

**FACT SHEET FOR NDPDES PERMIT  
NDR11-0000**

**PERMIT REISSUANCE**

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

**DATE OF THIS FACT SHEET – DECEMBER 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) oversees. In 1975, the State of North Dakota was delegated primacy of the NPDES program by EPA. The North Dakota Department of Environmental Quality, 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 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 North Dakota Administrative Code (NDAC) 33.1-16 which was adopted under North Dakota Century Code (NDCC) chapter 61-28. In North Dakota, these permits are referred to as North Dakota Pollutant Discharge Elimination System (NDPDES) permits.

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 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 section 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 C – Response to Comments**.

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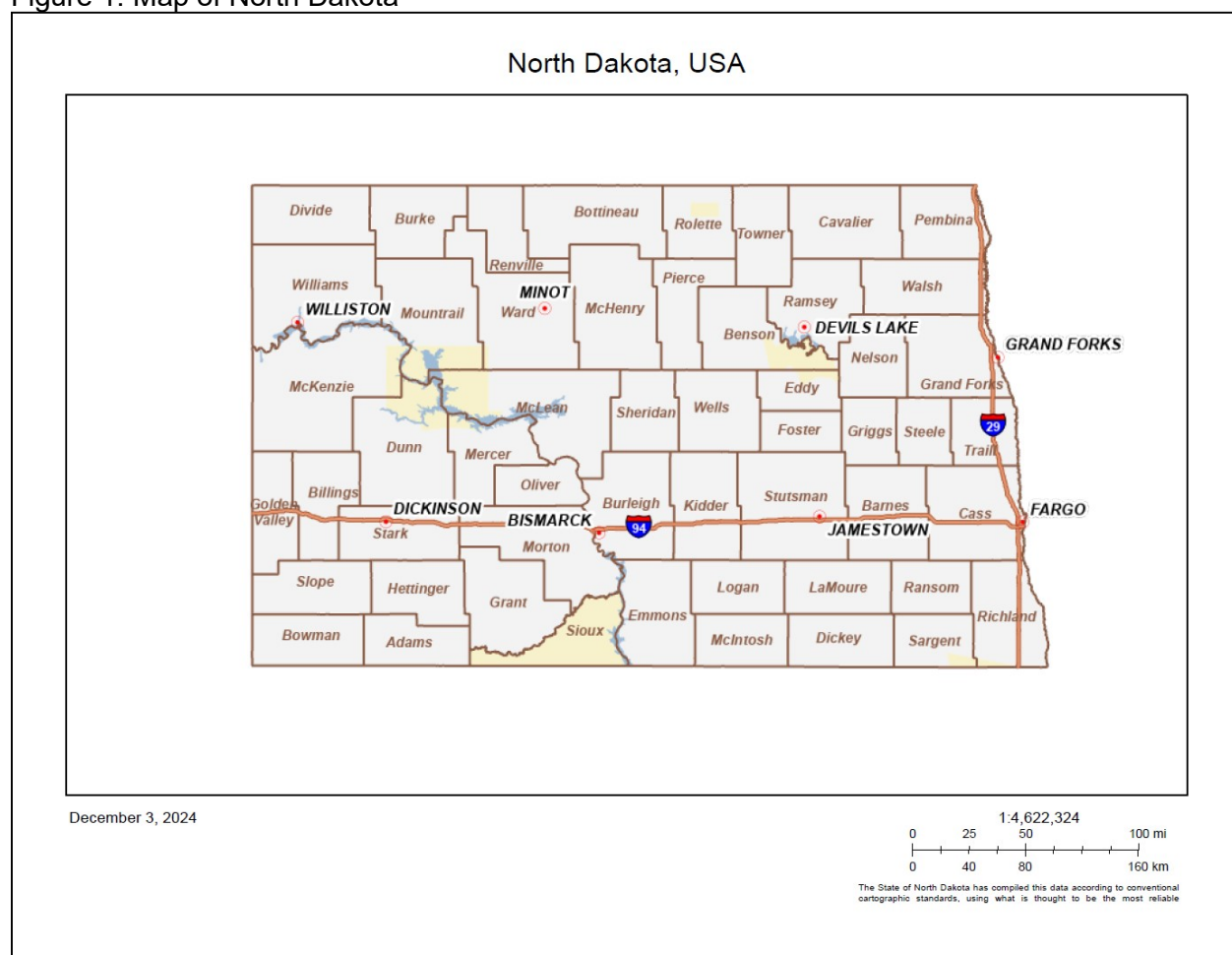
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## BACKGROUND INFORMATION

### General Information

|                     |  |
|---------------------|--|
| Permit Number:      | NDR11-0000   |
| 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



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 March 31, 2025. 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 2,100 construction projects or operations covered by the existing permit for the discharge of stormwater from construction activities.

### **SIGNIFICANT PERMIT CHANGES**

The draft proposed permit released for public comment contains many changes. Changes are redlined to allow the reader to view what was changed. The redline version of the draft proposed permit can be found in Appendix D. Items underlined were added to the permit. Items struck through were deleted from the permit. The redlines will be removed from the final version of the permit.

### **COVERAGE UNDER THIS PERMIT**

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

The proposed general 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 U.S. EPA. Projects which are within the jurisdiction of both the State and U.S. EPA must apply for and obtain coverage from both entities.

The proposed permit also 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 violation. 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. The applicability of the permit 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).

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 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 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 the permittees responsibility to ensure the project and resulting discharges comply with the respective requirements.
- Discharges to waters with a total maximum daily load (TMDL) allocation unless a Stormwater Pollution Prevention Plan (SWPPP) is consistent with the assumptions and requirements of the TMDL.
- 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 (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.
- Discharges of wastewater from washout of concrete, ~~unless managed by appropriate controls~~<sup>1</sup>.
- Discharges of wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials.
- Discharges of fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance.
- Discharges of soaps or solvents used in vehicle and equipment maintenance.

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<sup>1</sup> Removed in response to Comments #2, #4, #6, and #26.

### **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) and 127. Construction activities covered under the present permit will be retained provided a satisfactory request was made under the continuation of coverage provisions of the permit. Construction activities covered under the present permit must comply with this permit upon the effective date of the permit until coverage is terminated.<sup>2</sup>

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/site location, including county;
- Project/site latitude and longitude;
- Brief description of construction activity;
- Start and end dates of the construction activity;
- Total area of site and disturbance;
- Receiving waters or municipal storm sewer system and receiving water; and
- Signature of the applicant(s).

### **Notice of Intent Process**

A separate NOI 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 NOI for this permit. The owner is responsible for compliance with all terms and conditions of this permit. The operator has day to day supervision of construction activities and is jointly responsible with the owner for compliance with the permit for construction activities performed.

A 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).

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<sup>2</sup> Added in response to Comment #36.

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.

### **Termination of Coverage and Notice of Termination (NOT)**

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) and 127.

Permittees may terminate permit coverage after final stabilization has been achieved, or another owner, operator, or permittee has assumed control of the site. Permittees must submit a Notice of Termination (NOT) to terminate coverage in accordance with 40 CFR 122.64 and 127. Compliance with the conditions of the permit is required until a NOT is submitted or the proposed permit expires.

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**

The transfer of NOI coverage between owners will no longer be allowed beginning with the proposed 2025 permit. When a new owner assumes control of a construction project or a portion of a project, such as the sale of a lot between a homebuilder and a developer, the new owner must submit a new NOI, unless already covered by the permit.

When the operator of a construction project changes, the new operator must submit a written request for permit modification within fourteen days of assuming control of the site or commencing work on-site. A 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.

## **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 non-stormwater discharge. The discharge of wastewater and other sources provided in 40 CFR 450.21(e) 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. Permittees covered under the 2020 construction general permit have ninety days from the effective date of the final 2025 construction general permit to update their SWPPP to the 2025 permit requirements.

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 is 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 in the EPA Construction General Permit (CGP-2022) 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 with the exception of Stormwater Management. The Stormwater Management section addressed maintenance of constructed stormwater management devices. Maintenance and cleanout of constructed stormwater management devices was made a condition of final stabilization in the proposed 2025 construction general permit and removed as a SWPPP requirement. The updated minimum SWPPP requirements address 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.
- **Operational 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.
- **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:** SWPPP signatures, availability, and amendments to the SWPPP.

### **Local Requirements**

Stormwater discharges and dewatering activities 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**

Permittees must ensure final stabilization of construction sites. The final stabilization section was updated in the proposed 2025 construction general permit to specify areas not covered by a permanent structure or cover do not need to meet final stabilization. In addition, requirements to remove materials and waste, equipment, and other potential pollutants were added to the conditions for final stabilization. Final stabilization can be achieved in the following ways:

- All soil disturbing activities at the site are complete and soils not covered by permanent structures or cover are stabilized by a uniform perennial vegetative cover with a density of 70 percent of the pre-existing cover over the entire pervious surface area or stabilized with another equivalent means necessary to prevent soil failure under erosive conditions. In addition: (1) All drainage ditches must be stabilized to preclude erosion; (2) All temporary BMPs such as silt fence must be removed, (3) Sediment must be removed from stormwater conveyance, basins, and management features and stabilized; and (4) Construction materials, waste and waste handling devices, equipment and vehicles, and potential pollutants and pollutant-generating activities associated with construction must be removed.
- Areas that receive less than 20 inches of rain per year (per NOAA Atlas 14, Volume 8, Version 2, Midwestern States 2013) 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 in accordance with the landowner.
- For residential construction, soils are stabilized, and down gradient perimeter controls are provided. In addition, a homeowner fact sheet is provided to the homeowner.
- Coverage under an individual or alternative general NDPDES permit has been obtained.

### **Records Retention**

The SWPPP, inspection records, maintenance records, 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 permit coverage expires or is terminated.

Beginning with the 2025 proposed permit, a copy of the NOI and coverage letter is no longer required to be kept or be accessed at the site. The NOI and coverage letter are still required to be kept by the permittee for at least three years.

### **Authorization to Discharge**

The permit does not convey any property rights, exclusive privileges. The permit does not authorize any injury to private property, invasion of personal rights, infringement of federal, state or local laws or regulations. 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 NOI, the permittee shall modify the NOI. The permittee will not be authorized to discharge stormwater other than the type and at the location specified in the application.<sup>3</sup>

## **SELF MONITORING REQUIREMENTS**

### **Inspection and Maintenance Requirements**

All activities covered by the proposed permit are required to conduct comprehensive site inspections. Maintenance is required for erosion and sediment controls, stabilized areas, and pollution prevention and other protective measures.

- General Inspection Requirement: Inspections must be performed at least once 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.
- Stabilized Areas: Inspections may be performed once per month in areas that have been stabilized but do not meet 70 percent perennial vegetative cover.

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<sup>3</sup> Paragraph changed in response to Comment #39.

- 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.

If inspections are not able to be completed within the timeframes specified above due to adverse climatic conditions, then the permittee must record a description of why the inspection(s) could not be conducted. If inspections are delayed due to adverse weather conditions or rain events occurred outside of normal working hours, then an inspection must be conducted the next working day or as conditions allow.

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 summarize the scope of the inspection, major observations relating to the SWPPP, and corrective actions taken and include:

- Date of the inspection;
- Name of person(s) conducting the inspection;
- Findings including recordings or imagery (if utilized)<sup>4</sup>, and recommendations and time frame for corrective actions;
- Date and amount of rainfall events greater than 0.25 inches;
- Documentation that the SWPPP has been amended; and
- Signature of person(s) conducting the inspection or other means to verify an inspector

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<sup>4</sup> Added in response to Comment #28.

Maintenance records must include:

- BMPs corrected;
- Date of corrective actions;
- Name of person(s) performing corrective actions including recordings or imagery (if utilized)<sup>5</sup>;
- Corrective actions taken; and
- Signature of person(s) completing maintenance activities or other means to verify activities were completed

Dewatering records must include:

- Date of the inspection;
- Name of person(s) conducting the inspection;
- Approximate start and end times and pump rate;
- Findings including recordings or imagery (if utilized)<sup>6</sup>, and recommendations and time frame for corrective actions;
- Corrective actions taken including date and party completing maintenance activities;
- Documentation that the SWPPP has been amended; and
- Signature of person(s) conducting dewatering inspections and maintenance or other means to verify person(s)

### **REQUIREMENTS FOR BEST MANAGEMENT PRACTICES**

The proposed permit contains BMPs used to control or abate pollutants in stormwater discharges (40 CFR 122.44(k)). The proposed permit contains specific requirements for erosion and sediment control practices, maintenance of erosion and sediment controls, operational controls, and dewatering practices. Changes to BMPs in the proposed permit include:

- Moving or reiterating BMP requirements found in the SWPPP section of the permit to Appendix 1 of the permit;
- Adding soil stockpiles used for structural purposes to the types of temporary stockpiles that are not required to be stabilized;
- Clarifying steps to develop a stabilization plan when stabilization requirements cannot be met due circumstances beyond the control of the permittee;
- Clarifying additional erosion and sediment controls must be utilized if a vegetative buffer does not meet the minimum permit conditions;
- Including the soil compaction and topsoil preservation requirements found in 40 CFR 450.21(a)(7) and (8).
- Including the requirement to minimize exposure of construction materials to stormwater found in 40 CFR 450.21(b)(2).
- Including the requirement found in 40 CFR 450.21(b)(1) to minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters.

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<sup>5</sup> Added in response to Comment #29.

<sup>6</sup> Added in response to Comment #30.

## **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 TMDL study. TMDLs result from a scientific study of the water body and are developed in order to reduce pollution from all identified sources.

### **Narrative Criteria**

Narrative water quality criteria (NDAC § 33.1-16-02.1-08) limit the amount 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 BMPs in the proposed permit reflect the conditions of the EPA CGP-2022 and the requirements of the Construction and Development Effluent Guidelines (40 CFR 450). 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.

Coverage under the proposed permit also may be modified, revoked and reissued, or terminated for cause. The department may require permittees to obtain an individual permit or alternative general permit as provided in the proposed permit. The applicability of the proposed permit ends once an individual permit takes effect or coverage under an alternative general permit is granted.

#### **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.

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

## **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 **January 29, 2025** 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 Dallas Grossman.

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

Public Notice Date: 1/29/2025

Public Notice Number: ND-2025-003

**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: 10/1/2024

Application Number: NDR11

Applicant Name: NDPDES Construction Stormwater General Permit

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

Telephone Number: 701.328.5242

Proposed Permit Expiration Date: 3/31/2030

**Description**

The Department proposes to reissue NDPDES General Permit NDR110000 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, 4201 Normandy Street, Bismarck ND 58503-1324 or by calling 701.328.5210.

All comments received by March 03, 2025 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

### 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](http://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 3:1 (Horizontal:Vertical) or greater in grade.

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

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

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

(i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

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

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

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

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

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

## **APPENDIX C – RESPONSE TO COMMENTS**

Below are summaries of the written comments received during the public comment period. Although there are specific responses to each comment, the document should be read in its entirety with the understanding that a response to one comment may be applicable to additional comments. The department has updated the proposed permit and fact sheet to provide clarification and address comments received during the comment period. Substantive changes are discussed in the responses.

### **City of Grand Forks (Grand Forks)**

1. **Grand Forks Comment 1:** How does the original owner terminate their coverage? Will there be new criteria to select on the Notice of Termination form?

**Department Response:** Thank you for the comment. The comment is in reference to Section I(F)(1) of the permit which states the permit cannot be transferred from one owner to another. To terminate coverage, the original owner may submit a NOT if the conditions of Section I(E)(2)(a) and (b) of the permit are met. In response to the comment, the department added the following to Section I(F)(1) of the permit, “The previous owner may terminate coverage if the conditions of Part I(E) are met.” In addition, the department changed Section I(E)(2)(b) from,

“Another owner/operator/permittee has assumed control in accordance with the transfer provisions (Part I(F)) over all areas of the site that have not achieved final stabilization.”

To,

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

The department intends to update the criteria in the notice of termination form with the changes to the permit.

2. **Grand Forks Comment 2:** Are there examples of BMPs that would minimize the effects of discharge from concrete wash water that the DEQ would see as sufficient? Usually we have just seen leak proof pits/containers.

**Department Response:** Thank you for the comment. The comment is in reference to Section II(C)(3)(f) of the permit which states concrete wash water shall not be discharged to waters of the state, storm sewer systems, or curb and gutter systems unless BMPs are utilized that minimize the effects of the discharge (e.g., pH, suspended solids). Please refer to the department’s response to comment #26 and changes made to the permit. The department determined the change made to the permit in comment #26 addresses this comment.

3. **Grand Forks Comment 3:** Same question as above. Will there be criteria on the Notice of Termination to terminate coverage based on owner change?

**Department Response:** Thank you for the comment. The comment is in reference to Section II(E)(2) of the permit related to the condition for final stabilization for areas that receive less than 20 inches of average annual rainfall and comment #1. Please refer to the department's response to comment #1 and changes made to the permit. The department determined the change made to the permit in comment #1 addresses this comment.

#### **Midwest Erosion Control (MEC)**

4. **MEC Comment 1:** The contractor is left to decided what an appropriate control is? Should this have a definition of what the discharge water quality would need to be? I'm not sure that putting a straw wattle would be appropriate here, but one could make a case that it is.

**Department Response:** Thank you for the comment. The comment is in reference to sentence 2 in the first paragraph of Section II(A) of the permit which states there shall be no discharge of wastewater from concrete washout unless managed by an appropriate control. An appropriate control in this case would be considered a BMP. A BMP is defined as "...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." Based on this comment and similar comments (comment #2, #4, #6, and #26), and the department response to comment #26, the second sentence in the first paragraph of Section II(A) from:

"There shall be no discharge of wastewater from concrete washout unless managed by an appropriate control."

To:

"There shall be no discharge of wastewater from concrete washout."

Additionally, the department changed the similar language in Section I(B)(9), Discharges Not Covered, from:

"Discharges of wastewater from washout of concrete, unless managed by appropriate controls."

To:

"Discharges of wastewater from washout of concrete."

5. **MEC Comment 2:** On-site personnel must know the location of all BMPs and correct installation, function, maintenance and removal? Everyone onsite needs to know this?

**Department Response:** Thank you for the comment. The comment is in reference to Section II(C)(3)(e)(1)(b) and (c) of the permit which requires on-site personnel to know the location of all BMPs identified in the SWPPP, and the correct installation, function, maintenance, and removal of BMPs identified in the SWPPP. As a result of the comment, the department updated Section II(C)(3)(e)(1)(b) from:

“The location of all BMPs identified in the SWPPP; and”

To:

“The location of all BMPs identified in the SWPPP that pertain to their role; and”

And updated Section II(C)(3)(e)(1)(c) from:

“Correct installation, function, maintenance, and removal (if applicable) of BMPs identified in the SWPPP.”

To:

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

**6. MEC Comment 3:** How much is minimize?

**Department Response:** Thank you for the comment. The comment is in reference to Section II(C)(3)(f) of the permit which states concrete wash water shall not be discharged to waters of the state, storm sewer systems, or curb and gutter systems unless BMPs are utilized that minimize the effects of the discharge (e.g., pH, suspended solids). Please refer to the department’s response to comment #26 and changes made to the permit. The department determined the change made to the permit in comment #26 addresses this comment.

**7. MEC Comment 4:** the next sentence says if infeasible, do we need unless infeasible?

**Department Response:** Thank you for the comment. The comment is in reference to the second sentence in Section II(C)(3)(g)(3) of the draft permit (Section II(C)(3)(g)(2) of the final permit). The department reviewed the language and determined changing the language to “unless infeasible” would change the intent of the sentence. No change to the permit was made.

**8. MEC Comment 5:** This is the first and only mention of Wind erosion. Does the SWPPP cover wind erosion? If not then, don't mention, it yes it feels like we are missing some details. Do we have a table the lists the soil type and the erodibility?

**Department Response:** Thank you for the comment. The comment is in reference to Section II(C)(4)(a)(4) of the permit which outlines the considerations for selecting erosion and sediment controls and site stabilization. As provided in paragraph 1 of Section II(C) of the permit, the objectives of the SWPPP are to identify potential sources of sediment and other sources of pollution associated with construction activity, and to ensure practices are implemented and maintained to reduce the contribution of pollutants in stormwater discharges from the construction site to waters of the state and storm sewer systems. This includes wind erodibility which may be a potential source of sediment deposition to waters of the state and storm sewer systems (e.g., wind-blown soil in a gutter from a construction site may be washed down stream by a rain event). The department will keep the reference in the finalized permit since wind erodibility of soil and deposition of soil in waters of the state or

storm sewer system due to construction activity is an important consideration in the selection of erosion and sediment controls and stabilization practices.

Information about soil and wind erodibility may be obtained from the Natural Resources Conservation Service web soil survey or county soil survey books. Information is also available in various publications that discuss soil properties and online.

9. **MEC Comment 6:** Seasonal conditions, Straw has a functional longevity of 3months, how does putting straw on a job meet stabilization requirements from Nov to April

**Department Response:** Thank you for the comment. The comment is in reference to Section II(C)(4)(a)(5) of the permit which includes seasonal conditions as one of the considerations for erosion and sediment control and site stabilization. The application of straw is a method of stabilization. If the longevity of straw is less than the time period needed, then the SWPPP should take into consideration this expectation. In this example, if straw is not expected to function the entirety of the time needed (i.e., November to April), then provisions should be included in the SWPPP to ensure straw is appropriate, the required maintenance, or if additional practices are necessary.

10. **MEC Comment 7:** Velocity and Energy dissipation what? should there be devices that dissipate energy and slow down velocity installed?

**Department Response:** Thank you for the comment. The comment is in reference to sentence 2 of Section II(C)(4)(b) of the permit which includes velocity and energy dissipation at discharge locations as an item that must be addressed in the SWPPP. The department determined the language may be interpreted as requiring the installation of velocity or energy dissipation at all discharge locations (see response to comment #19). As a result, the department removed the sentence from the section. The department changed Section II(C)(4)(b) from:

“Sediment basins, or an appropriate combination of equivalent sediment controls such as smaller sediment basins and/or sediment traps, silt fences, fiber logs, vegetative buffer strips, berms, etc., are required for all down slope boundaries of the disturbance area and for those side slope boundaries as may be appropriate for site conditions. Velocity and energy dissipation is required at discharge locations. Erosion protection is required to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points.”

To:

“Sediment basins, or an appropriate combination of equivalent sediment controls such as smaller sediment basins and/or sediment traps, silt fences, fiber logs, vegetative buffer strips, berms, etc., are required for all down slope boundaries of the disturbance area and for those side slope boundaries as may be appropriate for site conditions. Erosion protection is required to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points.”

11. **MEC Comment 8:** if a product is only engineered for 3 months of functional use, why are we allowing them to be used to close permits in the fall?



**Department Response:** Thank you for the comment. The comment is in reference to sentence 1 of Section II(C)(4)(d) of the permit which requires control measures to be properly selected, installed and maintained in accordance with the manufacturer's specifications and good engineering practices. Please refer to the response to comments #9 and #13.

**12. MEC Comment 9:** What if wind caused this?

**Department Response:** Thank you for the comment. The comment is in reference to Section II(C)(4)(e) of the permit which refers to the removal of off-site accumulations of sediment that have escaped the construction site.

Off-site accumulations of sediment from a construction site due to wind erosion must still be removed in a manner and frequency sufficient to minimize off-site impacts. For example, wind erosion can deposit sediment into, or adjacent to, waters of the state or curb and gutter systems. Sediment that deposits adjacent to a water of the state or curb and gutter system has the potential to wash into a water of the state therefore would be a source of pollution.

**13. MEC Comment 10:** If the site is stabilized in a manner that keeps it stabilized for 3 years or until 70% vegetation is archived, why do we need to control erosion.

should not the permit be focused on stabilization, if we are installing erosion control measures that means we are having erosion and that would imply that we would need to maintain those items until we have 70% stabilization.

A rolled erosion control product is actually a stabilization method that prevents erosion from happening. I tend to think that erosion control and stabilization are the same thing. So does option #2 mean that no wattles (ie water filtration devices) are allowed for final stabilization?

Once final stabilization has been achieved (either through 70% veg or stabilized with less than 20in of rain) and a NOI has been submitted, what enforcement can happen if a storm event that is larger than the 2 year / 24 hr event happens and washes sediment off of the site?

**Department Response:** Thank you for the comment. The comment is in reference to Section II(E)(2) of the permit which provides a condition for final stabilization for projects located in arid and semi-arid areas that includes the use of erosion control measures and stabilization methods. Erosion control measures are meant to be a source control used in conjunction with stabilization. In some instances (such as the use of rolled erosion control product), erosion control and stabilization may be one in the same.

The use of straw wattles is not precluded by Section II(E)(2) if allowed by Section II(E)(1)(b) which requires temporary erosion prevention and sediment controls such as silt fence to be removed.

If a construction project has achieved final stabilization and coverage under this permit has been properly terminated, then this permit no longer applies to that project. The project area would no longer be considered a point source of pollution related to construction activity and a NDPDES permit to discharge pollution to waters of the state from construction activity is no longer applicable. Enforcement (i.e., control, prevention, and abatement of pollution to

waters of the state outside of the purview of the construction general permit) would fall under the purview of an alternate NDPDES permit where applicable or direct implementation of North Dakota Century Code Chapter 61-28.

14. **MEC Comment 11:** if inspections are at least every 14 days, why would not a rain event reset the 14 day time frame. It states that inspections "shall be performed at least once every 14 days and within 24 hrs of a rain event"

You would still be with in these criteria if your inspection time was 14 days after a rain event inspections. Why add extra inspections that are not called for in your requirements?

It seems that the at least every 14 days was so that a minimum inspection rate was followed, if it rains a quarter inch every day for one hour 13 days in a row, 13 inspections would be required, what is gained by the extra inspection on the 14th day.

This only seems to over complicate when inspections are needed and added extra burden to the inspector with no added value.

**Department Response:** Thank you for the comment. The comment is in reference to Section III(A)(2) of the permit which provides inspection frequencies allowed by the permit. As provided in 40 CFR 122.48(b), all NPDES permits are required to specify monitoring intervals and frequencies sufficient to yield data that is representative of the monitored activity. Whether an inspection is conducted at least once every 14 calendar days and following a rain event during that 14-calendar-day period, or an inspection is conducted at least once every 14 calendar days following a rain event, permittees would still be required to track the 14 calendar days to perform an inspection. The commenter has not demonstrated how this would over complicate inspection requirements and add extra burden to the inspector with no added value.

15. **MEC Comment 12:** A list should have a at least 2 items, otherwise it should be part of the above section.

**Department Response:** Thank you for the comment. The comment is in reference to Section III(A)(2)(a) of the permit which is a subsection of III(A)(2). The department kept the listing as is in the final permit.

16. **MEC Comment 13:** Why are recording or images now required. They would be nice, but should not be required.

**Department Response:** Thank you for the comment. The comment is in reference to Section III(A)(5)(c) of the permit. Please refer to the department's response to comment #28.

17. **MEC Comment 14:** this would be nice, but not required?

**Department Response:** Thank you for the comment. The comment is in reference to Section III(A)(7)(d) of the permit. Please refer to the department's response to comment #29.

18. **MEC Comment 15:** The SWPPP must be updated to ....

**Department Response:** The comment does not appear to be a finished comment. The comment is in reference to sentence three of Section III(A)(8) of the permit. This section refers to reduced inspection frequency and identifying the areas in the SWPPP and already contains this wording.

19. **MEC Comment 16:** Why are these required. Would be nice, but should not be required.

**Department Response:** Thank you for the comment. The comment is in reference to Section III(A)(10)(e) of the permit. Please refer to the department's response to comment #30.

20. **MEC Comment 17:** This is the 3rd time "Noncompliance" has been used in this document. What is considered a noncompliance? Where can we find a definition.

**Department Response:** Thank you for the comment. The comment is in reference to Section IV(A)(7) of the permit, Twenty-four Hour Notice of Noncompliance Reporting. Non-compliance would be a violation of the conditions of the permit consistent with North Dakota Century Code Chapter 61-28, Control, Prevention, and Abatement of Pollution of Surface Waters. The department has determined not to define noncompliance within the permit.

21. **MEC Comment 18:** Sediment controls on the side slope will help with what? this doesn't add any value or help with erosion and sediment control?

**Department Response:** Thank you for the comment. The comment is in reference to sentence 1 in Appendix 1(A)(1) of the permit which requires sediment basins or equivalent controls for side slope boundaries as may be appropriate for site conditions. As stated in the permit, the use of the basins or controls at side slope boundaries is based on site conditions. If a basin or control is not appropriate for a side slope boundary based on site conditions, then the permittee may choose not to use a basin or control in that situation. The department determined no change to the permit is necessary.

22. **MEC Comment 19:** Velocity? dissipation? Velocity check? Not all discharge locations have excessive velocity or need energy dissipation based on the drainage area. Isn't this adding an excessive burden to the cost of projects to require at all locations.

**Department Response:** Thank you for the comment. The comment is in reference to Appendix 1(A)(1) of the permit which requires velocity and energy dissipation at discharge locations. The department determined the language may be interpreted as requiring velocity or energy dissipation at all discharge locations. As a result, the department removed the sentence from the section. The intent of the language was to control velocity and provide energy dissipation at outfalls vulnerable to erosion to minimize soil erosion; however, other requirements of the permit (e.g., Appendix 1(A)(10) and (11)) already require energy dissipation at vulnerable outfalls, which essentially equates to dissipating velocity. The department changed Appendix 1(A)(1) from:

"Sediment basins, or an appropriate combination of equivalent sediment controls such as smaller sediment basins and/or sediment traps, silt fences, fiber logs, vegetative buffer strips, berms, etc., are required for all down slope boundaries of the disturbance area and for those side slope boundaries as may be appropriate for site conditions. Velocity and energy dissipation is required at discharge locations. Erosion protection is

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

To:

“Sediment basins, or an appropriate combination of equivalent sediment controls such as smaller sediment basins and/or sediment traps, silt fences, fiber logs, vegetative buffer strips, berms, etc., are required for all down slope boundaries of the disturbance area and for those side slope boundaries as may be appropriate for site conditions. Erosion protection is required to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points.”

**23. MEC Comment 20:** Minimized to what value? Minimized by what percent?

**Department Response:** Thank you for the comment. The comment is in reference to sentence 3 of Appendix 1(A)(14) of the permit which discusses minimizing concentrated flows in vegetated buffers. The department reviewed what value or what percentage concentrated flows should meet in order to be minimized. The department determined concentrated flows may exist in a vegetated buffer but should not bring about erosion without additional erosion and sediment controls. As a result, the department updated Appendix 1(A)(14) from:

“Vegetated buffers must have a minimum width of 1 foot for every 5 feet of disturbed area that drains to the buffer. The width of the buffer shall have a slope of 5 percent or less and the area draining to the buffer shall have a slope of 6 percent or less. Concentrated flows should be minimized throughout the buffer. Buffers shall consist of dense grassy vegetation, 3 to 12 inches tall with uniform coverage over 90 percent of the buffer. Woody vegetation shall not be counted for the 90 percent coverage. No more than 10 percent of the overall buffer may be comprised of woody vegetation. Additional erosion and sediment controls must be provided when a vegetated buffer does not meet these conditions.”

To:

“Vegetated buffers must have a minimum width of 1 foot for every 5 feet of disturbed area that drains to the buffer. The width of the buffer shall have a slope of 5 percent or less and the area draining to the buffer shall have a slope of 6 percent or less. Buffers shall consist of dense grassy vegetation, 3 to 12 inches tall with uniform coverage over 90 percent of the buffer. Woody vegetation shall not be counted for the 90 percent coverage. No more than 10 percent of the overall buffer may be comprised of woody vegetation. Additional erosion and sediment controls must be provided when a vegetated buffer does not meet these conditions or concentrated flows within the buffer bring about erosion.”

**24. MEC Comment 21:** What does Minimize mean in this case?

**Department Response:** Thank you for the comment. The comment is in reference to Appendix 1(A)(17) of the draft permit (Appendix 1(A)(16) of the final permit) which refers to minimizing the duration of exposed soils on steep slopes. Permittees that follow the overall SWPPP and stabilization timelines of the permit will minimize the duration of exposed soils

on steep slopes. To clarify this expectation, the department added “in accordance with the stabilization provisions of this permit” to this item.

**25. MEC Comment 22:** Please define Minimize. It means vastly different things to different people.

Does it mean that no heavy equipment can go on this area, then what is considered heavy. Does it mean that only equipment that is considered LGP can be used? What is considered LGP?

**Department Response:** Thank you for the comment. The comment is in reference to Appendix 1(A)(18) of the draft permit (Appendix 1(A)(17) of the final permit) which requires permittees to minimize soil compaction. LGP in this case refers to low ground pressure equipment, such as wide-track equipment. The department reviewed 40 CFR 450.21(a)(7) as well as the U.S. Environmental Protection Agency 2022 Construction General Permit. The department updated the language in the final permit from:

“Minimize soil compaction. Minimizing soil compaction is not required where the intended function of a specific area of the site dictates that it be compacted.”

To:

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

**North Dakota Department of Transportation (NDDOT)**

**26. NDDOT Comment 1:** Section II. C. 3. f.

What requirements must the discharge meet to be allowed to be discharged? Who determines if the BMPs utilized have sufficiently minimized the effects of the discharge? Allowing this discharge may open the permittee up to much greater risk of violating water quality without providing appropriate guidance on what is adequate treatment to allow the discharge to occur. Recommend removing the ability to discharge concrete wash water and returning to the existing permit requirements.

**Department Response:** Thank you for the comment. The comment is in reference to Section II(C)(3)(f) of the permit which states concrete wash water shall not be discharged to waters of the state, storm sewer systems, or curb and gutter systems unless BMPs are utilized that minimize the effects of the discharge (e.g., pH, suspended solids). The department reviewed this and similar comments (comment #2, #4, and #6). This and similar comments asked what requirements the discharge was supposed to meet, what is minimization, and examples of BMPs and who determines if BMPs have sufficiently minimized the effects of the discharge. Discharges of treated concrete wash water would be required to meet numerical standards for pH and suspended solids in line with State water quality standards and best professional judgment. These numerical standards were not established in the draft permit. Instead, the permit allowed for BMPs which are defined as “...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.” The previous permit stated wastewater from concrete washout could not be discharged to waters of the state, storm sewer systems, or curb and gutter systems which is a prohibition and/or management practice to prevent pollution to waters of the state in line with the definition of a BMP. Based on the review, the department concurs with the comment and changed the language in the opening paragraph of Section II(C)(3)(f) from:

“The SWPPP must describe how concrete grindings, slurry and wash water will be managed. Concrete wash water shall not be discharged to waters of the state, storm sewer systems, or curb and gutter systems unless BMPs are utilized that minimize the effects of the discharge (e.g., pH, suspended solids). Wastewater from cleanout and washout of stucco, paint, form release oil, curing compound, joint compound, and other construction materials shall not be discharged to waters of the state, storm sewer systems, or curb and gutter systems.”

To:

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

Additionally in the Discharges Not Covered section of the fact sheet, the phrase, “unless managed by appropriate controls” was removed from the concrete washout item.

**27. NDDOT Comment 2:** Section III. A. 5.

The requirement to record corrective actions is already in Section III. A. 7. This section states that “Corrective actions (maintenance activities) must be recorded and these records must be retained in accordance with Part III(B).” Requiring corrective actions to be recorded twice is redundant. Please remove the requirement to record corrective actions from Section III. A. 5.

**Department Response:** Thank you for the comment. The department reviewed the language in Section III(A)(5) and will keep the requirement to record corrective actions as part of the inspection record in Section III(A)(5). The inclusion of the requirement gives permittees the option to document corrective actions as part of the inspection record without implying that a separate record must be created.

**28. NDDOT Comment 3:** Section III. A. 5. c.

The wording of this section implies that recordings or imagery are mandatory parts of an inspection report. These items should not be made mandatory for an inspection record. This should be clarified to explain that recordings or imagery are not required but can be included if they are obtained. Add “if utilized” after “recordings or imagery”.

**Department Response:** Thank you for the comment. The department concurs with the comment and added “if utilized” after “recordings or imagery”. In addition, the department added “(if utilized)” to the inspection records summary in the fact sheet.

**29. NDDOT Comment 4:** Section III. A. 7. d.

The wording of this section implies that recordings or imagery are mandatory parts of the maintenance record. These items should not be made mandatory. This should be clarified to explain that recordings or imagery are not required but can be included if they are obtained. Add “if utilized” after “recordings or imagery”.

**Department Response:** Thank you for the comment. The department concurs with the comment and added “if utilized” after “recordings or imagery”. In addition, the department add “(if utilized)” to the maintenance records summary in the fact sheet.

**30. NDDOT Comment 5:** Section III. A. 10. e.

The wording of this section implies that recordings or imagery are mandatory parts of a dewatering inspection report. These items should not be made mandatory for an inspection record. This should be clarified to explain that recordings or imagery are not required but can be included if they are obtained. Add “if utilized” after “recordings or imagery”.

**Department Response:** Thank you for the comment. The department concurs with the comment and added “if utilized” after “recordings or imagery”. In addition, the department add “(if utilized)” to the dewatering records summary in the fact sheet.

**31. NDDOT Comment 6:** Appendix 1. A. 1.

Section II. C. 4. b. (Page 14) already includes this language. Remove this wording from either section as it is redundant.

**Department Response:** Thank you for the comment. The department reviewed the language in the two sections. Although the language appears unnecessary, it addresses separate permit requirements – the description and implementation of BMPs in a SWPPP and conformance of BMPs to other requirements. The department will keep the language in both sections of the permit.

**U.S. Environmental Protection Agency (EPA)**

**32. EPA Comment 1:** Minor note- it appears that Section I. G. "Continuation of Coverage for Existing Permittees After Permit Expiration", is missing from the Table of Contents.

**Department Response:** Thank you for the comment. The department added Section I. G. “Continuation of Coverage for Existing Permittees After Permit Expiration” to the Table of Contents.

**33. EPA Comment 2:** Note for consideration: It appears that links to the NOI forms are more specifically located on the ND DEQ "Stormwater Permit" page ([https://deq.nd.gov/WQ/2\\_NDPDES\\_Permits/7\\_Stormwater/stw.aspx](https://deq.nd.gov/WQ/2_NDPDES_Permits/7_Stormwater/stw.aspx)) . May want to

consider if providing a more direct link/instructions to the Stormwater Permit DEQ site page would make it easier for Permittees to locate the NOI form.

**Department Response:** Thank you for the comment. The comment is in reference to the website address in Section I(D)(1) of the permit. After consideration, the department updated the website address to [deq.nd.gov/eReporting.aspx](https://deq.nd.gov/eReporting.aspx). This address takes permittees to the Combined Environmental Regulatory Information System (CERIS), implemented by the NDPDES program March 17, 2025, to start the NOI process.

34. **EPA Comment 3:** Note for consideration (similar to above): It appears that links to the NOT forms are more specifically located on the ND DEQ "Stormwater Permit" page ([https://deq.nd.gov/WQ/2\\_NDPDES\\_Permits/7\\_Stormwater/stw.aspx](https://deq.nd.gov/WQ/2_NDPDES_Permits/7_Stormwater/stw.aspx)) . May want to consider if providing a more direct link/instructions to the Stormwater Permit DEQ site page would make it easier for Permittees to locate the NOT form.

**Department Response:** Thank you for the comment. The comment is in reference to the website address in Section I(E)(1) of the permit. After consideration, the department updated the website address to [deq.nd.gov/eReporting.aspx](https://deq.nd.gov/eReporting.aspx). This address takes permittees to the Combined Environmental Regulatory Information System (CERIS), implemented by the NDPDES program March 17, 2025, to manage the status of their permit including the submittal of a NOT.

35. **EPA Comment 4:** This language seems to indicate that the Permittee is no longer required to comply with the permit conditions as of the submission date of the NOT. However, if compliance is meant to continue until the Department completes processing/approval of the NOT (rather than just when an NOT is submitted), this language should be updated to reflect that procedure.

**Department Response:** Thank you for the comment. The comment is in reference to sentence 4 in Section I(E)(1) of the permit which states compliance with the permit is required until a NOT is submitted to the department.

As provided in Part I(E)(2), a NOT is submitted after the conditions for termination are met. The NOT form provided by the department mimics the provisions in the Notice of Termination and Final Stabilization sections of the permit (Sections I(E)(2) and II(E), respectively), and includes a certification statement and must be signed as required by Section IV(A)(6) of the permit. The department has determined the submittal of a NOT after the conditions for termination are met means the compliance has been achieved at the time of submittal. No changes to the permit were made based on the comment.

36. **EPA Comment 5:** Clarification related to this highlighted permit language is recommended:

For the period of time after the 2020 permit expires (i.e., March 31, 2025) but prior to submitting a new NOI by the June 30, 2025 NOI deadline for this renewal permit, it is unclear if the Permittees will continue to comply with the 2020 permit requirements (e.g., the 2020 permit requirements will be administratively extended until a new NOI is submitted by the June 30th date or coverage is otherwise terminated), or if they must meet the renewal 2025 permit requirements even if they have not yet submitted an NOI for the 2025 permit (prior to the June 30th deadline). It is recommended that this language be clarified to ensure Permittees are aware of which permit requirements they must comply with during the period



of time between the 2020 permit expiration and submission of a new NOI by the June 30, 2025 deadline/other termination of coverage.

**Department Response:** Thank you for the comment. The comment is in reference to Section I(G)(1) of the permit which discusses authorization to discharge for permittees transitioning from the 2020 permit to the 2025 permit. The intent of the section is for permittees to be covered under the 2025 permit until the authorization expires, is reissued or terminated. The department adjusted the language to clarify permittees with coverage under the 2020 permit would be covered under the 2025 permit. The department changed the language in Section I(G)(1) from:

“It is the duty of the permittee to reapply for coverage under this permit to continue coverage. The authorization to discharge for permittees with existing coverage under the 2020 permit shall continue with the 2025 permit until.”

To:

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

Additionally, the department added, “Construction activities covered under the present permit must comply with this permit upon the effective date of the permit until coverage is terminated” to the Request of Authorization section of the fact sheet.

37. **EPA Comment 6:** For "Frozen Conditions", the fact sheet (pg. 10) also indicates that "Inspections must take place if the ground is frozen and earthwork is occurring." If this is also a requirement, the fact sheet language should be incorporated into the permit to ensure consistency across both documents.

**Department Response:** Thank you for the comment. The comment is in reference to Section III(A)(9) of the permit and the “Frozen Conditions” item in the Inspections and Maintenance Requirements section of the Self Monitoring Requirements section of the fact sheet. Both sections (permit and fact sheet) discuss suspension of inspections due to frozen ground conditions. The department reviewed incorporating the language from the fact sheet into the permit. Although the language in the fact sheet lends to the decision making of the permit, the department determined the inclusion of the same or similar language did not substantially change the intent of the permit. The department will keep the section of the finalized permit the same.

38. **EPA Comment 7:** This sentence seems to indicate that the operator responsibility is generally for any construction activities being performed. However, Section I.D.2.a of the permit seems to add further specificity to this sentence to indicate "...with the permit conditions as they pertain to the construction activities **delegated to the operator.**" It is recommended that this language be reviewed to ensure the requirement is consistent as to what the intended permit requirement/condition is across both the permit and fact sheet.

**Department Response:** Thank you for the comment. The comment is in reference to sentence 4 in paragraph 1 of the “Notice of Intent” section of the fact sheet. The sentence offers the level of responsibility of an operator. The department reviewed the language in the

fact sheet and permit and determined the intent of the requirement is consistent across both documents. No changes were made to the fact sheet.

39. **EPA Comment 8:** It does not appear that this language is included in the permit. If this is a requirement of the permit, it should be included in the permit as well.

**Department Response:** Thank you for the comment. The comment is in reference to the “Authorization to Discharge” section of the fact sheet. The department reviewed the language in the permit and determined similar language regarding property rights, privileges, or authorization to injure private property, invade personal rights, or infringe upon federal, state, or local laws or regulations was already in place. Additionally, authorizations to change the SWPPP in lieu of submitting a new NOI have been established in previous permits. As a result, the department changed the language in the section from:

“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 NOI, the permittee shall modify the NOI. The permittee will not be authorized to discharge stormwater other than the type and at the location specified in the application.”

To:

“The permit does not convey any property rights, exclusive privileges. The permit does not authorize any injury to private property, invasion of personal rights, infringement of federal, state or local laws or regulations.”

#### **Additional Permit Updates**

40. The department updated the signatory authority on the cover page of the permit from the previous Director for the Division of Water Quality to the current Director.

**APPENDIX D – DRAFT PERMIT (REDLINE VERSION)**

Appendix D contains the redline version the draft permit released for public comment.

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

AUTHORIZATION TO DISCHARGE UNDER THE  
NORTH DAKOTA POLLUTANT DISCHARGE ELIMINATION SYSTEM

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

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

are authorized to discharge stormwater associated with construction activity

to waters of the state

provided all the conditions of this permit are met.

This permit and the authorization to discharge shall expire at midnight,  
March 31, 2030.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Director  
Division of Water Quality

Note: This document shows proposed text changes to the 2025 construction general permit (CGP). The following is intended as a guide to understanding the various proposed text changes:

- Language that is retained from the current 2020 CGP appears as black-colored text.
- Language that is added to the proposed 2025 CGP is shown as underlined, dark red text.
- Language that is deleted from the proposed 2025 CGP is shown as ~~striketrough, dark red text~~.
- Footnotes in dark blue will be removed from the final permit.

DRAFT

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## I. PERMIT COVERAGE AND LIMITATIONS

### A. Discharges Covered

1. This permit applies to all areas within the state of North Dakota, except for those areas defined as Indian Country. Construction activity located within Indian Country within the state of North Dakota must obtain a permit through the United States Environmental Protection Agency. If the construction activity is located with the jurisdiction of the state of North Dakota, and the United States Environmental Protection Agency, a permit must be obtained from both regulatory entities.
2. This permit applies to stormwater discharges associated with construction activity and small construction activity as defined in Title 40 of the Code of Federal Regulations (CFR), Parts 122.26(b)(14)(x) and (b)(15), respectively. The reference to construction activity in this permit includes both large construction activity and small construction activity as described below.
  - a. Large construction activity includes clearing, grading and excavation, that disturbs land of equal to or greater than five (5) acres and includes the disturbance of less than five (5) acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five (5) acres or more.
  - b. Small construction activity includes clearing, grading and excavation, that disturbs land of equal to or greater than one (1) acre, and includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater that one (1) and less than five (5) acres.
3. This permit applies to discharges of stormwater from construction activity identified in Part I(A)(1)-(2) associated with oil and gas exploration, production, processing or treatment operations, or transmission facilities resulting in the discharge of a reportable quantity for which notification is required pursuant to 40 CFR 110.6, 40 CFR 117.21, or 40 CFR 302.6 or contributes to a violation of a water quality standard.
4. Stormwater discharges from support activities (e.g., equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) may be covered by this permit as part of a related construction site. The support activities may only be in association with one project. If the support activity is associated with more than one project, a separate stormwater permit (Industrial or mining, extraction or paving material preparation) is required.
5. Certain non-stormwater discharges from facilities covered by this permit and meeting the requirements specified in Part II(A).
6. Stormwater discharges from construction activity covered by the previous permit, issued April 1, 2020, where a notice has been submitted to obtain coverage under this permit.
- ~~7. Projects which have obtained coverage under this permit shall amend and implement a Stormwater Pollution Prevention Plan (SWPPP) that meets the requirements of this permit within ninety (90) days of the effective date of this permit.<sup>1</sup>~~
8. Discharges from dewatering activities related to construction activities (discharges of uncontaminated stormwater, uncontaminated groundwater, and uncontaminated surface water).

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<sup>1</sup> Moved to Part II(C) of the proposed permit.



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

## **B. Discharges Not Covered**

1. Stormwater discharges associated with industrial activity from any source other than construction activities described in Part I(A).
2. Post-construction discharges from industrial activity that originate from the site after construction activities have been completed at the site. Industrial and post-construction stormwater discharges may need to be covered by a separate stormwater permit.
3. The placement of fill into waters of the state requiring local, state, or federal authorizations (such as U.S. Army Corps of Engineers Section 404 permits).
4. This permit does not substitute for obligations under the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), Wild and Scenic Rivers Act, or National Historic Preservation Act (NHPA), it is the permittees responsibility to ensure the project and resulting discharges comply with the respective requirements.
5. Discharges to waters for which there is a total maximum daily load (TMDL) allocation are not covered unless you develop a Stormwater Pollution Prevention Plan (SWPPP) that is consistent with the assumptions and requirements in the approved TMDL. To be eligible for coverage under this general permit, the SWPPP must incorporate the conditions applicable to the discharge necessary for consistency with the assumptions, allocations and requirements of the TMDL. If a specific numeric wasteload allocation has been established that would apply to discharges from construction activity, the permittee must incorporate that allocation into the SWPPP and implement necessary steps to meet that allocation. Information about TMDL allocations may be found at the following website: [deg.nd.gov/WQ](http://deg.nd.gov/WQ).
6. Stormwater discharges that the department determines will cause or have the reasonable potential to cause or contribute to a violation of the standards for quality for waters of the state (North Dakota Administrative Code [NDAC] 33.1-16-02.1).
7. Discharges from hydrostatic testing, well points, water line disinfection, treatment of refined petroleum contaminated groundwater or surface water, treatment of crude oil contaminated groundwater or surface water, and oil and gas production water.
8. Discharges of wash water using detergents, wastewater, and sanitary waste.
9. Discharges of wastewater from washout of concrete, unless managed by appropriate controls.
10. Discharges of wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials.
11. Discharges of fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance.
12. Discharges of soaps or solvents used in vehicle and equipment maintenance.

## **C. Obtaining Coverage and Authorization Effective Date**

1. To obtain authorization under this general permit for stormwater discharges you must submit a complete notice of intent (NOI) and develop a SWPPP in accordance with Part II(C) of this permit. A SWPPP must be in place as a condition of the permit and a copy of the SWPPP must be retained by the permittee.
2. Permit coverage will become effective seven (7) days after you submit a complete NOI unless otherwise notified by the department (based on the department receipt date).
3. Upon the effective date of permit coverage, permittees are authorized to discharge stormwater from eligible activities under the terms and conditions of this permit.

#### **D. Notice of Intent Process**

1. Applicants must use a NOI form or electronic NOI to complete the application process to obtain coverage under the permit. The NOI form or electronic NOI can be found at: [deg.nd.gov/WQ](http://deg.nd.gov/WQ). Submission of data contained within the NOI must be in compliance with the electronic reporting requirements found in 40 CFR 127.
2. NOI Content and Conditions.
  - a. The owner, or owner jointly with the operator (usually the general contractor), shall submit a completed NOI for this permit. The owner is responsible for compliance with all terms and conditions of this permit. The operator has day to day supervision of construction activities and is jointly responsible with the owner for compliance with the permit conditions as they pertain to the construction activities delegated to the operator.
  - b. The NOI shall contain, at a minimum, the following information:
    - 1) Owner name, mailing address, and phone number;
    - 2) Project contact name, phone number, and e-mail address;
    - 3) Project/site name;
    - 4) Project/site location (street address; section, township, range) and county;
    - 5) Project/site latitude and longitude;
    - 6) A brief description of the construction activity;
    - 7) The anticipated start date and the anticipated completion date for the project (if known);
    - 8) The estimated total area of the site and the total area of disturbance in acres;
    - 9) The name of receiving water(s), or the name of the municipal storm sewer system and receiving water; and
    - 10) The signature of the applicant(s), owner (and operator if co-applicants) signed in accordance with the Signatory Requirements in Part IV(A)(6) of this permit.
  - c. A SWPPP (Part II(C)) for the project must be prepared and available for review, upon request, by the department at the time of application. Permittees are not required to submit the SWPPP with the NOI unless otherwise notified by the department.
3. For residential construction activity occurring within a common plan of development (such as a subdivision) subject to the permit requirements, coverage may be obtained by the following:
  - a. The owner of the lot(s) shall submit one NOI for all of the owner's construction activity within the common plan of development, or

- b. The operator, such as a homebuilder who may represent one or more lot owners, shall submit one NOI for all of the operator's construction activity within the common plan of development. Additional phases of the common plan of development may be included under the initial NOI and permit coverage.

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

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

#### E. Notice of Termination (NOT)

1. Permittees wishing to terminate coverage under this permit must submit a Notice of Termination (NOT) signed in accordance with Part IV(A)(6) of this permit. The NOT form or electronic NOT can be found at: [deq.nd.gov/WQ](http://deq.nd.gov/WQ). Submission of data contained within the NOT must be in compliance with the electronic reporting requirements found in 40 CFR 127. Compliance with the conditions of this permit is required until a NOT is submitted to the department.
2. Permittees may only submit a NOT after one of the following conditions have been met:
  - a. Final stabilization (Part II(E)) has been achieved on all portions of the site for which the permittee is responsible.
  - b. Another owner/operator/permittee has assumed control in accordance with the transfer provisions (Part I(F)) over all areas of the site that have not achieved final stabilization.
  - c. For residential construction only, a NOT is not required for each lot that is sold, transferred, or has achieved final stabilization. The permittee must modify the SWPPP to indicate that permit coverage is no longer required for that lot. The SWPPP shall indicate the reason why coverage is no longer needed and the date the lot was sold, transferred, or achieved final stabilization. In order to terminate coverage, all lots under the control of the owner or operator must be sold, transferred, or achieved final stabilization (Part II(E)).

#### F. Transfer of Ownership or Control

1. Coverage under this permit cannot be transferred from one owner to another. When a new owner assumes control of a construction project, or a portion of the project, or will commence construction of a new project within a larger common plan of development, the new owner must submit a NOI in accordance with Parts I(C) and (D). The department reserves the right to take enforcement for any unpermitted discharges or permit noncompliance.
2. When the owner or operator of a construction project changes, the new owner or operator must submit a written request for permit transfer/modification within fourteen (14) days of assuming control of the site or commencing work on-site, or of the legal transfer, sale or closing on the property; except as provided in Part I(F)(2). Late submittals will not be rejected; however the department reserves the right to take enforcement for any unpermitted discharges or permit noncompliance. For stormwater discharges from construction activities where the owner or operator changes, the new owner or operator can implement the original SWPPP created for the project or develop and implement their own SWPPP. Permittees shall ensure either directly or through

coordination with other operators that their SWPPP meets all terms and conditions of this permit and that their activities do not interfere with another party's SWPPP.

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

#### **G. Continuation of Coverage for Existing Permittees After Permit Expiration**

1. It is the duty of the permittee to reapply for coverage under this permit to continue coverage. The authorization to discharge for permittees with existing coverage under the 2020 permit shall continue with the 2025 permit until:
  - a. A NOI for coverage under the 2025 permit has been submitted to the department no later than June 30, 2025; or
  - b. Coverage is otherwise terminated.
2. Permittees with existing coverage under the 2020 permit who miss the June 30, 2025, deadline, and do not submit an NOI to the department by August 29, 2025, will have coverage administratively terminated by the department. Administrative termination will result in the permittee no longer being authorized to discharge under this permit.

#### **H. Electronic Reporting**

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

## **II. STORMWATER DISCHARGE REQUIREMENTS**

### **A. Prohibition of Non-Stormwater Discharges**

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

The following sources of non-stormwater discharges are allowed if they are not a significant source of pollution and are identified in the SWPPP: fire-fighting activity, fire hydrant flushing, potable water line flushing, equipment wash down without detergents or hazardous cleaning products, uncontaminated foundation drains, springs, surface water, lawn watering, chemical treatment of stormwater, and air conditioning condensate. Impervious surface wash water may not be directed into any surface water or storm drain inlet unless appropriate pollution prevention measures have been implemented. Non-stormwater discharges may not come into contact with oil and grease deposits or any other toxic or

hazardous materials (unless cleaned up using dry clean-up methods). The SWPPP must include a description of the pollution prevention measures to be implemented while non-stormwater discharges are occurring.

## **B. Releases in Excess of Reportable Quantities**

This permit does not relieve the permittee of the reporting requirements of 40 CFR 110, 40 CFR 117, and 40 CFR 302, nor the reporting requirements found in NDAC 33.1-16-02.1. Any release which meets any reporting requirement shall be reported to the department in accordance with Part IV(A)(7).

## **C. Stormwater Pollution Prevention Plans**

All permittees shall implement a SWPPP for any construction activity requiring this permit until final stabilization is achieved. The SWPPP and revisions are subject to review by the department. The objectives of the SWPPP are to identify potential sources of sediment and other sources of pollution associated with construction activity, and to ensure practices are implemented and maintained to reduce the contribution of pollutants in stormwater discharges from the construction site to waters of the state and storm sewer systems. Stormwater management documents developed under other regulatory programs may be included or incorporated by reference in the SWPPP or used in whole as a SWPPP if it meets the requirements of this part. A partially complete SWPPP is acceptable when it clearly identifies the item(s) to be completed, the person(s) responsible for completing the item(s) and the deadline for completing the item(s). The SWPPP must be completed prior to the start of construction (or the applicable construction phase). Permittees that obtained coverage under the 2020 construction general permit shall amend and implement a SWPPP that meets the requirements of this permit within ninety (90) days of the effective date of this permit.<sup>2</sup>

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

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

1. **Site Description.** Each SWPPP shall provide a description of the construction activity and potential sources of pollution as indicated below:
  - a. A description of the overall project and the type of construction activity;
  - b. Estimates of the total area of the site and the total area that is expected to be disturbed by excavation, grading, grubbing, or other activities during the life of the project;
  - c. A proposed timetable/schedule, or chart, of activities that includes major phases/stages, BMP implementation, BMP removal, disturbances, and stabilization for major portions of the site;
  - d. A description of the soil within the disturbed area(s);
  - e. The name of the surface water(s) and municipal storm sewer system at or near the disturbed area that will receive stormwater runoff from the project site; and

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<sup>2</sup> Moved from Part I(A) of the proposed permit.



- f. A site map which indicates the following items as applicable (more than one (+) map may be needed). If an item is not applicable, provide rationale describing why the item is not applicable to the construction activity:
- 1) Location of project;
  - 2) Project boundaries;
  - 3) Areas of ground disturbance during each phase/stage of the project;
  - 4) Areas where disturbance will not occur, such as avoidance areas (e.g. wetlands, critical habitat, Threatened and Endangered Species, etc);
  - 5) Drainage patterns including flow direction (run-on and runoff);
  - 6) Discharge points and storm sewer system inlets which the site drains to or may be affected by the activity;
  - 7) Location of all temporary and permanent sediment and erosion controls during each particular phase;
  - 8) Location of any stormwater conveyances such as retention ponds, detention ponds, ditches, pipes, swales, stormwater diversions, culverts, and ditch blocks;
  - 9) Location of potential sources of pollution (e.g. portable toilets, trash receptacles, etc.) or areas where potential sources of pollution cannot be located;
  - 10) Location of soil stockpiles;
  - 11) Identify steep slopes;
  - 12) Surface waters, including an aerial extent of wetlands;
  - 13) Location of surface water crossings;
  - 14) Locations where stormwater is discharged to surface waters;
  - 15) Location of dewatering discharge points;
  - 16) Locations where chemical treatment of stormwater will be performed, including discharge points;
  - 17) Fueling locations and storage, vehicle and equipment maintenance areas, designated wash water collection site, lubricant and chemical storage, paint storage, material storage, staging areas, and debris collection area;
  - 18) Location of any impervious surfaces upon completion of construction; and
  - 19) Where included as part of the project, the site maps for off-site concrete/asphalt batch plants, equipment staging areas, borrow sites or excavated fill material disposal sites. Site maps must show items 1 through 18 of this section.
- g. Projects that discharge stormwater which flows to a water body listed as impaired under section 303(d) of the Federal Clean Water Act due to sediment, suspended solids or turbidity must identify the water body and impairment in the SWPPP. The department's 303(d) list may be found at the following website under Integrated Reports: [deq.nd.gov/WQ](http://deq.nd.gov/WQ)
- h. For water bodies which have a TMDL, the SWPPP must describe and conform to the Waste Load Allocations (WLA) of the water body. Information about TMDL allocations may be found at the following website: [deq.nd.gov/WQ](http://deq.nd.gov/WQ)
2. **Narrative.** The SWPPP must include a narrative description of the selected operational controls and sediment and erosion controls as outlined in Part II(C)(3), Part II(C)(4), and Appendix 1 of this permit. When applicable, a description of the requirements for any additional environmental regulations and local requirements related to the project, as it relates to waters of the state, must also be included or incorporated by reference (e.g. The Wild and Scenic Rivers Act, The National Historic Preservation Act, The Endangered Species Act, Fish and Wildlife Coordination Act, National Environmental Policy Act, Section 404 of the Clean Water Act, etc.).

The narrative shall describe at a minimum:

- a. The installation, removal (if applicable), and maintenance requirements of selected **Best Management Practices (BMPs)** for each phase/stage of construction activity;
  - b. The rationale for the selection of all BMPs (the design should be included where appropriate);
  - c. Whether selected BMPs are temporary or permanent;
  - d. Any descriptions of infeasibility or explanations as required in Part II of this permit.
3. **Operational Controls.** The SWPPP shall describe the BMPs used in day-to-day operations on the project site that reduce the contribution of pollutants in stormwater runoff.
- a. The SWPPP must identify a person knowledgeable and experienced in the application of erosion and sediment control BMPs who will oversee the implementation of the SWPPP, and the installation, inspection, and maintenance of the erosion and sediment control BMPs before and during construction until a NOT is filed ~~or the permit is transferred~~. A knowledgeable and experienced person is someone who meets the requirements of Part II(C)(3)(e) of this permit.
  - b. The owner shall develop a chain of responsibility with all operators on the site to ensure that the SWPPP will be implemented and stay in effect until the construction project is complete, the entire site has undergone final stabilization, and a NOT has been submitted to the department.
  - c. The SWPPP must include a description of good housekeeping practices used to maintain a clean and orderly site. The SWPPP shall describe how litter, debris, chemicals and parts will be handled to minimize exposure to stormwater. The SWPPP also shall describe what measures will be used to reduce and remove sediment tracked off site by vehicles or equipment. In addition, the SWPPP shall describe methods which will be used to reduce the generation of dust that could be discharged in stormwater from the project.
  - d. The SWPPP shall describe spill prevention and response procedures where potential spills can occur. Specific handling procedures, storage requirements, spill containment, cleanup procedures, and disposal must be identified. ~~Storage structures for petroleum products and other chemicals shall have adequate leak and spill protection to prevent any spilled materials from entering waters of the state or storm sewer systems.~~<sup>3</sup>

The potential discharge of hazardous substances in stormwater discharges shall be minimized by including measures detailed in the SWPPP to prevent and respond to releases of hazardous substances. If a reportable quantity release occurs, the SWPPP shall be revised to prevent the reoccurrence of such a release.
  - e. The SWPPP shall outline how employees and responsible parties shall be trained on the implementation of the SWPPP. Training must be provided at least annually, as new employees or responsible parties are hired, or as necessary to ensure compliance with the SWPPP and the general permit. Employees and responsible parties include individuals who are responsible for design, installation, maintenance, and repair of stormwater controls and conducting inspections.
    - 1) On-site personnel must understand the requirements of this permit as it pertains to their role in implementing the SWPPP. On-site personnel must know:
      - a. The purpose of the SWPPP, requirements of the SWPPP, and how the SWPPP will be implemented;

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<sup>3</sup> Moved to Appendix 1(C)(5).

- b. The location of all BMPs identified in the SWPPP; and
  - c. Correct installation, function, maintenance, and removal (if applicable) of BMPs identified in the SWPPP.
- 2) Personnel responsible for performing site inspections must understand when inspections must be conducted (Part III(A)), what must be inspected (Part ~~III(A)(1) H(C)(7)~~), how to record findings, and when to initiate and properly document corrective actions.
  - 3) Maintenance personnel must understand when maintenance must be performed on BMPs in order to maintain properly functioning BMPs and what needs to be recorded for corrective actions/maintenance records in accordance with Part III(A)~~(7)(5)~~ of this permit.
- f. The SWPPP must describe how concrete grindings, and slurry and wash water will be managed. Concrete wash water shall not be discharged to waters of the state, storm sewer systems, or curb and gutter systems unless BMPs are utilized that minimize the effects of the discharge (e.g., pH, suspended solids). Wastewater from ~~concrete washout~~, cleanout and or washout of from stucco, paint, form release oil, curing compound, joint compound, and other construction building materials shall not be discharged to waters of the state, storm sewer systems, or curb and gutter systems.
- ~~1) Wash water must be collected in leak-proof containers or leak-proof pits. Containers or pits must be designed and maintained so that overflows cannot occur due to inadequate sizing, precipitation events, or snowmelt.<sup>4</sup>~~
- g. The SWPPP shall describe any dewatering activities planned at the site. Dewatering or basin draining (e.g., pumped discharges, trench/ditch cuts for drainage) related to the permitted activity must be managed with appropriate BMPs, such that the discharge does not adversely affect the receiving water. The following conditions apply to dewatering activities:
1. Dewatering is limited to uncontaminated stormwater, surface water, and groundwater that may collect on-site and those sources identified in Part II(A) if they are not a significant source of pollution. A separate permit must be obtained to discharge water from other sources such as hydrostatic testing of pipes, tanks, or other similar vessels; disinfection of potable water lines; pump testing of water wells; and the treatment of refined petroleum contaminated groundwater or surface water.
  - ~~2. The permittee(s) must operate the discharge to minimize the release of sediment and provide adequate BMPs where necessary to minimize erosion due to the discharge. Discharges must not lead to the deposition of sediment within stormwater conveyance systems or surface waters. Discharges must not cause or potentially cause a visible plume within a surface water body.~~
  3. When dewatering basins and impoundments, utilize structures or BMPs which allow for draw down to occur from the surface of the water, unless infeasible. If infeasible, documentation must be provided in the SWPPP. In addition, you must describe what BMP(s) will be used in its place.
  4. Chemical treatment of dewatering activities for sediment removal must be conducted in accordance with the chemical manufacturer's specifications. Treatment chemicals must be appropriately selected for the anticipated soil particle size and characteristics of the

<sup>4</sup> Moved to Appendix 1(C)(2) of the proposed permit.



stormwater (pH, turbidity, flow rate of stormwater flowing into the chemical treatment system, etc.). A description of the chemical treatment process must be included in the SWPPP. Permittees shall ensure the selection and management of chemicals minimize the potential for harmful effects in the discharge. The following information must be included in the SWPPP.

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

~~5. Local authorities may require specific BMPs for discharges affecting their storm sewer system.<sup>5</sup>~~

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

- a. The selection of erosion and sediment controls, and site stabilization shall consider the following:
  - 1) The expected amount, frequency, intensity, and duration of precipitation events. Permittees may state that selected erosion and sediment controls and site stabilization methods are industry standards;
  - 2) The nature of stormwater run-on and runoff from the site as well as changes during, and as a result of, construction activity. This includes changes to impervious surfaces, slopes, seasonal changes, and drainage features on-site;
  - 3) Channelized flow must be handled in order to minimize erosion at outlets and to minimize impacts to downstream receiving waters;
  - 4) Soil types (wind and water erodibility, and settling time); and
  - 5) Seasonal conditions.
- b. Sediment basins, or an appropriate combination of equivalent sediment controls such as smaller sediment basins and/or sediment traps, silt fences, fiber logs, vegetative buffer strips, berms, etc., are required for all down slope boundaries of the disturbance area and for those side slope boundaries as may be appropriate for site conditions. Velocity and energy dissipation is required at discharge locations. Erosion protection is required to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points.

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<sup>5</sup> Added to Part II(D) of the proposed permit.

- c. Temporary or permanent erosion protection and stabilization (such as cover crop planting or mulching) must be initiated immediately, as described in Appendix 1(A), for all exposed soil areas where activities have been completed or temporarily ceased.
- d. All control measures must be properly selected, installed and maintained in accordance with the manufacturer's specifications and good engineering practices. If ~~periodic~~ inspections or other information indicates a control has been used inappropriately or incorrectly, the permittee must replace or modify the control for site situations. Corrective actions must be made prior to the next anticipated rainfall event or within 24 hours of discovery (whichever comes first) or as soon as field conditions allow. Documentation must be provided in the maintenance records if field conditions do not allow access along with a plan of action for performing maintenance activities.

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

- e. If sediment escapes from the site, off-site accumulations of sediment must be removed in a manner and frequency sufficient to minimize off-site impacts as outlined in Appendix 1(B). The SWPPP must be modified to prevent further sediment deposition off site.
  - f. Stormwater controls are expected to withstand and function properly during precipitation events of up to the 2-year, 24-hour storm event. Visible erosion and/or off-site sediment deposition from such storm events should be minimal. The 2-year, 24-hour storm event is based on NOAA Atlas 14, Volume 8, Version 2, Midwestern States 2013. The 2-year, 24-hour rainfall event in North Dakota ranges from about 1.76 inches in the west to 2.50 inches in the east (NOAA Atlas 14, Volume 8, Version 2, Midwestern States 2013).
  - g. For projects that discharge stormwater which flows to a water body for which there is a TMDL allocation the SWPPP must be consistent with the assumptions, allocations, and requirements in the approved TMDL. If a TMDL specifies certain BMPs or controls to meet a WLA applicable to the project's discharges, the BMPs or controls must be incorporated into the SWPPP. Information about TMDL allocations may be found at the following website: [deg.nd.gov/WQ](http://deg.nd.gov/WQ)
5. ~~Stormwater Management. The SWPPP must identify permanent practices incorporated into the project to control pollutants in stormwater discharges occurring after construction operations have been completed.~~
- ~~a. Identify stormwater ponds; flow reduction methods; infiltration of runoff on-site; sequential systems which combine several practices or other post-construction stormwater management features.~~
  - ~~b. Identify velocity / energy dissipation devices placed at discharge locations and appropriate erosion protection for outfall channels and ditches.~~
  - ~~c. Maintenance for on-site stormwater management features is the responsibility of the permittee until the NOT is submitted or the feature is accepted by the party responsible for long term maintenance.~~
  - ~~d. The design, installation and use of stormwater management features must comply with applicable local, state or federal requirements.~~

6. **Maintenance.** The SWPPP shall describe preventative maintenance practices used to ensure the proper operation of erosion and sediment control devices and equipment used or stored on site. ~~All erosion and sediment control measures and other protective measures identified in the SWPPP must be maintained in effective operating condition.~~<sup>6</sup> The SWPPP must indicate, as appropriate, the maintenance or clean out interval for sediment controls. ~~If site inspections, required in Part III of this permit, identify BMPs that are not operating effectively, maintenance shall be arranged and accomplished in accordance to Appendix 1 or as soon as practicable.~~<sup>7</sup>
7. **Inspections.** The SWPPP must provide for site inspections as outlined in Part III. The permittee shall ensure that personnel conducting site inspections are familiar with permit conditions and the proper installation and operation of control measures. Inspectors must be knowledgeable in their role of the SWPPP, as outlined in Part II(C)(3)(e) of this permit. ~~The erosion and sediment control measures and stabilized areas identified in the SWPPP shall be observed to ensure they are operating correctly and in serviceable condition. Inspections shall include areas used for storage of materials, permanent stormwater control measures, vehicle maintenance areas, and dewatering activities. These areas shall be inspected for evidence of, or the potential for, pollutants entering a drainage system. If necessary, the plan shall be revised based on the observations and deficiencies noted during the inspection.~~<sup>8</sup>
8. **SWPPP Review and Revisions.**
- a. ~~The owner, or owner jointly with the operator, shall sign the SWPPP in accordance with Part IV(A)(6). The SWPPP shall be retained on site for the duration of activity as outlined in Part III(B). The SWPPP shall be signed in accordance with the Signatory Requirements, Part IV(A)(6), and retained on site for the duration of activity as outlined in Part III(B). The owner, or owner jointly with the operator (usually the general contractor), shall sign the SWPPP.~~
  - b. The permittee shall make the SWPPP available upon request to the department, EPA, or, in the case of discharges to a municipal storm sewer system, the operator of the municipal system.
  - c. The permittee shall amend the SWPPP whenever there is a change in design, construction, operation, operational control, maintenance, or BMPs. The SWPPP shall be amended if the plan is found to be ineffective in controlling pollutants present in stormwater. The SWPPP shall include a description of the amendment process.

#### D. Local Requirements

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

#### E. Final Stabilization

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

<sup>6</sup> Moved to Part III(A)(6) of the proposed permit.

<sup>7</sup> Moved to Part III(A)(6) of the proposed permit.

<sup>8</sup> Moved to Part III(A)(1) of the proposed permit.

1. All soil disturbing activities at the site have been completed and ~~all~~ soils not covered by permanent structures or cover are must be stabilized by a uniform perennial vegetative cover with a density of 70 percent of the pre-existing cover over the entire pervious surface area, or other equivalent means necessary to prevent soil failure under erosive conditions and;
  - a. All drainage ditches, constructed to drain water from the site after construction is complete, must be stabilized to preclude erosion;
  - b. All temporary erosion prevention and sediment control BMPs (such as silt fence) must be removed as part of the site final stabilization; and
  - c. The permittee(s) must remove all sediment from conveyances, ~~and~~ temporary sedimentation basins that will be used as permanent water quality management basins, and other post-construction stormwater management features. Sediment must be stabilized to prevent it from being washed into basins, conveyances, ~~or~~ drainage ways, or features, or discharging off-site ~~or~~ to surface waters. The cleanout of permanent basins must be sufficient to return the basin to design capacity.
  - d. All construction materials, waste and waste handling devices are removed and properly disposed, and all equipment and vehicles used during construction are removed, unless intended for long-term use following construction.
  - e. All potential pollutants and pollutant-generating activities associated with construction have been removed.
2. For areas of the state where the average annual rainfall is less than 20 inches (per NOAA Atlas 14, Volume 8, Version 2, Midwestern States 2013), all soil disturbing activities at the site have been completed and erosion control measures (e.g., degradable rolled erosion control product) and stabilization methods are selected, designed, and installed along with an appropriate seed base to provide erosion control for at least three years and achieve 70 percent of the pre-existing vegetative cover within three (3) years without active maintenance. Sites must meet the criteria outlined in items 1(a), (b), and (c) above.
3. Disturbed areas on land used for agricultural purposes that are restored to their pre-construction agricultural use are not subject to these final stabilization criteria. If the construction activity removed standing crop, the area must be restored in accordance with the landowner.

Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to waters of the state, and areas which are not being returned to their pre-disturbance use must meet the final stabilization criteria in (1) or (2) above.
4. For residential construction only, final stabilization may be achieved when soil is stabilized (see Appendix 1(A)(3)) and down gradient perimeter control for individual lots has been implemented and the residence has been transferred to the homeowner. Additionally, the permittee must distribute a "homeowner fact sheet" to the homeowner to inform the homeowner of the need for, and benefits of, final stabilization. The permittee also must demonstrate that the homeowner received the fact sheet.
5. Coverage under an individual or alternative general NDPDES permit has been obtained.

### III. SELF MONITORING AND REPORTING

## A. Inspection and Maintenance Requirements

1. All erosion prevention and sediment control BMPs must be inspected to ensure integrity and effectiveness. Erosion and sediment control measures and stabilized areas identified in the SWPPP shall be observed to ensure they are operating correctly and in serviceable condition. Inspections shall include areas used for storage of materials, permanent stormwater control measures, vehicle maintenance areas, and dewatering activities. These areas shall be inspected for evidence of, or the potential for, pollutants entering a drainage system. If necessary, the plan SWPPP shall be revised based on the observations and deficiencies noted during the inspection.<sup>9</sup>
2. Inspections shall be performed by or under the direction of the permittee. Inspections shall be performed at least once every 14 calendar days and within 24 hours after any storm event of greater than 0.25 inches of rain per 24-hour period. Rainfall inspections do not take the place of the scheduled once every 14-calendar day inspection unless the rainfall inspection occurs on the same day as the once every 14-calendar day inspection. Inspections are only required during normal working hours. The permittee shall use a rain gauge on-site or utilize the nearest National Weather Service precipitation gauge station. Rain gauge locations or stations must be representative of the site.
  - a. "Within 24 hours after any storm event greater than 0.25 inches rain per 24-hour period" means that you are required to conduct an inspection within 24 hours once a storm event has produced 0.25 inches, even if the storm event is still continuing. If there is a storm event at your site that continues for multiple days, and each day of the storm produces 0.25 inches or more rain, you are required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm.
3. There may be times when a site inspection may not be practical at the specified time. Adverse climatic conditions, such as flooding, high winds, tornadoes, electrical storms, site access constraints, etc., may prohibit inspections. The permittee must include a description of why the inspection(s) could not be performed at the designated time in the next inspection record. If an inspection is delayed due to adverse weather conditions or rain events outside normal working hours, an inspection must be conducted during the next working day, or as conditions allow.
4. Some erosion and sediment control measures may require more frequent inspection based on location (e.g., sensitive areas or waters of the state) or as a result of recurring maintenance issues. Erosion or sediment control measures found in need of maintenance between inspections must be repaired or replaced with appropriate measures as soon as practicable. Erosion and sediment control measures which require more frequent inspection based on location or as a result of recurring maintenance issues must be identified in the SWPPP.
5. All inspections ~~conducted during construction~~ must be recorded. The record shall summarize the scope of the inspection, major observations relating to the SWPPP, and any corrective actions taken. These records (or reports) must be retained in accordance with Part III(B). Records (or reports) of each inspection activity shall include:
  - a. Date of inspections;
  - b. Name of person(s) conducting inspections;
  - c. Findings of inspections, including recordings or imagery, and recommendations and ~~schedule time frame~~ for corrective actions;

<sup>9</sup> Moved from Part II(C)(7) - Inspections of the proposed permit.



- d. Date and amount of all rainfall events greater than 1/4 inch (0.25 inches) in 24 hours;
  - e. Documentation that the SWPPP has been amended when changes are made to BMPs in response to inspections; and
  - f. Signature of person(s) conducting the inspection or other means used to verify an inspector (e.g., work order or preventative maintenance schedule completion).
6. All erosion and sediment control measures and other protective measures identified in the SWPPP must be maintained in effective operating condition. Stabilized areas and pollution prevention measures also must be maintained in effective operating condition. If site inspections, required in Part III of this permit, identify BMPs that are not operating effectively, Corrective actions and maintenance activities shall be arranged and accomplished in accordance with Appendix 1 or as soon as practicable.<sup>10</sup>
7. Corrective actions (maintenance activities) ~~performed during construction~~ must be recorded and these records must be retained in accordance with Part III(B). Records for maintenance activity shall include:
- a. Best Management Practice corrected;
  - b. Date of corrective action;
  - c. Name of person(s) performing corrective actions;
  - d. Corrective actions taken, including recordings or imagery; and
  - e. Corrective actions/maintenance records shall be signed or use another means to verify corrective actions/maintenance were completed (e.g., work order or preventative maintenance schedule completion).
8. Completed areas that have been stabilized but do not meet the 70 percent perennial vegetative cover criteria for final stabilization may be inspected once per month. Inspections may be suspended for parts of the construction site that meet final stabilization requirements of Part II(E) of this permit. The SWPPP must update to identify any areas which meet this condition.
9. Inspections may be suspended where earthwork has been suspended due to frozen ground conditions. The required inspections and maintenance must resume as soon as runoff occurs or the ground begins to thaw at the site. The permittee must record freeze/thaw and runoff dates as part of the inspection records.
10. Dewatering activities shall be inspected daily. The inspection must include the dewatering site, areas where BMPs are being implemented and the discharge location. A record (or report) shall be maintained to document the inspections of the dewatering operation and actions taken to correct any problems that may be identified. Records shall contain at a minimum:
- a. Date of inspections;
  - b. Name of person(s) conducting inspections;

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<sup>10</sup> Moved from Part II(C)(6) - Maintenance of the proposed permit.

- c. Approximate times dewatering started and ended (run time) on the day of inspection ~~volume of water discharged~~;
- d. Estimates of the rate of discharge (pump rate) on the day of discharge;
- e. Findings of inspections, including recordings or imagery, and recommendations and schedule time frame for corrective actions;
- f. Corrective actions taken (including dates and party completing maintenance activities);
- g. Documentation that the SWPPP has been amended when changes are made to the dewatering activity in response to inspections; and
- h. Signature of person(s) conducting inspections and maintenance or other means used to verify an individual (e.g., work order or preventative maintenance schedule completion).

## **B. Records Location**

~~A copy of the completed and signed NOI, coverage letter from the department, The~~ SWPPP, site inspection records, corrective actions/maintenance records, and this general permit shall be kept at the site of the construction activity in a field office, trailer, shed, vehicle that is on-site during normal working hours, or other reasonable on-site location. If the site does not have a reasonable on-site location, then the documents must be retained at a readily available alternative location; preferably with the individual responsible for overseeing the implementation of the SWPPP. Electronic copies of records are acceptable if the records can be accessed on-site. If the site is inactive, then the documents may be stored at a local office. Permittees should avoid using personal electronic devices for storing electronic records. The NOI and coverage letter from the department are not required to be kept at the site. All records and documentation must be retained in accordance with Part IV(A)(5).

## **IV. STANDARD CONDITIONS**

### **A. COMPLIANCE RESPONSIBILITIES**

#### **1. Duty to Comply**

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

#### **2. Proper Operation and Maintenance**

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

#### **3. Planned Changes**

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

#### **4. Duty to Provide Information**

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

**5. Records Retention**

All records and ~~documentation 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.

**6. Signatory Requirements**

~~All applications reports, or information submitted to the department shall be signed and certified.~~<sup>11</sup>

~~All permit applications~~ **NOIs and NOTs** shall be signed by a responsible corporate officer for a corporation; a general partner or the proprietor for a partnership or sole proprietorship; or a principal executive officer or ranking elected official for a municipality, State, Federal, or other public agency.

~~The SWPPP All reports required by the permit and other information requested by the department~~ shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- a. The authorization is made in writing by a person described above and included in the SWPPP; and
- b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters.

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

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

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

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

**7. Twenty-four Hour Notice of Noncompliance Reporting**

- a. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The oral report shall

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<sup>11</sup> Sentence moved within this section.



be made the department at 701.328.5210.

- b. A written submission shall also be provided within five days of the time that the permittee became aware of the circumstances. The written submission shall contain:
- 1) A description of the noncompliance and its cause;
  - 2) The period of noncompliance, including exact dates and times;
  - 3) The estimated time noncompliance is expected to continue if it has not been corrected; and
  - 4) Steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

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

ND Department of Environmental Quality  
Division of Water Quality  
4201 Normandy Street 948 East Divide Ave  
Bismarck ND 58503-1324 58501-1947

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

#### 8. **Bypass of Treatment Facilities**

- a. Prohibition of Bypass. Bypass is prohibited, and the department may take enforcement action against a permittee for bypass, unless:
- 1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - 2) There were no feasible alternatives to the bypass. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of preventive maintenance; ~~and~~

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

#### 9. **Upset Conditions**

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

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

- a. An upset occurred and the permittee can identify its cause(s);
- b. The permitted activity facility was, at the time being, properly operated;
- c. The permittee submitted notice of the upset as required under 7. Twenty-four Hour Notice of Noncompliance Reporting and

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

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

**10. Duty to Mitigate**

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

**11. Removed Materials**

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

**12. Duty to Reapply**

Any request to have this permit renewed must be done in accordance with Part I(G) should be made fifteen days prior to its expiration date.

**B. GENERAL PROVISIONS**

**1. Inspection and Entry**

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

**2. Availability of Reports**

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

**3. Transfers**

This permit is not transferable except upon the filing of a Transfer/Modification request (Part I(F)) by the new party. The current permit holder should inform the new controller, operator, or owner of the existence of this permit and also notify the department of the possible change.

**4. New Limitations or Prohibitions**

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

**5. Permit Actions**

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

**6. Need to Halt or Reduce Activity Not a Defense**

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

**7. State Laws**

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

**8. Oil and Hazardous Substance Liability**

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

**9. Property Rights**

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

**10. Severability**

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

**11. General Permits**

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

1. The discharge is not in compliance with the conditions of the general permit.
2. Conditions or standards have changed so that the discharge no longer qualifies for a general permit.
3. Information becomes available which indicates that the permittee's discharge has a reasonable potential to contribute to an exceedance of a water quality standard.

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

## V. DEFINITIONS

**“303(d) list”** or **“section 303(d) list”** means a list of North Dakota’s water quality-limited waters needing total maximum daily loads or TMDLs developed to comply with section 303(d) of the Clean Water Act. A copy of the list is available on the state’s web site at: [deg.nd.gov/WQ](http://deg.nd.gov/WQ)

**“Act”** means the Clean Water Act.

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

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

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

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

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

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

**“Energy dissipation”** means methods employed at pipe outlets to prevent erosion. Examples include, but are not limited to: concrete aprons, riprap, splash pads, and gabions that are designed to prevent erosion.

**“Indian country”** means (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservations; (2) All dependent Indian communities within the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

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

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

**“Large construction activity”** means land disturbance of equal to or greater than five (5) acres. Large construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale, if the larger common plan will ultimately disturb equal to or greater that

five acres.

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

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

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

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

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

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

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

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

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

**“Small construction activity”** means land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale, if the larger common plan will ultimately disturb equal to or greater than one and less than five acres.

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

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

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

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

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

(i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

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

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

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

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

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

## Appendix 1 – Erosion and Sediment Control Requirements for Best Management Practices

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

### A. Erosion and Sediment Control Practices

1. Sediment basins, or an appropriate combination of equivalent sediment controls such as smaller sediment basins and/or sediment traps, silt fences, fiber logs, vegetative buffer strips, berms, etc., are required for all down slope boundaries of the disturbance area and for those side slope boundaries as may be appropriate for site conditions. Velocity and energy dissipation is required at discharge locations. Erosion protection is required to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points.
2. Sites using temporary (or permanent) sediment basins must meet the following requirements:
  - a. Sediment basins shall be designed for a calculated volume of runoff from a 2-year, 24-hour storm per acre drained to the basin and provides not less than 1,800 cubic feet of sediment storage below the invert of the outlet pipe from each acre drained to the basin; or
  - b. Basins shall be sized to provide 3,600 cubic feet of sediment storage below the invert of the outlet pipe per acre drained to the basin if calculations are not performed.
  - c. Basin outlets must be designed to avoid short-circuiting and the discharge of floating debris. Basins must be designed with the ability to allow complete basin drawdown for maintenance activities. Basins must release the storage volume in at least 24 hours. Outlet structures must be designed to withdraw water from the surface, unless not practicable. If not practicable, rationale must be provided in the SWPPP. The basin must have a stabilized emergency overflow to prevent failure of pond integrity. Energy dissipation must be provided for the basin outlet.
3. Erosion, sediment, and stabilization practices shall be provided. Erosion, sediment, and stabilization practices include such things as: silt fences, fiber logs, stabilized earth berms, vegetative buffer strips, erosion control blankets, mulch, hydro-seeding combined with mulch or tackifiers, etc.
4. All exposed soil areas must be stabilized (see definitions). Stabilization must be initiated immediately where activities have been permanently or temporarily ceased on any portion of the site and will not resume for a period exceeding fourteen (14) calendar days. Stabilization must be completed as soon as practicable, but no later than fourteen (14) calendar days after the initiation of soil stabilization. Temporary stockpiles without significant silt, clay or organic components (e.g., clean aggregate stockpiles, demolition concrete stockpiles, sand stockpiles) or intended for structural use (e.g., structural fill) are exempt from this requirement.
  - a. For slopes with a grade of 3:1 or greater, stabilization must be initiated immediately once activities have been completed or temporarily ceased. Stabilization must be completed as soon as practicable, but no later than seven (7) calendar days after the initiation of soil stabilization.
5. Temporary soil stockpiles must have effective sediment controls, and cannot be placed in surface waters, including stormwater conveyances such as curb and gutter systems, or conduits and ditches.
6. The normal wetted perimeter of any temporary or permanent drainage ditch that drains water from a construction site, or diverts water around a site, must be stabilized at least 200 linear feet from the property edge, or from the point of discharge to any surface water. Stabilization shall be completed prior to connection with a surface water. Any remaining portion of the temporary or permanent drainage



ditch must be stabilized within fourteen (14) calendar days for portions which construction activities have temporarily or permanently ceased.

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

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

- ~~a. If vegetative stabilization is to be used, immediately initiate, and within 14 calendars days complete, the installation of temporary non-vegetated stabilization; or~~
- ~~b. Complete all methods of initiating stabilization as soon as conditions or circumstances allow.~~

~~If any conditions in parts (a) or (b) above are encountered, the permittee must document in the SWPPP the circumstances which prevented the stabilization requirements from being met and provide a schedule in the SWPPP which will be followed in order to meet the stabilization requirements.~~

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

8. Stream diversions, or any temporary or permanent drainage ditch or trench which will have continuous flow, shall be stabilized with appropriate controls prior to connection with any surface water. The entire area (channel and bank) of the stream diversion or temporary or permanent drainage ditch, or trench, must be appropriately stabilized to bankfull height.
9. While working in or around surface waters, sediment and erosion controls must be used above the anticipated level of the surface water. Floating silt curtain does not satisfy the down slope and side slope boundary requirements in Part II(C)(4)(b) of this permit, unless the construction activity is on or below the elevation of the surface water. Floating silt curtain must be placed as close to shore as possible. Sediment controls must be installed where exposed soils drain to the surface water immediately after construction activity along the waterline has been completed.
10. Pipe and culvert outlets must be provided with energy dissipation prior to connection with a surface water.
11. Splash pads and/or downspout extensions must be provided for roof drains to prevent erosion from roof runoff.
12. All storm drain inlets in the immediate vicinity of the construction site must be protected by appropriate BMPs during construction until all disturbed areas and stockpiles with the potential to discharge to the inlet have been stabilized. This includes storm drain inlets which may be affected by sediment tracked onto paved surfaces by vehicles or equipment.
13. Inlet protection devices are a last line of control – erosion and sediment control practices must be used on site. Inlet protection devices must conform to local ordinances or regulations. In general, inlet protection devices need to provide for adequate drainage to prevent excessive roadway flooding. Inlet



protection may be removed for a particular inlet if a specific concern (i.e., street flooding/freezing, snow removal) has been identified and documented in the SWPPP. In this situation, additional erosion and sediment control practices, or stabilization methods must be used to supplement the loss of the inlet protection device to prevent sediment from entering the storm sewer system.

14. Vegetated buffers must have a minimum width of 1 foot for every 5 feet of disturbed area that drains to the buffer. The width of the buffer shall have a slope of 5 percent or less and the area draining to the buffer shall have a slope of 6 percent or less. Concentrated flows should be minimized throughout the buffer. Buffers shall consist of dense grassy vegetation, 3 to 12 inches tall with uniform coverage over 90 percent of the buffer. Woody vegetation shall not be counted for the 90 percent coverage. No more than 10 percent of the overall buffer may be comprised of woody vegetation. Additional erosion and sediment controls must be provided when a vegetated buffer does not meet these conditions.

15. A 50-foot natural buffer or equivalent erosion and sediment controls must be provided when a project is within 50 feet of a surface water and stormwater flows to the surface water. If equivalent erosion and sediment controls are used, rationale for using equivalent controls must be provided in the SWPPP.

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

- ~~16. Discharges from the chemical treatment of stormwater must not cause a violation of the standards of quality for waters of the state (NDAC 33.1-16-02.1).<sup>12</sup> The discharge must meet the dewatering or basin draining requirements provided in Part II(C)(3)(g) of this permit.~~
17. Minimize the duration of exposed soils on steep slopes.
- ~~18. Minimize soil compaction. Minimizing soil compaction is not required where the intended function of a specific area of the site dictates that it be compacted.~~
- ~~19. Preserve topsoil unless infeasible. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed.~~

## **B. Maintenance Requirements for Erosion and Sediment Controls**

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

Permittees must investigate and comply with the following inspection and maintenance requirements:

- a. All control devices similar to, and including, silt fence or fiber rolls must be repaired, replaced, or maintained ~~or supplemented~~ when they become nonfunctional (torn from posts, visible tears, etc.). Collected sediment must be removed as it approaches 1/2 of the above ground capacity of the control device.

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<sup>12</sup> Moved to Appendix 1(D) of the proposed permit.

- b. Fiber rolls must be replaced when 1/2 of the original above ground height of the device when it was installed has been lost as a result of flattening or other damage.
  - c. Sedimentation basins must be drained and the sediment removed when the depth of sediment collected in the basin reaches 1/2 the storage volume. Drainage and removal must be completed within 72 hours of discovery, or as soon as field conditions allow access. Documentation must be provided in the maintenance records if field conditions do not allow access along with a plan of action for performing maintenance activities.
  - d. Maintenance and cleaning of inlet protection devices must be performed when sediment accumulates, the filter becomes clogged, and/or performance is compromised.
2. Surface waters, including drainage ditches and conveyance systems, must be inspected for evidence of sediment deposited by erosion. Permittees must remove all deltas and sediment deposits in surface waters, drainage ways, catch basins, and other drainage systems. Areas where sediment removal results in exposed soil must be stabilized. Removal and stabilization must take place immediately, but no more than, seven (7) calendar days after the discovery unless precluded by legal, regulatory or physical access constraints. Permittees shall use all reasonable efforts to obtain access. If precluded, removal and stabilization shall take place immediately, but no more than, seven (7) calendar days after obtaining access. Permittees are responsible for contacting all local, regional, state, and federal authorities, and receiving any applicable permits prior to conducting any work.
3. Vehicle tracking of sediment from the site must be minimized by BMPs. This may include having a designated egress with aggregate surfacing from the site or by designating off-site parking. Permittees are responsible for (or making the arrangements for) street sweeping and/or scraping if BMPs are not adequate to prevent sediment from being tracked onto the street from the site.

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

4. If sediment escapes the construction site, off-site accumulations of sediment must be removed in a manner and at a frequency sufficient to minimize off-site impacts (e.g., fugitive sediment in streets could be washed into storm sewers by the next rain event and/or pose a safety hazard to users of public streets). BMPs shall be used to minimize further impacts of off-site accumulations of sediment until the off-site accumulations are removed. Impervious surface wash water may not be directed into any surface water or storm drain inlet unless appropriate pollution prevention measures have been implemented.
5. Vegetative buffers must be inspected for proper distribution of flows, sediment accumulation and signs of rill formation. If a buffer becomes silt covered, contains rills, or is otherwise rendered ineffective, other control measures shall be implemented. Eroded areas shall be repaired and stabilized within 24 hours of discovery, or as soon as conditions allow access. Documentation must be provided in the maintenance records if field conditions do not allow access along with a plan of action for performing maintenance activities.

### **C. Operational Controls**

1. Properly handle construction debris and waste materials.

- a. Debris and waste must be handled appropriately until disposal. Litter and debris shall be collected and stored to reduce the potential for wind and water to carry the materials off-site or leachate discharging from a site. Collected material shall be taken to the appropriate facility for disposal or recycling.
- b. Liquid or soluble materials including oil, fuel, paint, and any other hazardous substances must be properly stored, to prevent spills, leaks or other discharges. Restricted access to storage areas must be provided to prevent vandalism. Storage and disposal of liquid or soluble material must be in compliance with applicable regulations.
2. Minimize the exposure of building materials, building products, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater. Minimization of exposure is not required in cases where the exposure to precipitation and to stormwater will not result in a discharge of pollutants, or where exposure of a specific material or product poses little risk of stormwater contamination (such as final products and materials intended for outdoor use).
3. Wash water must be collected in leak-proof containers or leak-proof pits. Containers or pits must be designed and maintained so that overflows cannot occur due to inadequate sizing, precipitation events, or snowmelt.<sup>13</sup> Wash water containments must be cleaned out (solids and liquid) before 80 percent of storage capacity is attained.
4. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge.
5. BMPs used in surface waters must be cleaned immediately upon removal from surface waters to prevent the transfer of aquatic nuisance species.
6. Fueling operations must be managed to minimize spills or leaks. Collected spill or leak material must be disposed in compliance with applicable regulations.
7. Storage structures for petroleum products and other chemicals shall have adequate leak and spill protection to prevent any spilled materials from entering waters of the state or storm sewer systems.<sup>14</sup>

#### **D. Dewatering Practices**

1. Operate the discharge to minimize the release of sediment and provide adequate energy dissipation where necessary to minimize erosion due to the discharge.<sup>15</sup>
2. Discharges must not lead to the deposition of sediment within stormwater conveyance systems or surface waters.<sup>16</sup>
3. Discharges must not cause or potentially cause a visible plume within a surface water body.<sup>17</sup>

<sup>13</sup> Moved from Part II(C)(3)(f)(1) of the proposed permit.

<sup>14</sup> Moved from Part II(C)(3)(d) of the proposed permit.

<sup>15</sup> Moved from Part II(C)(3)(g)(2) of the proposed permit.

<sup>16</sup> Moved from Part II(C)(3)(g)(2) of the proposed permit.

<sup>17</sup> Moved from Part II(C)(3)(g)(2) of the proposed permit.

4. Basins and impoundments shall be dewatered utilizing structures or BMPs which allow for draw down to occur from the surface of the water, unless infeasible. If infeasible, replacement BMP(s) that provide equivalent treatment shall be used instead.<sup>18</sup>
5. Discharges from the chemical treatment of stormwater must not cause a violation of the standards of quality for waters of the state (NDAC 33.1-16-02.1).<sup>19</sup>

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<sup>18</sup> Moved from Part II(C)(3)(g)(3) of the proposed permit.

<sup>19</sup> Moved from Appendix 1(A)(15) of the proposed permit.