, permittees need to plan accordingly and properly select erosion and sediment controls for season in which the construction activity will take place. In accordance with Part II(C)(4)(d) of the permit, the permittee may deviate from the manufacturer’s specifications. This allows for installation methods to be developed for installation during frozen ground conditions. For example, if erosion control blanket is to be installed during the winter, there are multiple options which could be used for securing the blanket. One option would be to place sand bags on top of the blanket. Another option would be to pre-drill holes so that the blanket can be stapled.

12. Comment:

Appendix 1(A)(3)
Winter Sediment and Erosion Control Installation Examples:

During frozen conditions, soil is removed in layers but often is removed in large clumps that are difficult to spread. Topsoil is stockpiled until Spring when seeding conditions are ideal. Once pad slopes are formed, they are tracked. Track slopes provide a solid base and freeze leaving sediment in place (see attached pictures of winter tracked slopes). As discussed above, the general permit indicated mulch, staked sod, riprap, erosion control blanket are good options when considering site stabilization.

- **Mulch**
  - Straw mulch is commonly sprayed onto the ground and can only be applied on a calm day as wind will blow the straw offsite. Manufacture guidelines dictate crimping the straw into the slopes. During winter months, frozen ground conditions make crimping the straw an impossibility. The DoH acknowledged this during an office visit from the Oasis regulatory team on 2/12/15. Given these facts, mulch could not be used during winter.

- **Staked sod**
  - Using sod on any construction site can be very costly and is often difficult to get in sufficient quantities. It is also impractical for winter months. The sod would not survived extreme temperatures and, therefore, would not provide any stabilization as the root system would not be able to penetrate the ground. Staking sod would also not be possible give the ground conditions.

- **Riprap**
  - For proper installation, geotextile fabric is required to be place on a smoothed area. Riprap is placed on top. Riprap is very effective for stabilizing drainage ditches, but would not be feasible for stabilizing an entire site.

- **Erosion Control Blanket**
  - Manufacturer guidelines call for smooth slopes in order to install blanket properly. The blankets must be overlapped and stapled in the ground – an impossible feat when the ground is frozen. For proper reclaim, seeding should occur under the blanket. During winter
months, seeding in not practical on rough, frozen slopes. Finally, installation of blankets requires physical labor along the slopes. There is a higher risk of injury during winter installation.

- Hydroseeding
  - Hydroseeding is applied using water and tackifier to adhere to slopes. Although good for steep, rough slopes, winter conditions would cause the water to freeze up and could damage equipment.

As indicated above, ineffective or improper usage of BMPs requires the operator to replace or modify the control. Thus the draft permit places yet an additional unnecessary burden on the operator: forcing improper installation of BMPs in the winter and replacing BMPS once site conditions improve.

In the winter time, when traditional BMPs installation is impracticable, perimeter controls and slope tracking is a viable mitigation option. The flexibility offered in the current permit better reflect reality without sacrificing SWPPP integrity.

Winter Tracked Slopes:
Response:

As per the response to comment 12, tracked slopes do not meet the definition of stabilized (refer to the response for comment 11). Tracked slopes still leave soil exposed, leaving it susceptible to wind and snowmelt erosion.

As mentioned in the response to comment 11, Part II(C)(4)(d) of the permit allows for permittees to deviate from manufacturer’s specifications. The installation of any BMP during the winter is difficult unless proper planning and installation methods are used. As stated in the previous response, erosion control blanket can be installed by pre-drilling for the staples, or placing sand bags on top of the blanket to anchor it down. The permittee would then need to come back in the spring to seed and re-stabilize the site. Instead of trenching in silt fence, sand bags may be placed on the bottom of the fabric and the stakes can be pre-drilled or the ground could be thawed in order to install the stake. Rebar stakes can be used to install waddles instead of wood stakes. As required in Part II(4)(a)(5), permittees need to plan accordingly for seasonal conditions in which their construction activity will be taking place.

The 2009 CGP extended permit still required that exposed soils needed to be stabilized. The current permit establishes a time frame, and still allows for permittees to deviate from the manufacturer’s specifications as the 2009 CGP did.

13. Comment:

Appendix 1(3)(a)
Stabilization activities on steep slopes when activities have been completed or temporarily ceased during frozen ground conditions “winter construction” is not generally considered to be practicable or feasible within a 7 calendar day period. Winter construction is commonly
interrupted during periods of severe weather including snow accumulation and extreme cold. Construction and stabilization of steep slopes during these adverse conditions is limited primarily due to safety, seeding, mulch application, and the installation of some BMPs are not feasible or effective during frozen conditions. Examples of limitations under adverse conditions include the following:

- Topsoil placement on frozen subgrade in steep slope conditions is very dangerous and would likely be in violation of OSHA guidelines.

- The stability of topsoil placed over frozen subgrade may be questionable due to accumulation and ice on the interface. Ripping of topsoil piles would produce large frozen boulders. A roughened interface between the subgrade and topsoil, which would promote stability, would not likely be achieved in the frozen ground. Topsoil would not adhere to the frozen surface. Thawing and runoff during spring conditions may result in seepage and sliding of soil along the interface. Poor soil placement and stability issues would likely result in accelerated erosion during spring thaw and spring rainfall.

- Operation of equipment to place seed, apply straw mulch, hydromulching, or installation of erosion matting during winter conditions is not practicable or feasible. Controlling depth of seed placement would be difficult and would likely result in seeding failures.

- Topsoil spreading during the winter is problematic since grading to achieve the desirable thickness is a problem when the ground is frozen. Large clumps of frozen soil do not breakup easily and would not result in a suitable seed bed.

- Drill seeding into frozen ground is not feasible since the disk will not penetrate the frozen ground allowing seeds to be placed at the proper depth. Seeding equipment is not designed to be operated in frozen conditions. Ice buildup due to frozen conditions will occur on the planters and press wheels that will result to damage to seeders and uneven seed application and seeding at less than optimal depths would result.

- Straw mulch application would be limited to location where access for tractors and mulch spreaders is feasible. Operation of tractors and spreaders on steep slopes would not be possible or safe. Straw crimping in frozen ground conditions would likely produce poor results and blowing would result in significant loss of the applied mulch.

- Other seeding methods such as broadcast seeding would not be optimal and seed applied to the surface could be blown away resulting in patchy germination. Hydromulching in sub-freezing conditions would be problematic since freezing would occur in the pump, piping, and application hose. Hydromulch would freeze on the frozen surface and running may occur after thawing if excessive moisture is present since the tackifier has not setup. The performance for hydromulching during winter conditions would be less than optimal resulting in poor grass establishment.

- Installation of erosion blankets, wattles, erosion logs, silt fence and other stormwater BMP is not feasible in frozen ground. Frozen conditions would be problematic for installing staples, wooden stakes, plowing silt fence, trenching, backfilling and other activities required
to properly install BMPs. Hand trenching required to install fiber wattles would not be practical in frozen conditions.

- Safety is always a concern when working during winter conditions when frozen ground occurs. This would be especially true when attempting to work on steep slopes. Laborers working in such conditions to install BMPs would be exposed to temperatures that may result in frostbite and footing hazards would exist.

**Response:**

Please refer to the response to comment 11 for addresses circumstances for when stabilization requirements of the permit cannot be met. The permit does not require the placement of topsoil; it only requires that exposed soils be stabilized. If it is not viable to place topsoil in the winter, exposed soils must still be stabilized using winter stabilization methods. Seeding could then be conducted in the spring.

Seed broadcasting can also be performed in the winter, it would be recommended that erosion controls be installed using alternative installation methods, as allowed in Part II(C)(4)(d) of the permit, so that the seed would not blow away. Please refer to the responses to comments 11 and 12 for further information on winter stabilization.
Comments from the North Dakota Department of Transportation

February 20, 2015

Mr. Marty Haroldson, NDPDES Program Manager
North Dakota Department of Health
Division of Water Quality
918 East Divide Avenue
Bismarck, ND 58501-1947

NDR10-0000 CONSTRUCTION GENERAL PERMIT 2015 RENEWAL COMMENTS

The North Dakota Department of Transportation (NDDOT) offers the attached comments on the draft 2015 North Dakota Department of Health (NDoH) Construction General Permit. The NDDOT appreciates the opportunity to review and comment on the permit and its provisions. We look forward to the Health Department’s response to the attached comments.

If you have any questions, please call Matt Sperry at 701-328-3486.

WAYDE L. SWENSON, P.E., OFFICE OF OPERATIONS DIRECTOR
80/mjs
1. **Comment:**

   As you read through this permit information, there are numerous references to other documents not provided. What do these other documents state? How do we know the impacts of these references when they are not provided? There could be items in these referenced documents that will dramatically change how the permit is administered.

   **Response:**

   The department is required to include any references to applicable statutory or regulatory provisions and appropriate supporting references which are used as a basis for the draft permit conditions under 40 CFR 124.8(b)(4). Referencing other documents within the permit and fact sheet is an appropriate method for providing the required information. These documents are readily available to the public.

2. **Comment:**

   **Tentative Determinations – Proposed effluents limitations have been made by the Department.** What are these limitations? Many of our locations are in the middle of farm land and much of the water reaching the site originated from this farm land. The expectation of cleaning this water from acres of farm land seems infeasible.

   **Response:**

   As referenced on page 4 of the Fact Sheet, National Pollution Discharge Elimination System (NPDES) permits, including general permits, are required to include effluent limitations. Effluent limitations may be numeric, non-numeric, or water quality based.

   The effluent limitations incorporated into the construction general stormwater permit are non-numeric. These non-numeric effluent limitations consist of the use of erosion and sediment control measures, and the implementation of pollution prevention measures to prevent the discharge of pollutants into waters of the state. These measures are to prevent the mobilization and discharge of sediment and sediment-bound pollutants, and to minimize the exposure of stormwater to construction materials, debris and other sources of pollutants which are present on construction sites.

3. **Comment:**

   Please remove any requirements that are not required by the EPA Construction General Permit.

   **Response:**

   The permit was developed in accordance with 40 CFR 122.44(s), which allows for “additional requirements necessary to achieve the applicable technology-based standards or “best available technology” and “best conventional technology” based on the best professional judgment of the permit writer.”
4. **Comment:**

   It is not clear what/who a “permittee” is nor is there a definition in the document. The document talks about applicants, owners, and operators, and contractors, but not what step or action designates or constitutes a permittee(s). We recommend adding a definition for “Permittee”.

   **Response:**

   The department appreciates the comment. The department has determined that adding a definition for “permittee” would not significantly impact the intent of the permit and will leave the current language.

5. **Comment:**

   There are frequent areas where the permit requires the owner to complete an action, sign something, or furnish information. We understand that as an owner, it does come with responsibilities but tasks will be difficult or impossible to complete. Can these duties be delegated to an Operator?

   **Response:**

   Please refer to Part IV(6) of the permit for information about delegating duties to an operator.

6. **Comment:**

   Section I.A. 1.
   Consider stating that for projects that are on both sides of the Indian Country Boundary both NDDOH and EPA permit is required.

   **Response:**

   In response to this comment, the following sentence was added to provide clarification:

   > If the construction activity is located within the jurisdiction of the state of North Dakota and the United States Environmental Protection Agency, a permit must be obtained from both regulatory entities.

7. **Comment:**

   Section I.A. 3.
   Clarification should be added. If a location is opened for a project it needs to be reclaimed prior to terminating the construction permit or a separate permit is required to allow that site to operate. Two projects cannot pull material from the same site unless it has a stand-alone MINING PERMIT.
Response:

In response to this comment, the following sentences were added to provide clarification:

*The support activities may only be in association with one project. If the support activity is associated with more than one project, a separate stormwater permit (industrial or mining, extraction or paving material preparation) is required.*

8. Comment:

Section I. A. 6.
There is a section in the fact sheet on "Request for Authorization". This section includes much more detail on this 90 day requirement. These details should be included in the permit.

Response:

Information contained in the “Request for Authorization” portion of the fact sheet may be found in Parts I(A)(5) & (6) of the permit.

9. Comment:

Section I. A. 6.
Consider extending this 90 days to 180 days or to the end of the 2015 construction season to allow training to be provided on the new permit requirements. This permit is being reissued at the beginning of a construction season when all projects for that construction season have been planned based upon the existing permit. Requiring compliance with this permit at this time would place undue costs on all projects associated with this permit and delay the completion of those projects.

Response:

Undue costs have not been demonstrated. The department has determined to leave the current language. As stated in the fact sheet, the basis of the grace period is based upon the time requirements for the reissuance of a permit outlined in NDAC 33-16-01-26.1(3), 40 CFR 122.21(C)(1), 40 CFR 122.28(b)(2)(iii), and 40 CFR 122.28(b)(2)(iv).

10. Comment:

Section I. B. 5.
What are the parameters associated with sediment? Please be specific.

Response:

Parameters associated with sediment incorporate any sediment-bound pollutants (e.g. pesticides, herbicides, nutrients, metals, and organics) which may be discharged to a water of the state.
11. Comment:

Section I.B. 8.
Washwater that does not contain detergents used to be allowed to be discharged. Can this still be discharged? If so, clarification as to what wash water cannot be discharged should be included.

Response:

In response to this comment the department change Part I(B)(8) to read:

Discharges of wash water using detergents, wastewater, or sanitary waste.

This was changed in order to provide consistency that the discharge of wash water without using detergents is allowable under Part II(A) of the permit.

12. Comment:

Section I. D. 2. a.
A sentence is missing here that is in the Fact Sheet. "A separate application must be submitted for each project meeting the definition of construction activity." Consider including this sentence in the permit.

Response:

The department appreciates the comment. The department has determined that this comment would not significantly impact the intent of the permit and will leave the current language. The inclusion of this language would significantly increase the amount of applications received by the department (homebuilding, oil and gas, etc.).

13. Comment:

Section I. D. 5.
What is the email address for submittal? This should be included.

Response:

Upon review of the electronic submittal requirements the department changed the sentence to read:

Completed applications and any reports required by this permit shall be submitted to:

This was changed in order to meet the requirements for electronic submittal of documents.

14. Comment:

Section I. E. 1.
This section adds the words "and accepted by the department. The Fact Sheet does not
contain these words. These words should be removed. Sometimes it is months after
submittal that they are accepted by the department. The permittee should not be penalized
for that.

Response:
In response to this comment, the department changed the sentence to read:

Compliance with the conditions of this permit is required until a NOT is submitted to
the department.

This change was made in order to reflect what is verbally told to permittees by the
department due to the back log in processing Notice of Terminations.

15. Comment:

Section II. A.
This section contradicts Section I. B. 8 mentioned above.

Response:

Please refer to the response of comment 11 above.

16. Comment:

Section II.C
Are all contractors and subcontractors listed as permittees in the SWPPP required to sign
the initial NOI?

Response:

Not all contractors and subcontractors are required to sign the initial NOI. Please refer to
Part I(D) of the permit for the NOI process.

17. Comment:

Section II. C. 1. c.
It appears the permit requires a very detailed construction schedule. In the past, it has been
very difficult to get a contractor to put information like this in writing. We request that this
section be simplified as this level of detail for a proposed schedule may be infeasible.

Response:

The timetable is only proposed. The department understands that there may be delays on
construction schedules. If delays occur the SWPPP should be updated as required in Part
II(C)(8)(c) of the permit.
18. **Comment:**

Section II. C. 1. b.
What detail is required for the description of soil?

**Response:**

The soil description should include enough detail to allow for the appropriate selection of erosion and sediment controls for the soil type.

19. **Comment:**

Section II. C. 1. F.
It appears the permit requires a very detailed site map. In the past, it has been very difficult to get a contractor to put information like this in writing. We request that this section be simplified as this level of detail for a site map may be infeasible.

**Response:**

These items were required to be on site maps in the past, but this permit lists the items instead of grouping them together into seven (7) items. An item does not need to be included on the map if it is not applicable to the project. Please refer to Part II(C)(1)(f) of the permit.

20. **Comment:**

Section II. C. 1. F. 6.
The permit asks for pre-existing and final grades. Are lines showing flow direction sufficient?

**Response:**

The permit requires pre-existing and final grades to be shown on a map (as applicable). Part II(C)(1)(f)(4) of the permit requires flow direction. Both items must be shown on a site map. The intent of pre-existing and final grades is to provide considerations for the selection of BMPs as the project starts and moves towards the final grade, and where runoff will be directed as the project progresses.

21. **Comment:**

Section II. C. 1. f. 8.
Are all these items required to be labeled? If so, our maps may be unreadable. We request this requirement be removed.
Response:

These items are not required to be labeled, but must be identified. A standard key may be used to identify these items on a map. These items need to be shown on a map, and must be identifiable. As stated in Part II(C)(1)(f), more than one map may be used.

22. Comment:

Section II. C. 1. F. 15
Is this required for all dewatering discharge points or only ones that discharge off-site?

Response:

This is required for all dewatering discharge points.

23. Comment:

Section II. C. 1. F. 19.
This should say “as part of the permit” not project. These can be part of a project, but covered under separate permits.

Response:

Please refer to Part I(A)(2) and Part I(B)(1) of the permit for information on what types of off-site support activities may be covered under this permit and what types of discharges are not covered under this permit.

24. Comment:

Section II. C. 1. g.
This should say “2000 stream feet”.

Response:

In response to this comment that department has changed the sentence to read:

Projects that discharge stormwater which flows to a water body listed as impaired under section 303(d) of the Federal Clean Water Act due to sediment, suspended solids or turbidity must identify the water body and impairment in the SWPPP.

The department also broke out the TMDL requirements into paragraph h, which reads:

For water bodies which have a TMDL, the SWPPP must describe and conform to the Waste Load Allocations (WLA) of the water body as per Part II(C)(4)(g) of this permit. Information about TMDL allocations may be found at the following website:

This change was made in order to meet the intent of this permit of reducing the discharge of pollutants to waters of the state.

25. **Comment:**

   Section II. C. 2. a.
   This should say “removal (if applicable).”

   **Response:**

   In response to this comment the department has changed to sentence to read:

   "The installation, removal (if applicable), and maintenance requirements of selected Best Management Practices (BMPs) for each phase/stage of construction activity;"

   This change was made due to the fact that some BMPs may be permanent BMPs and would not be removed from the construction site.

26. **Comment:**

   Section II. C. 2. b.
   What is considered appropriate? When exactly would calculations be required?

   **Response:**

   Examples of when calculations should be provided include: designing sediment basins for a 2-year, 24-hour precipitation event; determining appropriate sediment and erosion controls that would function up to a 2-year, 24-hour storm event; and calculating the channel flow from a 2-year, 24-hour storm event of a stream; or any other calculation which affects the selection of BMPs (temporary or permanent) used on a construction project.

27. **Comment:**

   Section II. C. 3. A.
   This should say “someone who meets the requirements of Part II(C)(3)(e) of this permit.”

   **Response:**

   In response to this comment, the department has changed this sentence to read:

   "A knowledgeable and experienced person is someone who meets the requirements of Part II(C)(3)(e) of this permit."

   This change was made to reference the correction section of the permit.
28. **Comment:**

Section II. C. 3. a.
This says "until final stabilization is achieved", but shouldn't this be until an NOT is filed or the permit is transferred? Also, this should indicate that a new person should be identified if the permit is transferred.

**Response:**

In response to this comment, the department changed this sentence to read:

*The SWPPP must identify a person knowledgeable and experienced in the application of erosion and sediment control BMPs who will oversee the implementation of the SWPPP, and the installation, inspection and maintenance of the erosion and sediment control BMPs before and during construction, until a NOT is filed or the permit is transferred.*

This change was made to maintain consistency with other portions of the permit.

29. **Comment:**

Section II. C. 3. a.
Most General Contractors have Sub-contractors that perform work on the job. It is unfeasible, and generally not allowed, to expect the owner of a project to be able to direct sub-contractors as they do not have a contract with the sub-contractors. The chain of responsibility should be developed by the operator or this should be changed just to say that a chain of responsibility shall be developed.

**Response:**

This section is not meant to require owners to direct sub-contractors. It is meant to establish a hierarchy to ensure the SWPPP is implemented. Please refer Part I(D)(2)(a) of the permit which outlines the responsibilities of the owner and operator.

30. **Comment:**

Section II. C. 3. B.
Dust control is generally an air quality issue. How is this a stormwater requirement?

**Response:**

Wind erosion can deposit sediment into or adjacent to waters of the state or curb and gutter systems. If the sediment is deposited adjacent to a water of the state or curb and gutter systems, the next precipitation event has the chance of discharging sediment into the water of the state.
31. **Comment:**

Section II. C. 3. b.
What level of detail is required for dust control and track out information?

**Response:**

The level of detail should be enough to adequately describe the procedures, so that individuals may easily understand and follow the SWPPP.

32. **Comment:**

Section II. C. 3. c.
What is considered proper inspection procedure?

**Response:**

Please refer to Parts II(C)(6) & (7) and Part III of the permit for inspection requirements. Permittees may develop procedures based on these requirements.

33. **Comment:**

Section II. C. 3. d.
This should say “adequate leak and spill protection based upon the type of material and amount stored”

**Response:**

The department has determined that the additional language would not significantly impact the intent of the permit and will leave the current language.

34. **Comment:**

Section II. C. 3.d.
Second paragraph should say “including measures onsite, detailed in the SWPPP”.

**Response:**

In response to this comment, the department has changed this sentence to read:

> The potential discharge of hazardous substances in stormwater discharges shall be minimized by including measures onsite, detailed in the SWPPP to prevent and respond to releases of hazardous substances.

This change was made in order to maintain consistency with the first paragraph of this part.
35. **Comment:**

Section II. C. 3. e.  
What are the minimum requirements for training? What level of detail needs to be provided in the SWPPP?

**Response:**

Part II(C)(3)(e) outlines the minimum requirements for training. The level of detail provided in the SWPPP must provide adequate information which outlines how employees and responsible parties are trained.

36. **Comment:**

Section II. C. 3. e. 1.  
This should say “On-site personnel must know”.

**Response:**

In response to this comment, the department changed the sentence to read:

*On-site personnel must know:*

This was changed as a grammatical correction.

37. **Comment:**

Section II. C. 3. e. 1. b.  
This section says the onsite personnel must understand the requirements as they pertain to their role, but this section says they need to know the location of all BMPs. What if all the BMPs do not pertain to their role? This should say “location of bmps relevant to their role”.

**Response:**

In response to this comment the department has changed Part II(C)(3)(e)(1)(b) to read:

*The location of all BMPs, relevant to their role, identified in the SWPPP; and*

This change was made to provide clarification that this requirement is as it pertains to the on-site personnel’s role in implementing the SWPPP.

38. **Comment:**

Section II. C. 3. E. 1. c.  
This should say “installation, function, maintenance and removal (if applicable)”
Response:

In response to this comment, the department changed this sentence to read:

\[
\text{Correct installation, function, maintenance and removal (if applicable) of BMPs identified in the SWPPP.}
\]

This was changed in maintain consistency with other portions of the permit.

39. **Comment:**

Section II. C. 3. e. 2.
This should say “when to initiate corrective actions, and how to properly document”

**Response:**

In response to this comment, the department changed this sentence to read:

\[
\text{Personnel responsible for performing site inspections must understand when inspections must be conducted (Part III(A)), what must be inspected (Part II(C)(7), how to record findings, when to initiate corrective actions, and how to properly document corrective actions.}
\]

This was changed in order to correct grammatical errors.

40. **Comment:**

Section II. C. 3. f.
Is there a reporting form for this required by the NDDoH? If so, include a reference to the form.

**Response:**

The department does not have a reporting form for this requirement. This requirement must be included in the SWPPP.

41. **Comment:**

Section II. C. 3. g. 2.
Consider revising this to say “must operate the dewatering”.

**Response:**

This requirement is under the dewatering sub-section of the permit, this requirement pertains to dewatering activities. The department has determined that the additional
language would not significantly impact the intent of the permit and will leave the current language.

42. **Comment:**

Section II. C. 3. g. 4. iii.
Is the exact volume necessary? For items such as work area dewatering, it may be impossible to know exact amounts. We request that this be removed. If this is kept, it should be “approximate”.

**Response:**

In response to this comment, the department changed this sentence to read:

*Approximate volume of water discharged,*

This change was made because it was the intent to only have an approximate volume of water discharged from dewatering activities.

43. **Comment:**

Section II. C. 3. g. 4. a. v.
Are there timelines for completing corrections for these items? If there are timelines discussed in other sections include a reference to those sections.

**Response:**

Timelines for completing corrective actions related to dewatering activity have not been established. Please refer to Part II(C)(6) of the permit for maintenance timelines.

44. **Comment:**

Section II. C. 3. g. 4. a. vi.
What is considered a substantial change? Please define.

**Response:**

In response to this permit, the department changed this sentence to read:

*Documentation that the SWPPP has been amended when changes are made to the dewatering activity in response to inspections.*

This change was made to remove the word “substantial” due to possible inconsistencies on what is considered a “substantial” change.

45. **Comment:**

Section II. C. 4. a. 1.
This is not a reasonable expectation as any information provided would be a guess. If this is kept, expectations need to be established as to what information you want.

Response:

This information needs to be considered because there can be multiple precipitation events which are high intensity and short duration, which produce less than the 2-yr, 24-hour storm event precipitation amount. During high intensity, short duration precipitation events, precipitation does not infiltrate the soil as much as during a low intensity, long duration events, which results in higher runoff volumes.

This information needs to be considered for selecting appropriate erosion and sediment controls which will withstand and function properly during multiple precipitation events, such as high intensity, short duration precipitation events. Sediment and erosion controls are expected to withstand and function properly for precipitation events up to a 2-year, 24-hour storm event (Part II(C)(4)(f) of the permit), which includes storm events which are high intensity and short duration, but do not produce the 2-year, 24-hour storm event precipitation amounts.

The department recognizes that weather changes from year to year and cannot always be predicted at the time SWPPP’s are developed. Historical precipitation amounts and storm event amounts can be utilized to assist in selecting appropriate erosion and sediment controls.

46. Comment:

Section II. C. 4. a. 2.
Do all run-on sources need to be named in the SWPPP?

Response:

This is a consideration that should be looked at while selecting appropriate erosion and sediment controls for your site.

47. Comment:

Section II. C. 4. a. 3.
This should say “handled appropriately”.

Response:

The department has determined that adding this language would not significantly impact the intent of the permit and will leave the current language.

48. Comment:

Section II. C. 4. a. 4.
Is there a source for this information that you will accept? If so, please indicate where to obtain this information.

**Response:**

This information can be obtained from the Natural Resources Conservation Service web soil survey or county soil survey books.

49. **Comment:**

Section II. C. 4. b.
The words “before work commences in the area” should be added to this requirement.

**Response:**

The department has determined that this language would not significantly impact the intent of the permit and will leave the current language.

50. **Comment:**

Section II. C. 4. d.
What is the timeline for replacement or modification of controls?

**Response:**

In response to this comment the department made the following changes to the permit:

Added a sentence to Part II(C)(4)(d), and now reads:

_All control measures must be properly selected, installed and maintained in accordance with the manufacturer’s specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately or incorrectly, the permittee must replace or modify the control for site situations. Corrective actions must be made prior to the next anticipated rainfall event of within 24 hours of discovery (whichever comes first) or as soon as field conditions allow. Documentation must be provided in the maintenance records if field conditions do not allow access along with a plan of action for performing maintenance activities._

_The permittee may deviate from the manufacturer’s specifications and erosion and sediment control requirements in Appendix 1 if they provide justification for the deviation and document the rationale for the deviation in the SWPPP. Any deviation must provide equivalent erosion and sediment control._

The last two sentences of Appendix 1(B)(1)(a) were moved to Appendix 1(B)(1), which now reads:
All erosion prevention and sediment control BMPs must be inspected to ensure integrity and effectiveness. All nonfunctional BMPs must be repaired, replaced, maintained or supplemented with functional BMPs. Corrective actions must be made prior to the next anticipated rainfall event or within 24 hours of discovery (whichever comes first), or as soon as field conditions allow access. Documentation must be provided in the maintenance records if field conditions do not allow access along with a plan of action for performing maintenance activities.

Permittee(s) must investigate and comply with the following inspection and maintenance requirements:

These changes were made in order to provide clarification on the intent of the permit.

51. **Comment:**

Section II. C. 4. d.
If something is standard practice for the NDDOT and it is more stringent than manufacturer’s instructions, does this need to be justified each time? For example, the NDDOT uses a different staple pattern from most ECB manufacturers. Does this need to be justified in all SWPPPs for DOT projects?

**Response:**

Each SWPPP is specific to one single project. This would need to be justified in all SWPPPs that the more stringent practice is required by NDDOT. NDDOT is considered a local agency and in accordance with Part II(D) of this permit, all stormwater discharges must comply with the requirements, policies, or guidelines of municipalities and other local agencies.

52. **Comment:**

Section II. C. 4. d.
Who determines if an equivalent control has been provided?

**Response:**

The modified control must provide the same treatment as the control installed per manufacturer’s specifications.

53. **Comment:**

Section II. C. 4. e.
There should be something indicating what should be done if access is prohibited by the landowner.

**Response:**
Please refer to Appendix 1(B)(2) of the permit which discussed access constraints.

54. **Comment:**

Section II. C. 4. f.
For clarity, consider providing the rainfall amounts by county in an appendix.

**Response:**

Rainfall amounts information is readily available to the public. Providing rainfall amounts would be unnecessary due to the information being readily available to the public.

55. **Comment:**

Section II. C. 4. g.
These parameters should match the TMDL requirements from earlier in the permit.

**Response:**

In response to this comment, Part II(C)(4)(g) now reads:

*For projects that discharge stormwater which flows to a water body for which there is a TMDL allocation for sediment and/or parameters associated with sediment transport, the SWPPP must be consistent with the assumptions, allocations, and requirements in the approved TMDL. If a TMDL specifies certain BMPs or controls to meet a WLA applicable to the project’s discharges, the BMPs or controls must be incorporated into the SWPPP. Information about TMDL allocations may be found at the following website: [www.ndhealth.gov/WQ/SW/Z2_TMDL/default.htm](http://www.ndhealth.gov/WQ/SW/Z2_TMDL/default.htm).*

This change was made in order to maintain consistency with Part I(B)(5) of the permit.

56. **Comment:**

Section II. C. 4. g.
There should be a distance requirement on this. Technically, every discharge in the state goes to a TMDL water eventually.

**Response:**

Please refer to the following website for information pertaining to the process of TMDL development and to view US EPA approved TMDL’s:


Not all surface waters have an established TMDL.
57. **Comment:**

Section II. C. 4. g.

The information contained in the Integrated Report is very complicated and difficult for anyone not familiar with 303(d) lists and TMDLs to ascertain what information is relevant. The NDDoH needs to provide a simpler method for permittee’s to search for the receiving stream for their site that will provide the information needed by the permit. With the GIS programs available to the NDDoH, an interactive map system should be created that will facilitate this activity. Permittee’s should not be expected to sort through a 276 page report to locate the information that the NDDoH requires. Training should also be provided by the NDDoH as to how to comply with the requirements of TMDLs.

**Response:**

The Surface Water Quality Program has had an interactive web mapping tool and has provided the information in a GIS format via the ND GIS Hub and Data Portal since 2012.

The interactive mapping tool was built primarily for people who wish to download all the analytical information from our water quality monitoring programs, but it also has an interactive map that users can see the impaired and listed water bodies. The Surface Water Quality Data Portal is here: [http://www.ndhealth.gov/WQ/SW/Z8_SWData/index.html](http://www.ndhealth.gov/WQ/SW/Z8_SWData/index.html). Click on the “Go To Interactive Map” button to open the interactive map. The default is to search for a particular station or analyte.

Based on the DOT comments, it appears that they simply wish to see if a water body is listed or impaired. To do that, click on the Map Layers (on the bottom of the list on the left side of the screen); and then select the “Water Quality Impairment Status.” The “2014 Category for Lakes and Reservoirs” and “2014 Category for Rivers and Streams” represents those water bodies that fall into the 6 categories identified in the Integrated Report, specifically

- a) unclassified,
- b) 1- All beneficial uses attained
- c) 2 – some beneficial uses attained
- d) 4A-TMDL Approved Still Impaired
- e) 4C – No TMDL required, impaired by non pollutant and
- f) 5-303(d) List-Impaired, needing a TMDL

These same layers that are used in the Interactive Web Mapping tool can also be pulled directly into GIS software (such as ArcGIS Desktop) by DOT personnel, or can be downloaded via the North Dakota GIS HUB Data Portal, [https://apps.nd.gov/hubdataportal/srv/en/main.home](https://apps.nd.gov/hubdataportal/srv/en/main.home). The data are called “Assessed Lakes and Reservoirs” and “Assessed Streams and Rivers”. The attribute “CATEGORY” has the codes, 1, 2, 4A, 4C and 5 that are used above.

When requested, the department can provide a training session to interested DOT personnel on how to use the interactive web mapping tool and how to download the information from the Hub Data Portal at a mutually agreed upon time.
58. **Comment:**

Section II. C. 5.
What does this mean? Are permanent structural controls required on all projects? What about areas that are returned to cropland?

**Response:**

Certain projects within a regulated MS4 are required to incorporate post-construction BMPs. Local authorities may require quantity controls, or specific permanent BMPs. If used, these must be incorporated into the SWPPP.

59. **Comment:**

Section II. C. 6.
Clarification should be added to this section detailing what can or cannot be done with respect to a BMP that is no longer functional, but has been replaced or supplemented with additional controls. For example, can a silt fence that is down be left in place if additional controls have been installed or does that violate the requirement that all BMPs must be maintained? Can degradable BMPs such as fiber roll be abandoned once they have been filled in by sediment?

**Response:**

This section requires maintenance in accordance with Appendix 1 of the permit. In response to this comment, the following sentence has been added to Appendix 1(B)(1): 

*If a nonfunctioning BMP is supplemented, the nonfunctional BMP shall be removed.*

Appendix 1(B)(1) will now read:

All erosion prevention and sediment control BMPs must be inspected to ensure integrity and effectiveness. All nonfunctional BMPs must be repaired, replaced, maintained or supplemented with functional BMPs. If a nonfunctioning BMP is supplemented, the nonfunctional BMP shall be removed. Corrective actions must be made prior to the next anticipated rainfall event or within 24 hours of discovery (whichever comes first), or as soon as field conditions allow access. Documentation must be provided in the maintenance records if field conditions do not allow access along with a plan of action for performing maintenance activities.

*Permittee(s) must investigate and comply with the following inspection and maintenance requirements:*

Appendix 1(B)(1)(a) will now read:

*All control devices similar to, and including, silt fence or fiber rolls must be repaired, replaced, maintained or supplemented when they become nonfunctional (torn from...*
FACT SHEET FOR NDPDES PERMIT NDR10-0000
STORMWATER DISCHARGES FROM CONSTRUCTION ACTIVITIES
NORTH DAKOTA POLLUTANT DISCHARGE ELIMINATION SYSTEM (NDPDES)
GENERAL PERMIT NDR10-0000
EXPIRATION DATE: MARCH 31, 2020
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posts, visible tears, etc.). Collected sediment must be removed as it approaches 1/2 of the above ground capacity of the control device.

These changes were made to provide clarification on how supplemented BMPs should be handled. The paragraph addressed maintenance, but not supplementing BMPs. In accordance with Part II(C)(6) of the permit, all BMPs need to be maintained in effective operating conditions. If the BMP is not in effective operating conditions and is supplemented, it should be removed so that it would still not need to be maintained in effective operating condition. This change was made in accordance to maintain consistency with the response to comment 50.

60. **Comment:**

Section II. C. 7.
Areas that have had permanent stabilization measures installed should no longer need to be inspected. This falls in line with the NOT exemption for final stabilization for areas with less than 20 inches of rain per year.

**Response:**

Please refer to Part III(6) of the permit which discusses reduced inspection frequencies.

61. **Comment:**

Section II. C. 8. c.
What is the timeline required for changes and updates to the SWPPP? These timelines need to be established to ensure that there is a specific expectation. It is not feasible to expect a contractor to immediately update a SWPPP. If the controls on site are kept up, there should be a grace period for updates to the SWPPP.

**Response:**

In response to this comment the department Part II(C)(8)(c) now reads:

*The permittee shall amend the SWPPP whenever there is a change in design, construction, operation, maintenance, or BMPs. The SWPPP shall be amended if the plan is found to be ineffective in controlling pollutants present in stormwater. The SWPPP shall be amended as soon as practicable.*

This addition was made to provide clarification on the time requirement for amending the SWPPP.

62. **Comment:**

Section II.D.
Consider a reference to MS4 communities specifically.
Response:

The department has determined that referencing MS4 communities specifically would not significantly impact the intent of the permit and will leave the current language.

63. Comment:

Section II. E. 1.
Does the pre-existing condition need to be documented? If so, how?

Response:

The department will leave the decision to the permittee as to whether to document pre-existing conditions or not and how.

64. Comment:

Section II. E. 1.
Is there a definition of pre-existing?

Response:

Pre-existing would be the conditions prior to the start of construction activity.

65. Comment:

Section II. E. 1. b.
Consider removing the terms synthetic and structural. If not, there should be some statement allowing TRM, transition mats or other synthetic and structural BMPs to remain in place.

Response:

In response to this comment, Part II(E)(1)(b) was revised to read:

*All temporary erosion prevention and sediment control BMPs (such as silt fence) must be removed as part of the site final stabilization; and*

This change was made in order to provide clarification that only temporary BMPs must be removed in order to terminate the permit under this condition.

66. Comment:

Section II. E. 1. b.
Consider adding definitions for temporary BMPs and permanent BMPs.
Response:
The department does not believe it is necessary to define temporary BMPs or permanent BMPs.

67. Comment:
Section II. E. 2.
Remove the word “temporary”.

Response:
In response to this comment Part II(E)(2) now reads:

For areas of the state where the average annual rainfall is less than 20 inches, all soil disturbing activities at the site have been completed and erosion control measures and stabilization methods are selected, designed, and installed along with an appropriate seed base to provide erosion control for at least three years and achieve 70 percent of the pre-existing vegetative cover within three (3) years without active maintenance.

Sites must meet the criteria outlined in items 1(a), (b), and (c) above.

This was changed in order to remove redundancy with Part II(E)(1) of the permit.

68. Comment:
Section II. E. 2.
Define “active maintenance”.

Response:
Active maintenance would be considered maintenance of erosion control or stabilization measures due to a failure that would, or has, led to erosion.

69. Comment:
Section II. E. 3.
This should be clarified. What about crop land that is in a non planted state? If the remainder of the field is just a plowed field, why would the area to be returned need to be seeded? What if it is out of the seeding dates for that particular crop? You don’t seed corn in September.

Response:
In response to this comment, Part II(E)(3) was changed to read:

Disturbed areas on land used for agricultural purposes that are restored to their pre-construction agricultural use are not subject to these final stabilization criteria.
If the construction activity removed standing crop, the area must be restored in accordance with the landowner.

Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to waters of the state, and areas which are not being returned to their pre-disturbance use must meet the final stabilization criteria in (1) or (2) above.

This was changed to meet the intent of the permit, which was to return it back to what it was or provide stabilization if the land is not returned back to pre-construction conditions.

70. **Comment:**

Section II. E. 3.
Are you asking for native seed? What if the landowner wants to develop the property? Will it need to be seeded first?

**Response:**

Please refer to the response to comment 69 above.

71. **Comment:**

Section III. A.
Consider referencing “Upset Conditions” in this section.

**Response:**

The department has determined that referencing “Upset Conditions” in this section would not significantly impact the intent of the permit and will leave the current language.

72. **Comment:**

Section III. A. 1.
Define “active construction”. If activity has been suspended in an area, can these areas be skipped and only the areas where activity is taking place be inspected?

**Response:**

In response to this comment, Part III(A)(1) now reads:

*Inspections shall be performed by or under the direction of the permittee at least once every 14 calendar days and within 24 hours after any storm event of greater than 0.25 inches of rain per 24-hour period. Inspections are only required during normal working hours. The permittee shall use a rain gauge on-site or utilize the nearest National Weather Service precipitation gauge station. Rain gauge locations or stations must be representative of the site.*
This change was made to remove the ambiguity of what was considered “active construction.”

73. Comment:

Section II. A. 1. a.
The federal permit has a better explanation for multi-day rain event inspections. This explanation should be used to provide consistency between the two permits.

Response:

Please refer to page 30 of the US EPA Construction General Permit. This explanation was used, but modified slightly to be consistent with the North Dakota General Construction permit inspection requirements.

74. Comment:

Section III. A. 2.
There should be a sentence in here stating that an inspection must be conducted as soon as conditions allow.

Response:

In response to this comment, the department changed Part III(A)(2) to read:

There may be times when a site inspection may not be practical at the specified time. Adverse climatic conditions, such as flooding, high winds, tornadoes, electrical storms, site access constraints, etc., may prohibit inspections. The permittee must include a description of why the inspection(s) could not be performed at the designated time in the next inspection record. If an inspection is delayed due to adverse weather conditions or rain events outside normal working hours, an inspection must be conducted during the next working day, or as conditions allow.

This was changed in order to provide clarification of when an inspection needs to be conducted upon the chance a site inspection may not be practical at a specified time due to adverse climatic conditions.

75. Comment:

Section III. A. 2.
The last sentence should state “If a rain event that would trigger an inspection”.

Response:

Please refer to the response to comment 74 above.
76. **Comment:**

Section III. A. 6.

The first sentence of this paragraph is contradicted by the second. It says you can go to once per month for areas that have been stabilized but not reached 70 percent, but the next sentence says that areas that meet Part II (E) can suspend inspections. Part II(E) allows for areas with less than 20 inches of rain to be considered final without meeting 70 percent. This section should be simplified to say that any areas that have permanent stabilization can suspend inspections.

**Response:**

Under the described conditions above, in accordance with Part II(E), that area would meet final stabilization requirements, which inspections may be suspended. This section addresses both Part II(E)(1) and Part II(E)(2) of the permit. It allows for projects in areas that have an annual rainfall of 20 inches or more to reduce inspection frequency for areas which have been stabilized, but have not met the criteria for final stabilization (mainly the eastern part of the state). It also allows for projects which are located in areas with an annual rainfall of 20 inches or less to suspend inspections because it meets the definition of final stabilization.

77. **Comment:**

Section III. A. 7.

What is the definition of frozen ground?

**Response:**

The department does not believe it is necessary to define frozen ground.

78. **Comment:**

Section III. A. 7.

What are these dates based upon? Does the contractor need to have a thermometer on site?

**Response:**

Dates are based on days when soil may freeze or thaw, and when runoff occurs due to snowmelt or precipitation events. Permittees may use available resources to determine soil temperature.

79. **Comment:**

Section III. B.

There should be an explanation of what to do if a coverage letter has not been received for a site. On nearly all projects last summer, the Contractor did not receive the "Notice of Coverage" letter until after the earth disturbing activities were already completed. If the
NDDOH is going to make this a requirement of the permit then they need to provide that letter 14 days after the NOI is submitted.

**Response:**

The department has determined that this comment would not significantly impact the intent of the permit and will leave the current language.

**80. Comment:**

Section III. B.
Please clarify. Electronic copies are acceptable but permittees should avoid using personal electronic devices. Does ownership of the device matter if the information is accurate and complete? If the reasoning behind this is that all devices used on site for permit compliance are discoverable and can be subpoenaed, the permit should state such.

**Response:**

The department has determined that this comment would not significantly impact the intent of the permit and will leave the current language.

**81. Comment:**

Section IV. A. 6.
How long is this delegation valid?

**Response:**

The delegation remains valid until it is no longer accurate for any reason. Please refer to Part IV(A)(6)(b) for further information.

**82. Comment:**

Section IV. B. 4.
The Act is referred to for effluent standards and prohibitions. The Clean Water Act is used as a reference throughout the permit. Either these standards should be included in the permit document or a hyperlink provided.

**Response:**

Please refer to the response for comment 1.

**83. Comment:**

Section V.
The "Act" can be changed or updated during the life of a Permit. The conditions of the Permit should state they will remain as specified in the Act at the date of signature by permittee.
Response:

Except as provided in Part IV(B)(4) of the permit and 40 CFR § 122.5(a)(1), compliance with a permit during its term, constitutes compliance with the Act. However, a permit may be modified, revoked, reissued, or terminated during its term.

84. Comment:

Section V.
“Normal wetted perimeter” – This should be during a two year 24 hour event for consistency.

Response:

The department appreciates the comment. The department has determined that this comment would not significantly impact the intent of the permit and will leave the current language.

85. Comment:

Section V.
“Permanently ceased” – Define Permanent structures.

Response:

The department does not believe it is necessary to define permanent structures.

86. Comment:

Section V.
Add definitions to explain the difference between temporary and permanent controls.

Response:

The department does not believe it is necessary to explain the difference between temporary and permanent controls.

87. Comment:

Section V.
“Steep slopes” – This does not line up with the stabilization requirement of 3:1 or steeper that is established in Appendix 1. While we recommend that the 3:1 stabilization in 7 days requirement be removed, if it is kept the definition of steep slopes should match the 3:1, not 15%. 2:1 or steeper may be a better compromise.

Response:

The definition of steep slopes is as defined by the U.S. EPA.
88. **Comment:**

Section V.
“You” – This definition should be more specific.

**Response:**

The department has determined changing the definition would not significantly impact the intent of the permit and will leave the current language.

89. **Comment:**

Appendix 1. A. 1. b.
Are you referencing the calculations in a?

**Response:**

The calculations are in reference to item “a.”

90. **Comment:**

Appendix 1. A. 2.
There should be a statement requiring perimeter control be placed before work commences in an area.

**Response:**

The department has determined that including a statement requiring perimeter controls be placed before work commences would not significantly impact the intent of the permit and will leave the current language.

91. **Comment:**

Appendix 1. A. 3.
This says where activities have been completed. It should say permanently ceased.

**Response:**

In response to this comment, the department has changed Appendix 1(A)(3) to read:

*All exposed soil areas must be stabilized (see definitions). Stabilization must be initiated immediately where activities have been permanently or temporarily ceased on any portion of the site and will not resume for a period exceeding fourteen (14) calendar days. Stabilization must be completed as soon as practicable, but no later than fourteen (14) calendar days after the initiation of soil stabilization. Temporary stockpiles without significant silt, clay or organic components (e.g., clean aggregate stockpiles, demolition concrete stockpiles, sand stockpiles) are exempt from this requirement.*
This change was made in order to be consistent with the definition of permanently ceased provided in Part V of the permit.

92. **Comment:**

Appendix 1. A. 3.
There should be an exemption for areas that it is infeasible to stabilize due to their nature, such as compacted roadway bases.

**Response:**

The department has determined that including an exemption of this type would not significantly impact the intent of the permit and will leave the current language.

93. **Comment:**

Appendix 1. A. 3. a.
7 days is an infeasible timeline to meet. Weather could cause activities to cease for longer than 7 days. Also, there is no precedent for this in the Federal permit. We request that this requirement be removed from the permit.

**Response:**

In response to this comment the department added the following paragraph to Appendix 1(A):

6. If stabilization requirements cannot be met due to circumstances beyond the control of the permittee, the permittee may comply with the following:

   a. If vegetative stabilization is to be used, immediately initiate, and within 14 calendars days complete, the installation of temporary non-vegetated stabilization; or

   b. Complete all methods of initiating stabilization as soon as conditions or circumstances allow.

   If any conditions in parts a or b above are encountered, you must document the circumstances which prevented you from meeting the stabilization requirements of this paragraph in the SWPPP and provide a schedule in the SWPPP which will be followed in order to meet the stabilization requirements.

   Permitees are responsible for implementing winter stabilization methods during frozen ground conditions if the site was not stabilized prior to the ground freezing.

This was added to the permit in order to allow for situations which may prohibit permittees to meet the stabilization requirements of the permit.
94. **Comment:**

Appendix 1. A. 4.
The second sentence in this section is redundant and should be removed. This falls under the requirements for 3 above.

**Response:**

In response to this comment, Appendix 1(A)(4) now reads:

> Temporary soil stockpiles must have effective sediment controls, and cannot be placed in surface waters, including stormwater conveyances such as curb and gutter systems, or conduits and ditches.

This change was made in order to reduce redundancy with Appendix 1(A)(3).

95. **Comment:**

Appendix 1. A. 5.
The dimension on this needs clarification. Do you mean 200 feet in all directions? or just 200 feet of the wetted area linearly from the property line? An example is needed if this requirement is going to stay.

**Response:**

The dimension refers to stabilizing the normal wetted perimeter of a ditch beginning at the property edge or point of discharge and extending 200 feet into the ditch.

96. **Comment:**

Appendix 1. A. 5.
There should be clarification on what should be done in a situation where 200 feet is not available due to land ownership or right of way.

**Response:**

The department would expect the available normal wetted perimeter to be stabilized in this situation.

97. **Comment:**

Appendix 1.A. 5.
The last sentence should state prior to connection with a surface water as it is stated in 6 below this for consistency.

**Response:**
In response to this comment, the department changed Appendix (1)(A)(5) to read:

The normal wetted perimeter of any temporary or permanent drainage ditch that drains water from a construction site, or diverts water around a site, must be stabilized at least 200 linear feet from the property edge, or from the point of discharge to any surface water. Stabilization shall be completed prior to connection with a surface water. Any remaining portion of the temporary or permanent drainage ditch must be stabilized within fourteen (14) calendar days for portions which construction activities have temporarily or permanently ceased.

This change was made to maintain consistency with Appendix (1)(A)(6) of the permit.

98. **Comment:**

Appendix I. A. 6.
Remove “which will have continuous flow”. This is not defined and will be a point of contention and confusion.

**Response:**

The department has determined that removing “which will have continuous flow” would not significantly impact the intent of the permit and will leave the current language. Removing the language would conflict with Appendix 1(A)(5) of the permit.

99. **Comment:**

Appendix I. A. 6.
This seems reasonable if the anticipated velocities indicate a scour potential. If the diversion can be designed in such a way to minimize scour, could this be a viable alternative to lining an entire channel?

**Response:**

Although it may be possible to design a diversion to minimize scour, this would be the exception. Therefore, the department will keep the current language.

100. **Comment:**

Appendix 1. A. 7.
Are you allowing soil/water interaction below the water line? For example, Can someone push fill into a stream as a cofferdam or a temporary crossing and only protect the area above the water line? You cannot put silt curtain across a flowing water. This implies that there are no protections needed below the water line. This should be clarified.
Response:

Down gradient BMPs must still be provided in accordance with Part II(C)(4)(b). The intent of this requirement is that floating silt curtain is a secondary sediment control, unless working on or below the elevation of the surface water. Only in this circumstance would it be an appropriate primary BMP. In the circumstance described of not being able to put floating silt curtain across flowing water, sediment and erosion controls still need to be appropriately selected given site conditions as required in Part II(C)(4)(d) of the permit. In accordance with Part I(B)(3), this permit does not cover the placement of fill into waters of the state which require local, state, or federal authorization.

101. Comment:

Appendix 1. A. 8.
This should be before connection to a surface water or it should be allowed to be stabilized within 14 days as the remainder of the ditch to be consistent.

Response:

The department has determined that changing the language would not significantly impact the intent of the permit and will leave the current language.

102. Comment:

Appendix 1. A. 10.
Stormwater conveyances that do not discharge into surface waters or off property (i.e. centerline and approach culverts) should not require protections. Please add language explaining this.

Response:

The department has determined that changing the language would not significantly impact the intent of the permit and will leave the current language.

103. Comment:

What would constitute “equivalent controls”? What amount of detail is required in the rationale for the equivalent controls?

Response:

Equivalent controls would be equivalent to natural buffer. The amount of detail required would need to be enough to show the control is equivalent to a natural buffer.
104. **Comment:**

Data from the manufacturer is sufficient. These tests should not be performed by the permittee.

**Response:**

If this data is provided by the manufacturer, then it may be used. Otherwise the permittee will be required to obtain this information.

Discharges of wastewater are not allowed under this permit. In order to simplify the process of obtaining a permit to discharge wastewater, the department included these requirements, which are the same requirements for NDG07 and NDG52, for using chemical additives for chemically treating water.

105. **Comment:**

Appendix 1. A. 15.
Please remove this item. This is not clear on what is required. This could change from inspector to inspector and it does not appear to be measurable.

**Response:**

In response to this comment, Appendix 1(A)(15) now reads:

*Minimize the duration of exposed soils on steep slopes.*

This was changed to provide clarification on the intent of the requirement.

106. **Comment:**

Appendix 1. B. 1. a.
Do these devices need to be removed when they are no longer functional if other controls have been installed? This should be established.

**Response:**

Please refer to the response from comment 59.

107. **Comment:**

Appendix 1. B. 1. c.
Is there a minimum draw down time for a basin or can it be drained as fast as possible?
Response:

Please refer to Appendix 1 (A)(1)(c) and Part II(C)(3)(g), which discusses basin draining and dewatering.

108. Comment:

Appendix 1 B. 2.
This goes back to the earlier statement on protecting work in surface waters. Won't the placement or exposure to water cause sediment to be deposited by erosion? The permit needs to be consistent.

Response:

This part requires that if sediment is deposited into a water of the state, permittees have seven (7) days to remove the sediment.

109. Comment:

Appendix 1 B. 3.
If clean-up is required daily, inspections of these areas should be required daily as they are for dewatering operations.

Response:

The department anticipates these areas will be visually observed daily to ensure sediment tracking is minimized. The department believes a daily written inspection report would be burdensome and unnecessary.

110. Comment:

Appendix 1 B.4.
Does this need to be documented in the maintenance records? If so, state that.

Response:

Please refer to the response to comment 109.

111. Comment:

Appendix 1. B. 5.
What does proper distribution of flows mean?

Response:

Proper distribution of flows would be sheet flow through the buffer with minimal concentrated flows that would lead to erosion.
Comment:

Appendix 1. C. 3.
This should say before transportation to another waterbody.

Response:

The addition of this language would be against ND Admin. Code § 30-03-06. In response to the comment Appendix 1 (C)(3) now reads:

*Best management practices used in surface waters must be cleaned immediately upon removal from surface waters to prevent the transfer of aquatic nuisance species.*

This was changed in order to be compliant with ND Admin. Code § 30-03-06.
February 20, 2015

ND Dept. of Health
Div. of Water Quality Permits Program
918 E. Divide Ave.
Bismarck, ND 58501-1947

Re: Comments for Draft NDPDES Construction Stormwater General Permit NDR10-0000
Public Notice No. ND-2015-091

Dear Sir or Madam:

Minnkota Power Cooperative, Inc. (Minnkota) is submitting comments associated with the draft NDPDES Construction Stormwater General Permit (CSGP) as outlined in the Public Notice indicated above.

Upon our review of the draft CSGP, Minnkota supports the departments’ draft CSGP. In particular, Minnkota points out the following draft requirements we support in more detail.

Draft Inspection and Maintenance Requirements (1.1) “Inspections shall be performed by or under the direction of the permittee at least once every 14 calendar days and within 24 hours after any storm event of greater than 0.25 inches or rain per 24-hour period on active construction. Inspections are only required during normal working hours.”

Draft Appendix 1 – Erosion and Sediment Control Requirements, A. Erosion and Sediment Control Practices (1)(a,b,c). Minnkota believes that this section provides a simplistic and flexible means in which to apply this portion of the 2009 GCP.

If you require any additional information, please contact me at 701-795-6293 or at tjohnson@minnkota.com.

Sincerely,

MINNKOTA POWER COOPERATIVE, INC.

Terry Johnson
Environmental Engineer