Permit No: NDR11-0000
Effective Date: April 1, 2025
Expiration Date: March 31, 2030

AUTHORIZATION TO DISCHARGE UNDER THE

NORTH DAKOTA POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with Chapter 33.1-16-01 of the North Dakota Department of Environmental Quality rules as promulgated under Chapter 61-28 (North Dakota Water Pollution Control Act) of the North Dakota Century Code,

Facilities both qualifying for and satisfying the requirements identified in Part I of the permit

are authorized to discharge stormwater associated with construction activity

to waters of the state

provided all the conditions of this permit are met.

This permit and the authorization to discharge shall expire at midnight,

March 31, 2030.

Signed this 25 day of March, 2025.

Marty Haroldson
Director
Division of Water Quality

BP 2025.02.05

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I. PERMIT COVERAGE AND LIMITATIONS

A. Discharges Covered

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

2. 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.

    a. 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.

    b. 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 (1) and less than five (5) acres.

3. This permit applies to discharges of stormwater from construction activity identified in Part I(A)(1)-(2) associated with oil and gas exploration, production, processing or treatment operations, or transmission facilities resulting in the discharge of a reportable quantity for which notification is required pursuant to 40 CFR 110.6, 40 CFR 117.21, or 40 CFR 302.6 or contributes to a violation of a water quality standard.

4. Stormwater discharges from support activities (e.g., 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. 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.

5. Certain non-stormwater discharges from facilities covered by this permit and meeting the requirements specified in Part II(A).

6. Stormwater discharges from construction activity covered by the previous permit, issued April 1, 2020, where a notice has been submitted to obtain coverage under this permit.

7. Discharges from dewatering activities related to construction activities (discharges of uncontaminated stormwater, uncontaminated groundwater, and uncontaminated surface water).

8. Local Authority. This permit does not preempt or supersede the authority of local agencies or operators of municipal separate storm sewer systems to prohibit, restrict, or control discharges of stormwater to storm sewer systems or other water courses within their jurisdiction.

B. Discharges Not Covered

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 the permittees 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 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: deq.nd.gov/WQ.

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 (North Dakota Administrative Code [NDAC] 33.1-16-02.1).

7. Discharges from hydrostatic testing, well points, water line disinfection, treatment of refined petroleum contaminated groundwater or surface water, treatment of crude oil contaminated groundwater or surface water, and oil and gas production water.

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

9. Discharges of wastewater from washout of concrete.

10. Discharges of wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials.

11. Discharges of fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance.

12. Discharges of soaps or solvents used in vehicle and equipment maintenance.

C. Obtaining Coverage and Authorization Effective Date

1. To obtain authorization under this general permit for stormwater discharges you must submit a complete notice of intent (NOI) and develop a SWPPP in accordance with Part II(C) of this permit.

A SWPPP must be in place as a condition of the permit and a copy of the SWPPP must be retained by the permittee.

2. Permit coverage will become effective seven (7) days after you submit a complete NOI unless otherwise notified by the department (based on the department receipt date).

3. Upon the effective date of permit coverage, permittees are authorized to discharge stormwater from eligible activities under the terms and conditions of this permit.

D. Notice of Intent Process

1. Applicants must use a NOI form or electronic NOI to complete the process to obtain coverage under the permit. The NOI form or electronic NOI can be found at: deq.nd.gov/eReporting.aspx. Submission of data contained within the NOI must be in compliance with the electronic reporting requirements found in 40 CFR 127.

2. NOI Content and Conditions.

   a. The owner, or owner jointly with the operator (usually the general contractor), shall submit a completed NOI 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 conditions as they pertain to the construction activities delegated to the operator.

   b. The NOI shall contain, at a minimum, the following information:

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

   c. 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. Permittees are not required to submit the SWPPP with the NOI unless otherwise notified by the department.

3. For residential construction activity occurring within a common plan of development (such as a subdivision) subject to the permit requirements, coverage may be obtained by the following:

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

Additional phases of the common plan of development may be included under the initial NOI and permit coverage.

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 provided the SWPPP is amended to include the additional area or phases.

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

E. Notice of Termination (NOT)

1. Permittees wishing to terminate coverage under this permit must submit a Notice of Termination (NOT). The NOT form or electronic NOT can be found at: deq.nd.gov/eReporting.aspx. Submission of data contained within the NOT must be in compliance with the electronic reporting requirements found in 40 CFR 127. Compliance with the conditions of this permit is required until a NOT is submitted to the department.

2. Permittees may only submit a NOT after one of the following conditions have been met:

   a. Final stabilization (Part II(E)) has been achieved on all portions of the site for which the permittee is responsible.

   b. Another owner/operator/permittee has assumed control in accordance with the Part I(F).

   c. 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 the 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)).

F. Transfer of Ownership or Control

1. Coverage under this permit cannot be transferred from one owner to another. When a new owner assumes control of a construction project, or a portion of the project, or will commence construction of a new project within a larger common plan of development, the new owner must submit a NOI in accordance with Parts I(C) and (D). The previous owner may terminate coverage if the conditions of Part I(E) are met. The department reserves the right to take enforcement for any unpermitted discharges or permit noncompliance.

2. When the operator of a construction project changes, the new operator must submit a written request for permit modification within fourteen (14) days of assuming control of the site or commencing work on-site. Late submittals will not be rejected; however the department reserves the right to take enforcement for any permit noncompliance. Permittees 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 SWPPP.

3. A permit 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 NOI in accordance with Parts I(C) and (D).

G. Continuation of Coverage for Existing Permittees After Permit Expiration

1. It is the duty of the permittee to reapply for coverage under this permit to continue coverage and authorization to discharge. Permittees with existing coverage under the 2020 permit shall be covered under, and comply with, this permit until:

   a. A NOI for coverage under the 2025 permit has been submitted to the department no later than June 30, 2025; or
   b. Coverage is otherwise terminated.

2. Permittees with existing coverage under the 2020 permit who miss the June 30, 2025, deadline, and do not submit an NOI to the department by August 29, 2025, will have coverage administratively terminated by the department. Administrative termination will result in the permittee no longer being authorized to discharge under this permit.

H. Electronic Reporting

Prior to December 21, 2025, permittees may elect to electronically submit NOIs and NOTs using the electronic reporting system or hybrid approach (i.e., electronic submission along with a uniquely matched paper submission) instead of solely mailing paper forms. Beginning December 21, 2025, permittees must submit NOIs and NOTs using the electronic reporting system or hybrid approach. Submission of data contained within NOIs and NOTs must be in compliance with the electronic reporting requirements found in 40 CFR 127.

II. STORMWATER DISCHARGE REQUIREMENTS

A. Prohibition of Non-Stormwater Discharges

The discharge of wastewater is not authorized by this permit. There shall be no discharge of wastewater from concrete washout. There shall be no discharge of wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials. There shall be no discharge of fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance. There shall be no discharge of soaps or solvents used in vehicle and equipment washing.

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 activity, 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. Non-stormwater 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.

B. Releases 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 NDAC 33.1-16-02.1. Any release which meets any reporting requirement shall be reported to the department in accordance with Part IV(A)(7).

C. 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 are 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. A partially complete SWPPP 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). Permittees that obtained coverage under the 2020 construction general permit shall amend and implement a SWPPP that meets the requirements of this permit within ninety (90) days of the effective date of this permit.

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.

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

1. **Site Description**. Each SWPPP 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) and municipal storm sewer system at or near the disturbed area that will receive stormwater runoff from the project site; and

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

        1) Location of project;

2) Project boundaries;
3) Areas of ground disturbance during each phase/stage of the project;
4) Areas where disturbance will not occur, such as avoidance areas (e.g. wetlands, critical habitat, Threatened and Endangered Species, etc);
5) Drainage patterns including flow direction (run-on and runoff);
6) Discharge points and storm sewer system inlets which the site drains to or may be affected by the activity;
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.) or areas were potential sources of pollution cannot be located;
10) Location of soil stockpiles;
11) Identify steep slopes;
12) Surface waters, including an aerial extent of wetlands;
13) Location of surface water crossings;
14) Locations where stormwater is discharged to surface waters;
15) Location of dewatering discharge points;
16) Locations where chemical treatment of stormwater will be performed, including discharge points;
17) Fueling locations and storage, 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: deq.nd.gov/WQ

h. For water bodies which have a TMDL, the SWPPP must describe and conform to the Waste Load Allocations (WLA) of the water body. Information about TMDL allocations may be found at the following website: deq.nd.gov/WQ

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 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 describe at a minimum:

a. The installation, removal (if applicable), and maintenance requirements of selected BMPs for each phase/stage of construction activity;
b. The rationale for the selection of all BMPs (the design should be included where appropriate);
c. Whether selected BMPs are temporary or permanent;

d. Any descriptions of infeasibility or explanations as required in Part II of this permit.

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

   b. 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.

   c. 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 that could be discharged in stormwater from the project.

   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.

      The potential discharge of hazardous substances in stormwater discharges shall be minimized by including measures 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.

   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:

         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 that pertain to their role; and

         c. Correct installation, function, maintenance, and removal (if applicable) of BMPs identified in the SWPPP that pertain to their role.

      2) Personnel responsible for performing site inspections must understand when inspections must be conducted (Part III(A)), what must be inspected (Part III(A)(1)), how to record findings, and when to initiate and properly document corrective actions.

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)(7) of this permit.

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

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 uncontaminated 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 refined petroleum contaminated groundwater or surface water.

2. When dewatering basins and impoundments, 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.

3. Chemical treatment of dewatering activities for sediment removal must be conducted in accordance with the chemical manufacturer's specifications. Treatment chemicals must be appropriately selected 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. Permittees shall ensure the selection and management of chemicals minimize the potential for harmful effects in the discharge. The following information must be included in the SWPPP.

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

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. Permittees may state that selected erosion and sediment controls and site stabilization methods are industry standards;

   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. Erosion protection is required to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points.

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 inspection 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 or 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.

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 storm event is based on NOAA Atlas 14, Volume 8, Version 2, Midwestern States 2013. The 2-year, 24-hour rainfall event in North Dakota ranges from about 1.76 inches in the west to 2.50 inches in the east (NOAA Atlas 14, Volume 8, Version 2, Midwestern States 2013).

g. For projects that discharge stormwater which flows to a water body for which there is a TMDL allocation 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: deq.nd.gov/WQ

6. **Maintenance**. The SWPPP shall describe preventative maintenance practices used to ensure the proper operation of erosion and sediment control devices and equipment used or stored on site. The SWPPP must indicate, as appropriate, the maintenance or clean out interval for sediment controls.

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.

8. **SWPPP Review and Revisions**.

   a. The owner, or owner jointly with the operator, shall sign the SWPPP in accordance with Part IV(A)(6). The SWPPP shall be 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, operational control, 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 include a description of the amendment process.

D. Local Requirements

All stormwater discharges and dewatering activities 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.

E. Final Stabilization

The permittee(s) must ensure final stabilization of the site. Permittees 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 the following ways.

1. All soil disturbing activities at the site have been completed and soils not covered by permanent structures or cover are 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 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, temporary sedimentation basins that will be used as permanent water quality management basins, and other post-construction stormwater management features. Sediment must be stabilized to prevent it from being washed into basins, conveyances, drainage ways, or features, or discharging off-site to surface waters. The cleanout of permanent basins must be sufficient to return the basin to design capacity.

d. All construction materials, waste and waste handling devices are removed and properly disposed, and all equipment and vehicles used during construction are removed, unless intended for long-term use following construction.

e. All potential pollutants and pollutant-generating activities associated with construction have been removed.

2. For areas of the state where the average annual rainfall is less than 20 inches (per NOAA Atlas 14, Volume 8, Version 2, Midwestern States 2013), all soil disturbing activities at the site have been completed and 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. 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.

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.

5. Coverage under an individual or alternative general NDPDES permit has been obtained.

III. SELF MONITORING AND REPORTING

A. Inspection and Maintenance Requirements

1. All erosion prevention and sediment control BMPs must be inspected to ensure integrity and effectiveness. Erosion and sediment control measures and stabilized areas 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, vehicle maintenance areas, and dewatering activities. These areas shall be inspected for evidence of, or the potential for, pollutants entering a drainage system. If necessary, the SWPPP shall be revised based on the observations and deficiencies noted during the inspection.

2. Inspections shall be performed by or under the direction of the permittee. Inspections shall be performed 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. Rainfall inspections do not take the place of the scheduled once every 14-calendar day inspection unless the rainfall inspection occurs on the same day as the once every 14-calendar day inspection. 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.

3. 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.

4. 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 replaced 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.

5. All inspections must be recorded. The record shall summarize the scope of the inspection, major observations relating to the SWPPP, and any corrective actions taken. These records (or reports) must be retained in accordance with Part III(B). Records (or reports) of each inspection activity shall include:

    a. Date of inspections;

    b. Name of person(s) conducting inspections;

    c. Findings of inspections, including recordings or imagery if utilized, and recommendations and time frame for corrective actions;

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

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

    f. Signature of person(s) conducting the inspection or other means used to verify an inspector (e.g., work order or preventative maintenance schedule completion).

6. All erosion and sediment control measures and other protective measures must be maintained in effective operating condition. Stabilized areas and pollution prevention measures also must be maintained in effective operating condition. Corrective actions and maintenance activities shall be arranged and accomplished in accordance with Appendix 1 or as soon as practicable.

7. Corrective actions (maintenance activities) must be recorded 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 of corrective action;

    c. Name of person(s) performing corrective actions;

    d. Corrective actions taken, including recordings or imagery if utilized; and

    e. Corrective actions/maintenance records shall be signed or use another means to verify corrective actions/maintenance were completed (e.g., work order or preventative maintenance schedule completion).

8. 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.

9. 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.

10. 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 (or report) shall be maintained to document the inspections of the dewatering operation and actions taken to correct any problems that may be identified. Records shall contain at a minimum:

    a. Date of inspections;

    b. Name of person(s) conducting inspections;

    c. Approximate times dewatering started and ended (run time) on the day of inspection;

    d. Estimates of the rate of discharge (pump rate) on the day of discharge;

    e. Findings of inspections, including recordings or imagery if utilized, and recommendations and time frame for corrective actions;

    f. Corrective actions taken (including dates and party completing maintenance activities);

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

h. Signature of person(s) conducting inspections and maintenance or other means used to verify an individual (e.g., work order or preventative maintenance schedule completion).

B. Records Location

The SWPPP, site inspection records, corrective actions/maintenance records, and this general permit shall be kept at the site of the construction activity in a field office, trailer, shed, vehicle that is on-site during normal working hours, or other reasonable on-site location. 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. The NOI and coverage letter from the department are not required to be kept at the site. All records and documentation must be retained in accordance with Part IV(A)(5).

IV. STANDARD CONDITIONS

A. COMPLIANCE RESPONSIBILITIES

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

2. **Proper Operation and Maintenance**
   The permittee shall at all times maintain in good working order and operate as efficiently as possible all treatment or control facilities or systems installed or used by the permittee to achieve compliance with the terms and conditions of this permit. If necessary to achieve compliance with the conditions of this permit, this shall include the operation and maintenance of backup or auxiliary systems.

3. **Planned Changes**
   The department shall be given advance notice of any planned changes at the permitted facility or of an activity which may result in permit noncompliance. Any anticipated facility expansions, production increase, or process modifications which might result in new, different, or increased discharges of pollutants shall be reported to the department as soon as possible. Changes which may result in a facility being designated a "new source" as determined in 40 CFR 122.29(b) shall also be reported.

4. **Duty to Provide Information**
   The permittee shall furnish to the department, within a reasonable time, any information which the department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit. When a permittee becomes aware that it failed to submit any relevant facts or submitted incorrect information in a permit application or any report, it shall promptly submit such facts or information.

5. **Records Retention**
   All records and documentation required by this permit shall be kept by the permittee for at least three years from the date that permit coverage expires or is terminated or longer if requested by the department or EPA.

6. **Signatory Requirements**
   NOIs and NOTs shall be signed by a responsible corporate officer for a corporation; a general

partner or the proprietor for a partnership or sole proprietorship; or a principal executive officer or ranking elected official for a municipality, State, Federal, or other public agency.

The SWPPP shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and included in the SWPPP; and

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters.

A copy of the written authorization must be submitted to the department upon request. If an authorization under 6. Signatory Requirements is no longer accurate for any reason, a new authorization satisfying the above requirements must be included in the SWPPP.

All inspection reports and maintenance records shall be signed in accordance with Part III(A)(5).

NOIs, NOTs, SWPPPs, or information submitted to the department shall be signed and certified. Any person signing a NOI, NOT, SWPPP, or other information submitted to the department under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

7. **Twenty-four Hour Notice of Noncompliance Reporting**
   a. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The oral report shall be made the department at 701.328.5210.

   b. A written submission shall also be provided within five days of the time that the permittee became aware of the circumstances. The written submission shall contain:

      1) A description of the noncompliance and its cause;

      2) The period of noncompliance, including exact dates and times;

      3) The estimated time noncompliance is expected to continue if it has not been corrected; and

      4) Steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

   Written reports shall be submitted using the electronic reporting system or mailed to the department at the following address:

ND Department of Environmental Quality
Division of Water Quality
4201 Normandy Street
Bismarck ND 58503-1324

The department may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the department at 701.328.5210 as identified above.

8. **Bypass of Treatment Facilities**
   a. Prohibition of Bypass. Bypass is prohibited, and the department may take enforcement action against a permittee for bypass, unless:

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

      2) There were no feasible alternatives to the bypass. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of preventive maintenance.

      The department may approve an anticipated bypass, after considering its adverse effects, if the department determines that it will meet the two (2) conditions listed above.

9. **Upset Conditions**
   An upset constitutes an affirmative defense to an action brought for noncompliance with erosion and sediment or site stabilization methods if the requirements of the following paragraph are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

   A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

   a. An upset occurred and the permittee can identify its cause(s);

   b. The permitted activity was, at the time being, properly operated;

   c. The permittee submitted notice of the upset as required under 7. Twenty-four Hour Notice of Noncompliance Reporting and

   d. The permittee complied with any remedial measures required under 10. Duty to Mitigate.

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

10. **Duty to Mitigate**
    The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment. The permittee, at the department's request, shall provide accelerated or additional monitoring as necessary to determine the nature and impact of any discharge.

11. **Removed Materials**
    Collected screenings, grit, solids, sludges, or other pollutants removed in the course of treatment shall be managed or disposed of in such a manner to prevent any pollutant from entering any waters of the state or creating a health hazard.

12. **Duty to Reapply**
    Any request to have this permit renewed must be done in accordance with Part I(G).

B. GENERAL PROVISIONS

1. **Inspection and Entry**
   The permittee shall allow department and EPA representatives, at reasonable times and upon the presentation of credentials if requested, to enter the permittee's premises to inspect the construction activity and monitoring equipment, to sample any discharges, and to have access to and copy any records required to be kept by this permit.

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

3. **Transfers**
   This permit is not transferable.

4. **New Limitations or Prohibitions**
   The permittee shall comply with any effluent standards or prohibitions established under Section 306(a), Section 307(a), or Section 405 of the Act for any pollutant (toxic or conventional) present in the discharge or removed substances within the time identified in the regulations even if the permit has not yet been modified to incorporate the requirements.

5. **Permit Actions**
   This permit may be modified, revoked and reissued, or terminated for cause. This includes the establishment of limitations or prohibitions based on changes to Water Quality Standards, the development and approval of waste load allocation plans, the development or revision to water quality management plans, or the establishment of prohibitions or more stringent limitations for toxic or conventional pollutants and/or sewage sludges. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

6. **Need to Halt or Reduce Activity Not a Defense**
   It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

7. **State Laws**
   Nothing in this permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation preserved under Section 510 of the Act.

8. **Oil and Hazardous Substance Liability**
   Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

9. **Property Rights**
   The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

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

11. **General Permits**
    Coverage under this permit may be modified, revoked and reissued, or terminated for cause. The department may require permittees covered by this permit to apply and obtain an individual or alternative general permit if:

    1. The discharge is not in compliance with the conditions of the general permit.

    2. Conditions or standards have changed so that the discharge no longer qualifies for a general permit.

    3. Information becomes available which indicates that the permittee's discharge has a reasonable potential to contribute to an exceedance of a water quality standard.

    When an individual NDPDES permit is issued to a permittee otherwise subject to this permit or the permittee is approved for coverage under an alternative NDPDES general permit, the applicability of this permit to the permittee is automatically inactivated upon the effective date of the individual permit or coverage under the alternative general permit.

V. DEFINITIONS

"**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 list is available on the state's web site at: deq.nd.gov/WQ

"**Act**" means the Clean Water Act.

"**Bankfull**" means the channel is filled to the top of one or both of its banks.

"**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.

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

"**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.

"**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.

"**Department**" means the North Dakota Department of Environmental Quality, Division of Water Quality.

"**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.

"**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.

"**Infeasible**" means not technologically possible or not economically practicable and achievable in light of best industry practices.

"**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.

"**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.

“**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.

“**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.

“**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.

“**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.

“**Permanently ceased**” means clearing and excavation within any area of your construction site that will not include permanent structures has been completed.

“**Permanent Cover**” means final stabilization. Examples include grass, gravel, asphalt, and concrete.

“**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.

“**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.

“**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).

“**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.

“**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.

“**Steep Slopes**” means slopes which are 3:1 (Horizontal:Vertical) or greater in grade.

"**Stormwater**" means stormwater runoff, snow melt runoff, and surface runoff and drainage.

"**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).

"**Stormwater associated with small construction activity"** means the discharge of stormwater from:

(i) Construction activities including clearing, grading, and excavating that result in 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. 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.

(ii) 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.

"**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.

"**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.

"**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.

"**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.

Appendix 1 – Requirements for Best Management Practices

Requirements for designing, implementing, and maintaining erosion and sediment controls, stabilization, operational controls, and dewatering practices.

A. Erosion and Sediment Control Practices

1. 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. Erosion protection is required to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points.

2. 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.

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

4. 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) or intended for structural use (e.g., structural fill) 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.

5. 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.

6. 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.

7. If stabilization requirements cannot be met due to circumstances beyond the control of the permittee, the permittee must initiate stabilization in areas of the site as soon as conditions or circumstances allow. The permittee must document in the SWPPP the conditions or circumstances which prevented the stabilization requirements from being met and develop and implement a stabilization plan to meet the stabilization requirements. The stabilization plan must be included with the SWPPP. Permittees are responsible for implementing stabilization during frozen ground conditions if the site was not stabilized prior to the ground freezing.

8. 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.

9. 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. Floating silt curtain must be placed as close to shore as possible. Sediment controls must be installed where exposed soils drain to the surface water immediately after construction activity along the waterline has been completed.

10. Pipe and culvert outlets must be provided with energy dissipation prior to connection with a surface water.

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

12. 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.

13. 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.

14. Vegetated buffers must have a minimum width of 1 foot for every 5 feet of disturbed area that drains to the buffer. The width of the buffer shall have a slope of 5 percent or less and the area draining to the buffer shall have a slope of 6 percent or less. Buffers shall consist of dense grassy vegetation, 3 to 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 10 percent of the overall buffer may be comprised of woody vegetation. Additional erosion and sediment controls must be provided when a vegetated buffer does not meet these conditions or concentrated flows within the buffer bring about erosion.

15. 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.

16. Minimize the duration of exposed soils on steep slopes in accordance with the stabilization provisions of this permit.

17. In areas where vegetation is used to establish final stabilization or where infiltration practices will be installed, use techniques that rehabilitate and condition compacted soils to support vegetative growth before seeding or planting. Minimizing soil compaction is not required where the intended function of a specific area of the site dictates that it be compacted.

18. Preserve topsoil unless infeasible. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed.

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, maintained, or replaced 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.

   Permittees 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, or maintained when they become nonfunctional (torn from posts, visible tears, etc.). Collected sediment must be removed as it approaches 1/2 of the above ground capacity of the control device.

   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.

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 sediment 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.

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.

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). BMPs shall be used to minimize further impacts of off-site accumulations of sediment until the off-site accumulations are removed. Impervious surface wash water may not be directed into any surface water or storm drain inlet unless appropriate pollution prevention measures have been implemented.

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.

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.

2. Minimize the exposure of building materials, building products, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater. Minimization of exposure is not required in cases where the exposure to precipitation and to stormwater will not result in a discharge of pollutants, or where exposure of a specific material or product poses little risk of stormwater contamination (such as final products and materials intended for outdoor use).

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

4. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge.

5. BMPs used in surface waters must be cleaned immediately upon removal from surface waters to prevent the transfer of aquatic nuisance species.

6. Fueling operations must be managed to minimize spills or leaks. Collected spill or leak material must be disposed in compliance with applicable regulations.

7. 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.

D. Dewatering Practices

4. Operate the discharge to minimize the release of sediment and provide adequate energy dissipation where necessary to minimize erosion due to the discharge.

5. Discharges must not lead to the deposition of sediment within stormwater conveyance systems or surface waters.

6. Discharges must not cause or potentially cause a visible plume within a surface water body.

7. Basins and impoundments shall be dewatered utilizing structures or BMPs which allow for draw down to occur from the surface of the water, unless infeasible. If infeasible, replacement BMP(s) that provide equivalent treatment shall be used instead.

8. Discharges from the chemical treatment of stormwater must not cause a violation of the standards of quality for waters of the state (NDAC 33.1-16-02.1).