

**FACT SHEET FOR NDPDES PERMIT
NDR11-0000
(FORMERLY NDR10-0000)
PERMIT REISSUANCE**

**GENERAL PERMIT FOR STORMWATER DISCHARGES FROM
CONSTRUCTION ACTIVITIES**

DATE OF THIS FACT SHEET – JANUARY 2020

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**.

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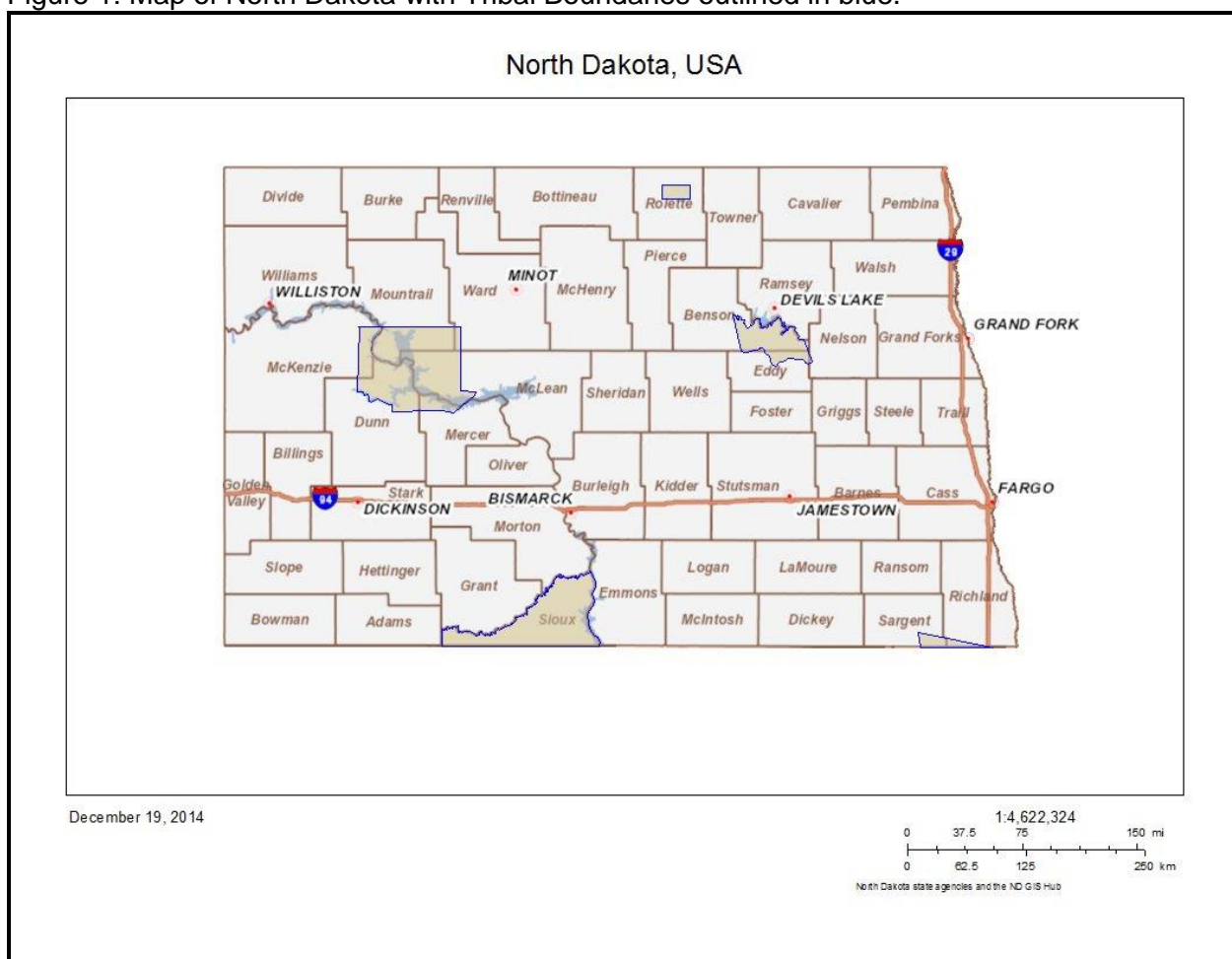
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BACKGROUND INFORMATION

General Information

Permit Number:	NDR11-0000 (formerly NDR10-0000)
Permit Type:	General Permit, Renewal
Type of Treatment:	Best Available Technology Economically Achievable (BAT); Best Practicable Control Technology Currently Available (BPT); Best Professional Judgment (BPJ); and Best Management Practices (BMPs)
Discharge Location:	Waters of the State of North Dakota

Figure 1: Map of North Dakota with Tribal Boundaries outlined in blue.



General permits (Title 40 of the Code of Federal Regulations (CFR), Part 122.28) provide a streamlined means to cover a large number of construction activities included in the definition of “stormwater discharges associated with industrial activity” (40 CFR 122.26(b)(14)(x)) and small construction activity defined in 40 CFR 122.26(b)(15). These activities 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 may still be developed to address specific water quality concerns.

The present general permit issued for stormwater discharges associated with construction activity expires on March 31, 2020. 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 cover stormwater discharges from construction activity. Currently, there are about 3,000 construction projects or operations covered by the existing permit for the discharge of stormwater from construction activities.

SIGNIFICANT PERMIT CHANGES

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

- Part I(A)(2)(c) was changed to Part I(A)(3) in the proposed permit. The subsection deals with the permit covering discharges from construction activity related to oil and gas exploration, production, processing or treatment operations, or transmission facilities. The subsection was included and updated to clarify what types of oil and gas related construction activity are covered by the permit and when a permit is required. The language reflects the Code of Federal Regulations prior to 2006 which the Ninth Circuit Court of Appeals remanded to in the court's opinion in *Natural Resources Defense Council v. United States Environmental Protection Agency*, 526 F.3d 591 (9th Cir. 2008).
- The reference to total maximum daily load (TMDL) allocations for sediment and/or parameters associated with sediment transport was removed from Part I(B)(5) of the proposed permit. The subsection now specifies that discharges to any water that has a TMDL must be consistent with the assumptions and requirements of the TMDL. The department determined that a TMDL allocation will include the specific requirements for construction activity.
- The department added "treatment of crude oil contaminated groundwater or surface water" and "oil and gas production water" to the types of discharges not covered in Part I(B)(7) of the proposed permit. The department changed the term "gasoline or diesel" to "refined petroleum" in this subsection. The department also included surface water as part of the treatment of refined petroleum contamination in this subsection.
- References to department websites were updated.
- Location of project was added to the site map conditions (Part II(C)(1)(f) in the proposed permit). Location of dividing lines and pre-existing and final grades were removed from the site map conditions (Part II(C)(1)(f) in the proposed permit).
- Requiring acreage in determining an aerial extent of wetlands was removed from the site map conditions (Part II(C)(1)(f) in the proposed permit). The department determined identifying an aerial extent of wetlands is sufficient.

- The department clarified that the stormwater pollution prevention plan (SWPPP) must describe methods used to minimize the generation of dust that could be discharged in stormwater from the project (Part II(C)(3)(c) in the proposed permit).
- The Operational Controls related to inspection and maintenance requirements were moved to the “Inspections” and “Maintenance” sections of the SWPPP requirements (Part II(C)(6) and (7) in the proposed permit).
- Dewatering inspection requirements were moved from Part II(C)(3)(g) to Part III(A)(8) in the proposed permit.
- Provisions regarding chemical treatment of dewatering activity were moved from Appendix 1(A) to Part II(C)(3)(g) of the proposed permit.
- The word “supplemented” was removed from sections that dealt with erosion and sediment control maintenance.
- A requirement to have the SWPPP signed by the owner, or owner jointly with the operator, was specified in the SWPPP signature requirement (Part II(C)(8)(a) of the proposed permit).
- The SWPPP amendment process in Part II(C)(8)(c) of the proposed permit was changed to require permittees to describe the SWPPP amendment process instead of amending the SWPPP as soon as practicable. The department determined the change will allow permittee to clearly define the SWPPP amendment process.
- Electronic reporting requirements for notices of intent and termination were included in the proposed permit. The electronic reporting requirements comply with 40 CFR 127.
- The requirements to record time of inspections and corrective actions was removed from the Inspection and Maintenance Requirements section of the proposed permit (Part III(A)(4), (5), and (8). A requirement to allow inspection records to be signed or use of another means to verify an inspector were included in these parts. The requirements to maintain written records were updated to allow other types of records or reports to be maintained.
- The Signatory Requirements (Part IV(A)(6) of the proposed permit) were updated to state that written authorization for a duly authorized individual no longer has to be submitted to the department but must be kept with the SWPPP. A copy of the written authorization must be submitted to the department upon request. The language is similar to the language in the U.S. EPA 2017 Construction General Permit.
- Permit language related to 24-hour non-compliance reporting and bypass provisions was updated to be relevant to construction activity (Part IV(A)(7) and (8) in the proposed permit).
- Stabilized earth berms were added to the list of erosion, sediment, and stabilization practices of Appendix 1(A)(4) in the proposed permit.

- In Appendix 1(A)(9) of the proposed permit, the timeline to provide energy dissipation for pipe and culvert outlets was changed from “within 24 hours of connection to a surface water” to “prior to connection to a surface water.” The change was made since energy dissipation is provided for pipe/culvert installation or construction.
- Requirements to implement BMPs to minimize further impacts of off-site accumulations of sediment were added to the off-site accumulations provision (Appendix 1(B)(4) of the permit). The requirement to utilize pollution prevention measures for impervious surface wash water was reiterated in the provision.
- A provision to manage fueling operations to minimize spills or leaks was added as an Operational Control in Appendix 1(C) of the proposed permit.
- A statement was added to the finalized permit clarifying that rainfall inspections do not take the place of a scheduled once every 14-calendar day inspection unless the rainfall inspection occurred on the same day as the once every 14-calendar day inspection.¹
- Maintenance records were added to the list of items that must be kept on site. Other reasonable on-site locations also was included in the list of locations where records can be kept.²
- A statement was added to say all records must be kept for at least three years from the date permit coverage expires or is terminated.³
- The definition of “steep slopes” was changed from a slope of fifteen percent (15%) or greater to 3:1 (Horizontal:Vertical) or greater.⁴

COVERAGE UNDER THIS PERMIT

Applicability of the General Permit

The proposed permit applies to stormwater discharges associated with construction activity and small construction activity as defined in 40 CFR 122.26(b)(14)(x) and (b)(15), respectively. The reference to construction activity in the permit includes both large construction activity and small construction activity. The permit authorizes the discharge of relatively uncontaminated stormwater from construction activity, support activities, and dewatering associated with the construction activity. The permit is not intended for stormwater discharges from other industrial activities. These activities are covered under separate general permits, NDR05-0000 and NDR32-0000.

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

¹ Update added based on NDDOT comment #4.

² Update added based on NDDOT comment #5.

³ Update added based on NDDOT comment #6

⁴ Update added based on NDDOT comment #8.

The proposed permit applies to the discharge of stormwater from construction activity associated with oil and gas exploration, production, processing or treatment operations, or transmission facilities that results in the discharge of a reportable quantity which requires notification pursuant to 40 CFR 110.6, 117.21, or 302.6, or contributes to a water quality standard. Discharges of stormwater from construction activity associated with oil and gas exploration, production, processing or treatment operations, or transmission facilities that do not result in the discharge of a reportable quantity or contribute to a violation of a water quality standard are not eligible for coverage under the proposed permit.

Construction activities covered under the present permit will be retained under the proposed permit after a renewal form is submitted to the department.

Discharges Not Covered

There are other types of discharges which also may not be 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 associated with industrial activity from any source other than construction activities and associated activity.
- Post-construction discharges from industrial activity that originate from the site after construction activities have been completed at the site.
- 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).
- This permit does not substitute for obligations under the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), Wild and Scenic Rivers Act, or National Historic Preservation Act (NHPA), it is your responsibility to ensure the project and resulting discharges comply with the respective requirements.
- Stormwater discharges that the department determines will cause, or have the reasonable potential to cause or contribute to, violations of the standards of quality for waters of the state (North Dakota Administrative Code [NDAC] 33.1-16-02.1).
- 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, or oil and gas production water.
- Discharges of wash water using detergents, wastewater, or sanitary waste.

Request for Authorization

Construction activities 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). Construction activities covered under the present permit will be retained, provided a satisfactory request was made under the renotification provisions of the permit. If necessary, the department may require the submittal of a new NOI.

For operators of new construction activities 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 construction activity. Permit coverage becomes effective seven days after a complete 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 name, mailing address, and phone number;
- Project contact name, phone number, and e-mail address;
- Project/site name;
- Project location;
- Brief description of construction activity;
- Start and end dates of the construction activity;
- Total area of site and disturbance; and
- Receiving waters or municipal storm sewer system and receiving water.

Application Process

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

A stormwater pollution prevention plan (SWPPP) 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 notified by the department.

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

- An owner of one or more lots may submit one NOI for all of the owner's construction activity within the common plan of development
- An operator, such as a homebuilder who may represent one or more lot owners, may submit one NOI for all of the operator's construction activity within each addition of a development or subdivision (i.e., common plan of development or sale).

For construction activity associated with oil and gas exploration, production, processing, treatment operations, or transmission facilities which require coverage under the proposed permit an NOI may be submitted for individual project sites or for an area of operations such as well field or by county.

Alternative Permit Coverage

The department may require any construction activity 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 permittee 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.

Notice of Termination (NOT)

Permittees may terminate permit coverage after the final stabilization conditions outlined in the proposed permit have been achieved. The permittee must submit a Notice of Termination (NOT) to terminate coverage. Compliance with the conditions of the permit is required until a NOT is submitted.

For residential construction only, a NOT is not required for each lot that is sold, transferred, or has achieved final stabilization. Permittees must modify their SWPPP to indicate that permit coverage is no longer required for that lot. The SWPPP must indicate 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.

Transfer of Ownership or Control

When the owner or operator of a construction project changes the new owner/operator must submit a written request for permit transfer/modification within fourteen days of assuming control of the site or commencing work on-site, or of the legal transfer, sale or closing on the property. The new owner or operator can implement the original SWPPP created for the project or develop and implement their own SWPPP. A transfer/modification request is not required for the legal transfer, sale or closing on a property between permittees covered by the permit (e.g., sale of a property parcel from a developer to a builder, transfer of an easement from a developer to a local government authority). If the new party is not covered by the permit at the time of transfer or sale, the new owner/operator must submit a NOI within fourteen days of assuming control of the site.

STORMWATER DISCHARGE REQUIREMENTS

Prohibition of Non-Stormwater Discharges

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 no-stormwater discharge. The discharge of wastewater is not authorized by this permit. Non-stormwater discharges that are eligible for coverage under the proposed permit include: 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.

Release in Excess of Reportable Quantities

The proposed permit does not relieve the permittee of the reporting requirements under 40 CFR 110, 40 CFR 117, and 40 CFR 302 or the reporting requirements found in NDAC 33.1-16-02.1. Any releases which meet any reporting requirement must be reported.

Stormwater Pollution Prevention Plan

All activities covered by the proposed permit are required to prepare, implement, and maintain a SWPPP until final stabilization is achieved. 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 construction activities 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 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 requirements reflect a combination of control measures and BMPs outlined the EPA Construction General Permit (CGP-2017), and the requirements of the Construction and Development Effluent Guidelines (40 CFR 450). The required SWPPP items in the proposed permit are similar to those in the past versions of the permit. The minimum SWPPP must include the following:

- Site Description: Include description of project and type of construction activities, total area and area expected to be disturbed, timetable of activities, soil description, surface water or municipal storm sewer systems in the area, and site maps detailing items such as outfalls and the presence of impaired waters.
- Narrative Description: Describe the selection or operational controls and sediment and erosion controls. This section includes installation, removal, and maintenance practices of BMPs; the rationale for selecting BMPs; and any description of infeasibility.
- Stormwater Controls: Describe the BMPs used in day to day operations on the project site to reduce pollutants in stormwater runoff. This section includes site supervisor, chain of responsibility, good housekeeping, dust control, preventative maintenance, spill prevention and response, employee training, concrete and wash water management, and dewatering management.
- Erosion and Sediment Controls: Describe the erosion and sediment controls and site stabilization methods used throughout the construction activity. This section addresses erosion and sediment controls and site stabilization; recovery of off-site accumulations of sediment; and TMDL conditions.
- Stormwater Management: This section addresses the maintenance of constructed stormwater management devices.
- Maintenance: A description of the maintenance practices for all stormwater pollution prevention control measures identified in the SWPPP.
- Inspections: Procedures for performing inspections such as inspector knowledge, schedule, area of inspection, and information to record.
- 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.

Local Requirements

Stormwater discharges from construction activity must comply with the requirements, policies, or guidelines of municipalities and other local agencies. Any discharge must comply with any specific conditions or BMPs required by the municipality or agency.

Final Stabilization

Permittee must ensure final stabilization of a construction site. Final stabilization can be achieved in one of the following ways:

- All soil disturbing activities at the site complete and soils must be stabilized by a uniform perennial vegetative cover with a density of 70 percent of the pre-existing cover over the entire pervious surface area or stabilized with another equivalent means necessary to prevent soil failure under erosive conditions. In addition, all drainage ditches must be stabilized to preclude erosion; all temporary BMPs such as silt fence must be removed; and sediment must be removed from stormwater conveyances and basins and stabilized.
- Areas that receive less than 20 inches of rain per year may meet final stabilization after all soil disturbing activities are complete and erosion controls and stabilization methods are employed to achieve 70 percent of pre-existing cover within three years.
- Soils that will return to agricultural use are restored to their agricultural use.
- For residential construction, soils are stabilized and down gradient perimeter controls are provided. In addition, a homeowner fact sheet is provided to the homeowner.

Records Retention

A copy of the completed and signed NOI, coverage letter from the department, SWPPP, inspection records, maintenance records,⁵ and the general permit, must be kept at the site of construction activity or a reasonable alternative location. Electronic copies are acceptable. All records must be kept for at least three years from the date the permit coverage expires or is terminated⁶.

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. Permittees are responsible for applying and obtaining any additional authorizations necessary to initiate the discharge proposed in the permittee'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 permittee will not be authorized to discharge stormwater other than the type and at the location specified in the application.

⁵ Maintenance records added to list based on NDDOT comment #5.

⁶ Point when record retention period begins was added based on NDDOT comment #6.

SELF MONITORING REQUIREMENTS

Inspection and Maintenance Requirements

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

- General Inspection Requirement: Inspections shall be performed one every 14 calendar days and within 24 hours after a storm event greater than 0.25 inches in 24 hours. Rainfall inspections do not take the place of a scheduled once every 14-calendar day inspection unless the rainfall inspection occurs on the same day as the once every 14-calendar day inspection.⁷
- Stabilized Areas: Inspections may be performed once per month in areas that have been stabilized but do not meet 70 percent perennial vegetative cover.
- Final Stabilization Areas: Inspections may be suspended where parts of the project meet the requirements of final stabilization.
- Frozen Conditions: Inspections may be suspended due to frozen ground conditions. Inspections must take place if the ground is frozen and earthwork is occurring. Regular inspections must resume when runoff occurs or the ground begins to thaw.
- Dewatering Activities: Dewatering activities must be inspected daily.

Permittees must inspect erosion and sediment control measures and stabilized areas to ensure they are operating correctly and in serviceable conditions. Permittees also must inspect the following areas for evidence of, or the potential for, pollutants entering the drainage system:

- Areas used for storage of materials;
- Permanent stormwater control measures;
- Vehicle maintenance areas;
- Dewatering activities

Personnel conducting inspections must be familiar with:

- The SWPPP;
- Location, installation, function, maintenance, and removal of BMPs;
- Inspection frequency;
- Areas to inspect;
- How to record inspection findings;
- How to initiate and properly document corrective actions

Inspection records must include:

- Date of the inspection;
- Name of person(s) conducting the inspection;
- Findings including recommendations and schedule for corrective actions;
- Date and amount of rainfall events greater than 0.25 inches; and

⁷ Sentence added based on NDDOT comment #4.

- Documentation that the SWPPP has been amended

Maintenance records must include:

- BMPs corrected;
- Date of corrective actions;
- Name of person(s) performing corrective actions; and
- Corrective actions taken

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.

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:

- 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.

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

The best management practices in the proposed permit reflect the conditions of the EPA Construction General Permit (CGP-2017). Additional water quality-based limitations may be imposed on discharges covered by this permit through the implementation of a TMDL allocation. In addition, a construction activity covered by this permit may be required to obtain an individual permit based on site specific water quality-based limitations.

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, or the establishment of prohibitions or more stringent limitations for toxic or conventional pollutants. 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 construction activity. The permit includes management practices 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.

Any request to retain coverage under a renewal of this permit shall be made in writing to the department at least 15 days prior to the expiration date of this permit. Typically, the department provides permit holders with renewal or renotification instructions when a new permit has been drafted. Upon request by the department, a new Notice of Intent shall be submitted.

APPENDIX A – PUBLIC INVOLVEMENT

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

The department will place a Public Notice of Draft on **February 14, 2020** 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
918 East Divide Avenue, 4th Floor
Bismarck, ND 58501

The primary author of the general permit and fact sheet is Dallas Grossman.

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

Public Notice Date: 2/14/2020

Public Notice Number: ND-2020-005

Purpose of Public Notice

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

Permit Information

Application Date: 10/1/2019

Application Number: NDR11

Applicant Name: NDPDES Construction Stormwater General Permit

Mailing Address: ND Dept of Env Quality, Div of Water Quality, 918 East Divide Ave, Bismarck ND 58501-1947

Telephone Number: 701.328.5242

Proposed Permit Expiration Date: 3/31/2025

Description

The Department proposes to reissue NDPDES General Permit NDR110000 (formerly NDR100000) to authorize the discharge of stormwater associated with construction activity as defined in 40 CFR part 122.26(b)(14)(x) and small construction activity as defined in 40 CFR part 122.26(b)(15). The regulated construction activities include clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre. Construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale, if the larger common plan will ultimately disturb equal to or greater than one acre. The permit requires the implementation of a pollution prevention plan to reduce erosion and sediment impacts to surface waters. The permit includes discharge conditions based on prohibitions, best management practices, water quality standards, and other considerations applicable to construction activity.

Tentative Determinations

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

Information Requests and Public Comments

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

All comments received by March 17, 2020 will be considered prior to finalizing the permit. If there is significant interest, a public hearing will be scheduled. Otherwise, the Department will issue the final permit within sixty (60) days of this notice. If you require special facilities or assistance relating to a disability, call TDD at 1.800.366.6868.

APPENDIX B – GLOSSARY

DEFINITIONS Permit Specific

“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 than 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 fifteen (15) percent or greater in grade.~~ means slopes which are 3:1 (Horizontal:Vertical) or greater in grade.⁸

“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.

⁸ Change made based on NDDOT comment #8 and review of 40 CFR 450.21, 2017 EPA CGP (as modified), and 2018 CGPs for Montana, South Dakota, and Minnesota.

“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 C – RESPONSE TO COMMENTS

Comments were provided by the North Dakota Department of Transportation and Northern Improvement Company. In addition, sections of the permit were updated after department review during the public comment period to provide clarification in the permit.

Comments from the North Dakota Department of Transportation (NDDOT)



March 19, 2020

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

NDR11-0000 Construction General Permit 2020 Renewal Comments

The North Dakota Department of Transportation (NDDOT) offers the attached comments on the draft 2020 North Dakota Department of Environmental Quality (NDDEQ) Construction General Permit. The NDDOT appreciates the opportunity to review and comment on the permit and its provisions. We look forward to the Department of Environmental Quality's response to the attached comments.

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

Sincerely,

A handwritten signature in blue ink that reads "Mark Gaydos".

MARK GAYDOS, P.E.,
DIRECTOR, ENVIRONMENTAL AND TRANSPORTATION SERVICES DIVISION

19/mjs

NDDOT Comments on 2020 Draft NDDEQ Construction General Permit

Section I. A. 7.

- Consider extending this "90 days" to 180 days or to the end of the 2020 construction season to allow training to be provided on the new permit requirements. This permit is being reissued at the beginning of a construction season when all projects for that construction season have been designed and planned based upon the existing permit. Requiring compliance with this permit at this time would place undue costs on all projects associated with this permit and delay the completion of those projects.

Section II. C. 4. a. 4.

- Indicate where to obtain soil wind and water erodibility and settling time.

Section II. C. 4. d.

- There is a typo in the third sentence. It should read "... rainfall event or within 24 hours..." instead of "... rainfall event of within 24 hours...".

Section III. A. 1.

- Add a sentence after the first in this section that states "Rainfall inspections do not take the place of the scheduled once every 14 calendar day inspections unless they happen to occur on the scheduled day." The permit does not explicitly indicate that rainfall inspections cannot reset the 14 calendar day timeline for scheduled inspections. During the reviews conducted by NDDOT staff, NDDOT contractors have indicated that they were not aware that the rainfall inspections do not reset this 14 day timeline. NDDOT contractors have stated that they have been cited by the NDDEQ for violations for using rainfall inspections to take the place of the scheduled 14 calendar day inspections.

Section III. B.

- Change this to "A copy of the completed and signed NOI, coverage letter from the department, SWPPP, site inspection records, 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." This change will help clarify the records required and where they can be kept.

Section IV. A. 5.

- Change this to "All records and information (including calibration and maintenance) required by this permit shall be kept by the permittee for at least three years from the date of permit termination or longer if requested by the department or EPA." This clarifies who must retain the documentation and how long.

Section IV. A. 6.

- Change this to "Any person signing a document under this section has made the following certification:" and add the instruction that paragraph following this statement does not need to be added to each document signed under this section. Having required certification language for documents signed under this section only leads to the possibility of violations due to errors in typing or inadvertent omission and does not increase the protection of the Environment.

Section V.

- "Steep slopes" – This does not line up with the stabilization requirement of 3:1 or steeper that is established in Appendix 1. We request that 3:1 be used in place of 15%.

Appendix 1. A. 7.

- Remove "which will have continuous flow". Ephemeral streams in Western North Dakota do not have continuous flow, but stream diversions in these streams must still be stabilized to meet the water quality standard. The NDDOT has had contractors that claim these streams do not require the same protections as there is not always continuous flow.

Appendix 1. C. 2.

- Change this to "Concrete wash water containments...". This clarifies that only concrete wash water containments require clean out before 80% storage capacity is reached.

Appendix 1. C. 3.

- Change this to "BMPs used in surface waters must have all aquatic vegetation removed immediately upon removal from surface waters to prevent the transfer of aquatic nuisance species." Through discussion with the North Dakota Game and Fish Aquatic Nuisance Species Biologist Ben Holen, [REDACTED] bholen@nd.gov, this wording would fall in line with the regulations set forth in North Dakota Administrative Code 30-03-06 on Aquatic Nuisance Species.

1. Comment

Section I.A.7

Consider extending this “90 days” to 180 days or to the end of the 2020 construction season to allow training to be provided on the new permit requirements. This permit is being reissued at the beginning of a construction season when all projects for that construction season have been designed and planned based upon the existing permit. Requiring compliance with this permit at this time would place undue costs on all projects associated with this permit and delay the completion of those projects.

Response

The department will not extend the grace period for projects to amend the SWPPP within 90 days of the effective date of the permit. The 90-day grace period is based upon the time requirements for the reissuance of a permit outlined in NDAC 33.1-16-01-26.1(3), 40 CFR 122.21(c)(1), 40 CFR 122.28(b)(2)(iii), and 40 CFR 122.28(b)(2)(iv). In addition, the North Dakota Department of Transportation (NDDOT) has not demonstrated examples of permit changes that would place undue costs on projects or delay the completion of projects.

2. Comment

Section II.C.4.a.4

Indicate where to obtain soil wind and water erodibility and settling time.

Response

This information can be obtained from the Natural Resources Conservation Service web soil survey or county soil survey books. The information also is available in various publications that discuss soil properties and online.

3. Comment

Section II.C.4.d

There is a typo in the third sentence. It should read “... rainfall event or within 24 hours...” instead of “... rainfall event of within 24 hours...”.

Response

The department made the correction in the finalized permit.

4. Comment

Section III.A.1

Add a sentence after the first in this section that states “Rainfall inspections do not take the place of the scheduled once every 14 calendar day inspections unless they happen to occur on the scheduled day.” The permit does not explicitly indicate that rainfall inspections cannot reset the 14 calendar day timeline for scheduled inspections. During the reviews conducted by NDDOT staff, NDDOT contractors have indicated that they were not aware that the rainfall inspections do not reset this 14 day timeline. NDDOT contractors have stated that

they have been cited by the NDDEQ for violations for using rainfall inspections to take the place of the scheduled 14 calendar day inspections.

Response

The department added the following sentence after the first sentence in Section III(A)(1) of the finalized permit:

“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.”

The department interprets the once every 14-calendar day inspection to take place every 14 calendar days regardless of when a rain event occurred, and that a rain event of 0.25 inches or greater does not reset the 14-calendar day schedule. An example of this interpretation would be a regular 14-calendar day inspection takes place every other Wednesday. If a rainfall event of 0.25 inches or greater occurs on the Thursday following the Wednesday inspection, then an inspection must be done following the Thursday rain event; however regularly scheduled inspections must still occur every other Wednesday. The department understands there are other scenarios where rain events may occur before or on the scheduled 14 calendar day inspection. In these cases, the rain event inspection must be conducted in accordance with the permit which means the rain event inspection and the 14-calendar day inspection may be one in the same.

The department’s interpretation that the 14-calendar day inspection occurs on a regular schedule and that rain event inspections do not reset that schedule is based on 40 CFR 122.48(b) which requires all NPDES permits to specify monitoring intervals and frequencies sufficient to yield data which is representative of the monitored activity. The department has determined that restarting the 14-calendar day period after each rain event of 0.25 inches or greater would not be sufficient to address non-compliance with the conditions of the permit for construction activity.

5. Comment

Section III.B

Change this to “A copy of the completed and signed NOI, coverage letter from the department, SWPPP, site inspection records, 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.” This change will help clarify the records required and where they can be kept.

Response

The department concurs with the NDDOT’s suggestion. In response to this comment, the department changed the first sentence of Section III(B)—Records Location from:

“A copy of the completed and signed NOI, coverage letter from the department, SWPPP, site inspection records, and this general permit shall be kept at the site of the construction activity in a field office, trailer, shed, or in a vehicle that is on-site during normal working hours.”

To:

“A copy of the completed and signed NOI, coverage letter from the department, 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.”

6. **Comment**

Section IV.A.5

Change this to “All records and information (including calibration and maintenance) required by this permit shall be kept by the permittee for at least three years from the date of permit termination or longer if requested by the department or EPA.” This clarifies who must retain the documentation and how long.

Response

The department concurs with the NDDOT’s suggestion. In response to this comment, the department changed Section IV(5)—Records Retention from:

“All records and information (including calibration and maintenance) required by this permit shall be kept for at least three years or longer if requested by the department or EPA.”

To:

“All records and information (including calibration and maintenance) 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.”

This language is consistent with the 2017 U.S. Environmental Protection Agency Construction General Permit (as modified June 2019) (2017 EPA CGP).

7. **Comment**

Section IV.A.6

Change this to “Any person signing a document under this section has made the following certification:” and add the instruction that paragraph following this statement does not need to be added to each document signed under this section. Having required certification language for documents signed under this section only leads to the possibility of violations due to errors in typing or inadvertent omission and does not increase the protection of the Environment.

Response

The language in Section IV(A)(6)—Signatory Requirements of the permit is consistent with the language in 40 CFR 122.22(d) which states, “*Certification.* Any person signing a document under paragraph (a) or (b) of this section [40 CFR 122.22—Signatories to permit applications and reports (applicable to State programs)] shall make the following certification:”

8. Comment

Section V

“Steep slopes” – This does not line up with the stabilization requirements of 3:1 or steeper that is established in Appendix 1. We request that 3:1 be used in place of 15%.

Response

The department reviewed 40 CFR 450.21, the 2017 EPA CGP, and construction general permits from Minnesota, Montana, and South Dakota. The term “steep slopes” is mentioned in 40 CFR 450.21 but is not defined. The 2017 EPA CGP provides the following definition for “steep slopes”:

“where a state, tribe, local government, or industry technical manual (e.g., stormwater BMP manual) has defined what is to be considered a “steep slope”, this permit’s definition automatically adopts that definition. Where no such definition exists, steep slopes are automatically defined as those that are 15 percent or greater in grade.”

The construction general permits for Montana, South Dakota, and Minnesota define steep slopes as being fifteen percent, 3:1 (H:V), and 1:3 (V:H), respectively. These permits took effect on the following dates: Montana – January 1, 2018; South Dakota – April 1, 2018; Minnesota – August 1, 2018; showing a progression of increase to what is considered a “steep slope.”

Based on the information provided in 40 CFR 450.21, the definition in the 2017 EPA CGP, and the progression of what is considered a “steep slope” neighboring State construction general permits, the department concurs the NDDOT and modified the definition of a “steep slope” in the finalized permit from:

“slopes which are fifteen (15) percent or greater in grade”

To:

“slopes which are 3:1 (Horizontal:Vertical) or greater in grade”

This change to the definition also aligns with the rapid stabilization requirement in the permit for slopes of 3:1 or steeper.

9. Comment

Appendix 1.A.7

Remove “which will have continuous flow”. Ephemeral streams in Western North Dakota do not have continuous flow, but stream diversions in these streams must still be stabilized to meet the water quality standard. The NDDOT has had contractors that claim these streams do not require the same protections as there is not always continuous flow.

Response

The department reviewed the first sentence of the Appendix 1(A)(7) erosion and sediment control requirement. The department determined that that by altering the sentence without removing the statement “which will have continuous flow” that the requirement to stabilize stream diversions would include ephemeral streams not just streams with flow. The department changed the sentence from:

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.

To:

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.

10. Comment

Appendix 1.C.2

Change this to “Concrete wash water containments...”. This clarifies that only concrete wash water containments require clean out before 80% storage capacity is reached.

Response

The department reviewed changing the sentence for the wash water containment operational control. The department determined that by only applying the operational control to concrete wash water, then other types of wash water containments (e.g., tools, equipment, paint, stucco, etc.) would not be cleaned out at the same frequency. The department will keep the sentence the same in the finalized permit as it applies to all types of wash water.

11. Comment

Appendix 1.C.3

Change this to “BMPs used in surface waters must have all aquatic vegetation removed immediately upon removal from surface waters to prevent the transfer of aquatic nuisance species.” Through discussion with the North Dakota Game and Fish Aquatic Nuisance Species Biologist Ben Holen, [cell phone number omitted], bholen@nd.gov, this wording would fall in line with the regulations set forth in North Dakota Administrative Code 30-03-06 on Aquatic Nuisance Species.

Response

The department reviewed North Dakota Administrative Code (NDAC) 30-03-06, as well as North Dakota Century Code (NDCC) 20.1-17, NDCC 61-28, NDAC 33.1-16-02.1, and the 2018 North Dakota Aquatic Nuisance Species Management Plan (2018 ND ANS Management Plan). The operational control in the permit to clean best management practices (BMPs) upon removal from surface waters to remove ANS is consistent with State

rules and agency rules for both the North Dakota Game and Fish Department and Department of Environmental Quality (NDDEQ). The operational control in the permit also is consistent with Objective 3 (Prevention and Control) of the 2018 ND ANS Management Plan. In particular, the permit requirement meets Strategy 3.C of the 2018 ND ANS Management Plan by incorporating ANS preventative actions into a state issued permit for permitted activities that present a high risk of introducing and spreading ANS.

The department will keep the sentence the same in the finalized permit as it is consistent with 2018 ND ANS Management Plan, NDCC 20.1-17 and 61-28, and NDAC 30-03-06 and 33.1-16-02.1.

Comments from Northern Improvement Company

ND Dept of Env Quality, Div of Water Quality

918 East Divide Ave

Bismarck, ND 58501-1947

March 4, 2020

Dear ND DEQ Personnel,

I would like to submit a public comment to the proposed NDR 11 Construction Storm Water Permit
Pertaining to III. Self Monitoring and Reporting

A. Inspections and Maintenance Requirement

1. Inspections shall be performed by or under direction of the permittee at least once every 14 calendar days and within 24 hours after any storm event greater than .25 inches of rain in 24 hours.

Comment:

I would like to propose or see the calendar reset for the 14 days routine inspection after a rain event inspection.

Solution suggested:

Inspections should be performed:

- A. at least once every 14 days from the day the permit authorization achieved, &
- B. within 24 hours after a storm event produces greater than a .25 in 24 hours.
- C. The 14 Day inspection resets after a greater than .25 rain event in 24 hours inspection.

There are many times when the rain event will trigger an inspection, then a day or two later the 14 day inspection is due. It seems redundant, excessive and over burdening to inspect the whole site over after you had just gone over it a short time ago.

Please consider this comment as I believe it wouldn't be any harder to keep track and schedule this floating inspection date then it would be to schedule an initial routine inspection date and stick to that schedule it between all the rain events.

Thanks for your consideration,

Respectfully Submitted,

Jeff Reinholz

EHS Director Northern Improvement Company

Comment

I would like to propose or see the calendar reset for the 14 days routine inspection after a rain event inspection.

Solution suggested:

Inspections should be performed:

- A. at least once every 14 days from the day the permit authorization achieved, &
- B. within 24 hours after a storm event produces greater than a .25 in 24 hours.
- C. The 14 Day inspection resets after a greater than .25 rain event in 24 hours inspection.

There are many times when the rain event will trigger an inspection, then a day or two later the 14 day inspection is due. It seems redundant, excessive and over burdening to inspect the whole site over after you had just gone over it a short time ago.

Please consider this comment as I believe it wouldn't be any harder to keep track and schedule this floating inspection date then it would be to schedule an initial routine inspection date and stick to that schedule it between all the rain events.

Response

Refer to the response to NDDOT comment #4. The department interprets the once every 14-calendar day inspection to take place every 14 calendar days regardless of when a rain event occurred, and that a rain event of 0.25 inches or greater does not reset the 14-calendar day schedule. An example of this interpretation would be a regular 14-calendar day inspection takes place every other Wednesday. If a rainfall event of 0.25 inches or greater occurs on the Thursday following the Wednesday inspection, then an inspection must be done following the Thursday rain event; however regularly scheduled inspections must still occur every other Wednesday. The department understands there are other scenarios where rain events may occur before or on the scheduled 14 calendar day inspection. In these cases, the rain event inspection must be conducted in accordance with the permit which means the rain event inspection and the 14-calendar day inspection may be one in the same.

The department's interpretation that the 14-calendar day inspection occurs on a regular schedule and that rain event inspections do not reset that schedule is based on 40 CFR 122.48(b) which requires all NPDES permits to specify monitoring intervals and frequencies sufficient to yield data which is representative of the monitored activity. The department has determined that restarting the 14-calendar day period after each rain event of 0.25 inches or greater would not be sufficient to address non-compliance with the conditions of the permit for construction activity.

As a response to the NDDOT comment and the department's interpretation, the department added the following sentence after the first sentence in Section III(A)(1) of the finalized permit:

"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."

Additional Permit Updates

1. Language in Part I(D)(3)(b) was reworded to clarify that homebuilders may submit a NOI for all construction activity within a development or subdivision. The same NOI also will cover additional phases to the development or subdivision. The language was changed from:

“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 each addition of the common plan of development.

In addition, a SWPPP must be developed and implemented for the permittee’s activities within the common plan of development. Additional phases of the common plan of development may be included under the initial NOI and permit coverage provided the SWPPP is amended to include the additional area or phases.”

To:

“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.”