FACT SHEET FOR NDPDES PERMIT NDR04-0000

PERMIT REISSUANCE

GENERAL PERMIT FOR STORMWATER DISCHARGES FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS

DATE OF THIS FACT SHEET – JANUARY 2026

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 D – Response to Comments.

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BACKGROUND INFORMATION

General Information

Permit Number:	NDR04-0000
Permit Type:	General Permit, Renewal
Small Municipal Separate Storm Sewer System General Permit Type:	Comprehensive General Permit 40 CFR 122.28(d)(1)
Type of Treatment:	Best Available Technology Economically Achievable (BAT); Best Professional Judgment (BPJ); and Best Management Practices (BMPs)
Discharge Location:	Waters of the State of North Dakota

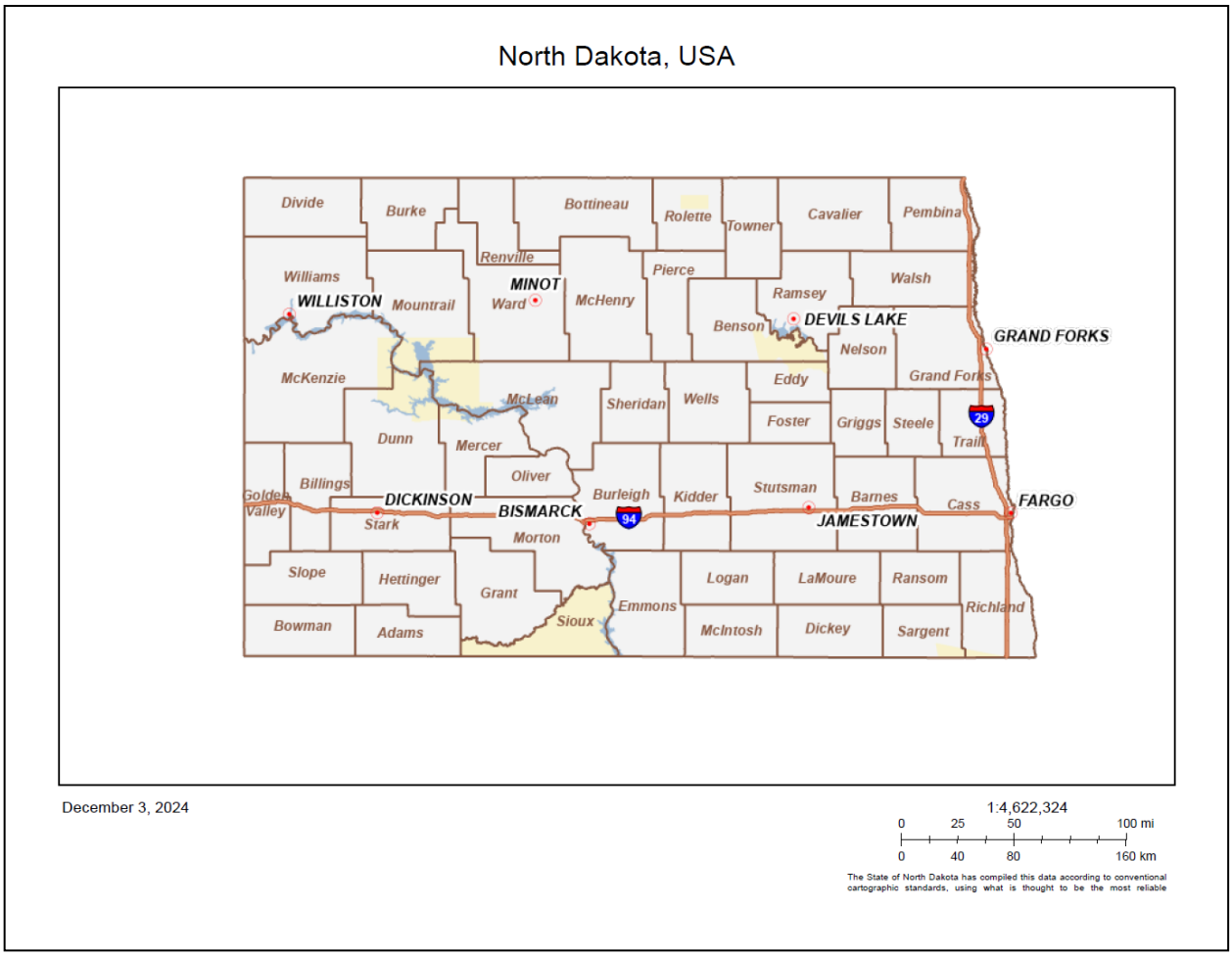

Figure 1 – Map of North Dakota

General permits (Title 40 of the Code of Federal Regulations (CFR), 122.28) provide a streamlined means to cover a large number of facilities that are subject to the regulations pertaining to small Municipal Separate Storm Sewer Systems (MS4s). These facilities are subject to the requirements of Section 402 of the Clean Water Act, as enforced by the NDPDES program. In addition, the general permit process places less of an administrative burden on the issuing authority than the individual permitting process. The general permits require baseline control practices aimed at minimizing the impact of stormwater discharges to waters of the state. Individual permits may be developed to address specific water quality concerns if necessary.

The present general permit issued for stormwater discharges from small MS4s expires March 31, 2026. The initial general permit was issued in response to the EPA's Stormwater "Phase II" Final Rule published on December 8, 1999 (64 FR68722). The rule requires the department, as the delegated permitting authority, to issue permits for discharges from certain small MS4s.

The primary goal of this permit is to restore and maintain the chemical, physical, and biological integrity of waters of the state to the extent practicable through the implementation of management practices applied to urban stormwater runoff. This permit reflects the phase II rule in requiring regulated MS4s to develop management practices to reduce pollutants in stormwater from the MS4. The minimum requirements for controlling pollutants in stormwater are outlined in a MS4 Program which regulated MS4s must develop. The MS4 Program consists of six minimum control measures (MCM) which include: public education, public participation, illicit discharge elimination, construction site runoff controls, post-construction stormwater management, and pollution prevention for municipal operations. The general permit meets the requirements of 40 CFR 122.34 for a small MS4 (40 CFR 122.28(d)) and is written as a comprehensive general permit (40 CFR 122.28(d)(1)).

MS4s covered by this permit primarily consist of storm sewer systems or portions of systems located within an urban area with a population of 50,000 or more people as determined by the latest Decennial Census by the U.S. Census Bureau (once defined as an urbanized area by the U.S. Census Bureau). MS4s designated for coverage based on their proximity to urban areas are referred to as "automatic" designations (40 CFR 122.32(a)). Additional MS4s are designated for coverage based on the mandatory review specified in the rules for cities with populations greater than 10,000 (40 CFR 123.35(b)(2))

Beginning in 2002, fourteen MS4s in the state were regulated based on their proximity to an urban area with a population of 50,000 or more people. Four additional systems were regulated based on the mandatory review specified in the rules for cities with populations greater than 10,000. One additional system was regulated under this permit based on the 2010 census and its proximity to an urban area with a population of 50,000 or more people. The 19 MS4s currently regulated by this permit are identified in Tables 1 and 2. Additional MS4s are being reviewed for coverage under this permit based on the 2020 census. Information about the initial designation process for regulation by the permit, including possible future designations, is provided in the policy document North Dakota Department of Health NDPDES Storm Water Permitting Policy Designation Criteria for Small MS4s, 2002 (Appendix C).

Table 1: Regulated Small MS4s Located in Urban Areas

	Fargo/Moorhead	**Grand Forks**	**Bismarck/Mandan**	**Minot**
Cities	Fargo West Fargo Horace	Grand Forks	Bismarck Mandan Lincoln	Minot
Counties (Parts located in UA or contributing to regulated city)	Cass	Grand Forks	Burleigh Morton	
Public Facilities	North Dakota State University	University of North Dakota	Bismarck State College	
	North Dakota Department of Transportation			

Table 2: Regulated Small MS4s Based on Designation Criteria

City	Population (1990)
Minot Dickinson Jamestown Williston	36,567 16,010 15,527 12,512

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 E. 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 authorizes the discharge of relatively uncontaminated stormwater from small MS4s to the waters of the state of North Dakota. The permit is not intended for discharges from industrial activities or construction disturbances unless otherwise specified. These activities will be covered under separate general permits, NDR05-0000 for industrial activities; NDR32-0000 for mining, extraction or paving material preparation activities; and NDR11-0000 for construction activities. This permit applies to discharges composed (either in whole or in part) of stormwater from small MS4s as defined in 40 CFR 122.26(b)(16) and designated under 40 CFR 122.32(a)(1) & (a)(2).

Authorization under this permit applies only to the storm sewer system (or portions of a system) operated by the MS4 and described in the application. Authorization under this permit does not cover other regulated MS4s operated within or connected to the MS4 or regulated MS4s waived from permit requirements in accordance with 40 CFR 122.32 (c) through (e).

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:

- Discharges other than stormwater and allowable non-stormwater sources.

- Discharges of stormwater when a separate NPDES permit is required for these activities. For example, while stormwater from construction activity may be discharged from a MS4 with authorized stormwater discharges, this permit does not replace or satisfy any other permits required for those discharges.

- Discharges from new MS4 outfalls or the expansion of existing MS4 outfalls that are not constructed or operated in accordance with the conditions of the permit.

- Discharges whose direct, indirect, interrelated, interconnected, or independent impacts would jeopardize a listed threatened or endangered species or adversely modify a designated critical habitat.

- Discharges that adversely affect properties listed (or eligible for listing) in the National Register of Historic Places or affecting known or discovered archeological sites.

Request for Authorization
Small MS4s 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. Small MS4s covered under the present permit will be retained provided a satisfactory request was made under the renotification provisions of the permit. The NOI will include the following:

- The street address and name of the MS4;
- The name, title, mailing address, telephone number, and email address of the MS4 contact(s);
- A brief description of the extent of the MS4;
- The name or general description of the water body(s), or other MS4s, that receive stormwater from the MS4;
- The location of MS4 owned and operated facilities and open spaces;
- The location and description of systems operated by other public entities within the MS4;
- A summary of the MS4 Program as outlined in the permit;
- Map of the area regulated by the MS4.

The NOI for MS4s with facilities required to sample must include:

- Name and site address of the facility;
- Facility contact, title, and email address;
- Sampling industry sector;
- Total number of outfalls along with outfall identifiers;
- Total number of substantially identical outfalls including which outfalls will be sampled.

Alternative Permit Coverage and Notice of Termination
The department may require any small MS4 to apply for and either obtain an individual NDPDES permit or seek coverage under an alternative NDPDES general permit (40 CFR

122.28(b)(3)). Any small MS4 covered by this general permit may request to be excluded from such coverage by applying for an individual NDPDES permit. When an individual NDPDES permit is issued to a small MS4 otherwise subject to this permit, the applicability of the general permit to the individual permittee is automatically terminated upon the effective date of the individual permit. When a permittee is approved for coverage under an alternative general permit, the applicability of this general permit is automatically terminated upon the date of approval for coverage under the alternative general permit.

Special Conditions
The proposed permit must identify discharges that are prohibited from coverage under the permit. Wastewater and other non-stormwater sources that combine with a stormwater discharge must comply with a NDPDES permit specifically for the wastewater or non-stormwater discharge. Non-stormwater discharges that are eligible for coverage under the proposed permit include: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, and discharges or flows from firefighting activities. These non-stormwater discharges are identified, or sufficiently similar to those identified, in similar EPA stormwater discharge general permits.

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

MUNICIPAL SEPARATE STORM SEWER SYSTEM PROGRAM

Permittees must develop, implement and enforce a MS4 Program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP) to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. The MS4 Program consists of a combination of Best Management Practices (BMPs) including education, maintenance, control techniques, system design and engineering methods, and other provisions to meet the minimum requirements of the permit. The MS4 Program can consist of a single document or multiple documents that describe how the permittee intends to comply with the requirements of the permit as allowed by 40 CFR 122.34(b).

The MS4 Program addresses the six minimum control measures (MCM) outlined in 40 CFR 122.34. The permit includes the minimum controls identified for the six control measures. The terms and conditions for each MCM are meant to be expressed in clear, specific, and

measurable terms which may include narrative, numeric, or other types of requirements (40 CFR 122.34(a) ~~122.43(a)~~)[1]. The MCMs are:

1. Public education and outreach;
2. Public participation/involvement;
3. Illicit discharge detection and elimination;
4. Construction site runoff control;
5. Post-construction runoff control; and
6. Pollution prevention/good housekeeping for municipal operations.

The MS4 Program must include BMPs that control or reduce pollutants as appropriate for a community. MS4s must consider the sources of pollutants and the potential polluting activities in the MS4 when developing BMPs. For each minimum control measure, there must be a description of the BMPs for the measure, responsible department in charge, an implementation schedule, and measurable goals that will be used to determine the success or benefits of the BMPs.

Implementation of one or more minimum control measures may be shared between MS4s (40 CFR 122.35). This rule provides that a MS4 may cooperate with all or part of a MS4 Program developed by another MS4. This option is particularly beneficial for MS4s that serve low populations, have limited resources, or are adjacent to another MS4. An MS4 still remains responsible for compliance with the permit within their jurisdiction, however. Any agreement outlining such an arrangement or other legally binding requirement must be maintained as part of the MS4 Program (40 CFR 122.35(a)(3)).

ADDITIONAL PERMIT CONDITIONS

Post-Construction Controls

The proposed permit includes design considerations for post-construction controls to reduce pollutants in the first flush of stormwater (40 CFR 122.34(b)(5)(i)). The design considerations provide a volume of runoff to treat or infiltrate called the Water Quality Volume. The Water Quality Volume is generally equivalent to the first 0.5 inches of runoff. The Water Quality Volume provides a base for the design of post-construction controls to treat runoff from new development and redevelopment projects. The permit also allows the use of alternate practices or a combination of practices as a portion of the overall Water Quality Volume. These practices include low impact development, groundwater recharge, runoff capture, and source and management control.

The design considerations for ponds specify drawdown and detention times used for sedimentation. The design considerations for selection of flow-through devices specify a volume of water for treatment. The design considerations also provide information for suspended solids removal such as starting concentration, particle size distribution, and removal percentage. The intent of the design considerations for flow-through devices is meant to provide a basis for selection of a device and not to specifically limit devices to these testing/design considerations. The basis for the design considerations for flow-through devices is provided below:

- A starting suspended solids concentration of 300 milligrams per liter (mg/L) was chosen based on design considerations already used and correlated with information meant to

[1] Updated to refer to the correct citation in the Code of Federal Regulations.

characterize urban runoff (Nationwide Urban Runoff Program, U.S. Environmental Protection Agency, 1983).

- A particle size distribution similar to ~~testing standard~~[2] OK-110 was selected based on its use in product testing. The department understands other particle size distributions are used for product testing based on the type of treatment or removal capability needed.

- The 80 percent sediment removal criterion is similar to criterion specified throughout the U.S. The department understands percent removal efficiencies can vary based on many factors such initial sediment concentration and type, rain event size and number of days between rain events, maintenance, etc., and that percent removal alone may not be the only solution to prevent or minimize water quality impacts. However, 80 percent removal of sediment from a feed concentration of 300 mg/L provides sediment concentrations in effluent similar to facilities in the state which require treatment of stormwater runoff to remove sediment.

The proposed permit does not include requirements to monitor and calculate removal efficiencies for flow-through devices. The expectation of the permit is that the criterion used to select the device is intended to meet the removal efficiency.

The design considerations are intended to treat sources of sediment that are common within a fully developed urbanized area (i.e., residual road sand, dust). The design considerations are not intended to address sediment from construction or industrial activities (this is typically handled through other NDPDES permits or MS4 ordinances), non-point sources, or natural erosion.

Industrial Activities
Stormwater discharges from industrial activities operated by the permittee may be covered by this permit provided the permittee develops and implements a stormwater pollution prevention plan (SWPPP) for each industrial facility. Typical industrial stormwater discharges operated by municipalities are transportation facilities, wastewater treatment facilities with design flows of 1.0 million gallons per day and waste handling facilities. The MS4 may obtain a separate permit for the industrial activities within the area covered by the MS4. If a MS4 does not obtain coverage under a separate permit for industrial stormwater discharges, the MS4 must develop a SWPPP as outlined in the proposed MS4 permit. The SWPPP requirements are the same as those found in the state's 2025 general permit for industrial stormwater discharges.

Retention and Availability of Records
The proposed permit includes requirements to keep records required by the permit for at least three years and submit records when specifically asked to do so, and to make records available to the public in accordance with 40 CFR 122.34(d)(2).

Annual and Discharge Monitoring Report Requirements
The proposed permit requires permittees to submit reports to the department each year in accordance with 40 CFR 122.34(d)(3). The annual report covers the monitoring period from January 1 to December 31. The report is due by March 28 of each year unless another date is set by the department.

[2] Removed in response to Comment #7.

MS4 facilities that are required to conduct sampling under the proposed permit must submit a discharge monitoring report (DMR). The DMR summarizes monitoring results obtained during the monitoring period. If no discharge occurs during a reporting period, “no discharge” shall be reported. Facilities also must report if a sample could not be collected because the facility was inactive or unstaffed, or if the discharge occurred outside of normal business hours. The proposed permit describes the schedule for submitting yearly reports.

REGULATED SMALL MS4 DESIGNATION CRITERIA

A description of the regulated MS4s in North Dakota including the designation criteria developed based on the Stormwater Phase II Final Rule (December 8, 1999) was first released in a separate policy document North Dakota Department of Health NDPDES Storm Water Permitting Policy Designation Criteria for Small MS4s, December 19, 2002. The document released by the Environmental Health Section of the Department of Health reflected the designation criteria in place when the Phase II Final Rule took effect. The Environmental Health Section later became the North Dakota Department of Environmental Quality in 2019. The contents of the policy document are incorporated into this 2026 fact sheet as Appendix C – Designation Criteria. The designation criteria are not being changed as part of the permit renewal. Additional small MS4s may be or designated as “regulated” MS4s after the proposed permit takes effect.

The Phase II rule directs the state to require permits for certain MS4s located in urban areas with a population of 50,000 or more people and develop designation for certain MS4s outside urban areas with a population of 50,000 or more people (40 CFR 122.32 and 123.35). The rational for the discretionary parts of the designation criteria are noted in this fact sheet.

The Phase II rule includes four provisions for designating a small MS4 for regulation and thus subject to permit coverage. A system can be designated as a “regulated” small MS4 by any of the following:

1. Automatic designation: Small MS4s located within the boundaries of an urban area with a population of 50,000 or more people defined by the latest decennial census conducted by the U.S. Census Bureau;

2. Potential designation by permit authority: Small MS4s that are located outside of urban aread with a population of 50,000 or more people determined to result in or have the potential to result in significant water quality impacts;

3. Contributes to an interconnected regulated MS4: Small MS4s that contribute substantially to pollutant loadings of a physically interconnected MS4 regulated by the NDPDES program; or

4. Petition for designation: Small MS4s may be designated following a final determination by the department on a petition, or request, for designation.

Small MS4s located in an urban area with a population of 50,000 or more people are automatically designated for coverage under 40 CFR 122.32. The definition for small MS4 includes systems serving state or federal complexes such as colleges in addition to the typical municipal entities such as cities and towns. The definition also includes systems owned by a public body having jurisdiction over the disposal of stormwater and other wastes such as a highway system.

A list of storm sewer systems located within urban areas with a population of 50,000 or more people was provided in the preamble to the Phase II rule. The list identified several townships in North Dakota as potential MS4s subject to automatic coverage. In North Dakota, townships are not normally associated with the operation of storm sewer systems. While townships normally maintain roads within their boundaries, NDCC 58-12-05 provides that the township overseer of highways is a deputy of the county superintendent of highways. In addition, the century code title pertaining to townships (NDCC 58) does not identify duties pertaining to the operation of storm sewer systems. As such, the department has not designated townships as “regulated” small MS4s that require coverage under the general permit.

The department has not required coverage for state or federal systems or complexes in urban areas with a population of 50,000 or more people (such as colleges, military facilities, prisons, etc.) that service a population less than 1,000. While these entities could have piping and other conveyances that drain stormwater, the stormwater is generally routed to a city system. In regard to these small public complexes, the preamble to the Phase II rule indicated that the permit authority would have to use its best judgment to decide if the complex should be regulated as a small MS4 based on the nature of the complex and its stormwater conveyance system (64 FR 68749). Additionally, the permit authority should consider whether the public complex cooperates with the municipality’s efforts to implement their stormwater management program. Since the city (or county) is in the best position to identify the extent of its jurisdiction and cooperation by a public complex, the department will rely on the city’s (or county’s) judgment and require permits for facilities that are identified as not cooperating with the local stormwater program.

The Phase II Final Rule requires the department as the permitting authority to develop a set of designation criteria and apply them to MS4s outside of UAs (40 CFR 123.35(b)). The rule required the evaluation of MS4s serving a population of at least 10,000 and with a population density of at least 1,000 people per square mile prior to December 9, 2002 (40 CFR 123.35(b)(2)&(3)). All cities in North Dakota with a population of 10,000 or greater were designated for coverage.

The department’s designation criteria for MS4s outside of urban areas with a population of 50,000 or more people take into consideration the factors in 40 CFR 123.35(b)(1). The factors include the municipality’s population, the sensitivity of the receiving water, proximity to an urban area with a population of 50,000 or more people, and pollutant contribution to a receiving water. The department can apply the criteria, as appropriate, to designate additional small MS4s for coverage under the permit at any time.

The department waived coverage under the general permit for several very small MS4's located in the Fargo urban area (40 CFR 123.35(d)). The incorporated towns of Briarwood, Frontier, Prairie Rose, and North River were waived due to populations well under 1,000 people and limited growth potential. The department intends to continue the waivers as part of the permit renewal.

The cities of Lincoln and Horace, located in the Bismarck and Fargo urban areas, respectively, are the smallest cities regulated by the permit. Lincoln had a population of 1,730 based on the 1990 census and did not meet the criteria for waivers in 2002 as specified in the Phase II rule for places with populations of more than 1,000 people. Horace had a population of 2,430 based on the 2010 census and also was included in the Fargo urban area. Additional MS4s are being reviewed for coverage under this permit based on the 2020 census.

SURFACE WATER QUALITY-BASED EFFLUENT LIMITS

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

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

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

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

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

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

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

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

mixing zone and dilution allowances shall be limited, as necessary, to protect the integrity of the receiving water's ecosystem and designated uses.

Nutrients
Numeric nutrient criteria have yet to be developed for the state of North Dakota. Currently, the WQS contain a narrative standard stating that surface waters must be free from nutrients in concentrations or loading that cause objectionable growth of vegetation, algae, or other impairments (NDAC 33.1-26-02.1-08(1)(a)(6)). The proposed permit contains public education, illicit discharge and dumping, TMDL, and requirements for written fertilizer application procedures that allow permittees to address nutrient reduction.

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

The effluent limitation and benchmark concentrations in the proposed permit reflect the conditions of the EPA Multi-Sector General Permit (MSGP-2021). Water quality-based limits may be imposed on discharges covered by this permit through the implementation of a TMDL allocation. In addition, a MS4 covered by this permit may be required to obtain an individual permit based on site specific water quality-based limitations.

Ammonia
In the current permit, the ammonia benchmark concentration for the Baseline Parameter monitoring group was based on the acute ammonia water quality standard in place at the time permit was issued. Since the issuance of the current permit, the ammonia water quality standards changed. As a result, the department updated the ammonia benchmark concentration based on the current acute water quality standard where the genus of fish "*Oncorhynchus*" are absent.

MONITORING REQUIREMENTS

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

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

PERMIT ISSUANCE PROCEDURES

Permit Actions
The proposed permit may be modified, revoked and reissued, or terminated for cause. This includes the establishment of limitations or prohibitions based on changes to WQS, the development and approval of waste load allocation plans, the development or revision to water quality management plans, 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 coverage 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 small MS4s. 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 INFORMATION

The department proposes to reissue a general permit for stormwater discharges associated with small Municipal Separate Storm Sewer Systems. The permit includes the use of best management practices, the development of a MS4 Program, monitoring requirements, and other conditions. This fact sheet describes the types of small MS4s covered under the permit and the department's reasons for requiring permit conditions.

The department will place a Public Notice of Draft on **January 30, 2026** 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, Meetings & 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 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
Reissue of an NDPDES Permit

Public Notice Date: January 30, 2026 Public Notice Number: ND-2026-002

Purpose of Public Notice

The Department intends to reissue 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: January 15, 2026
Application Number: HQJ-MAA5-ZCXTE
Permit Number: NDR040000
Applicant Name: North Dakota Department of Environmental Quality
Mailing Address: 4201 Normandy Street Bismarck, ND 58503-1324
Telephone Number: 701.328.5210
Proposed Permit Expiration Date: March 31, 2031

Facility Description

The NDDEQ proposes to reissue NDPDES General Permit NDR040000 to authorize the discharge of stormwater from small Municipal Separate Storm Sewer Systems (MS4s). The permit applies to MS4s in North Dakota that are regulated pursuant to 40 CFR 122.26. MS4s covered by this permit are located in urban areas with a population of at least 50,000 and cities with a population of at least 10,000. The NDDEQ may authorize other small MS4s based on criteria outlined in the Phase II Federal Stormwater Rule. The general permit requires a stormwater management program to reduce pollutants in stormwater discharges from the MS4 and includes minimum control measures as identified in 40 CFR 122.34.

MS4s included in the renewal are: Bismarck City of, Bismarck State College, Burleigh County (Urban Area), Cass County (Urban Area), Dickinson City of, Fargo City of, Grand Forks City of, Grand Forks County (Urban Area), Horace City of, Jamestown City of, Lincoln City of, Mandan City of, Minot City of, Morton County (Urban Area), ND Dept. of Transportation (Urban Area), ND State University, University of ND, West Fargo City of, and Williston City of.

Tentative Determinations

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

Information Requests and Public Comments

Copies of the application, draft permit, and related documents are available for review. For further information on making public comments/public comment tips please visit: https://deq.nd.gov/PublicCommentTips.aspx. 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 09, 2026 will be considered prior to finalizing the permit. If there is significant interest, a public hearing will be scheduled. Otherwise, the Department will issue the final permit within sixty (60) days of this notice. If you require special facilities or assistance relating to a disability, call TDD at 1.800.366.6868.

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. To request accommodations, contact the NDDEQ Non-discrimination Coordinator at 701-328-5210 or deqEJ@nd.gov. TTY users may use Relay North Dakota at 711 or 1-800-366-6888.

APPENDIX B – GLOSSARY

DEFINITIONS Standard Permit BP 2025.03.13

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

2. "**Best management practices**" (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.

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

4. "**Composite**" sample means a combination of at least 4 discrete sample aliquots, collected over periodic intervals from the same location, during the operating hours of a facility not to exceed a 24-hour period. The sample aliquots must be collected and stored in accordance with procedures prescribed in the most recent edition of Standard Methods for the Examination of Water and Wastewater.

5. "**Continuous Discharge**" means a "discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

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

7. "**Daily maximum discharge limitation**" means "maximum daily discharge limitation" which is the highest allowable "daily discharge."

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

9. "**DMR**" means discharge monitoring report.

10. "**EPA**" means the United States Environmental Protection Agency.

11. "**Geometric mean**" means the n^{th} root of a product of n factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.

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

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

14. "**Monthly average discharge limitation**" means "average monthly discharge limitation" which is the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

15. "***Oncorhynchus***" means of, belonging to, or characteristic of the genus *Oncorhynchus* in the family *Salmonidae*, which includes salmon and trout.

16. "**Sanitary Sewer Overflows (SSO)**" means untreated or partially treated sewage overflows from a sanitary sewer collection system.

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

18. "**Total drain**" means the total volume of effluent discharged.

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

20. "**Weekly average discharge limitation**" means "average weekly discharge limitation" which is the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all "daily discharges" measured during a calendar week divided by the number of "daily discharges" measured during that week.

DEFINITION Permit Specific

1. "**Common plan of development or sale**" means a contiguous area where multiple separate and distinct construction activities are planned to occur at different times on different schedules under one plan, e.g., a housing development of five ¼-acre lots (40 CFR 122.26(b)(15)(i)).

2. "**Expanded source of pollution**" means any changes in volume, quality, location, or any other factor that results in increased pollutant loading from a regulated discharge source which would have significant permanent effects on waters of the state.

3. "**General permit**" means a permit issued under NDAC 33.1-16-01 to a category of permittees whose operations, emissions, activities, discharges, or facilities are the same or substantially similar.

4. "**Maximum extent practicable**" or "**MEP**" is the statutory standard that establishes the level of pollutant reductions that an owner or operator of regulated MS4s must achieve. The U.S. EPA has intentionally not provided a precise definition of MEP to allow maximum flexibility in MS4 permitting. The pollutant reductions that represent MEP may be different for each small MS4, given the unique local hydrologic and geologic concerns that may exist and the differing possible pollutant control strategies. Therefore, each permittee will determine appropriate BMPs to satisfy each of the six minimum control measures through an evaluative process. The U.S. EPA envisions application of the MEP standard as an iterative process.

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

6. "**Municipal separate storm sewer system**" or "**MS4**" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

   - Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management Agency under section 208 of the CWA that discharges to waters of the United States;

   - Designed or used for collecting or conveying stormwater;

   - Which is not a combined sewer; and

   - Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

7. "**NPDES**" means National Pollutant Discharge Elimination System and includes the authorized state program.

8. "**New development**" means construction activities that create new impervious surface.

9. "**New source of pollutants**" means a discharge that started after the effective date of this permit.

10. "**Notice of Intent**" as referenced in the U.S. EPA documents is synonymous with the term "permit application" for the purposes of this permit.

11. "**Other regulatory mechanism**" means any legally enforceable document, such as a contract or other agreement that has penalties such as withholding payments, fines or other measures to prevent non-compliance.

12. "**Operator**" means the person with primary operational control and legal responsibility for the municipal separate storm sewer system.

13. "**Outfall**" means the point where a municipal separate storm sewer system discharges from a pipe, ditch, or other discrete conveyance to receiving waters, or other municipal separate storm sewer systems. It does not include diffuse runoff or conveyances, which connect segments of the same stream or other water systems.

14. "**Owner**" means the person that owns the municipal separate storm sewer system.

15. "**Person**" means the state or any agency or institution thereof, any municipality, governmental subdivision, public or private corporation, individual, partnership, or other entity, including, but not limited to, association, commission or any interstate body, and includes any officer or governing or managing body of any municipality, governmental subdivision, or public or private corporation, or other entity.

16. "**Physical alteration**" means the dredging, filling, draining, or permanent inundating of a wetland. Restoring a degraded wetland by reestablishing its hydrology is not a physical alteration.

17. "**Redevelopment**" refers to alterations of a property that change the "footprint" of a site or building in such a way that results in the disturbance of equal to or greater than one acre of land. The term is not intended to include such activities as exterior remodeling, which would not be expected to cause adverse stormwater quality impacts and offer no new opportunity for stormwater controls.

18. "**Small municipal separate storm sewer system**" or "**small MS4**" means all separate storm sewers that are:

    - Owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.

    - Not defined as "large" or "medium" municipal separate storm sewer systems pursuant to 40 CFR 122.26 paragraphs (b)(4) and (b)(7) of, or designated under paragraph (a)(1)(v).

    - This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

19. "**Stormwater**" means stormwater runoff, snowmelt runoff, surface runoff and drainage.

20. "**Stormwater discharge associated with construction activity**" means discharge of stormwater from construction activities; including 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. 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.

21. "**Stormwater associated with industrial activity**" means stormwater runoff, snow melt runoff, or surface runoff and drainage from industrial activities as defined in 40 CFR 122.26(b)(14). Industrial facilities (including industrial facilities that are federally or municipally owned or operated that meet the description of the facilities listed in this paragraph (i)-(xi)) include those facilities designated under 122.26(a)(1)(v). The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this subsection:

    (i) Facilities subject to stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except facilities with toxic pollutant effluent standards which are exempted under Category (xi) of this paragraph);

    (ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28, 29, 30, 311, 32, 33, 3441, 373;

    (iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations meeting the definition of a reclamation area under 40 CFR 434.11(1)) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge stormwater contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, by products or waste products located on the site of such operations; inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator;

    (iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

    (v) Landfills, land application sites, and open dumps that have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA;

    (vi) Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

    (vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42, 44 and 45 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i) - (vii) or (ix) - (xi) of this subsection are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR 503;

(x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 31 (except 311), 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-25.

22. "**Total Maximum Daily Load**" or "**TMDL**" is the process established by the U.S. EPA for the allocation of pollutant loads, including stormwater, to a particular water body or reach of a water body.

23. "**Uncontaminated ground water infiltration** (as defined at 40 CFR 35.2005(20))" means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

24. "**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 – DESIGNATION CRITERIA

North Dakota Department of Health
NDPDES Storm Water Permitting Policy
Designation Criteria for Small MS4s
December 19, 2002

This policy identifies the small Municipal Separate Storm Sewer Systems (MS4s) that are required to obtain a permit under the North Dakota Pollutant Discharge Elimination System (NDPDES) pursuant to the EPA's Storm Water "Phase II" Final Rule published on December 8, 1999 (64 FR68722). The rule requires the Department, as the delegated permitting authority, to develop criteria for designating MS4's for regulation and to issue permits for discharges from MS4s designated as "regulated" small MS4s (40 CFR 123.35).

The phase II rule includes four provisions by which a small MS4 may be designated as a "regulated" small MS4 and thus require permit coverage. A system may be designated as "regulated" by any of the following:

1) Automatic designation - Small MS4s located within the boundaries of a Census Bureau-defined Urbanized Area (UA) based on the latest decennial census;

2) Potential designation by permit authority - Small MS4s that are located outside of UAs determined to result in or have the potential to result in significant water quality impacts;

3) Contributes to an interconnected "regulated" MS4 - Small MS4s that contribute substantially to pollutant loadings of a physically interconnected MS4 regulated by the NPDES storm water program; or

4) Petition for designation - Small MS4s may be designated following a final determination by the Department on a petition, or request, for designation.

This document outlines the criteria and process the Department will use in determining whether specific small MS4s will be designated as "regulated" small MS4s.

Unless otherwise indicated by the Department the applications for coverage under the general permit will be due by March 10, 2003, for the small MS4s identified as located within an urbanized area. Additional small MS4s, identified at a later date, will be required to submit applications within 180 days of notification by the Department.

1. Automatic Designation

The Phase II Final Rule requires coverage of all operators of small MS4s that are located within the boundaries of a Bureau of the Census-delineated "urbanized area" (UA) based on the latest decennial Census (40 CFR 122.32[a][1]). This does not just include municipal operators of small MS4s, but also universities, highway departments, and any other operator of a storm sewer system that is located fully or partially within the UA. At a minimum, the small MS4 must obtain permit coverage for the portion of the system located within the boundary of the UA. A small MS4 that is designated into the program based on the UA boundaries cannot be waived from the program if in a subsequent UA calculation the small MS4 is no longer within the UA boundaries. A list of regulated small MS4s located at least partially in an urbanized area is provided in Table 1.

Small MS4s affiliated with a UA will be required to implement the provisions of the storm water permit within the area served by the MS4 where storm water from residential, commercial, or industrial development is contributed to a system serving an UA. In no case will the requirements of the MS4 permit apply to areas used for agriculture that may be located in the general vicinity of a MS4. The boundaries for the MS4 will vary depending on the type of entity operating the MS4. Generally, the following will be considered the minimum boundaries for automatically designated MS4s:

a. The city limits for cities;
b. The property boundary for public institutions/complexes;
c. The area described by a county that includes any urbanized area along with any areas of development within the counties jurisdiction that are interconnected with an adjoining regulated MS4.

The rule provides that a facility may cooperate on all or part of the storm water pollution prevention program developed by another entity (40 CFR 122.35). This option is particularly beneficial for operators that are adjacent to a regulated MS4, serve low populations, or have limited resources. The facility will remain responsible for compliance with the permit within their jurisdiction.

The state and federal entities required to submit applications for systems located in urbanized areas in North Dakota are identified in Table 1. The facilities identified for permitting in the state consist of more than a few buildings and have a significant user and/or resident populations (greater than 1000 people). The definition of small MS4 includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. In regard to state and federal facilities the preamble to the Phase II rule states: "The minimum measures for small MS4s were written to apply to storm sewer 'systems' providing storm water drainage service to human populations and not to individual buildings" (64 FR 68749). The preamble goes on to indicate that a complex of two or three buildings could be treated as an individual building. In the case of the Department of Transportation, the preamble includes an explanation of why the DOT highway systems are subject to small MS4 permit requirements. The general rationale being that the highway system represents a large area within an UA with a potential for significant effects on interconnected regulated small MS4s.

The Department is granting waivers from permitting for small MS4s serving populations of less than 1000 as allowed for under 40 CFR 123.35(d)(1). The MS4s granted waivers are listed in Table 2, along with the key criteria qualifying the facility for the waiver. For all facilities listed, the Department has no information indicating the facilities are contributing substantially to a physically interconnected regulated MS4. In addition the facilities do not discharge to a water body identified in the state's section 303d list as "not supporting" a designated use due to a pollutant attributed to MS4 discharges.

The Department has not identified any MS4s serving populations between 1000 and 10000 people for a waiver from the Phase II permitting requirements. The Department does not have sufficient water quality or "total maximum daily load" (TMDL) information available for storm sewer discharges from MS4s serving more than a 1000 people to meet the criteria described in the rule (40 CFR 123.35[d][2]).

The Department may require a permit from a waived facility based on new information on the MS4 discharge or changes to the MS4 such that the criteria for the waiver is no longer satisfied. State and federal office buildings or complexes that have not been identified as regulated MS4s are considered waived. A waived state or federal small MS4 may be required to obtain a

permit, like any other small MS4, should it be determined that the waiver criteria are no longer satisfied.

2. Potential Designation

The Phase II Final Rule requires the Department as the permitting authority to develop a set of designation criteria and apply them to MS4s outside of urbanized areas (40 CFR 123.35[b]). MS4s serving jurisdictions with a population of at least 10,000 and with a population density of at least 1,000 people per square mile must be evaluated prior to December 9, 2002 (40 CFR 123.35[b][2]&[3]). The Department can apply the criteria to make additional designations, as appropriate, at any time.

All cities with a population of 10,000 or greater have been designated for coverage. The MS4s are required to obtain a permit unless the operator of the MS4 conclusively demonstrates to the Department that their discharges do not contribute or have the potential to contribute to the violation of a water quality standard. The applications for coverage under the general permit will be due by June 10, 2003, 180 days after the finalization of the permit and this accompanying policy. The affected cities are listed below:

Dickinson	Jamestown
Minot	Williston

Description of Designation Criteria. The designation criteria is designed to consider whether storm water discharges from a small MS4 results, or potentially results, in exceedances of water quality standards, including impairment of designated uses, and/or adverse habitat or biological impacts. The Department's designation criteria applies a scoring system to the considerations identified by the EPA in the Phase II rule proposal (40 CFR 123.35[b][1]). As a rule, MS4s that score 25 or more will be designated for permit coverage and MS4s that score less than 25 will not be designated. The following is the Departments criteria for designating small MS4s for permit coverage.

Population Served by MS4
This factor summarizes population density, growth potential and, to some extent, the significance of pollutant contribution to receiving waters. The population factor will be rated on the basis of the population of the community served by the MS4 and any adjacent communities. Scoring will be:

1 point	per 1000 people

Sensitivity of Receiving Waters
This factor evaluates the designated uses, special uses and known impairments for water bodies effected by the MS4. The receiving waters will be rated based largely on the classification designated in the state's water quality standards. Additional consideration will be given to waters listed as impaired (303d list) or listing as critical habitat. Scoring will be:

10 points	Class I and IA streams and Class 1,2 and 3 lakes
7 points	Class II streams, Class 4 lakes, and any tributary within 3 miles of water body listed in the 10 point group
5 points	Class III streams

2 points	Streams not specifically classified, Class 5 lakes, and wetlands

Additional points will be assessed for each of the following:

2 points	Identified on the state's 303(d) list as impaired due to a MS4 pollutant of concern (BOD [Low DO], sediment, nutrients, oil/grease, human pathogens)
2 points	Identified as critical habitat for threatened or endangered species
3 points	Designated as an Outstanding State Water Resource

Located Contiguous to an Urbanized Area
This factor considers the collective effect of MS4 discharges adjacent to an urbanized area and potential impacts on a neighboring regulated MS4. The MS4 will be rated on whether or not it is located adjacent to a UA. Scoring will be:

10 points	MS4 is located adjacent to a UA
0 points	MS4 is not located adjacent to a UA

Significant Contributor of Pollutants / Ineffective Water Quality Protection
This factor evaluates the significance of the MS4's contribution of pollutants to a water body and the effectiveness of any existing controls to prevent the contribution of pollutants to a water body. The contribution of the MS4 discharge will be rated on the basis of an evaluation of all waters of the state that receive a discharge from the MS4. The evaluation needs to show that storm water controls are (or are not) needed based on wasteload allocations (WLA) that are part of an EPA approved or established TMDL that addresses the pollutants of concern or an equivalent analysis. Scoring will be:

25 points	An evaluation attributes a major portion (35% or more) of the pollutant loading causing impairment to the MS4 and a WLA requires significant reductions in pollutant contribution from the MS4
10 points	An evaluation shows that additional controls or operating practices are needed to meet a WLA
5 points	An evaluation has not been completed; or an evaluation shows current controls or operating practices are adequate to meet any assigned WLA
0 points	An evaluation shows that storm water controls are not needed

The Director of the Division of Water Quality may take into account other factors or circumstances not addressed in the scoring system to make the final determination on whether or not to designate an MS4. The scoring system was developed as a tool to evaluate the potential impacts from MS4s on a reasonably consistent basis and require permits where appropriate. The score obtained may not always adequately characterize the conditions of a specific MS4 and thus the Department must exercise its judgement in determining if all factors have been considered and considered correctly.

3. MS4 Physically Interconnected to Another MS4

As required by 40 CFR 123.35 (b)(4), a small MS4 that contributes substantially to the pollutant loadings of a physically interconnected MS4 already regulated under Phase II must be included in the program. To be "physically interconnected," the MS4, including roads with drainage systems and municipal streets, is physically connected directly to a municipal separate storm sewer of another entity. Any small MS4s identified for regulation as a physically interconnected system will be required to submit applications within 180 days of notification by the Department.

4. Petition for Designation

A person may petition to have a small MS4 designated for permit coverage as provided under 40 CFR 122.26(f). The Department must make a final determination within 180 days of the receipt of a petition as required under 40 CFR 123.35(c). The determination will be based on the application of the designation criteria to the MS4. Any small MS4s identified for regulation based on a petition will be required to submit applications within 180 days of notification by the Department.

Table 1.
Regulated Small MS4s Located in Urbanized Areas

	Fargo/Moorhead	**Grand Forks**	**Bismarck/Mandan**
Cities (w/pop. > 1000)	Fargo West Fargo	Grand Forks	Bismarck Mandan Lincoln
Counties (Parts located in UA or contributing to regulated city)	Cass	Grand Forks	Burleigh Morton
Public Facilities	North Dakota State University ND Department of Transportation	University of North Dakota ND Department of Transportation	Bismarck State College ND Department of Transportation
Waivers			
Significant waived MS4s with population (or equivalent) less than 1000	North River Prairie Rose Frontier Briarwood Veterans Hospital		State Penitentiary

Table 2.
Waivers for Small MS4s Located in Urbanized Areas

City / Facility	Receiving water body	Water body listed in 303d as Not supporting uses /1	Population /2 (or equiv.)	Identified as significant contributor to other MS4	Grant Waiver
North River	Red River	No	65	No	Yes
Prairie Rose	Red River / Fargo MS4	No	68	No	Yes
Frontier	Red River / Fargo MS4	No	273	No	Yes
Briarwood	Red River	No	78	No	Yes
Veterans Hospital	Fargo MS4 to Red R.	No	109 beds 600 staff (rotating) per VA	No	Yes
State Penitentiary	Hay Creek / Bismarck MS4	No	approx. 620 inmate 200 staff (rotating) per DOCR 2001 Biannual Report	No	Yes
University of North Dakota	English Coulee / Grand Forks MS4	Yes	11,700 enrollment for Fall 2001	No	No
North Dakota State University	Red River / Fargo MS4	No	10,500 enrollment for Fall 2001	No	No
Bismarck State College	Missouri River / Bismarck MS4	No	3,044 enrollment for Fall 2001	No	No

/1. Per the North Dakota 2002 Section 303d List of Waters Needing TMDLs, December 2002
/2. Per 2000 census unless noted.

Glossary
Note: This glossary is provided for informational purposes only; legal definitions of these terms can be found in the Code of Federal Regulations at 40 CFR Section 122.26(b) or in the Phase II Final Rule, published December 8, 1999 (64 FR 68722).

Municipal separate storm sewer means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

(i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act that discharges to waters of the United States;

(ii) Designed or used for collecting or conveying storm water;

(iii) Which is not a combined sewer; and

(iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR Section 122.2.

Physically interconnected means that one MS4 is connected to a second MS4 in such a way that it allows for direct discharges to the second system.

Regulated small MS4 means an MS4 which is automatically designated for inclusion in the Phase II storm water permitting program by its location within an urbanized area, or by designation by the NPDES permitting authority.

Small municipal separate storm sewer system means all separate storm sewers that are:

(i) Owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act that discharges to waters of the United States.

(ii) Not defined as "large" or "medium" municipal separate storm sewer systems pursuant to 40 CFR Sections 122.26 (b)(4) and (b)(7).

(iii) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

Storm water means storm water runoff, snow melt runoff, and surface runoff and drainage.

Urbanized Area: For Census 2000, the Census Bureau classifies "urban" as all territory, population, and housing units located within an urbanized area (UA) or an urban cluster (UC). It delineates UA and UC boundaries to encompass densely settled territory, which consists of: core census block groups or blocks that have a population density of at least 1,000 people per square mile and surrounding census blocks that have an overall density of at least 500 people per square mile. In addition, under certain conditions, less densely settled territory may be part of each UA or UC. **Note: Refer to the U.S. Census Bureau website at *http://www.census.gov/geo/www/ua/ua_2k.html* for more details.**

APPENDIX D – 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:** Seeking further clarification on non-structural BMPs [Best Management Practices]. For city entities, a local street sweeping program may cover this. What level of documentation is required to show an effective substitution? How much technical analysis is expected to be tracked? Could directing drainage into a grass field be considered a non-structural BMP as long as we can quantify the treatment? Suggest listing a few examples of non-structural BMPs.

   Department Response: Thank you for the comment. The comment is in reference to Part IV(F)(5)(b) in the Post-construction Stormwater Management for New Development and Redevelopment section of the permit.

   Because non-structural BMPs are preventative practices and source controls, and structural BMPs are storage and treatment practices, the effectiveness of non-structural controls versus structural controls has not been quantified and is beyond the scope of the small MS4 regulations and what permittees are required to determine. Each BMP has its appropriate use and/or disuse depending on the particular situation, which must be weighed against the desired outcome. It is up to the permittee to include the decision-making process for selecting non-structural and structural BMPs appropriate for the regulated MS4 as part of the MS4 Program.

   The department determined the language in the permit which states “Non-structural BMPS include preventative actions that involve management and source control” provides enough direction for permittees to determine what is a non-structural BMP without listing specific examples. As provided in 40 CFR 122.34(b)(5)(ii), non-structural BMPs are preventative actions that involve management and source controls such as: Policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; policies or ordinances that encourage infill development in higher density urban areas, and areas with existing infrastructure; education programs for developers and the public about project designs that minimize water quality impacts; and measures such as minimization of percent impervious area after development and minimization of directly connected impervious areas. This section of the CFR also provides that structural BMPs include storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as grassed swales, sand filters and filter strips; and infiltration practices such as infiltration basins and infiltration trenches. Additionally, BMPs as defined in the permit and 40 CFR 122.2

means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of ‘‘waters of the United States.’’ BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

The department also determined directing drainage into a grass field would not be considered a non-structural BMP. As previously stated, non-structural BMPs are preventative actions that involve management and source controls. Directing drainage to a grass field would effectively be a structural control as it allows water to be filtered, infiltrate, or evaporate.

2. **Grand Forks Comments 2 and 3:**
   1. Can non-structural BMPs be used even if there is not a lack of right-of-way? See comment on page 32.

   2. Can non-structural BMPs be used even if there is not a lack of right-of-way?

   Department Response: Thank you for the comments. The department grouped the two similar comments in the same comment and response. The first comment is in reference to Part IV(F)(5)(b) in the Post-construction Stormwater Management for New Development and Redevelopment section of the permit. The second comment is in reference to paragraph 3 of Appendix 1 – Post Construction Controls. Both sections of the permit deal with utilizing structural and non-structural BMPs.

   As provided in 40 CFR 122.34(b)(5)(ii), non-structural BMPs are preventative actions that involve management and source controls such as: Policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; policies or ordinances that encourage infill development in higher density urban areas, and areas with existing infrastructure; education programs for developers and the public about project designs that minimize water quality impacts; and measures such as minimization of percent impervious area after development and minimization of directly connected impervious areas. This section of the CFR also provides that structural BMPs include storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as grassed swales, sand filters and filter strips; and infiltration practices such as infiltration basins and infiltration trenches. Additionally, BMPs as defined in the permit and 40 CFR 122.2 means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of ‘‘waters of the United States.’’ BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

   Part IV(F)(5)(b) provides in part that permittees must develop, implement, and document the use of structural and non-structural BMPs to reduce the discharge of pollutants from

new development and redevelopment projects. Additionally, if a lack of right-of-way precludes the use of structural BMPs, non-structural BMPs shall be used.

Paragraph 3 of Appendix 1 provides in part that if it is impractical to meet the water quality criteria of the post-construction controls identified in Appendix 1 or the lack of right-of-way precludes the installation of described practices, alternative practices (e.g., grassed swales, smaller ponds, or grit chambers) must be provided.

Neither Part IV(F)(5)(b) or Appendix 1 limit the use of non-structural BMPs to areas where lack of right-of-way limits the use of structural BMPs. These two parts do, however, imply that if lack of right-of-way limits the use of a structural BMP, then a non-structural BMP must be used. Therefore, non-structural BMPs may be used even if there is plenty of right-of-way available to install structural BMPs.

3. **Grand Forks Comment 4:** We are seeking clarification on this term. Is a drainage map area map expected? Will it be limited to the immediate patterns around the facility? Or will we need to track drainage patterns from the beginning to end?

   Department Response: Thank you for the comment. The comment is in reference to Item 1(c)(2) of Appendix 2 which requires a site map for an MS4 facility required to implement stormwater pollution prevention plans to show stormwater drainage patterns in and around the facility. The drainage map is limited to the immediate area around the facility. It is not the department's intention to have require maps beyond the immediate area of the facility. There are ample hydrologic resources and maps available and discernible that can provide information beyond the immediate area of a facility.

North Dakota Department of Transportation (NDDOT)

4. **NDDOT Comment 1:** This statement assumes that structural BMPs are inherently better than non-structural BMPs. This may not be entirely factual in all cases. Permittees should not be required to justify the use of non-structural BMPs. Also, this is redundant as the first sentence already asks for the non-structural BMPs to be documented.

   Department Response: Thank you for the comment. The comment is in reference to Part IV(F)(5)(b) in the Post-construction Stormwater Management for New Development and Redevelopment section of the permit, specifically the statement:

   > "Structural BMPs include facilities and structures, such as ponds and infiltration areas. Non-structural BMPs include preventative actions that involve management and source control. If a lack of right-of-way precludes the use of structural BMPs, non-structural BMPs shall be used. The use of non-structural BMPs shall be documented in the MS4 Program and must describe how the non-structural BMP effectively substitutes for the structural BMP."

   As provided in 40 CFR 122.34(b)(5)(ii), non-structural BMPs are preventative actions that involve management and source controls such as: Policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space (including a dedicated funding source for open space acquisition), provide buffers along

sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; policies or ordinances that encourage infill development in higher density urban areas, and areas with existing infrastructure; education programs for developers and the public about project designs that minimize water quality impacts; and measures such as minimization of percent impervious area after development and minimization of directly connected impervious areas. This section of the CFR also provides that structural BMPs include storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as grassed swales, sand filters and filter strips; and infiltration practices such as infiltration basins and infiltration trenches. Additionally, BMPs as defined in the permit and 40 CFR 122.2 means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of ‘‘waters of the United States.’’ BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

It is not the intent of the permit to assume structural BMPs are inherently better than non-structural BMPs. The permit condition is meant to be expressed in clear, specific, and measurable terms in accordance with 40 CFR 122.34(a). This section of the CFR requires any permit issued to a regulated small MS4 to include terms and conditions that are clear, specific, and measurable. Describing how the use of a non-structural BMP effectively substitutes for a structural BMP provides the measurable metric.

5. **NDDOT Comment 2:** Email should be allowed for this notification so that communication can be done during times when there is no one present to take a phone call. This would allow the notification to not wait until normal business hours the following day.

   Department Response: Thank you for the comment. The comment is in reference to Part VII(F)(1) in the Twenty-four Hour Notice of Noncompliance Reporting section of the permit which requires the permittee to orally report noncompliance which may endanger health or the environment as soon as possible, but no later than twenty-four hour from the time the permittee first became aware of the circumstance.

   Conditions applicable to all National Pollutant Discharge Elimination System permits, including NDPDES permits, are found in 40 CFR 122.41. Specifically, 40 CFR 122.41(l)(6)(i) provides in part that permits must incorporate a requirement for permittees to orally report any noncompliance which may endanger health or the environment within 24 hours from the time the permittee became aware of the circumstance. The condition in the NDPDES permit does not disallow the use of email to report non-compliance which may endanger health or the environment; however, any noncompliance that meets these conditions must be provided orally. In instances where the notification to the department would be provided outside of normal business hours, permittees have an option to leave an oral voicemail message with the department or department contact. Permittees may follow up with an email to the department or department contact if they choose. No change to the permit was made based on the comment.

6. **NDDOT Comment 3:** Provide clarity as to what rules. This is vague and could leave misinterpretation.

Department Response: Thank you for the comment. The comment is in reference to Part VII(J) in the Removed Materials section of the permit which requires dredged spoil, accumulated sediments, floatables, debris, and other wastes removed from storm sewers, streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet and maintenance shops, salt and sand storage locations, snow disposal areas, and waste transfer stations to be disposed of according to applicable rules.

Because all kinds of material may be removed from an MS4, it is upon the generator of the material to know which management, transport, and/or disposal rules apply based on the characterization of the material. The department determined clarifying which rules apply in the NDPDES permit would not be prudent as this may not represent the correct rules that apply. No change to the permit was made based on the comment.

7. **NDDOT Comment 4:** OK-110 is not a testing standard, it is a product used for testing. Recommend find the ASTM standard and if the OK110 is required to be used or add a definition of the silica and sizes for reference.

   Department Response: Thank you for the comment. The comment is in reference to the design considerations for Flow-Through Treatment Devices found in Appendix 1 which ask devices to be designed “to provide 80 percent removal of sediment with a particle size distribution similar to testing standard OK-110 at a feed concentration similar to 300 mg/L.” After review, the department removed the words “testing standard” from the design considerations. In addition, the department removed the words “testing standard” from the explanation for the design consideration found in bullet item 2 of paragraph 2 of the Post-Construction Controls section of the fact sheet.

8. **NDDOT Comment 5:** Reword this to match the requirements of the NDR11 permit. "other recordings and imagery, if utilized"

   Department Response: Thank you for the comment. The comment is in reference to item (6) in the Inspection Records section of Appendix 2 of the permit (Appendix 2, Item 6(d)(6)) which lists other recordings and imagery as part of the inspection findings that must be included in the inspection record. The department concurs with the comment and added “if utilized” after “recordings or imagery”. The intent of the requirement is to include recordings and imagery as part of the inspection record only if they are generated as part of the inspection.

9. **NDDOT Comment 6:** Reword this to match the requirements of the NDR11 permit. "other recordings and imagery, if utilized"

   Department Response: Thank you for the comment. The comment is in reference to the Maintenance Records section of Appendix 2 of the permit (Appendix 2, Item 6(e)) which lists other recordings and imagery that must be included in the maintenance record. The department concurs with the comment and added “if utilized” after “recordings or imagery”. The intent of the requirement is to include recordings and imagery as part of the maintenance record only if they are generated as part of the maintenance activity.

10. **NDDOT Comment 7:** Remove this requirement. This should be understood as part of the permit application and not as the SWPPP.

    Department Response: Thank you for the comment. The comment is in reference to item (c) of the Sampling section of Appendix 2 of the permit (Appendix 2, Item 7(c)). This item requires MS4 facilities that are required to have a stormwater pollution prevention plan (SWPPP) and are not required to sample stormwater runoff to include a statement in the SWPPP identifying that the facility is not subject to sampling requirements.

    After review, the department will keep this requirement as part of the SWPPP conditions. Although permittees must include information for facilities that are required to sample as part of the notice of intent, this requirement is separate from the SWPPP and sampling conditions found throughout the permit. The SWPPP is meant to explain permit conditions applicable to a facility and sampling conditions are not applicable to all facilities. Explaining if a facility is required to sample or not required to sample keeps individuals informed of the permit conditions applicable to the facility.

Additional Fact Sheet Updates

11. The department updated the citation to the Code of Federal Regulations in the third sentence of paragraph 2 of the Municipal Separate Storm Sewer System Program section of the fact sheet.

APPENDIX E – DRAFT PERMIT (REDLINE VERSION)

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

DRAFT

Permit No: NDR04-0000
Effective Date: April 1, 2026~~1~~
Expiration Date: March 31, 203~~126~~

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,

Small Municipal Separate Storm Sewer Systems both qualifying for and satisfying the requirements identified in Part I of this permit

are authorized to discharge stormwater

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, 2031 ~~2026~~.

Signed this _____ day of _____, _____.

Marty Haroldson ~~Karl H. Rockeman, P.E.~~
Director
Division of Water Quality

BP 2025.02.05 ~~2019.05.29~~

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Note: This document shows proposed text changes to the 2026 small municipal separate storm sewer system general permit (MS4 permit). The following is intended as a guide to understanding the various proposed text changes:

- Language that is retained from the current 2021 MS4 permit appears as black-colored text.
- Language that is added to the proposed 2026 MS4 permit is shown as underlined, dark red text.
- Language that is deleted from the proposed 2026 MS4 permit is shown as ~~strikethrough, dark red text~~.

Table of Contents

DEFINITIONS Standard Permit BP 2025.03.13 ~~2019.05.29~~

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

2. ~~"**Average monthly discharge limitation**" means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.~~

3. ~~"**Average weekly discharge limitation**" means the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all "daily discharges" measured during a calendar week divided by the number of "daily discharges" measured during that week.~~

4. "**Best management practices**" (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.

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

6. "**Composite**" sample means a combination of at least 4 discrete sample aliquots, collected over periodic intervals from the same location, during the operating hours of a facility not to exceed a 24-hour period. The sample aliquots must be collected and stored in accordance with procedures prescribed in the most recent edition of Standard Methods for the Examination of Water and Wastewater.

7. "**Continuous Discharge**" means a "discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

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

9. "**Daily maximum discharge limitation**" means "maximum daily discharge limitation" which is the highest allowable "daily discharge."

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

11. "**DMR**" means discharge monitoring report.

12. "**EPA**" means the United States Environmental Protection Agency.

13. "**Geometric mean**" means the n^{th} root of a product of n factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.

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

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

~~16. "**Maximum daily discharge limitation**" means the highest allowable "daily discharge."~~

17. "**Monthly average discharge limitation**" means "average monthly discharge limitation" which is the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

18. "***Oncorhynchus***" means of, belonging to, or characteristic of the genus *Oncorhynchus* in the family *Salmonidae*, which includes salmon and trout.

~~19. "**Salmonid**" means of, belonging to, or characteristic of the family Salmonidae, which includes the salmon, trout, and whitefish.~~

20. "**Sanitary Sewer Overflows (SSO)**" means untreated or partially treated sewage overflows from a sanitary sewer collection system.

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

22. "**Total drain**" means the total volume of effluent discharged.

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

24. "**Weekly average discharge limitation**" means "average weekly discharge limitation" which is the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all "daily discharges" measured during a calendar week divided by the number of "daily discharges" measured during that week.

DEFINITION Permit Specific

1. "**Common plan of development or sale**" means a contiguous area where multiple separate and distinct construction activities are planned to occur at different times on different schedules under one plan, e.g., a housing development of five ¼-acre lots (40 CFR 122.26(b)(15)(i)).

2. "**Expanded source of pollution ~~pollutants~~**" means any changes in volume, quality, location, or any other factor that results in increased pollutant loading from a regulated discharge source which would have significant permanent effects on waters of the state.

3. "**General permit**" means a permit issued under NDAC 33.1-16-01 to a category of permittees whose operations, emissions, activities, discharges, or facilities are the same or substantially similar.

4. "**Maximum extent practicable**" or "**MEP**" is the statutory standard that establishes the level of pollutant reductions that an owner or operator of regulated MS4s must achieve. The U.S. EPA has intentionally not provided a precise definition of MEP to allow maximum flexibility in MS4 permitting. The pollutant reductions that represent MEP may be different for each small MS4, given the unique local hydrologic and geologic concerns that may exist and the differing possible pollutant control strategies. Therefore, each permittee will determine appropriate BMPs to satisfy each of the six minimum control measures through an evaluative process. The U.S. EPA envisions application of the MEP standard as an iterative process.

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

6. "**Municipal separate storm sewer system**" or "**MS4**" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

   - Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management Agency under section 208 of the CWA that discharges to waters of the United States;

   - Designed or used for collecting or conveying stormwater;

   - Which is not a combined sewer; and

   - Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

7. "**NPDES**" means National Pollutant Discharge Elimination System and includes the authorized state program.

8. "**New development**" means construction activities that create new impervious surface.

9. "**New source of pollutants**" means a discharge that started after the effective date of this permit.

10. "**Notice of Intent**" as referenced in the U.S. EPA documents is synonymous with the term "permit application" for the purposes of this permit.

11. "**Other regulatory mechanism**" means any legally enforceable document, such as a contract or other agreement that has penalties such as withholding payments, fines or other measures to prevent non-compliance.

12. "**Operator**" means the person with primary operational control and legal responsibility for the municipal separate storm sewer system.

13. "**Outfall**" means the point where a municipal separate storm sewer system discharges from a pipe, ditch, or other discrete conveyance to receiving waters, or other municipal separate storm sewer systems. It does not include diffuse runoff or conveyances, which connect segments of the same stream or other water systems.

14. “**Owner**” means the person that owns the municipal separate storm sewer system.

15. “**Person**” means the state or any agency or institution thereof, any municipality, governmental subdivision, public or private corporation, individual, partnership, or other entity, including, but not limited to, association, commission or any interstate body, and includes any officer or governing or managing body of any municipality, governmental subdivision, or public or private corporation, or other entity.

16. “**Physical alteration**” means the dredging, filling, draining, or permanent inundating of a wetland. Restoring a degraded wetland by reestablishing its hydrology is not a physical alteration.

17. “**Redevelopment**” refers to alterations of a property that change the “footprint” of a site or building in such a way that results in the disturbance of equal to or greater than one acre of land. The term is not intended to include such activities as exterior remodeling, which would not be expected to cause adverse stormwater quality impacts and offer no new opportunity for stormwater controls.

18. “**Small municipal separate storm sewer system**” or “**small MS4**” means all separate storm sewers that are:

    - Owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.

    - Not defined as “large” or “medium” municipal separate storm sewer systems pursuant to 40 CFR 122.26 paragraphs (b)(4) and (b)(7) of, or designated under paragraph (a)(1)(v).

    - This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

19. “**Stormwater**” means stormwater runoff, snowmelt runoff, surface runoff and drainage.

20. “**Stormwater discharge associated with construction activity**” means discharge of stormwater from construction activities; including 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. 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.

21. “**Stormwater associated with industrial activity**” means stormwater runoff, snow melt runoff, or surface runoff and drainage from industrial activities as defined in 40 CFR 122.26(b)(14). Industrial facilities (including industrial facilities that are federally or municipally owned or operated that meet the description of the facilities listed in this paragraph (i)-(xi)) include those facilities designated under 122.26(a)(1)(v). The following categories of facilities are considered to be engaging in “industrial activity” for purposes of this subsection:

(i) Facilities subject to stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except facilities with toxic pollutant effluent standards which are exempted under Category (xi) of this paragraph);

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28, 29, 30, 311, 32, 33, 3441, 373;

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations meeting the definition of a reclamation area under 40 CFR 434.11(1)) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge stormwater contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, by products or waste products located on the site of such operations; inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator;

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

(v) Landfills, land application sites, and open dumps that have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA;

(vi) Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42, 44 and 45 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i) - (vii) or (ix) - (xi) of this subsection are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR 503;

(x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 31 (except 311), 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-25.

22. "**Total Maximum Daily Load**" or "**TMDL**" is the process established by the U.S. EPA for the allocation of pollutant loads, including stormwater, to a particular water body or reach of a water body.

23. "**Uncontaminated ground water infiltration** (as defined at 40 CFR 35.2005(20))" means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

24. “**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.

I. PERMIT COVERAGE AND LIMITATIONS

During the effective period for this general permit, municipalities are authorized to discharge stormwater from regulated portions of their municipal separate storm sewer system (MS4) in accordance with the requirements and conditions outlined in this permit.

The terms and conditions established in the permit meet the requirements of Title 40 of the Code of Federal Regulations (CFR), Section 122.34. The permit is issued as a Comprehensive General Permit in accordance with 40 CFR 122.28(d).

A. Discharges Covered

1. This permit applies to stormwater discharges from small MS4s as defined in the phase II stormwater rules, 40 CFR 122.26(b)(16), and designated under 40 CFR 122.32(a)~~(1) & (a)(2)~~ & (b).

2. Non-stormwater discharges to the MS4 from sources listed in Part IV(F)(3)(f) of this permit.

3. Stormwater discharges from certain municipal operations provided the conditions in Part IV(F)(6) are met.

4. Stormwater discharges from a conveyance or system of conveyances, designed or used for collecting or conveying stormwater, owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity or a designated and approved management Agency under section 208 of the Clean Water Act that discharges to waters of the state.

B. Coverage Limitations

1. This permit does not authorize discharges other than stormwater, allowable non-stormwater sources, and other sources identified in this permit. A separate NPDES permit may be required for the discharge of wastewater.

2. This permit does not authorize the discharge of stormwater when a separate NPDES permit is required for these activities. For example, while stormwater from construction activity may be discharged from a MS4 with authorized stormwater discharges, this permit does not replace or satisfy any other permits required for those discharges.

3. Authorization under this permit applies only to the storm sewer system (or portions of a system) operated by the MS4 and described in the application. Authorization under this permit does not cover other regulated MS4s operated within or connected to the MS4 or regulated MS4s waived from permit requirements in accordance with 40 CFR 122.32(c) through (e).

4. This permit does not authorize the discharge of stormwater from new or expanded MS4 discharges unless the following requirements are met:

   a. A new or expanded MS4 discharge must be constructed and operated in accordance with the conditions of this permit. An antidegradation review may be conducted by the department in accordance with the antidegradation procedures outlined in the North Dakota Standards of Quality for Waters of the State (NDAC 33.1-16-02.1-02(2)(c)) for new or expanded sources of pollution that result in significant effects on the quality or use of a

receiving water outside of the scope of this permit.

b. This permit does not replace or satisfy any environmental review requirements, such as the National Environmental Policy Act (NEPA). Permittees must complete any environmental review required by law, including any required environmental assessment work sheets or environmental impact statements, federal environmental review, or other required review.

c. This permit does not replace or satisfy any review requirements for discharges whose direct, indirect, interrelated, interconnected, or independent impacts would jeopardize a listed threatened or endangered species or adversely modify a designated critical habitat. Permittees must conduct any required review and coordinate with appropriate agencies for projects with the potential of affecting threatened or endangered species, or critical habitat.

d. This permit does not replace or satisfy any review requirements for historic or archeological sites, for discharges that adversely affect properties listed (or eligible for listing) in the National Register of Historic Places or affecting known or discovered archeological sites. Permittees must comply with National Historic Preservation Act and conduct all required review and coordination related to historic preservation – including significant anthropological sites and any burial sites – with the appropriate agency(s).

C. Obtaining Coverage and Authorization Effective Date

To obtain authorization under this general permit ~~for stormwater discharges~~, permittees must submit a complete notice of intent (NOI) and develop a MS4 Program as outlined in Part IV of this permit. The MS4 Program shall ~~must~~ be implemented as a condition of this permit authorization. The submittal and authorization effective dates are provided below.

1. Renewal Permittees
   Permittees with existing coverage under ~~that were covered by~~ the 2021 ~~previous~~ MS4 general permit and have submitted a NOI by March 31, 2026 ~~in accordance with the department's request~~ are authorized to discharge stormwater on the effective date of this permit. Permittees must continue to implement the MS4 Program and modify or revise the MS4 Program in accordance with this permit. Permittees may be required to submit a compliance schedule if the permittee cannot demonstrate that the MS4 Program is implemented in accordance with the conditions of this permit.

   Permittees with existing coverage under the 2021 MS4 general permit who miss the March 31, 2026 deadline, and do not submit a NOI to the department by April 30, 2026, will have coverage administratively terminated by the department. Administrative termination will result in the permittee no longer being authorized to discharge under this permit.

2. New Applicants
   New permittees that have submitted a NOI in accordance with this permit are authorized to discharge stormwater 30 days after the NOI is submitted unless the department requests additional information during that time. New permittees must develop and implement a MS4 Program as outlined in Part IV of this permit.

3. New Designation Applicants
   The department may designate small MS4s that were not previously regulated by a permit to obtain coverage under this permit. Operators of MS4s that are designated for coverage after the permit effective date must submit a complete NOI within 180 days of notification unless otherwise specified by the department. Authorization to discharge stormwater under the permit will become effective 30 days after the NOI is submitted unless the department

requests additional information during that time. New permittees must develop and implement a MS4 Program as outlined in Part IV of this permit.

II. APPLICATION REQUIREMENTS

Applicants must use a~~n NOI form or~~ electronic NOI to complete the process to obtain coverage under the permit ~~application~~. The ~~NOI form or~~ electronic NOI can be found at: deq.nd.gov/WQ

A. Notice of Intent Content

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

1. The street address and ~~the~~ name ~~of the owner, agency, or person with operational control~~ of the MS4;
2. ~~The n~~Name, title, mailing address, ~~and~~ telephone number, and email address of the MS4 contact(s) ~~responsible for permit compliance~~;
3. A brief description of the extent of the MS4;
4. The name or general description of the water body(s), or other MS4s, that receive stormwater from the MS4;
5. The location of MS4 owned and operated facilities and open spaces;
6. The location and description of systems operated by other public entities within the MS4;
7. A summary of the MS4 Program as outlined in Part II(B);
8. Map of the area regulated by the MS4 such as a KML, GeoJSON, or polygon file.

Permittees with facilities that are required to collect samples of stormwater discharges as outlined in Part IV(F)(6)(e)(4) must include the following supplemental information with the NOI:

1. Facility name and site address;
2. Facility contact name, title, and email address;
3. Sampling industry sector (see Appendix 4);
4. Total number of outfalls;
5. Identifier assigned to each outfall; (Note: the identifier must be at least three to four alpha-numeric characters unique to the permitted NDPDES activity [e.g., 001, 002, etc.] but not already used by another permitted NDPDES activity, such as a Publicly Owned Treatment Works);
6. Total number of substantially identical outfalls that will be sampled (Note: At least 20 percent of all outfalls must be sampled);
7. Identifier of each outfall that will be sampled.

B. Municipal Separate Storm Sewer System (MS4) Program Summary

The MS4 Program will consist of a combination of best management practices (BMPs), including education, maintenance, control techniques, system design and engineering methods, and

provisions appropriate to meet the minimum requirements of this permit. The MS4 Program must be a written document (or documents) that describe how the permittee intends to comply with the permit requirements. A summary of the MS4 Program must be attached to the NOI ~~application~~ and include the following:

1. BMPs that will be implemented for each of the stormwater minimum control measures in Part IV(F) of this permit;

2. The measurable goals for each BMP the permittee plans to implement, including as appropriate, a description of the planned actions, timing and frequency of actions (months, years), and milestones;

3. Identify the entity responsible for implementing and/or coordinating each component of the MS4 Program.

~~**C. Submittal**~~

~~Applications signed in accordance with the signatory requirements in Part VII(E) must be submitted to the department at the address below. The MS4 Program summary may be submitted to the department electronically.~~

~~North Dakota Department of Environmental Quality~~
~~Division of Water Quality~~
~~918 East Divide Ave~~
~~Bismarck, ND 58501-1947~~

III. DISCHARGE CONDITIONS

A. Releases in Excess of Reportable Quantities

This permit does not relieve the permittee of the reporting requirements of 40 CFR 110, 40 CFR 117, or 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 VII(F).

B. Stormwater Sampling

The department reserves the right to require water quality sampling and testing. Additional monitoring may be required if the MS4 discharges to a waterbody with a Total Maximum Daily Load (TMDL) allocation.

C. Section 303(d) Listings and Total Maximum Daily Load (TMDL)

1. If the MS4 discharges to waters identified on the current list of impaired waters under Section 303(d) of the Clean Water Act (see Integrated Report on the department's website), the MS4 Program must be reviewed to determine if changes to the program are required to reduce the impact of stormwater discharges from the MS4. Permittees must review the Section 303(d) list of impaired waters every two years to determine if the MS4 discharges to an impaired water. If the MS4 discharges to an impaired water identified on the 303(d) list, permittees must develop a schedule outlining when changes to the MS4 Program will be made.

2. If a TMDL has been approved for a water body, the MS4 Program must be reviewed annually to determine if the MS4 Program meets the TMDL's Waste Load Allocation (WLA) set for stormwater sources. If the MS4 Program is not meeting the applicable requirements, schedules, and objectives of the TMDL, the MS4 Program must be modified. Permittees must develop a schedule outlining when changes to the MS4 Program will be made.

IV. MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PROGRAM

A. Implementation Requirement

The permittee must develop, implement, and enforce an MS4 Program designed to reduce the discharge of pollutants from their MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the North Dakota Water Pollution Control Act (NDCC 61-28) and the Clean Water Act. Implementation of BMPs consistent with the provisions of the MS4 Program and the other requirements in this permit constitutes compliance with the standard of reducing pollutants to the MEP.

New permittees must develop and implement an MS4 ~~p~~Program within five (5) years from the date authorization under this general permit is obtained. New permittees must complete the ordinance for construction site stormwater runoff controls required in Part IV(F)(4) within three (3) years from the date coverage is obtained.

B. Shared Programs

Implementation of one or more of the MS4 ~~p~~Program measures ~~elements~~ may be shared with another entity, or the other entity may fully implement the measure. ~~The agreement outlining such an arrangement must be maintained as part of the description the MS4 Program.~~ The MS4 Program must identify the measure, the entity, whether the measure is fully implemented or shared, and information that supports the decision, such as an agreement between entities that outlines such an arrangement or other legally binding requirement.

C. Pollutant Assessment

The MS4 Program must identify the pollutants of concern in stormwater discharges from the MS4, sources of pollutants, and potential polluting activities. The MS4 Program must include BMPs that control or reduce the pollutants of concern in stormwater discharges from the MS4.

D. Local Requirements

This permit does not pre-empt or supersede the authority of local agencies to prohibit, restrict or control discharges to storm drain systems or other water courses within their jurisdiction. Stormwater discharges must comply with the requirements of municipalities, counties, drainage districts, and other local agencies in regards to discharges to storm drain systems or other water courses under their jurisdiction.

E. MS4 Program Map

The permittee must d~~D~~evelop and maintain a current storm sewer system map showing the location of:

a. Ponds, streams, lakes and wetlands that are part of the MS4 system or receive discharges from the MS4;

b. Structural pollution control devices (grit chambers, separators, etc.) that are part of the MS4;

c. All structural, post-construction BMPs both publicly and privately owned or controlled;

d. All pipes and conveyances in MS4 system, including manholes and storm sewer inlets;

e. Outfalls, including discharges to other MS4s; structures that discharge stormwater directly into groundwater; overland discharge points; and all other points of discharge from the MS4;

f. Municipally owned property and facility locations, including open spaces.

F. Control Measures

Each minimum control measure (MCM) must include a description of the BMPs for the MCM, implementation schedule and measurable goals that will be used to determine the success or benefits of the BMPs and responsible person in charge.

The six MCMs to include in the MS4 Program are:

1. **Public Education and Outreach on Stormwater Impacts**

   a. Permittees must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff.

   b. The education program must address each of the MCMs listed below (Parts IV(F)(3) through (6)):

      Measure 3 - Illicit discharge detection and elimination;
      Measure 4 - Construction site stormwater runoff control;
      Measure 5 - Post-construction stormwater management in new development; and
      Measure 6 - Pollution prevention/good housekeeping for municipal operations.

   c. The public education program, including the education programs for the Minimum Control Measures listed above, shall identify the following:

      1) The audience or audiences involved (e.g., general public, MS4 employees, construction industry, commercial and retail outlets, gas stations, auto repair, fertilizer applicators, etc.);
      2) Target pollutants for each audience (e.g., grass clippings, sediment, litter, oil and grease, nutrients, etc.);
      3) Educational goals for each audience in terms of increased awareness, increased understanding, acquired skills, and/or desired changes in behavior;
      4) Activities used to reach educational goals for each target audience;
      5) Activity implementation plans, including responsible department in charge, entities responsible for given activities, and schedules;
      6) Message and medium for distribution to reach target audience;
      7) Available performance measures that can be used to determine success in reaching educational goals; and
      8) Method for adjusting target audience and educational goals.

   d. The education program(s) may coordinate with and make use of other stormwater education programs conducted by entities such as: community groups; nonprofit organizations; lake conservation districts; soil and water conservation districts; watershed districts; watershed management organizations; school districts; university outreach and extension; and county, regional, state, and federal government. Coordination with or use of other entities must be documented as part of the MS4 Program.

   e. For each year of the permit, permittees must implement at least four public education and outreach activities from Table 1 below. At least two of the items must be from the “Active and Interactive Outreach” column of the table. The activities can be the same from year to year or be different each year.

Table 1: Education and Outreach Activities*

Passive Outreach	Active and Interactive Outreach (minimum of two)
• Bus shelter/bench advertisement • Billboard/dasher board/stadium advertisement • Vehicle/bus advertisement • Radio/television/movie theatre advertisement • Newspaper or circular advertisement • Distribute educational materials by brochure/handout • Distribute educational materials by coloring/activity book • Distribute educational materials by fact sheet • Distribute educational material by utility bill insert • Publish article (hard copy or electronic) • Storm drain marking by permittee staff that maintains 25 percent of permittee-maintained inlets • Signage • Website • Website marquee	• Ongoing advertisement/promotion of a stormwater hotline number or other method to report an illicit discharge • Ongoing advertisement/promotion on how to get more information about the stormwater program • Ongoing social media program • Website that is interactive or contains stormwater information that includes actions that can be taken to reduce stormwater pollution • Newsletter (hard copy or electronic) • Promotion of existing local stormwater/environmental events or programs that help protect water quality • Distribute stormwater publicity items or giveaways • Participate in or sponsor a water festival which involves populations that exist within the permit boundary • Participate in or sponsor a waterway clean-up and trash removal event • Participate in or sponsor a service project • Participate in or sponsor a stormwater or environmental presentation • Participate in or sponsor a stormwater training course • Participate in or sponsor a stormwater-/environmental event or program that helps protect water quality • Participate in or sponsor community project-based programs that investigate watershed health using a Science, Technology, Engineering and Math (STEM) approach • Participate in or sponsor a household hazardous waste event • Participate in or sponsor an Adopt-a-Street program • Participate in or sponsor an Adopt-a-Highway program • Participate in or sponsor an Adopt-a Waterway program • Participate in or sponsor an Adopt-a-Storm Drain program • Provide ongoing access to motor vehicle fluids recycling program • Stormwater/environmental booth at a community event • Conduct a stormwater survey • Storm drain marking program performed by the public/community • Pet waste stations

Passive Outreach	Active and Interactive Outreach (minimum of two)
	• Participate in, plan or present stormwater materials to schools • Stormwater demonstration projects that show control measures or other pollutant reduction methods
* Implement at least four items from Table 1. At least two items must be from the "Active and Interactive Outreach" column. The other two items may be from the "Passive Outreach" column or the "Active and Interactive Outreach" column.	

f. Permittees must maintain records of target pollutants, target audience, and distribution mechanism for each Education and Outreach Activity, including dates the activities were implemented and documentation of the activities provided and/or made available and the dates of distribution. Signs, markers, or equivalent material intended to be maintained for the permit term must be described in the public education program with location information.

2. **Public Participation/Involvement**
Permittees must develop a program that allows the public (i.e., general, commercial, industrial) to participate and become involved in the MS4 Program. Opportunities for members of the public to participate and become involved in the MS4 Program can include, but are not limited to, serving on a panel or board involved in local stormwater management, attending public meetings related to the MS4 Program, working as volunteers to educate others about the MS4 Program, assisting with coordinating the MS4 Program with other MS4 Programs, and participating in volunteer monitoring efforts. The public participation/involvement program must include the following:

a. A description of how the public will be informed of the MS4 Program and how the public may become involved with the program. The permittee may provide the opportunity for public involvement and input on the MS4 Program through formal and/or informal public meetings or notices soliciting comments from the public. Provide a minimum of one opportunity annually for the public to provide input about the MS4 Program.

b. A description of how the public may submit comments and input about the MS4 Program to the permittee. Permittees must consider public input (oral and written) to the MS4 Program and shall make appropriate adjustments. Permittees must provide the public with a resource to submit comments to the permittee such as a phone number, email address, website form, or mailing address.

c. A description of how the public will be informed of the permittee's determination to make changes to the program. Permittees must describe how the public will be informed of changes made internally to the MS4 Program by the permittee.

d. The permittee must comply with state and local public notice requirements when implementing the MS4 Program.

3. **Illicit Discharge Detection and Elimination (IDDE)**
Permittees must develop, implement, and enforce a program to detect and eliminate illicit discharges, including dumping, into the MS4. Illicit discharges do not include discharges or flows from emergency firefighting activities, non-stormwater discharges as described in Part IV(F)(3)(f) unless the permittee identifies them as significant contributors of pollutants to the MS4, or other activities authorized by a separate NPDES permit. The IDDE program must

include the following:

a. To the extent allowable under law through ordinance or other regulatory mechanism, effectively prohibit illicit discharges and dumping to the MS4 and implement enforcement procedures and actions capable of removing the illicit discharge or dumping.

b. Written procedures to detect illicit discharges and dumping, and non-stormwater discharges to the MS4 system. In addition, written procedures for receiving information from the public about illicit discharges and dumping, and non-stormwater discharges to the MS4 system. The permittee should investigate any illicit discharge or dumping, or non-stormwater discharge within fifteen (15) days of its detection.

c. Written procedures that eliminate and/or remove illicit discharges and dumping from the MS4 system. The permittee should eliminate the source of the discharge or dumping within forty-five (45) days of its detection.

d. Provide the public with information about preventing illicit discharges and dumping to the MS4 system. Include the method(s) of distribution as part of the program. Distribution methods include website, utility bill insert, brochure, fact sheet, handouts, handbooks, stenciling or other means to reach the target audience.

e. A system to track illicit discharge and dumping, and non-stormwater discharge information. Information must include location, date, type, substance, cause, and responsible party including contact information. Illicit discharge and dumping information must include the date the illicit discharge or dumping was stopped or removed.

f. The permittee shall address the following categories of non-stormwater discharges or flows if the permittee identifies them as significant contributors of pollutants to the MS4. If a non-stormwater discharge or flow is identified as a significant contributor of pollutants to the MS4, then it must be eliminated or removed in accordance with Part IV(F)(3)(c).

> Water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, and discharges or flows from firefighting activities.

4. **Construction Site Stormwater Runoff Control**
Permittees must develop, implement, and enforce a program to reduce pollutants in stormwater runoff from construction activities that result in a land disturbance of one or more acres. Controls on stormwater discharges from construction activity disturbing less than one acre must be included in the program if the construction activity is part of a larger common plan of development or sale that disturbs one or more acres. The construction site stormwater runoff control program must include the following:

a. To the extent allowable under law through ordinance or other regulatory mechanism, require construction activity under the authority of ~~within~~ the MS4 to implement erosion and sediment controls, stabilization requirements, and other BMPs. In addition, implement enforcement procedures and/or actions capable of requiring construction activity under the authority of ~~within~~ the MS4 to implement erosion and sediment controls, stabilization requirements, and other BMPs.

b. Require construction activity under the authority of ~~within~~ the MS4 to control:

   1) Waste such as discarded building materials, concrete truck washout, concrete grindings and slurry, litter, and sanitary waste;

   2) Chemical and petroleum products; and

   3) Non-stormwater discharges at the construction site, such as construction dewatering, that may cause adverse impacts to water quality

c. Require construction activity under the authority of ~~within~~ the MS4 to implement a site plan that meets the requirements of the North Dakota Department of Environmental Quality NDPDES stormwater discharge general permit associated with construction activity.

d. Written procedures for reviewing site plans which at a minimum must meet the requirements of the North Dakota Department of Environmental Quality NDPDES stormwater discharge general permit associated with construction activity. Written procedures must outline the review and approval process of site plans and identify the department reviewing the plans.

e. Written procedures for receipt, process, and consideration of information, complaints, and concerns submitted by the public. Permittees must provide the public with a resource to contact the permittee such as a phone number, email address, website form, or mailing address.

f. Written procedures for site inspection and enforcement of construction activity under the authority of ~~within~~ the MS4. Include inspection training, process, and documentation as part of the procedures. Also include department responsible for inspection and enforcement of public construction activity and private construction activity, as well as method of enforcement such as stop-work-orders, rescinding permits, withholding permits, withholding payment, or penalties. Permittees shall inspect 100 percent of the construction activities under the jurisdiction of the small MS4, both public and private, that result in land disturbance of one or more acres including construction activities that disturb less than one acre but are part of a common plan of development that disturbs one or more acres at least once during the calendar year from January through December.

g. A system to track inspection and enforcement of construction activity. The system may be electronic or hardcopy.

h. Provide the construction industry with information about the use of erosion and sediment controls, stabilization practices, and other BMPs to minimize the discharge of pollutants in stormwater runoff. Permittees must provide the information through inspection reports, brochures, fact sheets, handouts, newsletters, trainings, meetings, websites, or other means used to reach the construction industry.

5. **Post-construction Stormwater Management for New Development and Redevelopment**
Permittees must develop, implement, and enforce a program to reduce pollutants in stormwater runoff from new development and redevelopment projects within the jurisdiction of the MS4 for projects that disturb one or more acres, including projects that disturb less than one acre that are part of a larger common plan of development or sale that disturbs one or more acres.

   Permittees are encouraged to reduce pollutants in stormwater runoff from new development and redevelopment projects that disturb less than one acre but are not part of a larger common plan of development or sale. Examples of projects include parking garage

construction, downtown revitalization projects, parking lot reconstruction, or building redevelopment.

The program must ensure controls are in place that prevent or minimize water quality impacts. At a minimum the post-construction stormwater management program must include the following:

a. To the extent allowable under law through ordinance or other regulatory mechanism, require new development and redevelopment projects within the jurisdiction of the MS4 to implement post-construction controls to reduce pollutants in stormwater runoff. In addition, implement enforcement procedures capable of requiring new development and redevelopment within the jurisdiction of the MS4 to implement post-construction controls to reduce pollutants in stormwater runoff.

b. Develop, implement, and document the use of structural and non-structural BMPs to reduce the discharge of pollutants from new development and redevelopment projects. In addition, develop, implement, and document strategies to maintain or restore hydrologic conditions to prevent in-channel impacts associated with increased impervious surface from new development and redevelopment projects. Structural BMPs include facilities and structures, such as ponds and infiltration areas. Non-structural BMPs include preventative actions that involve management and source control. If a lack of right-of-way precludes the use of structural BMPs, non-structural BMPs shall be used. The use of non-structural BMPs shall be documented in the MS4 Program and must describe how the non-structural BMP effectively substitutes for the structural BMP. Post-construction controls must include a water quality component as outlined in Appendix 1.

c. Develop, implement, and document procedures to ensure long-term operation and maintenance of public and private post-construction controls, including procedures to enforce the requirements for other parties, both public and private, to maintain post-construction controls.

    1) Verify BMPs, required by this measure, are installed according to specifications;

    2) Implement procedures to document the location, point of contact, maintenance specifications, and inspections for long-term BMPs.

6. **Pollution Prevention for Municipal Operations**
Develop an operation and maintenance program to prevent and reduce stormwater pollution from municipal operations. The operation and maintenance program must contain the following:

a. Develop and implement a training component for operation and maintenance programs with the goal of preventing or reducing pollutants in runoff from municipal operations. The program must include employee training to identify, prevent, and reduce stormwater pollution from activities such as park and open space maintenance, snow disposal operations, fleet and building maintenance, new construction and land disturbances, storm sewer system cleaning and maintenance, and roadway maintenance and cleaning operations.

b. Develop and implement a program to train employees to recognize and respond to illicit discharges and dumping that may be observed during typical duties. The program must outline which employees will receive training and how staff will report illicit discharges and dumping.

c. The training program shall detail the content and frequency of training and method of training. At a minimum, training must be provided at least annually or as new employees are hired. Permittees shall retain a record of training.

d. Operation and maintenance procedures that minimize the discharge of pollutants in stormwater. As part of the operation and maintenance program, permittees must:

   1) Inspect all pollution control devices such as grit chambers, sumps, floatable skimmers, traps, separators, small settling devices, and filtering devices once every two years on a rotating basis. If maintenance or sediment removal is required as a result of two consecutive inspections, the frequency of inspection must be increased to annual.

   2) At a minimum, inspect 20 percent of MS4 outfalls, snow disposal areas, sediment basins, and ponds each year on a rotating basis with all items inspected before the expiration of this permit. Document inspection findings including sediment accumulation, algae growth, color, odor, and other signs of pollution. In addition, document any observable non-stormwater discharge that may be present.

   3) Based on inspection findings, repair, replace, or maintain the items in Part IV(F)(6)(d)(1) & (2) for proper operation and to prevent environmental impacts. Corrective actions shall be completed during the same year as the inspection. When this is not practicable, the reason and a schedule for completion shall be documented.

   4) Keep records of inspection findings including date, weather conditions, and records of maintenance recommended and conducted. If patterns of maintenance become apparent, the frequency of inspections must be adjusted.

e. Municipal facilities shall be operated to minimize the potential for pollutants in stormwater discharges. The operation and maintenance program must provide for the following:

   1) Provide for the enclosure or covering of salt storage piles, including salt treated sand, to prevent exposure to precipitation. Salt storage piles do not need to be covered or enclosed when adding to or taking materials from the pile and when stormwater drainage from the pile is contained on-site.

   2) Locate and operate snow disposal sites using BMPs to minimize litter and sediment from leaving the site. A 50-foot vegetated buffer or other BMPs (such as berms, basins, or fencing) must be used between the snow disposal site and both waters of the state and storm sewer inlets. Do not locate disposal sites in riparian areas, abandoned gravel pits, landfills or areas that could adversely affect wells. Remove litter and accumulated sand from snow disposal sites to control pollutants from the site.

   3) A Stormwater Pollution Prevention Plan (SWPPP) must be developed and implemented for each of the following permittee-owned facilities: maintenance garages, public works facilities, transfer stations, park and recreation maintenance facilities, publicly owned treatment works, water treatment plants, and landfills and other waste handling facilities. If facilities are located at the same property, the permittee may develop one SWPPP for the entire property. The SWPPP minimum requirements are outlined in Appendix 2.

      A SWPPP does not need to be developed if a permittee owned facility is covered by a currently effective North Dakota Department of Environmental Quality NDPDES stormwater discharge general permit associated with industrial activity or no-exposure

certification. A SWPPP also does not need to be developed if a facility is able to meet the requirements of Appendix 3. If a SWPPP has been developed under a currently effective NDPDES permit, an additional SWPPP is not required.

4) Sampling requirements. Only permittees with industrial activities identified in this section are required to sample stormwater runoff from ~~all~~ facility outfalls as a condition of this permit unless waived. ~~The minimum monitoring frequency is annual except for discharges from facilities directed by the department to follow another schedule.~~ The specific monitoring conditions and parameter list for each facility group are ~~is~~ outlined in Appendix 4 and 5. Stormwater sampling is required for the industrial activities identified below:

i. Landfills and Land Application
ii. Coal Pile Runoff (stormwater discharge from coal storage piles)

Outfalls at the facility shall be sampled in accordance with Appendix 4 and 5. Outfalls that require sampling are outfalls with industrial activity present in the drainage. Sampling at an outfall is no longer required if industrial activity that requires sampling is removed from the drainage to an outfall and the permittee is given department approval subsequent to the department being provided with written notification.

f. Written procedures for park and golf course maintenance, mowing operations, roadway cleaning and maintenance, fertilizer and pesticide application, and storm sewer system cleaning and maintenance. Written procedures must outline how these operations will be managed to minimize impacts from potential sources of pollution.

G. Modifications to the MS4 Program

The MS4 Program may be modified in accordance with the following:

1. A BMP is added or removed from the MS4 Program.

2. A less effective BMP identified in the MS4 Program is replaced with an alternate BMP. The alternate BMP shall address the same or similar concerns as the ineffective or failed BMP.

3. When a BMP is identified as ineffective a schedule for implementing an alternative BMP must be provided.

4. All modifications must be included in the annual report for the year the modification is made.

V. EVALUATING, RECORDKEEPING AND REPORTING

A. Evaluation and Assessment

Annually, permittees must evaluate program compliance with the permit, BMPs, measurable goals, and effectiveness of the MS4 Program. The program evaluation must be included in the annual report (see Part V(C~~D~~)).

B. Public Availability

Permittees must make records, including the MS4 Program, available to the public at reasonable times during regular business hours or online (see 40 CFR 122.7 for confidentiality provision). Permittees may assess a reasonable charge for a records request as allowed by law. Permittees may require a member of the public to provide advance notice.

C. Annual Report

The annual report covering the calendar year (January 1 to December 31) must summarize:

1. The status of compliance with permit conditions, including an evaluation and assessment of BMPs.

2. Whether the permittee has completed each measurable goal associated with each permit component;

3. The permittee's compliance and progress toward meeting each measurable goal;

4. The effectiveness of the MS4 Program;

5. Stormwater activities planned during the next reporting cycle;

6. A change in any identified BMPs or measurable goals for any MCM (see Part IV(G));

7. Whether another entity is used to satisfy any permit requirement, including the identity of the entity.

8. The responsible government entity for each permit component;

9. The total number of enforcement actions taken by the permittee. The permittee will identify "No Authority" if the permittee does not have the authority to conduct enforcement actions.

D. Report Submittals
Annual reports shall be submitted to the department by March 28 ~~31~~, or another date set by the department, for each year of the permit term. Reports shall be submitted to the department in accordance with Part VI(E).

VI. MONITORING, RECORDING, AND REPORTING REQUIREMENTS BP 2021.09.09 ~~2020.10.19~~

A. Representative Sampling (Routine and Non-Routine Discharges)
All samples and measurements taken shall be representative of the monitored discharge.

In order to ensure that the effluent limits set forth in this permit are not violated at times other than when routine samples are taken, the permittee must collect additional samples at the appropriate outfall whenever any discharge occurs that may reasonably be expected to cause or contribute to a violation that is unlikely to be detected by a routine sample. The permittee must analyze the additional samples for those parameters listed in **Appendix 4** of this permit that are likely to be affected by the discharge.

The permittee must collect such additional samples as soon as the spill or discharge reaches the outfall. The samples must be analyzed in accordance with B. Test Procedures. The permittee must report all additional monitoring in accordance with D. Additional Monitoring.

B. Test Procedures
The collection and transportation of all samples shall conform with EPA preservation techniques and holding times found in 40 CFR 136. All laboratory tests shall be performed by a North Dakota certified laboratory in conformance with test procedures pursuant to 40 CFR 136, unless other test procedures have been specified in this permit or approved by EPA as an alternate test procedure under 40 CFR 136.5. ~~The method of determining the total amount of water discharged shall provide results within 10 percent of the actual amount.~~

C. Recording of Results

Records of monitoring information shall include:

1. the date, exact place and time of sampling or measurements;
2. the name(s) of the individual(s) who performed the sampling or measurements;
3. the name of the laboratory;
4. the date(s) and time(s) analyses were performed;
5. the name(s) of the individual(s) who performed the analyses;
6. the analytical techniques or methods used; and
7. the results of such analyses.

D. Additional Monitoring

If the discharge is monitored more frequently than this permit requires, all additional results, if in compliance with B. Test Procedures, shall be included in the summary on the Discharge Monitoring Report.

E. Reporting of Monitoring Results

1. Monitoring results shall be summarized and reported to the department using Discharge Monitoring Reports (DMRs). If no discharge occurs during a reporting period, "No Discharge" shall be reported. Indicate on the DMR if a sample could not be collected because a facility was inactive or unstaffed, or the discharge occurred outside of normal business hours. DMRs shall cover the period from April 1 to March 31 and be submitted to the department by April 28 ~~30~~. The permittee must submit DMRs electronically using the electronic information reporting system unless requirements in subsection 3 are met.

2. ~~Prior to December 21, 2025, the permittee may elect to electronically submit the following compliance monitoring data and reports instead of mailing paper forms.~~ Beginning December 21, 2025, the permittee must report the following using the electronic reporting system:

    a. General permit reports [e.g., notices of intent (NOI); notices of termination (NOT); no exposure certifications (NOE)];
    b. Municipal separate storm sewer system program reports;
    c. Pretreatment program reports;
    d. Sewer overflow/bypass event reports; and
    e. Clean Water Act 316(b) annual reports

3. The permittee may seek a waiver from electronic reporting. To obtain a waiver, the permittee must complete and submit an Application for Temporary Electronic Reporting Waiver form (SFN 60992) to the department. The department will have 120 days to approve or deny the waiver request. Once the waiver is approved, the permittee may submit paper versions of monitoring data and reports to the department.

    a. One of the following criteria must be met in order to obtain a waiver. The department reserves the right to deny any waiver request, even if they meet one of the criteria below.

        1. No internet access,

        2. No computer access,

        3. Annual DMRs (upon approval of the department),

        4. Employee turnover (3-month periods only), or

        5. Short duration permits (upon approval of the department)

All reports must be postmarked by the last day of the month following the end of each reporting period. All original documents and reports required herein shall be signed and submitted to the department at the following address:

ND Department of Environmental Quality
Division of Water Quality
4201 Normandy Street ~~918 East Divide Ave~~
Bismarck ND 58503-1324 ~~58501-1947~~

F. Records Retention

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

VII. COMPLIANCE RESPONSIBILITIES

A. 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.

B. 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.

C. 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.

D. 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.

E. Signatory Requirements

All applications, reports, or information submitted to the department shall be signed and certified.

All permit applications 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.

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:

1. The authorization is made in writing by a person described above and included in the MS4 Program; and

2. 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 E. Signatory Requirements is no longer accurate for any reason, a new authorization satisfying the above requirements must be included in the MS4 Program.

Any person signing a document 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."

F. Twenty-four Hour Notice of Noncompliance Reporting

1. 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 following occurrences of noncompliance shall be included in the oral report to the department at 701.328.5210:

   a. Any unanticipated bypass which exceeds any effluent limitation in the permit under G. Bypass;

   b. Any upset which exceeds any effluent limitation in the permit under H. Upset Conditions; or

   c. Violation of any daily maximum effluent or instantaneous discharge limitation for any of the pollutants listed in the permit.

2. 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:

   a. A description of the noncompliance and its cause;

   b. The period of noncompliance, including exact dates and times;

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

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

Reports shall be submitted in accordance with **Part VI.E. Reporting of Monitoring Results**. 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.

All other instances of noncompliance shall be reported no later than at the time of the next annual report submittal. The report shall include the four items listed in this subsection.

G. Bypass

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to any of the following provisions in this section.

    a. Anticipated Bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of bypass.

    b. Unanticipated Bypass. The permittee shall submit notice of an unanticipated bypass as required under F. Twenty-four Hour Notice of Noncompliance Reporting.

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

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

    b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. 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 equipment downtime or preventive maintenance; and

    c. The permittee submitted notices as required under the 1.a. Anticipated Bypass subsection of this section.

    The department may approve an anticipated bypass, after considering its adverse effects, if the department determines that it will meet the three (3) conditions listed above.

H. Upset Conditions

An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations 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:

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

2. The permitted facility was, at the time being, properly operated;

3. The permittee submitted notice of the upset as required under F. Twenty-four Hour Notice of

Noncompliance Reporting; and

4. The permittee complied with any remedial measures required under I. Duty to Mitigate.

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

I. 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.

J. Removed Materials

Dredged spoil, accumulated sediments, floatables, debris, and other wastes removed from storm sewers, streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet and maintenance shops, salt and sand storage locations, snow disposal areas, and waste transfer stations shall be disposed of according to applicable rules and may not be abandoned or discarded in waters of the state.

~~Collected screenings, grit, solids, sludges, or other pollutants removed in the course of treatment shall be buried or disposed of in such a manner to prevent any pollutant from entering any waters of the state or creating a health hazard. The permit issuing authority shall be contacted prior to the disposal of any sludges. At that time, concentration limitations and/or self-monitoring requirements may be established.~~

VIII. GENERAL PROVISIONS

A. 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 stormwater/industrial activity treatment facilities and monitoring equipment, to sample any discharges, and to have access to and copy any records required to be kept by this permit.

B. 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.

C. Transfers

This permit is not transferable except upon the filing of a Statement of Acceptance by the new party and subsequent department approval. 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.

D. 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.

E. 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, changes in sewage sludge practices, or the establishment of prohibitions or more stringent limitations for toxic or conventional pollutants and/or sewage sludges. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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.

K. General Permits

Coverage under this permit may be modified, revoked and reissued, or terminated for cause. The department may require any operator 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 an operator otherwise subject to this permit or the operator is approved for coverage under an alternative NDPDES general permit, the applicability of this permit to the operator is automatically inactivated upon the effective date of the individual permit or coverage under the alternative general permit.

APPENDIX 1 – Post-Construction Control

The post-construction controls for managing water quality for reducing pollutants carried in the first flush of stormwater runoff are outlined below.

The water quality criteria apply to on-site or regional systems for post-construction stormwater management. The water quality considerations do not replace or substitute for water quantity or flood management requirements implemented on the local level for new developments. The water quality features may be incorporated into the design of structures for flow control; or water quality control may be achieved with separate features.

If it is impractical to meet the water quality criteria or the lack of right-of-way precludes the installation of described practices, alternative practices (e.g., grassed swales, smaller ponds, or grit chambers) must be provided. If a combination of practices that incorporate water quality volume, water quality flow, groundwater recharge volume, runoff capture volume, source control, and management control are ~~is~~ used, the water quality volume is accounted for on a percentage basis. Low impact development and/or green infrastructure practices may be used as an alternative to, or in conjunction with, post-construction controls.

The design considerations for treating a water quality volume for common post-construction controls are as follows:

Control	Water Quality Design Consideration
Wet Detention Ponds	Water Quality Volume (Vwq) = 1800 cu-ft per impervious acre draining to the pond. The drawdown time for the Vwq should be a minimum of 12 hours. The Vwq is the volume above the permanent pool elevation.
Dry Detention Ponds (w/Extended Detention)	Extended Detention / Water Quality Volume (Vwqed) = 1800 cu-ft per impervious acre draining to pond. The drawdown time for the Vwqed should be a minimum of 24 hours and not more than 72 hours.
Infiltration	Water Quality Volume (Vwq) = 0.5 inches from impervious area. The volume captured in rain gardens, or passed through biofilters with under drains, would be grouped with infiltration for water quality treatment. The Vwq should discharge through the soil or filter media within 48 hours. Additional flows that cannot be infiltrated in 48 hours should be routed to bypass the system through a stabilized outlet.
Flow-Through Treatment Devices	Size devices to treat the first 0.5 inches of runoff from impervious area. Design devices to provide 80 percent removal of sediment with a particle size distribution similar to testing standard OK-110 at a feed concentration similar to 300 mg/L.
Redevelopment / Retrofit	Incorporate water quality criteria by reducing impervious surface area and implementing controls to treat the first 0.5 inches of runoff from

	impervious areas.

The selection and design of post-construction controls must consider clogging or obstructions, freeze-thaw cycles, effects on slope stability and groundwater, and the ability to effectively maintain the control. Design post-construction controls for ease of inspection and maintenance access (e.g., a stabilized access that allows equipment to enter a pond).

~~Recommended~~ ~~r~~Resources for planning and designing controls for urban stormwater runoff are provided by the U.S. EPA (https://www.epa.gov/npdes/stormwater-discharges-municipal-sources) and through other available sources.~~:~~

~~"North Dakota Stormwater Criteria Manual"~~

~~The EPA National Menu of Best Management Practices at:~~

~~www.epa.gov/npdes/national-menu-best-management-practices-bmps-stormwater~~

APPENDIX 2 – Stormwater Pollution Prevention Plans (SWPPP)

The requirements outlined in this section are for MS4 owned or operated facilities such as vehicle maintenance shops, wastewater treatment plants, and landfill facilities. The objectives of the SWPPP are to identify potential sources of stormwater pollution and ensure that practices are implemented and maintained to reduce the contribution of pollutants in stormwater runoff 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.

1. **Site Description**

   a. Provide a description of the type of activities conducted at the facility.

   b. Provide a general location map (e.g., U.S. Geological Survey [USGS] quadrangle map) with enough detail to identify the location of the facility, boundaries of the property, the size of the property in acres and all receiving waters (including wetlands and storm sewer systems that receive stormwater runoff from the facility).

   c. Provide a site specific map(s) of suitable scale and quality to show:

      1) Township, range, and section; or latitude and longitude;
      2) Stormwater drainage patterns in and around the facility;
      3) All stormwater conveyances including ditches, pipes, and swales in and around the facility;
      4) Storm sewer inlets and outfalls, along with a unique identification code for each outfall (e.g., Outfall 001, 002), in and around the facility;
      5) All stormwater sample collection points;
      6) Potential sources of pollution;
      7) Structural stormwater control measures;
      8) Location and extent of facility structures and impervious surfaces; and
      9) Any locations and dates where reportable quantity spills or leaks have occurred within the three years preceding the most recent SWPPP revision.

      Also indicate the location of the following activities that are exposed to precipitation:

      10) Fueling stations;
      11) Vehicle and equipment maintenance and/or cleaning areas;
      12) Loading/unloading areas;
      13) Locations used for the treatment, storage, or disposal of wastes;
      14) Liquid storage tanks;
      15) Processing and storage areas;
      16) Immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility;
      17) Transfer areas for substances in bulk; and
      18) Machinery.

   d. Facilities that have a discharge point within 2000 feet of, and flow to, a water body listed as impaired under section 303(d) of the Federal Clean Water Act~~,~~ shall 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

2. **Stormwater Pollution Prevention Team**
   Identify the individual(s) responsible for overseeing the development of the SWPPP, any later

modifications to the SWPPP, and for compliance with this permit. Include the name or title of the individual and identify their responsibilities. The individual(s) shall have ready access to a copy of this permit, the current version of the SWPPP, and other relevant documents and information that shall be kept as required by this permit.

3. **Description of Potential Pollutant Sources**
The SWPPP shall include a narrative description of the potential pollution sources and material handling at the facility. For each potential pollution source, the description shall include:

   a. Activity Assessment. The SWPPP shall provide an assessment of activity at the facility that could contribute pollutants to stormwater runoff. Each of the following shall be evaluated for the reasonable potential to contribute pollutants to stormwater runoff: material handling equipment or operations; industrial machinery; industrial production and processes; significant dust generating activities; disturbed area vulnerable to erosion; and the storage, loading and unloading, transportation, disposal, and conveyance of any raw material, intermediate products, by-products, final products, and waste products.

   b. Pollutant List. The SWPPP shall include a list of significant materials that could be exposed to precipitation and discharged from the facility as potential pollutants. Examples include but are not limited to oil, fuel, fertilizer, and pesticides. The pollutant list shall include all significant materials that have been handled, treated, stored, or disposed at the facility. The list also shall include past spills that were exposed to stormwater in the three years prior to the date the SWPPP was prepared or amended.

      For facilities subject to Emergency Planning and Community Right-to-Know Act Section 313 (EPCRA 313) requirements, the sources of potential pollutants reported under EPCRA 313 shall be included in the description of potential pollutant sources.

   c. Non-Stormwater Discharges. The SWPPP shall identify sources and locations of non-stormwater discharges that may be present and include a description of the pollution prevention measures in use.

4. **Stormwater Controls**
The SWPPP shall describe the location and type of all stormwater control measures for each source or activity that could contribute pollutants to stormwater runoff. A combination of BMPs and structural controls shall be implemented as appropriate to reduce the contribution of pollutants to stormwater runoff. The SWPPP shall include a description of the following:

   a. The SWPPP shall describe good housekeeping practices to maintain a clean and orderly facility. Litter, debris, chemicals, and parts shall be handled properly to minimize exposure to stormwater. Include a schedule for regular collection and disposal of waste materials, along with routine inspections for leaks, and the condition of drums, tanks and containers. All exposed areas that are potential sources of pollutants shall be kept clean to prevent pollutants from being carried away by wind or water. All materials shall be stored in appropriately labeled containers when feasible. The SWPPP also shall address specific processing and storage practices for materials and parts that present a potential environmental concern.

   b. The SWPPP shall describe methods used to minimize the generation of dust that could be discharged in stormwater for the facility. Bins, dumpsters, and roll-off boxes that contain materials that are a potential source of stormwater pollution and are susceptible to being removed by wind or rain must have lids or be covered when not in use.

   c. The SWPPP shall describe preventative maintenance procedures to ensure the proper operation of stormwater management devices, as well as equipment on-site. This includes regular

inspection, testing, maintenance, and repair of all control measures and equipment to ensure proper operation. The SWPPP shall include the schedule or frequency for inspecting and maintaining all selected control measures and equipment.

d. The SWPPP shall detail procedures for preventing and responding to spills and leaks. The SWPPP shall include notification procedures for reporting internally and to the department. Response procedures shall specify recovery equipment and disposal methods. Document in the SWPPP all spills and leaks of chemicals, oil, or toxic or hazardous pollutants that occurred in areas exposed to stormwater or that drained to a stormwater conveyance. Documentation shall include all reportable quantity spills or leaks that have occurred within the three years preceding the most recent SWPPP revision. Spill kits shall be maintained in a ready state.

e. The SWPPP shall describe employee training used to inform personnel of their responsibility in implementing the practices and controls included in the SWPPP such as spill response, good housekeeping, and sediment control practices.

    1) All employees who work in areas where materials or activities are exposed to stormwater, or are responsible for implementing activities necessary to meet the conditions of this permit (including all members of the Stormwater Pollution Prevention Team), shall receive training.

    2) Personnel shall be trained in at least the following areas as related to the scope of their job duties:
        - An overview of the contents of the SWPPP;
        - Spill prevention and response procedures, good housekeeping practices; maintenance requirements, and material management practices;
        - The location and maintenance of on-site stormwater pollution prevention controls;
        - Operating procedures for preventing pollution; and
        - Inspection procedures and records retention.

    3) Training shall be provided at least annually, as new employees are hired, and as necessary to maintain compliance with this permit. The SWPPP shall detail the content and frequency of training, and retain a log of the dates employees received training.

f. The SWPPP shall describe erosion and sediment controls implemented on areas vulnerable to erosion. The SWPPP shall describe the appropriate control<u>s</u> ~~measures~~ and when they will be implemented. The description and implementation of controls shall address the following:

    1) Areas vulnerable to erosion, including those with little or no vegetation, steep slopes, or those with concentrated runoff flows such as ditches and culverts, shall be stabilized.

    2) The SWPPP shall identify the control<u>s</u> ~~measures~~ used to minimize the release of sediment from the site (sediment basins, rock check dams, silt fences, vegetative buffers, permanent seeding, grassed swales, etc.).

    3) Sediment and erosion controls are expected to withstand and function properly during precipitation events of less than or equal to the 2-year, 24-hour storm event. The release of sediment or other materials due to such storm events should be minimal. 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 (<u>NOAA Atlas 14, Volume 8, Version 2, Midwestern States 2013</u>).

    4) The SWPPP shall describe methods to recover off-site sediment accumulations.

g. The SWPPP shall describe stormwater management. The SWPPP shall include a description of practices to control pollutants in stormwater discharges. Such practices may include: stormwater

ponds; flow reduction by use of open vegetated swales and natural depressions; infiltration of runoff on-site; and sequential systems which combine several practices.

h. For facilities that discharge to waters with a TMDL allocation, the SWPPP shall incorporate the conditions applicable to the discharge necessary for consistency with the assumptions, allocations and requirements of the TMDL. The SWPPP shall incorporate the WLA and outline necessary steps to meet the TMDL.

i. The SWPPP shall describe the pollution prevention measure(s) that will be implemented while non-stormwater discharges are occurring.

5. **Maintenance**
All stormwater pollution prevention control measures identified in the SWPPP shall be maintained in effective operating condition. The SWPPP shall identify the maintenance schedule for stormwater pollution prevention controls. If site inspections identify BMPs that are not operating effectively, maintenance shall be arranged and accomplished as soon as practicable.

6. **Inspections**
Site inspections shall be conducted to monitor the condition of stormwater discharge outlets and effectiveness of BMPs. The SWPPP shall specify the procedures for performing inspections, including: person(s) or position(s) responsible for inspections; schedules and frequencies for conducting inspections; areas and activities that will be inspected; and information that will be recorded as part of an inspection.

a. Inspection Frequency
A comprehensive inspection of the facility shall be performed according to the schedule below:

1) Inspections shall be conducted at least once during each three-month period. The three-month periods shall consist of the first quarter of the year (January – March), the second quarter of the year (April – June), the third quarter of the year (July – September) and the fourth quarter of the year (October – December).

2) Increased inspection frequency may be appropriate for some types of equipment, processes and stormwater control measures, or areas of the facility with significant activities and materials exposed to stormwater. These frequencies shall be identified in the SWPPP.

b. Inspector Qualifications
The permittee shall ensure that personnel conducting inspections are familiar with the SWPPP, the proper installation and operation of control measures, and applicable sampling requirements.

c. Areas to Inspect
Inspectors shall consider the results of previous inspections and sampling results when planning and conducting inspections. The following areas shall be inspected for the evidence of, or the potential for, pollutants entering the stormwater drainage system:

1) Areas where materials or activities are exposed to stormwater;
2) Items identified in the SWPPP that are potential pollutant sources;
3) Areas where spills and leaks have occurred in the past three years;
4) Stormwater outfalls;
5) Stormwater pollution prevention control measures used to comply with this permit; and
6) Disturbed areas of the site that are vulnerable to erosion.

Inspectors shall look for the following during the inspection:

7) Industrial materials, residue, leak or spilled material, or trash that may have or could come into contact with stormwater and pollute runoff from the facility;
8) Offsite tracking of waste materials or sediment; and
9) Stormwater pollution prevention control measures needing replacement, maintenance or repair.

d. Inspection Records
A record shall be made summarizing the scope of the inspection, major observations relating to the SWPPP, and any corrective actions taken. At a minimum the inspection record (or report) shall include:

1) Date of inspections;
2) Name of person(s) conducting inspections;
3) Signature of person(s) conducting inspections or other means used to verify an inspector (e.g., work order or preventative maintenance schedule completion);
4) Indicate if the inspection is a result of a stormwater discharge event;
5) Signs of pollution or the potential for pollution;
6) Inspection findings including major observations related to the SWPPP, condition of stormwater pollution prevention controls, deficiencies noted, recommendations for corrective actions and corrective actions taken, and other recordings and imagery; and
7) Documentation that the SWPPP has been amended when substantial changes are made to stormwater controls or other BMPs in response to inspections.

e. Maintenance Records
When deficiencies are noted during an inspection, corrective actions shall be performed as soon as feasible. A record of corrective and maintenance activities shall be kept. This record shall include the dates and party completing the activities, and any recordings or imagery.

7. **Sampling**
The SWPPP shall include sampling procedures for facilities with industrial activities identified in Part IV(F)(6)(e)(4) of this permit. The SWPPP shall include specifics such as sampling points, sampling procedures, chain-of-custody requirements, contracted laboratory, and parameters to be sampled.

a. The SWPPP shall outline:

1) Locations of all outfalls where samples will be collected, including any determination that two or more outfalls are substantially identical (refer to Appendix 5);
2) Sample parameters;
3) Type of sample collection method (e.g., grab, instantaneous);
4) Schedules for sampling and monitoring at the facility;
5) Any numeric control values (benchmarks, effluent limitations, TMDL-related WLAs, etc.) applicable to each outfall;
6) Procedures for collecting samples; and
7) Procedures for gathering storm event data.

b. The SWPPP for facilities conducting representative sampling (Appendix 5(3)) shall include:

1) The location of each of the substantially identical outfalls;
2) The location of representative outfalls;
3) A description of the general activities conducted in the drainage area of each outfall;
4) A description of the exposed materials located in the drainage area of each outfall that are likely to be significant contributors of pollutants to stormwater discharges;
5) A description of the control measures implemented in the drainage area of each outfall; and
6) Information indicating why outfalls are expected to discharge substantially identical effluents.

c. The SWPPP for facilities not required to conduct sampling under the permit shall include a statement identifying that they are not subject to sampling requirements.

8. **SWPPP Review and Revisions**

a. The SWPPP shall be signed in accordance with the Signatory Requirements, Part VII(E), and retained on-site for the duration of activity at the permitted location.

b. The permittee shall amend the SWPPP whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the state. The SWPPP also shall be amended if it is found to be ineffective at controlling pollutants present in stormwater.

c. Facilities operating under an existing SWPPP are responsible for incorporating and implementing any changes necessitated by the conditions described in this permit within 180 days of the effective date of this permit.

9. **Additional Terms and Conditions**

a. ~~Salt Storage Piles.~~ Salt storage piles used for deicing or other purposes shall be enclosed or covered. Salt storage piles do not need to be covered or enclosed when adding or taking materials from the pile and when stormwater drainage from the pile is contained on-site.

b. Petroleum products, oil field production water, and other chemicals shall have adequate leak and spill protection to prevent any spilled materials from entering waters of the state. Position materials, equipment and activities so that leaks and spills are contained, or able to be contained, to prevent the leak or spill from leaving the facility. Clean up spills and leaks promptly to prevent the discharge of pollutants. The SWPPP shall include recovery and disposal methods for cleaning up spills and leaks.

c. Dewatering or basin draining (i.e., pumped discharges) related to the permitted activity shall be managed with the appropriate BMPs, such that the discharge does not adversely affect the receiving water. The permittee(s) shall operate the discharge to minimize the release of sediment and provide energy dissipation measures to adequately protect the outlet from erosion. Dewatering is limited to uncontaminated stormwater, ground water, and non-stormwater sources.

d. Minimize the exposure of activity including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations to precipitation by locating these activities indoors or utilizing storm resistant coverings, where practicable.

e. Wash water from vehicle or equipment cleaning and washing operations shall drain to a sanitary sewer, sump, or other proper collection system, with the exception of:

1) Wash water from vehicle or equipment cleaning and washing operations without the use of detergents or hazardous cleaning products;
2) Wash water where the discharge of sediment to the storm sewer system has been minimized by BMPs; and
3) Wash water without contact with oil and grease deposits or other toxic or hazardous materials unless cleaned up using dry clean-up methods.

APPENDIX 3 – No Exposure Requirements

MS4 owned or operated facilities that have any of the following materials or activities exposed to precipitation are not eligible for no exposure requirements and must develop a SWPPP in accordance with Appendix 2.

1. Industrial machinery or equipment is exposed to stormwater while being used, stored, or cleaned at the facility. This includes areas of the facility where residuals from using, storing, or cleaning industrial machinery or equipment remains and are exposed to stormwater.

2. Materials or residuals from spills or leaks are on the ground or in storm sewer inlets.

3. Materials or products from past industrial activity are exposed to stormwater.

4. Material handling equipment (except adequately maintained vehicles) is exposed to stormwater.

5. Materials or products are exposed to stormwater during loading/unloading or transporting activities

6. Materials or products stored outdoors are exposed to stormwater. This does not include products intended for outside use where exposure to stormwater does not result in the discharge of pollutants.

7. Materials contained in open, deteriorated, or leaking storage drums, barrels, tanks, and similar containers are exposed to stormwater.

8. Materials or products are handled or stored on roads or railways owned or maintained by the MS4.

9. Waste material (except waste in covered, non-leaking containers [e.g., dumpsters]) is exposed to stormwater.

10. The application or disposal of process wastewater is exposed to stormwater unless otherwise permitted.

11. Particulate matter or visible deposits or residuals from roof stacks and/or vents (not otherwise regulated) are evident in stormwater outflow.

APPENDIX 4 – Sampling and SWPPP Requirements

The industry sectors identified in this appendix are required to collect samples of stormwater discharges from all outfalls as part of the sampling requirements listed in Appendix 2 of the permit. The specific sampling parameters and frequencies applicable to each industry sector are listed below.

The sampling procedures and conditions applicable to all facilities sampling stormwater discharges are outlined in Appendix 2 and 5. In general, operators shall collect grab samples of measurable storm events at each and every outfall for the parameters listed for their industry sector. Appendix 5 also provides conditions for reduction in monitoring based on sample history and "benchmark" values.

Benchmark concentrations should not be interpreted as stormwater effluent limitations, individual wastewater effluent limitations, or as state water quality standards. Benchmark concentrations provide an appropriate level to determine whether a facility's stormwater pollution prevention measures are effective. A pollutant concentration that is above the benchmark value represents a potential water quality concern and the need to improve a facility's SWPPP. If samples exceed the benchmark value, the SWPPP shall be revised to include possible sources of the high concentration and methods to reduce future concentrations.

A. Landfills and Land Application

Applicability: All Landfill, Land Application Sites and Open Dumps (Industrial Activity Code "LF")
- Sample Frequency: 1/year

Required Parameter	Benchmark Value	Discharge Limit
• Oil and Grease	No visible sheen (15 mg/L)	
• pH	Between 6.0 and 9.0 S.U.	
• Total Suspended Solids	100 mg/L	
• Iron, Total	1.0 mg/L	
• Chlorides	250 mg/L	
• Arsenic, Total	0.15 mg/L	

This permit does not authorize the discharge of waters which have come into direct contact with landfill wastes, leachate, gas collection condensate, drained free liquids, contaminated ground water, facility wastewater, contact wash water from washing truck or equipment exteriors and surface areas which have come in direct contact with solid waste at the landfill facility.

Applicability: Municipal Solid Waste Landfill (MSWLF) Areas Closed in Accordance with 40 CFR 258.60
- Sample Frequency: 1/year

Required Parameter	Benchmark Value	Discharge Limit
• Oil and Grease	No visible sheen (15 mg/L)	
• pH	Between 6.0 and 9.0 S.U.	
• Total Suspended Solids	100 mg/L	

This permit does not authorize the discharge of waters which have come into direct contact with landfill wastes, leachate, gas collection condensate, drained free liquids, contaminated ground water, facility wastewater, contact wash water from washing truck or equipment exteriors and surface areas which have come in direct contact with solid waste at the landfill facility.

B. Coal Pile Runoff

Applicability: Any facility with discharges from coal storage piles • Sample Frequency: 1/year		
Required Parameter	Benchmark Value	Discharge Limit
• Oil and Grease	No visible sheen (15 mg/L)	
• pH		Between 6.0 and 9.0 S.U.
• Total Suspended Solids		50 mg/L
Any untreated overflow from facilities designed, constructed and operated to treat the volume of coal pile runoff associated with a 10-year, 24-hour storm event shall not be subject to the total suspended solids limitation.		

C. Baseline Parameter

Applicability: facilities directed to sample by the department, but not listed in Items A and B above • Sample Frequency: 1/year	
Required Parameter	Benchmark Value
• Oil and Grease	No visible sheen (15 mg/L)
• pH	Between 6.0 and 9.0 S.U.
• Total Suspended Solids	100 mg/L
• Phosphorus, Total	2.0 mg/L
• Ammonia [1] as N	5.91 ~~8.41~~ mg/L
• Nitrate plus Nitrite Nitrogen	0.68 mg/L
• 5-Day Biochemical Oxygen Demand	30 mg/L
• Chemical Oxygen Demand	120 mg/L

Notes:
[1] Ammonia is pH dependent; value given is based on a pH of 8.0 S.U. and temperature of 15° Celsius.

APPENDIX 5 – Stormwater Sampling Requirements, Procedures and Conditions

Applicable to facilities conducting a sampling program. The monitoring period shall cover the period from April 1 to March 31. Monitoring results shall be reported to the department in accordance with Part VI(E).

1. **Sample procedures**
   a. All required monitoring must be performed on a storm event that results in an actual discharge from the facility ("measurable storm event") that follows the preceding measurable storm event by at least 72 hours (three days). In the case of snowmelt, the monitoring must be performed at a time when a measurable discharge occurs from the facility.

   b. For discharges from holding ponds or other impoundments with a 24-hour or greater retention capability, grab samples of the discharge may be obtained at any time. For all other discharges, grab samples shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample may be taken as soon as practicable.

   c. For storm events sampled, except snowmelt monitoring, the permittee shall record the date and duration (in hours) of the event, rainfall amount or estimates (in inches) of the event, and time (in days) since the last measurable storm event which generated runoff. For snowmelt monitoring, the date of the sampling event must be identified. The information shall be included on discharge monitoring ~~in the annual~~ reports. The permittee shall have the option of maintaining a rain gauge on site or utilizing the nearest National Weather Service rain gauge station. Rain gauge locations or stations must be representative of the facility.

2. **Impractical or adverse conditions**
   When a permittee is unable to collect samples due to impractical or adverse climatic conditions, the permittee must describe in the discharge monitoring ~~annual~~ report why samples could not be collected. Impractical or adverse climatic conditions which may prohibit the collection of samples include: normal non-working hours, nightfall, or weather conditions that create dangerous conditions for personnel (local flooding, high winds, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impractical (drought, extended frozen periods, inactive or unstaffed facility, etc.).

3. **Substantially Identical Outfalls**
   When a facility has two or more outfalls which the permittee believes would discharge substantially identical effluents (based on the features and activities within the areas drained by the outfalls), the permittee must develop and retain a representative sampling plan in which at least 20 percent of all outfalls would be monitored. Permittees utilizing this option shall include the representative sampling plan in the SWPPP.

4. **Equivalent monitoring plans**
   Where appropriate, results for monitoring plans developed for other regulatory agencies or other purposes can be used for the requirements of this permit.

5. **Sampling Reduction**
   A permittee may reduce all or part of the sampling requirements outlined in Appendix 4 by demonstrating that the conditions listed below have been met. The reduction in sampling may be pursued on both a parameter by parameter and outfall by outfall basis. Sample reductions are not available for parameters which have effluent limitations in the permit. The reduction will be based on the following conditions:

   a. At least four (4) samples have been collected and analyzed from a discharge point where sampling is required for the parameter(s) being considered. The samples may have been

obtained over the course of one year or several years. The results from the four (4) most recent samples shall have an average concentration below the benchmark value listed in Appendix 4. A summary of all available monitoring data should be included in the request.

b. The activities at the site, such as material handling and storage, chemical use, waste disposal practices, erosion controls, and other types of industrial activities, have not changed since the samples were taken in any way that could have an adverse impact on stormwater quality.