

**FACT SHEET FOR NDPDES PERMIT  
NDR32-0000**

**PERMIT REISSUANCE**

**GENERAL PERMIT FOR STORMWATER DISCHARGES FROM  
MINING, EXTRACTION OR PAVING MATERIAL PREPARATION ACTIVITIES**

**DATE OF THIS FACT SHEET – SEPTEMBER 2024**

**INTRODUCTION**

The Federal Clean Water Act (CWA, 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 CWA is the National Pollutant Discharge Elimination System (NPDES), which the US Environmental Protection Agency (EPA) has oversight authority. In 1975, the State of North Dakota was delegated primacy of the NPDES program by EPA. The North Dakota Department of Environmental Quality (NDDEQ), hereafter referred to as “department”, has been designated the state water pollution control agency for all purposes of the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251, et seq.], and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of the act and similar federal acts. The department’s authority and obligations for the wastewater discharge permit program is in the NDAC 33.1-16 (North Dakota Administrative Code) which was promulgated pursuant to NDCC chapter 61-28 (North Dakota Century Code). The department uses North Dakota Pollutant Discharge Elimination System (NDPDES) as its permitting title.

The following rules or regulations apply to NDPDES permits:

- Procedures the department follows for issuing NDPDES permits (NDAC chapter 33.1-16-01),
- Standards of Quality for Waters of the State (NDAC chapter 33.1-16-02.1).

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 North Dakota Administrative Code (NDAC) section 33.1-16-01-08, the department must prepare a draft permit and accompanying fact sheet, and make it available for public review. The department must also publish an announcement (public notice) during a period of thirty days, informing the public where a draft permit may be obtained and where comments regarding the draft permit may be sent (NDAC chapter 33.1-16-01-07). For more information regarding preparing and submitting comments about the fact sheet and permit, please see **Appendix A – Public Involvement**. Following the public comment period, the department may make changes to the draft NDPDES permit. The department will summarize the responses to comments and changes to the permit in **Appendix D - Response to Comments**.

**TABLE OF CONTENTS**

**BACKGROUND INFORMATION ..... 3**

**SIGNIFICANT PERMIT CHANGES..... 4**

**COVERAGE UNDER THIS PERMIT ..... 5**

**Applicability of the General Permit ..... 5**

**Discharges Not Covered ..... 6**

**Request for Authorization..... 7**

**Alternative Permit Coverage..... 7**

**Termination of Coverage and Notice of Termination ..... 7**

**Special Conditions ..... 8**

**STORMWATER POLLUTION PREVENTION PLAN ..... 9**

**Additional Terms and Conditions ..... 10**

**Records Retention..... 10**

**Authorization to Discharge..... 10**

**PROPOSED PERMIT LIMITS ..... 11**

**Effluent Limitations, Benchmark Concentrations, and Stormwater Sampling..... 11**

**Annual Inspection and Discharge Monitoring Report Requirements ..... 16**

**Self-Monitoring Requirements..... 17**

**SURFACE WATER QUALITY-BASED EFFLUENT LIMITS ..... 18**

**Numerical Criteria for the Protection of Aquatic Life and Recreation ..... 18**

**Numerical Criteria for the Protection of Human Health ..... 18**

**Narrative Criteria ..... 18**

**Antidegradation..... 18**

**Mixing Zones ..... 19**

**EVALUATION OF SURFACE WATER QUALITY-BASED EFFLUENT LIMITS FOR NUMERIC  
 CRITERIA ..... 19**

**MONITORING REQUIREMENTS..... 19**

**Test Procedures ..... 19**

**PERMIT ISSUANCE PROCEDURES..... 20**

**Permit Actions ..... 20**

**Proposed Permit Issuance..... 20**

**APPENDIX A – PUBLIC INVOLVEMENT INFORMATION ..... 21**

**APPENDIX B – GLOSSARY ..... 23**

**APPENDIX C – RESPONSE TO COMMENTS..... 27**

### BACKGROUND INFORMATION

#### General Information

Permit Number:	NDR32-0000
Permit Type:	General Permit, Renewal
Type of Treatment:	Best Available Technology Economically Achievable (BAT); Best Professional Judgment (BPJ); and Best Management Practices (BMPs)
Discharge Location:	Waters of the State of North Dakota

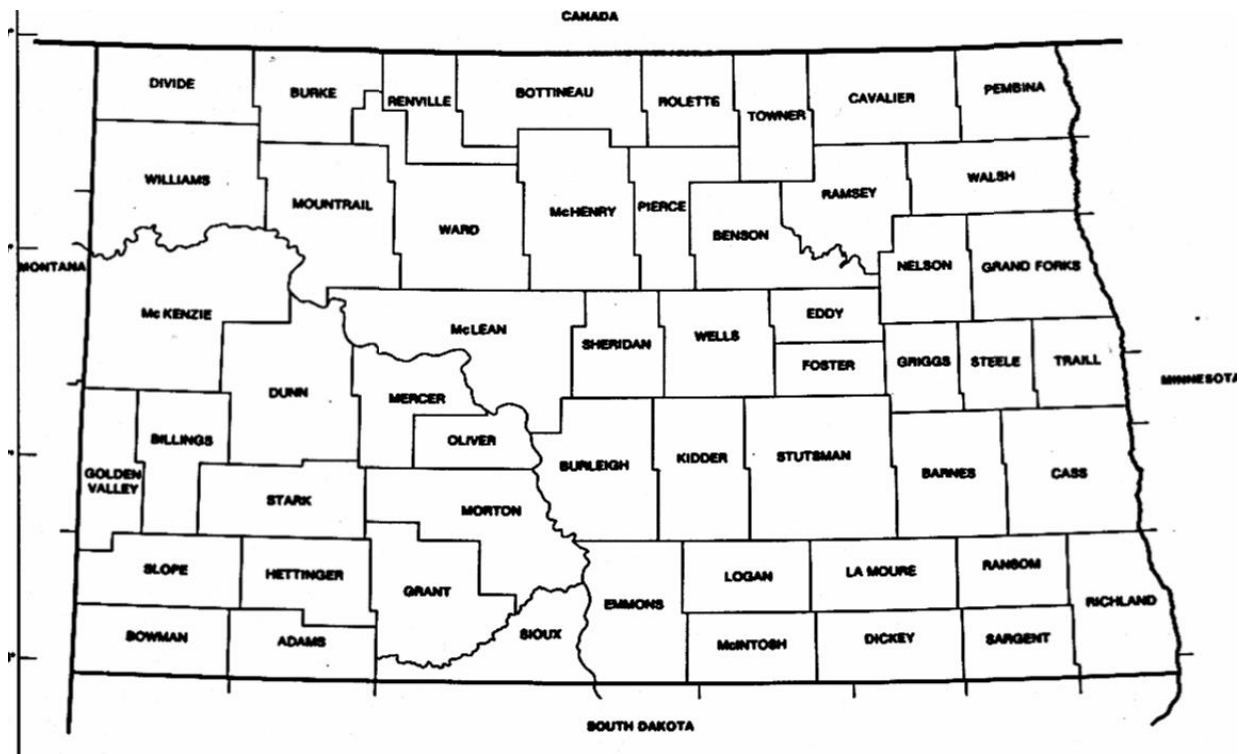


Figure 1 – Photograph of the State of North Dakota

General permits (Title 40 of the Code of Federal Regulations (CFR), Part 122.28) provide a streamlined means to cover a large number of facilities that fall under the broad definition of “stormwater discharges associated with industrial activity.” These facilities are subject to the requirements of Section 402 of the Clean Water Act, as enforced by the NDPDES program. General permits require baseline control practices aimed at minimizing the impact of stormwater discharges to waters of the state. In addition, the general permit process places less of an administrative burden on the issuing authority than the individual permitting process. Individual permits or industry specific permits may still be developed to address specific water quality concerns or industry specific control practices.

The present general permit issued for stormwater discharges associated with mining, extraction, or paving material preparation activities expires December 31, 2024. 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 renewal will continue to provide coverage for stormwater discharges from mining, extraction, or paving material preparation facilities statewide. Currently, there are approximately 210 facilities covered by the present permit for mining, extraction or paving material preparation activities.

### **SIGNIFICANT PERMIT CHANGES**

The following additions or changes to this general permit were made:

- A continuation of coverage section (Part I(E)) was added to the permit to state that coverage from the general 2020 permit is automatically continued until coverage has been granted under the proposed permit, provided a notice of intent (NOI) is submitted no later than January 31, 2025, or coverage under an alternative NDPDES permit is obtained, or coverage is otherwise terminated.
- Language was added to state permittees currently covered under the 2020 permit who miss the January 31, 2025, deadline and do not submit a NOI to the department by March 31, 2025, will have their coverage under the permit administratively terminated.
- Language was added to clarify termination options for reclamation requirements in accordance with North Dakota Century Code 38-16-01.1 for non-coal mining operations.
- The stormwater pollution prevention plan (SWPPP) must identify sampling requirements, including identifying if a facility is exempt or waived from sampling requirements.
- If a facility becomes inactive or unstaffed, the department should be provided with written notification and a statement must be included in the SWPPP.
- The department removed sampling requirements for industry sectors conducting benchmark monitoring and not subject to an effluent limitation and are not under the direction of the department to conduct sampling. In addition, a waiver was added for facilities that are required to sample stormwater runoff under the permit provided the facility meets one of the conditions identified in the permit and has notified the department.
- The department removed the once per year sampling requirement for facilities with industrial activities associated with the Production of Liquid Hydrocarbons from Oil and Gas Field Gases (SIC code 1321) and Oil and Gas Field Service (SIC codes 1381-1389) that obtain permit coverage but have not had a discharge of stormwater 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. The department determined removing the requirement for these oil and gas

**EXPIRATION DATE: DECEMBER 31, 2029**

Page 5 of 29

facilities to sample and be subject to water quality-based effluent limitations established by the department does not result in less stringent conditions since these facilities would not necessitate coverage under the general permit due to the absence of a stormwater discharge resulting in the discharge of a reportable quantity release. The provision for these types of facilities to submit an annual inspection report would stay the same.

- Renotification under General Provisions (Part VI(L)) was removed and replaced with Continuation of Coverage (Part I(E)) in accordance with 40 CFR 122.41(b).
- Paragraph number two (2) was updated under the definition for "stormwater associated with industrial activity" to reflect the definition in 40 CFR 122.26(b)(14)(ii).

### **COVERAGE UNDER THIS PERMIT**

#### **Applicability of the General Permit**

The proposed general permit authorizes the discharge of relatively uncontaminated stormwater from mining, extraction or paving material preparation activities. The permit is not intended for stormwater discharges from other industrial activities or construction disturbances. These activities are covered under separate general permits, NDR05-0000 and NDR10-0000, respectively.

The proposed permit applies to discharges of stormwater associated with industrial activity as defined in 40 CFR 122.26(b)(14) from any of the following:

- Operations involved in coal mining, Standard Industrial Classification (SIC) Code major group 12 (NAICS Codes 212111-212113, 213113, and 238910);
- Operations involved in crude petroleum and natural gas extraction, SIC Code 1311 (NAICS Code 211111), that have had a discharge of stormwater 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 (40 CFR 122.26(a)(2)(ii) and (c)(1)(iii));
- Operations involved in producing liquid hydrocarbons from oil and gas field gases, SIC Code 1321 (NAICS Code 211112), that have had a discharge of stormwater 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 (40 CFR 122.26(a)(2)(ii) and (c)(1)(iii));
- Operations involved in oil and gas field services, SIC Codes 1381-1389 (NAICS Codes 213111, 213112, 237120, and 238910), that have had a discharge of stormwater 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 (40 CFR 122.26(a)(2)(ii) and (c)(1)(iii));

**EXPIRATION DATE: DECEMBER 31, 2029**

Page 6 of 29

- Operations involved in mining and quarrying of nonmetallic minerals, SIC Code major group 14 (NAICS Codes 212311-212313, 212319, 212321-212325, 212391-212393, 213115, 238910, and 212399);
- Facilities operated to obtain or prepare materials for highway construction activities including concrete or asphalt batch plants, SIC Codes 1611 and 2951, and industry group number 327;
- Equipment storage and maintenance yards supporting the industrial categories identified above.

### **Discharges Not Covered**

There are other types of discharges that are not appropriately regulated by the proposed permit and other limitations on what activities the proposed permit can authorize. As such, the following discharges are not eligible for coverage under the proposed permit:

- Stormwater discharges from facilities or activities subject to nationally established effluent limitation guidelines or other performance standards under 40 CFR subchapter N except as provided in the proposed permit.
- Discharges or releases that are not stormwater except those non-stormwater discharges authorized under Part II(A) of the proposed permit.
- Discharges to waters that have a total maximum daily load (TMDL) allocation are not covered unless permittees 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 the proposed general permit, the SWPPP shall 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 (WLA) has been established that would apply to the discharge from the facility, the permittee shall incorporate that WLA into the SWPPP and implement necessary steps to meet the TMDL.
- 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).
- The proposed 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 responsibility of the permittee to ensure the facility and resulting discharges comply with the respective requirements.
- Stormwater discharges that the department determines will cause, or have the reasonable potential to cause or contribute to, violations of standards of quality for waters of the state (North Dakota Administrative Code 33.1-16-02.1).

- The discharge of process wastewater or sanitary waste.

### **Request for Authorization**

Facilities that are required to obtain coverage under the proposed permit must submit a Notice of Intent (NOI) in accordance with 40 CFR 122.28(b)(2). Facilities covered under the present permit will be retained, provided an updated NOI is submitted to the department in accordance with the continuation of coverage section, Part I(E), of the permit. For operators of new facilities wishing to obtain coverage, a NOI must be submitted at least seven days prior to starting any activity subject to regulation as a stormwater discharge associated with mining, extraction or paving material preparation activity. Operators of oil and gas related facilities that experience a stormwater discharge of a reportable quantity release must submit an NOI within 15 days of becoming aware of the release. Permit coverage becomes effective seven days after a completed NOI has been submitted to the department, unless otherwise notified by the department (based on the department receipt date).

The NOI will include the following:

- Owner or operator contact name and phone number and mailing address;
- Name of facility or site with brief description of business or activity and SIC code<sup>1</sup>;
- Location of the site;
- Acreage of the facility dedicated to industrial activity<sup>2</sup>;
- Name of receiving water or the name of the receiving municipal storm sewer system and receiving water; and
- Signature of applicant(s) signed in accordance with the signatory requirements identified in the permit<sup>3</sup>.

The NOI for facilities required to sample must include:

- Number of outfalls and outfalls sampled, including substantially identical outfalls, if applicable<sup>4</sup>, and sampling group; and
- For oil and gas related activities, whether runoff is from remediation activities.

### **Alternative Permit Coverage**

The department may require any facility to apply for and obtain an individual NDPDES permit or seek coverage under an alternative NDPDES general permit (40 CFR 122.28(b)(3)). Any facility covered by the proposed general permit may request to be excluded from coverage by applying for an individual NDPDES permit.

When an individual NDPDES permit is issued to a facility otherwise subject to the proposed permit, the applicability of the general permit to the individual permittee is automatically terminated upon the effective date of the individual permit.

### **Termination of Coverage and Notice of Termination**

A permittee may request the termination of permit coverage when stormwater discharges

---

1 Added in response to Comment 3

2 Added in response to Comment 3

3 Added in response to Comment 3

4 Added in response to Comment 3

associated with industrial activity are no longer present at the facility. Facilities covered under the present permit will have permit coverage administratively terminated provided the department does not receive the information requested in the continuation of coverage section, Part I(E), of the permit. For permittees wishing to terminate permit coverage, the permittee must submit a Notice of Termination (NOT). The NOT may be submitted after one of the following conditions has been met:

- All stormwater discharges associated with industrial activity have been eliminated and final stabilization has been achieved.
- Stormwater discharges were from an inactive coal mining operation no longer meeting the definition of a reclamation area because the performance bond issued to the facility has been released, or a non-coal mining operation which has been released from applicable reclamation requirements after December 17, 1990.
- Stormwater discharges were from oil and gas related facilities where the areas affected by a reportable quantity release that resulted in coverage under the permit have been reclaimed and the facility has operated satisfactorily under a SWPPP for a minimum of one year following spill remediation and department closure. The department may deny termination for facilities that experience repeat incidents.
- The facility has been issued an individual NDPDES permit or obtained coverage under another authorized NDPDES general permit<sup>5</sup> to discharge stormwater associated with industrial activity.
- The facility is a portable operation that no longer operates within the state of North Dakota.
- Stormwater discharges were from non-coal mining operations reclaimed in accordance with North Dakota Century Code Section 38-16-01.1.

### **Special Conditions**

The proposed permit must identify discharges that are prohibited from coverage under the permit. Wastewater and other non-stormwater sources that combine with a stormwater discharge must comply with a NDPDES permit specifically for the wastewater or non-stormwater discharge. Non-stormwater discharges that are eligible for coverage under the proposed permit include: fire-fighting activity, fire hydrant flushing, potable water line flushing, building and equipment wash down without detergents or hazardous cleaning products, uncontaminated foundation drains, springs, lawn watering, chemical treatment of stormwater, air conditioning condensate, and appropriately managed pavement wash water. These non-stormwater discharges are identified, or sufficiently similar to those identified, in similar EPA stormwater discharge general permits.

The proposed permit does not relieve the permittee of the reporting requirements under 40 CFR

---

<sup>5</sup> Added in response to Comment 4



**EXPIRATION DATE: DECEMBER 31, 2029**

Page 9 of 29

110, 40 CFR 117, or 40 CFR 302 or the reporting requirements found in NDAC 33.1-16-02.1. Any releases which meet any reporting requirements must be reported. There is a remote possibility that hazardous substances in excess of reporting quantities may enter stormwater discharges regulated by this permit. Since the discharge of these hazardous substances is not authorized by this permit, the reporting requirement exemption in 40 CFR 117.12 would not apply, and all specified reporting requirements would remain in effect. Of a more probable nature is the possibility of oil in excess of the mandated reporting quantity entering a stormwater discharge. As an oil spill release is not authorized by this permit, the discharger would not be relieved of the reporting obligations, which in this case are identified in 40 CFR 110. In addition, the requirements of Section 311 of the Clean Water Act, and any applicable provisions of Section 301 and 402 of the Clean Water Act would also apply.

### **STORMWATER POLLUTION PREVENTION PLAN**

All facilities covered by the proposed general permit are required to prepare, implement, and maintain a SWPPP. The major objectives of the SWPPP are to identify potential sources of pollution which may reasonably be expected to affect the quality of stormwater discharges and ensure that practices are implemented to minimize pollutants in stormwater discharges.

Some facilities covered by the proposed permit may be subject to local or state sediment and erosion control programs or stormwater management related requirements as part of other regulatory programs. In particular, spill prevention control and countermeasure (SPCC) plans have been developed for many facilities. In most cases, it will be acceptable to incorporate by reference the applicable portions or requirements of plans developed under other regulatory programs into the SWPPP.

The SWPPP developed and approved under the current permit may be continued under the proposed permit. Facilities with existing plans are responsible for updating their SWPPP accordingly within 180 days of the issuance of the proposed permit.

The SWPPP requirements reflect a combination of control measures and BMPs pertinent to the industrial activities covered by the proposed permit. The required SWPPP items in the proposed permit are similar to those in the past versions of the permit. At a minimum, the SWPPP must include the following:

- Site Description: Include description of activities, general location maps, site specific maps detailing items such as outfalls and the presence of impaired waters.
- Stormwater Pollution Prevention Team: Identify who will be responsible for SWPPP compliance.
- Description of Potential Pollutant Sources: Include a narrative description of potential pollution sources associated with industrial activity and material handling at the facility. Each description shall include an activity assessment, a pollutant list, and identify non-stormwater discharges.

**EXPIRATION DATE: DECEMBER 31, 2029**

Page 10 of 29

- **Stormwater Controls:** Describe the location and type of existing and planned controls for each industrial source or activity that could contribute pollutants to stormwater runoff. This section includes good housekeeping, dust control, preventative maintenance, spill prevention and response, employee training, erosion and sediment controls, stormwater management, TMDL conditions, and non-stormwater control practices.
- **Maintenance:** A description of the maintenance schedule for all stormwater pollution prevention control measures identified in the SWPPP.
- **Inspections:** Procedures for performing inspections such as person or position responsible, schedule, area of inspection, and information to record.
- **Sampling:** Applicability of sampling and procedures for conducting stormwater discharge sampling.
- **Plan Review and Revisions:** Amendments to the SWPPP when there is a change that affects the SWPPP or to achieve compliance with the proposed permit.

#### **Additional Terms and Conditions**

The proposed permit includes additional terms and conditions for:

- Salt storage piles
- Petroleum products, oil field production water, and other chemicals
- Dewatering or basin draining
- Construction related to the normal operation and expansion of the facility
- Loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations
- Vehicle and equipment washing
- Local requirements
- Concrete wash water
- Inactive and/or unstaffed facilities

#### **Records Retention**

A copy of the completed and signed NOI, renewal forms, notice of coverage letter from the department, SWPPP, inspection records, the general permit, and when applicable, annual inspection reports, annual location reports, sample results, chain-of-custody sheets, and discharge monitoring reports shall be kept at the facility or reasonable alternative location. Electronic copies are acceptable. All records must be kept for at least three years.

#### **Authorization to Discharge**

Coverage under the proposed permit does not convey approval to discharge through any ditch, storm sewer, private property, or other method of routing stormwater from the facility to waters of the state. Facilities are responsible for applying and obtaining any additional authorizations necessary to initiate the discharge proposed in the facility's application. If the process of obtaining all authorizations to discharge results in changes to the permittee's application, the permittee shall modify in writing the application for an NDPDES permit. The facility will not be authorized to discharge stormwater other than the type and at the location specified in the application.

## **PROPOSED PERMIT LIMITS**

### **Effluent Limitations, Benchmark Concentrations, and Stormwater Sampling**

The proposed permit contains effluent limitations and benchmark concentrations for stormwater discharge from various industrial sectors. The proposed permit does not take the place of any promulgated effluent limitation guidelines applicable to any discharge unless specified in the proposed permit. These discharges must be covered by a different NDPDES permit. The effluent limitation and benchmark concentrations in the proposed permit reflect the conditions of 40 CFR Subchapter N and the EPA Multi-Sector General Permit (MSGP-2021). Effluent limitations for oil and gas related facilities are based on the water quality standard for total chlorides and similar effluent limitations found in the department's NDPDES temporary discharge general permit for treatment of contaminated ground or surface water from remediation activities (NDG07-0000, Part I(B)(1), Table 5).

Benchmark concentrations should not be interpreted as stormwater effluent limitations, individual wastewater effluent limitations, or as state water quality standards. Benchmark concentrations provide an appropriate level to determine whether a facility's stormwater pollution prevention measures are effective. A pollutant concentration that is above the benchmark value represents a potential water quality concern and the need to improve a facility's SWPPP.

The proposed permit includes benchmarks for industrial categories that currently operate or could potentially operate within the state of North Dakota. Benchmarks for industrial activities that do not exist or are not reasonably expected to begin operation within the state were not included in this renewal. If the expectations change over time, a future permit renewal could include such benchmarks.

The permit identifies industry sectors that are subject to effluent limitations or directed by the department that conduct sampling. The department removed sampling requirements for industry sectors not subject to benchmark monitoring. The department believes changing sampling requirements in the proposed permit does not result in less stringent conditions because the industry sectors are still required to submit an annual inspection report to identify instances of pollution in accordance with 40 CFR 122.44(i)(4)(i).

The department also removed the once per year sampling requirement for facilities with industrial activities associated with the Production of Liquid Hydrocarbons from Oil and Gas Field Gases (SIC code 1321) and Oil and Gas Field Service (SIC codes 1381-1389) that have not had a discharge of stormwater 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. The department determined removing the requirement for these oil and gas facilities to sample and be subject to water quality-based effluent limitations established by the department does not result in less stringent conditions since these facilities would not necessitate coverage under the general permit due to the absence of a stormwater discharge resulting in the discharge of a reportable quantity release. The provision for these types of facilities to submit an annual inspection report would stay the same.

The specific monitoring conditions and parameter list for each facility group is outlined in Appendices 2 and 3 of the proposed permit. The parameters, effluent limitations, and benchmark concentrations by industry are provided below:

**Asphalt Paving and Roofing Materials**

Applicability: Facilities with asphalt paving and roofing materials, SIC code 2951		
<u>Required Parameter</u>	<u>Benchmark Value</u>	<u>Discharge Limit</u>
• Total Suspended Solids	100 mg/L	

**Asphalt Emulsion Facilities**

<u>Required Parameter</u>	<u>Benchmark Value</u>	<u>Discharge Limit</u>
• Total Suspended Solids		23.0 mg/L (daily max) 15.0 mg/L (monthly avg)
• pH		Between 6.0-9.0 S.U.
• Oil and Grease		15 mg/L (daily max) 10 mg/L (monthly avg)

**Glass, Clay, Cement Concrete, and Gypsum Products**

Applicability: Facilities with industrial activities associated with Cement, Concrete, and Gypsum Product manufacturing facilities SIC codes 3271-3275		
<u>Required Parameter</u>	<u>Benchmark Value</u>	<u>Discharge Limit</u>
• Total Suspended Solids	100 mg/L	
• Iron, Total	1.0 mg/L	

**Additional SWPPP Requirements**  
*Good Housekeeping Measures.* Using good housekeeping measures, prevent or minimize the discharge of spilled cement, aggregate (including sand or gravel), kiln dust, fly ash, settled dust, or other significant material in stormwater from paved portions of the site that are exposed to stormwater.

Determine the frequency of sweeping or other measures based on the amount of industrial activity occurring in the area and the frequency of precipitation. Sweeping or other measures must be performed at least once a week if cement, aggregate, kiln dust, fly ash, or settled dust are being handled or processed that may be discharged in stormwater.

Prevent the exposure of fine granular solids (cement, fly ash, kiln dust, etc.) to stormwater, where practicable, by storing these materials in enclosed silos, hoppers, or buildings, or under other covering.

**Cement Manufacturing**

Applicability: Discharges from material storage piles at cement manufacturing facilities; SIC code 3241		
<u>Required Parameter</u>	<u>Benchmark Value</u>	<u>Discharge Limit</u>
• Total Suspended Solids		50 mg/L (daily max)
• pH		Between 6.0-9.0 S.U.

**Mine Dewatering – Nonmetallic Mineral (except<sup>6</sup> fuels), Crushed Stone, Sand and Gravel Mining**

Applicability: Mine dewatering at crushed stone mining facilities, constructions sand and gravel mining facilities, and industrial sand mining facilities SIC code 1422-1429, 1442		
<u>Required Parameter</u>	<u>Benchmark Value</u>	<u>Discharge Limit</u>
• pH		Between 6.0-9.0 S.U.

**Mine Dewatering – Nonmetallic Mineral (except fuels), Industrial Sand Mining**

Applicability: Mine dewatering discharges from industrial sand mining facilities; SIC code 1446		
<u>Required Parameter</u>	<u>Benchmark Value</u>	<u>Discharge Limit</u>
• Total Suspended Solids		45 mg/L (daily max) 25 mg/L (monthly avg)
• pH		Between 6.0-9.0 S.U.

**Runoff – Nonmetallic Mineral Mining and Dressing, Sand and Gravel Mining**

Applicability: Runoff from Sand and Gravel Mining; SIC codes 1442, 1446		
<u>Required Parameter</u>	<u>Benchmark Value</u>	<u>Discharge Limit</u>
• Nitrate plus Nitrite Nitrogen	0.68 mg/L	
• Total Suspended Solids	100 mg/L	

**Runoff – Nonmetallic Mineral Mining and Dressing, Dimension and Crushed Stone and Nonmetallic Minerals (except fuels)**

Applicability: Runoff from Dimension and Crushed Stone and Nonmetallic Minerals (except fuels); SIC codes 1411, 1422-1429, 1481, 1499		
---	--	--

<sup>6</sup> Added in response to Comment 5

<u>Required Parameter</u>	<u>Benchmark Value</u>	<u>Discharge Limit</u>
• Total Suspended Solids	100 mg/L	

**Coal Mines and Coal Mining Related Facilities**

Applicability: Stormwater discharges associated with industrial activity from Coal Mines and Coal Mining-Related facilities as identified by the SIC codes 1221-1241		
<u>Required Parameter</u>	<u>Benchmark Value</u>	<u>Discharge Limit</u>
• Total Suspended Solids	100 mg/L	
• Iron, Total	1.0 mg/L	
• Aluminum, Total	0.75 mg/L	
<b>Additional SWPPP Requirements</b>		
<p><i>Other Applicable Regulations.</i> All active coal mining-related areas (SIC Codes 1221-1241) are subject to sediment and erosion control regulations of the Public Service Commission (PSC) that enforces the Surface Mining Control and Reclamation Act (SMCRA). The Office of Surface Mining has granted authority to most coal-producing states to implement SMCRA through State SMCRA regulations. All SMCRA requirements regarding control of stormwater-related pollutant discharges must be addressed and then documented with the SWPPP (directly or by reference).</p>		

**Crude Petroleum and Natural Gas Extraction**

Applicability: Facilities with industrial activities associated with Crude Petroleum and Natural Gas Extraction that have had a discharge of stormwater 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; SIC code 1311.		
<u>Required Parameter</u>	<u>Benchmark Value</u>	<u>Discharge Limit</u>
• Chlorides, Total		250 mg/L
• pH		Between 6.0-9.0 S.U.
• Benzene		5 ug/L
• Total BTEX		100 ug/L
• Total Petroleum Hydrocarbons		1 mg/L (to domestic water supply) 10 mg/L (to other waters)
• Oil and Grease		10 mg/L (if a visible sheen is present)
Crude petroleum and natural gas extraction facilities shall conduct monthly sampling during spill remediation activities. Sampling may be reduced to quarterly following spill remediation and department closure.		
The following steps shall be taken to initiate the discharge of stormwater or melt water from well pads or secondary containment structures:		

**EXPIRATION DATE: DECEMBER 31, 2029**

- Dewatering may occur from areas where a spill occurred (e.g., oil or produced water) that was remediated
- Dewatering may not occur from areas where a spill has not been remediated
- The water to be discharged shall not have come in contact with reserve pits, drilling fluid, drilling mud, crude oil, produced water, hydrofracturing fluid, hydrofracturing flowback water, or other possible contaminants

**Production of Liquid Hydrocarbons from Oil and Gas Field Gases**

Applicability: Facilities with industrial activities associated with Production of Liquid Hydrocarbons from Oil and Gas Field Gases that have had a discharge of stormwater 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; SIC code 1321.

Required Parameter	Benchmark Value	Discharge Limit
• pH		Between 6.0-9.0 S.U.
• Benzene		5 ug/L
• Total BTEX		100 ug/L
• Oil and Grease		10 mg/L (if a visible sheen is present)

Facilities producing liquid hydrocarbons from oil and gas field gases shall conduct monthly sampling during spill remediation activities. Sampling may be reduced to quarterly following spill remediation and department closure. Facilities that have not experienced a reportable quantity release may sample annually.

**Oil and Gas Field Service**

Applicability: Facilities with industrial activities associated with Oil and Gas Field Services that have had a discharge of stormwater 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; SIC codes 1381-1389.

Required Parameter	Benchmark Value	Discharge Limit
• Chlorides, Total		250 mg/L
• pH		Between 6.0-9.0 S.U.
• Total Petroleum Hydrocarbons		1 mg/L (to domestic water supply) 10 mg/L (to other waters)
• Oil and Grease		10 mg/L (if a visible sheen is present)

Oil and gas field service facilities shall conduct monthly sampling during spill remediation activities. Sampling may be reduced to quarterly following spill remediation and department closure. Facilities that have not experienced a reportable quantity release may sample annually.

There may be instances where the department may find it necessary to require sampling to evaluate the effectiveness of BMPs and other water quality concerns. As such, provisions for sampling stormwater discharges are included in the proposed permit. Conditions that may require sampling include but are not limited to the following:

- Facilities where additional analytical data is needed to estimate the potential impact of stormwater discharges on water quality. Examples of where additional data may be needed include: water quality improvement projects such as Section 319 Nonpoint Sources, Total Maximum Daily Load (TMDL) development, or lake restoration projects.
- Facilities where monitoring sample results indicate discharges are generally of a poor quality or have significantly higher pollutant concentrations relative to the results of similar industrial categories.
- Facilities where the SWPPP is delinquent, not properly implemented, or determined to be inaccurate.

The permit contains conditions for sampling waivers. The waiver (or reduction in sampling) may be pursued on both a parameter by parameter and outfall by outfall basis. The waiver request must be submitted to the department for approval. The waiver is not applicable to sampling for parameters which are required due to effluent limits in the permit. Permittees do not have to request a new waiver if a waiver was approved under a previous permit. The approval of any waiver will be based on the following conditions:

- At least four samples must have been collected and analyzed from a discharge point where sampling is required. The results from the four most recent samples must have an average concentration below the benchmark value.
- The industrial activities at the site have not changed since the samples were taken.

#### **Annual Inspection and Discharge Monitoring Report Requirements**

All facilities covered by the proposed permit must submit an annual inspection report (AIR) to the department. The AIR summarizes all incidents and signs of pollution from stormwater outfalls. The submittal of an AIR meets 40 CFR 122.44(i)(4)(i) and 40 CFR 122.44(i)(5) which allows permittees to submit reports to identify areas contributing to a stormwater discharge associated with industrial activity and report instances of non-compliance not otherwise reported.

Facilities that are required to conduct sampling under the proposed permit, unless waived, must submit a discharge monitoring report (DMR). The DMR summarizes monitoring results obtained during the monitoring period. If no discharge occurs during a monitoring period, "no discharge" shall be reported. Facilities also must report if a sample could not be collected because the facility was inactive or unstaffed, or if the discharge occurred outside of normal business hours. The proposed permit describes the schedule for submitting monthly, quarterly, and yearly reports.

Portable or temporary facilities covered by this permit are required to submit annual location



record reports to the department on an annual basis.

The department may require reports on a case-by-case basis to gauge permit adequacy such as inspection result summaries, SWPPPs or portions thereof.

### **Self-Monitoring Requirements**

All facilities covered by this permit are required to conduct comprehensive site inspections according to the schedule below:

- Active facilities shall be inspected at least once during a three-month period. The three-month periods consist of the calendar quarter of each year (i.e., January – March, April – June, July – September, October – December).
- Operators of temporary or portable facilities (i.e., sand and gravel pits, batch plants) have to conduct monthly inspections while the operation is active.
- Inactive operations shall be inspected annually.

Permittees must inspect the following areas for evidence of, or the potential for, pollutants entering the drainage system:

- Areas where industrial materials or activities are exposed to stormwater;
- Areas identified in the SWPPP that are potential pollutant sources;
- Areas where spills and leaks have occurred in the past 3 years;
- Stormwater outfalls;
- Stormwater pollution prevention control measures used to comply with the proposed permit; and
- Disturbed areas that are vulnerable to erosion.

Permittees must look for the following during the inspection:

- Industrial materials, residue, leak or spilled material, and trash that can be a source of pollution in runoff;
- Offsite tracking of industrial or waste materials, or sediment; and
- Stormwater pollution prevention control measures in need of replacement, maintenance, or repair.

Personnel conducting inspections must be familiar with permit conditions, the SWPPP, applicable sampling requirements<sup>7</sup>, and the proper installation and operation of control measures.

Inspection records must summarize the scope of the inspection, major observations related to the SWPPP and any corrective actions. Inspection records must include:

- Date of the inspection;
- Name of person(s) conducting the inspection;

---

<sup>7</sup> Added in response to Comment 6

- Signature of, or other means used to verify, person(s) conducting inspections<sup>8</sup>;
- Whether the inspection is a result of a stormwater discharge;
- Signs of pollution, or the potential for pollution, from industrial activities;
- Inspection findings and corrective actions; and
- Documentation that the SWPPP has been amended.

Inspectors must consider the results of previous visual and analytical monitoring when planning and conducting inspections.

### **SURFACE WATER QUALITY-BASED EFFLUENT LIMITS**

The North Dakota Standards of Quality for Waters of the State (NDAC Chapter 33.1-16-02.1) – known as the state water quality standards (WQS) – are designed to protect existing water quality and preserve the beneficial uses of North Dakota’s surface waters. Stormwater discharge permits must include conditions that ensure the discharge will meet the surface water quality standards. Water quality-based effluent limits may be based on an individual waste load allocation or on a waste load allocation developed during a basin wide total maximum daily load (TMDL) study. TMDLs result from a scientific study of the water body and are developed in order to reduce pollution from all sources.

#### **Numerical Criteria for the Protection of Aquatic Life and Recreation**

Numerical water quality criteria are listed in the WQS for surface waters (NDAC Chapter 33.1-16-02.1-09). They specify the maximum levels of pollutants allowed in receiving waters to protect aquatic life and recreation in and on the water. The department uses numerical criteria along with chemical and physical data for stormwater and receiving waters to derive the effluent limits in the discharge permit. When surface water quality-based limits are more stringent or potentially more stringent than technology-based limits, the discharge must meet the water quality-based limits.

#### **Numerical Criteria for the Protection of Human Health**

The U.S. EPA has published numeric water quality criteria for the protection of human health that are applicable to dischargers. These criteria are designed to protect humans from exposure to pollutants linked to cancer and other diseases, based on consuming fish and shellfish and drinking contaminated surface waters. The WQS also include radionuclide criteria to protect humans from the effects of radioactive substances.

#### **Narrative Criteria**

Narrative water quality criteria (NDAC Chapter 33.1-16-02.1-08) limit concentrations of pollutants from exceeding applicable standards of the receiving waters. The department adopted a narrative biological goal solely to provide an additional assessment method that can be used to identify impaired surface waters.

#### **Antidegradation**

The purpose of North Dakota’s Antidegradation Policy (NDAC Chapter 33.1-16-02.1 (Appendix IV)) is to:

---

<sup>8</sup> Added in response to Comment 7

**EXPIRATION DATE: DECEMBER 31, 2029**

Page 19 of 29

- Provide all waters of the state one of three levels of antidegradation protection.
- Determine whether authorizing the proposed regulated activity is consistent with antidegradation requirements.

The department's fact sheet demonstrates that the existing and designated uses of the receiving water will be protected under the conditions of the proposed permit.

### **Mixing Zones**

The department's WQS contain a Mixing Zone and Dilution Policy and Implementation Procedure, NDAC Chapter 33.1-16-02.1 (Appendix III). This policy addresses how mixing and dilution of point source discharges with receiving waters will be addressed in developing chemical-specific and whole effluent toxicity discharge limitations for point source discharges. Depending upon site-specific mixing patterns and environmental concerns, some pollutants/criteria may be allowed a mixing zone or dilution while others may not. In all cases, mixing zone and dilution allowances shall be limited, as necessary, to protect the integrity of the receiving water's ecosystem and designated uses.

### **EVALUATION OF SURFACE WATER QUALITY-BASED EFFLUENT LIMITS FOR NUMERIC CRITERIA**

The effluent limitation and benchmark concentrations in the proposed permit reflect the conditions of 40 CFR Subchapter N and the EPA Multi-Sector General Permit (MSGP-2021). Effluent limitations for oil and gas related facilities are based on the water quality standard for total chlorides and similar effluent limitations found in the department's NDPDES temporary discharge general permit for treatment of contaminated ground or surface water from remediation activities (NDG07-0000, Part I(B)(1), Table 5). Additional water quality-based limitations may be imposed on discharges covered by this permit through the implementation of a TMDL allocation. In addition, a facility covered by this permit may be required to obtain an individual permit based on site specific water quality based limitations.

### **MONITORING REQUIREMENTS**

The department requires monitoring, recording, and reporting (NDAC Chapter 33.1-16-01-(21 through 23), and 40 CFR 122.41 and 122.44) to verify that the treatment process is functioning correctly and that the discharge complies with the permit's limits.

### **Test Procedures**

The collection and transportation of all samples shall conform to EPA preservation techniques and holding times found in 40 CFR 136. All laboratory tests shall be performed by a North Dakota certified laboratory in conformance with test procedures pursuant to 40 CFR 136, unless other test procedures have been specified or approved by EPA as an alternate test procedure under 40 CFR 136.5.

## **PERMIT ISSUANCE PROCEDURES**

### **Permit Actions**

The proposed permit may be modified, revoked and reissued, or terminated for cause. This includes the establishment of limitations or prohibitions based on changes to WQS, the development and approval of waste load allocation plans, the development or revision to water quality management plans, changes in sewage sludge practices, 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.

### **Proposed Permit Issuance**

The proposed permit meets all statutory requirements for the department to authorize a stormwater discharge associated with industrial activity. The permit includes limits and conditions to protect human health and aquatic life, and the beneficial uses of waters of the State of North Dakota. The department proposes to issue the proposed permit for a term of five years.

To retain coverage under a renewal of this permit, the permittee shall submit a new notice of intent to the department. The department provides permit holders with renewal or renotification instructions when a new permit has been drafted.

## **APPENDIX A – PUBLIC INVOLVEMENT INFORMATION**

The department proposes to reissue a general permit for stormwater discharges associated with mining, extraction, or paving material preparation 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 Public Notice of Draft on **October 16, 2024**, 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 also will be mailed to the department's Public Notice mailing list and placed on the department's Public Comments & Notices webpage.

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

The primary author of the general permit and fact sheet is Kylee Dettling.

**North Dakota Department of Environmental Quality Public Notice  
Issue of an NDPDES Permit**

Public Notice Date: 10/16/2024      Public Notice Number: ND-2024-025

**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: 7/1/2024      Application Number: NDR32

Applicant Name: General Permit NDR320000-Stormwater from Mining, Extraction & Paving Material Preparation Industries

Mailing Address: ND Dept of Env Quality, Div of Water Quality, 4201 Normandy Street, Bismarck ND 58503-1324

Telephone Number: 701.328.5187

Proposed Permit Expiration Date: 12/31/2029

**Description**

The general permit applies to mining, extraction and paving facilities in North Dakota. The general permit regulates stormwater discharges from coal, gravel, scoria and other mineral mining operations, oil and gas facilities, and concrete and asphalt batch plants. The permit requires the implementation of a pollution prevention plan to reduce stormwater pollution. The permit includes discharge limits 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 FWPCAA 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 Env Quality, Div of Water Quality, 4201 Normandy Street, Bismarck ND 58503-1324 or by calling 701.328.5210.

All comments received by November 17, 2024 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.

The NDDEQ will consider every request for reasonable accommodation to provide an accessible meeting facility or other accommodation for people with disabilities, language interpretation for people with limited English proficiency (LEP), and translations of written material necessary to access programs and information. Language assistance services are available free of charge to you. To request accommodations, contact the NDDEQ Non-discrimination Coordinator at 701-328-5210 or [deqEJ@nd.gov](mailto:deqEJ@nd.gov). To request accommodations, TTY users may use Relay North Dakota at 711 or 1-800-366-6888.

## APPENDIX B – GLOSSARY

**“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](http://deq.nd.gov/WQ)

**“Act”** means the Clean Water Act.

**“Best management practices”** (BMPs) 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 plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.

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

**“Daily discharge”** means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the “daily discharge” is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the “daily discharge” is calculated as the average measurement of the pollutant over the day.

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

**“DMR”** means discharge monitoring report.

**“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.

**“EPA”** means the United States Environmental Protection Agency.

**“Final stabilization”** means that:

- a. All soil disturbing activities at the site have been completed and a uniform perennial vegetative cover with a density of 70 percent of the native cover for unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) has been achieved.
- b. For areas with an average annual rainfall of less than 20 inches only, all soil disturbing activities at the site have been completed and temporary erosion control measures (e.g., degradable rolled erosion control product) are selected, designed, and installed along with an appropriate seed base to provide erosion control for at least three years and achieve 70 percent vegetative coverage within three years without active maintenance.

- c. 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. 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 agricultural use must meet the final stabilization criteria in (a) or (b) above.

**"Grab"** for monitoring requirements, means a single "dip and take" sample collected at a representative point in the discharge stream.

**"Inactive mining"** or **"inactive oil and gas operations"** means areas, on or beneath lands, which were previously disturbed in activity related to the extraction, removal or recovery of coal, minerals, ores, or oil and gas from their natural deposits and were not otherwise subject to runoff controls or reclamation requirements. The term does not include areas of coal mining activity defined as "active mining area" or reclamation area" in 40 CFR 434.11 or areas which have been reclaimed, cleaned up or sealed under applicable SMCRA or equivalent requirements.

**"Instantaneous"** for monitoring requirements, means a single reading, observation, or measurement. If more than one sample is taken during any calendar day, each result obtained shall be considered.

**"Maximum daily discharge limitation"** means the highest allowable "daily discharge."

**"Measurable storm event"** means a storm event that results in an actual discharge and follows the preceding measurable storm event by at least 72 hours (3-days). The 72-hour storm interval does not apply if you document that less than a 72-hour interval is representative for local storm events. In the case of snowmelt, the monitoring must be performed at a time when a measurable discharge occurs at your site.

**"NDPDES"** means North Dakota Pollutant Discharge Elimination System.

**"No exposure"** means that all industrial materials or activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt and/or runoff.

**"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, building and equipment wash down without detergents or hazardous cleaning products, uncontaminated foundation drains, springs, lawn watering, chemical treatment of stormwater, and air conditioning condensate.

**"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.

**"Operator"** means the owner, party, person, general contractor, corporation, or other entity that has operational control over a facility. The operator is responsible for ensuring compliance with all



conditions of the permit and with development and implementation of the “stormwater pollution prevention plan.”

**“Severe property damage”** means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

**“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; raw materials used in food processing or production; 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).

**“Stabilized”** means the exposed ground surface has been covered by appropriate materials such as mulch, staked sod, riprap, wood fiber blanket, or other material that prevents erosion from occurring. Grass seeding alone is not stabilization.

**“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). Industrial facilities include industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in paragraphs (1)-(11) below, including those facilities designated under 40 CFR 122.26(a)(1)(v). The following categories of facilities are considered to be engaging in "industrial activity" for the purposes of this subsection:

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category 11 of this section);
2. Facilities classified within Standard Industrial Classification 24, Industry Group 241 that are rock crushing, gravel washing, log sorting, or log storage facilities operated in connection with silvicultural activities defined in 40 CFR 122.27(b)(2)-(3) and Industry Groups 242 through 249; 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373; (not included are all other types of silviculture facilities);
3. Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are

being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;
5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;
6. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;
7. Steam electric power generating facilities, including coal handling sites;
8. Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs 1-7 or 9-11 of this section are associated with industrial activity;
9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR part 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with section 405 of the CWA;
10. Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;
11. Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-25;

**“Temporary erosion protection”** means methods employed to prevent erosion. Examples of temporary cover include; straw, wood fiber blanket, wood chips, and erosion netting.

**“Total drain”** means the total volume of effluent discharged.

**“Upset”** means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

**“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 C – RESPONSE TO COMMENTS**

Comments received during the public comment period and their associated responses are shown below:

### **Strata Corporation**

#### **Comment 1:**

One thing I noticed for Mandan 2: We don't operate in late winter/early spring. It was April or May the first time we got in there, which is typical for this site. Is this something we'll have to update the DEQ on with the new permit asking for inactive notifications?

#### **Department Response to Comment 1:**

Thank you for your comment. The department is not requesting permittees to notify the department of seasonal operational shutdown. The department has added language to clarify "inactive" and "unstaffed" facilities in Part II(C)(D)(9) of the permit. Seasonal operational shutdown is not considered to be inactive and does not require providing inactive notifications to the department.

### **Environmental Protection Agency (EPA)**

#### **Comment 2:**

EPA identified a typo in Appendix 2(E) of the permit.

#### **Department Response to Comment 2:**

Thank you for identifying the typo in Appendix 2(E) of the permit (page 35). Appendix 2(E) states "...Nonmetallic Mineral (expect fuels)..." The department has updated "expect" to "except" in this section.

#### **Comment 3:**

In Part I. section D.2. of the permit, there are additional minimum information requirements listed. It is recommended that the language be updated so that the requirements are consistent across the fact sheet and permit.

#### **Department Response to Comment 3:**

Thank you for your comment. This comment is in reference to the fact sheet. The department has updated and added additional information to the fact sheet (page 7) to maintain consistency on requirements across the fact sheet and permit.

Comment 4:

Would this also apply to alternative general permit coverage as well?

Department Response to Comment 4:

Thank you for your comment. This comment is in reference to the fact sheet. The notice of termination/termination of coverage conditions identified on pages 7 and 8 of the fact sheet would include terminating coverage under this permit for coverage under an alternate general permit that is more applicable. The department has added language to the termination conditions in the fact sheet (page 8) and the permit (page 9).

Comment 5:

Appendix 2 includes additional description for this facility type (e.g., "Nonmetallic Material (except fuels)"). Recommended to adjust the description for this facility type so that it is consistent with the permit description.

Department Response to Comment 5:

Thank you for your comment. This comment is in reference to the fact sheet. The department believes the entire description was missed due to a page break; the description for "Mine Dewatering ... Crushed Stone, Sand and Gravel Mining" in the fact sheet (page 13) is the same description as Appendix 2(E) of the permit. However, the same typo identified in Comment 2 is also in the fact sheet, therefore, the department has updated "expect" to "except" in this section.

Comment 6:

Permit also includes requirement for familiarity with "applicable sampling requirements". Recommend incorporating that requirement here for consistency across both the fact sheet and permit requirements.

Department Response to Comment 6:

Thank you for your comment. This comment is in reference to the fact sheet. The department has added the language "applicable sampling requirements" to the fact sheet (page 17) to maintain consistency across the fact sheet and permit.

Comment 7:

Permit also includes requirement for: "Signature of person(s) conducting inspections or other means used to verify an inspector (e.g., work order or preventative maintenance schedule completion)". Recommend including requirement here for consistency across both the fact sheet and permit.

Department Response to Comment 7:

Thank you for your comment. This comment is in reference to the fact sheet. The department has added the language “signature of, or other means used to verify, person(s) conducting inspections” to the fact sheet (page 18) to maintain consistency across the fact sheet and permit.