

**Electronic Availability:** Electronic copies of this document and the Fact Sheet are available from the EPA home page at the Environmental Sub-Set entry for this document under "Regulations" (<http://www.epa.gov/fedrgstr/>).

EPA issued a notice, published in the **Federal Register** of March 8, 1995 (60 FR 12765; FRL-4937-2), which announced that FMC Corp., 1735 Market St., Philadelphia, PA 19103, had submitted applications to register the pesticide products Sulfentrazone Technical, Sulfentrazone 4F, and Sulfentrazone 75DF (EPA File Symbols 279-GRUO, 279-GRUA, and 279-GRUI), containing the active ingredient sulfentrazone, *N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide(methyl at 92.2, 39.6, and 75 percent respectively, active ingredients not included in any previously registered products.

EPA subsequently received applications from FMC Corp., to conditionally register the pesticide products Authority BL (File Symbol 279-GRTO) containing the active ingredients sulfentrazone *N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide 47% and metribuzin 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5(4*H*)-one 28.% and Authority Broadleaf (File Symbol 279-GRTL), containing the active ingredients sulfentrazone 46.9% and chlorimuron ethyl ethyl 2-[[[(4-chloro-6-methoxypyrimidin-2-yl)amino]carbonyl]amino]sulfonyl]benzoate 9.4%. However, since the notice of receipt of application did not publish in **Federal Register**, as required by FIFRA, as amended, interested parties may submit written comments within 30 days from the date of publication of this notice. Comments and data may also be submitted electronically by sending electronic mail; e-mail: [opp-docket@epamail.epa.gov](mailto:opp-docket@epamail.epa.gov). No Confidential Business Information (CBI) should be submitted through e-mail. More detailed information is found in all documents requesting comments as of May 1995.

The applications were approved on February 27, 1997, for one technical and four end-use products listed below:

1. Sulfentrazone Technical for manufacturing use only (EPA Registration Number 279-3149).
2. Authority 4F (formerly Sulfentrazone 4F) for preemergence and preplant incorporated weed control in soybeans (EPA Registration Number 279-3146).

3. Authority 75DF (formerly Sulfentrazone 75DF for preemergence and preplant incorporated weed control in soybeans (EPA Registration Number 279-3148)

4. Authority BL for use on soybeans in preemergence, preplant incorporated, no-till, and minimum till applications (EPA Registration Number 279-3175)

5. Authority Broadleaf for use on soybeans in preemergence, preplant incorporated, no-till, and minimum till applications (EPA Registration Number 279-3179).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of sulfentrazone, metribuzin, and chlorimuron ethyl ethyl 2-[[[(4-chloro-6-methoxypyrimidin-2-yl)amino]carbonyl]amino]sulfonyl]benzoate, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of sulfentrazone, metribuzin, and chlorimuron ethyl ethyl 2-[[[(4-chloro-6-methoxypyrimidin-2-yl)amino]carbonyl]amino]sulfonyl]benzoate during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

These products are conditionally registered in accordance with FIFRA section 3(c)(7)(C). If the conditions are not complied with the registrations will be subject to cancellation in accordance with FIFRA section 6(e).

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on these conditional registrations is contained in an EPA Pesticide Fact Sheet on sulfentrazone, metribuzin, and chlorimuron ethyl ethyl 2-[[[(4-chloro-6-methoxypyrimidin-2-yl)amino]carbonyl]amino]sulfonyl]benzoate.

A copy of the fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703-305-5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

**Authority:** 7 U.S.C. 136.

#### List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: April 4, 1997.

**Stephen L. Johnson,**

*Director, Registration Division, Office of Pesticide Programs.*

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#### ENVIRONMENTAL PROTECTION AGENCY

[FRL-5810-6]

#### Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges From Construction Activities That Are Classified as Associated With Industrial Activity (FLR100000)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of draft NPDES general permit reissuance for storm water discharges from construction activities

that are classified as "associated with industrial activity".

**SUMMARY:** Section 405 of the Water Quality Act of 1987 (WQA) added section 402(p) of the Clean Water Act (CWA) which requires the Environmental Protection Agency (EPA) to develop a phased approach to regulating storm water discharges under the National Pollutant Discharge Elimination System (NPDES) program. EPA published a final regulation on November 16, 1990, (55 FR 47990) establishing permit application requirements for storm water discharges associated with industrial activity and for discharges from municipal separate storm sewer systems serving a population of 100,000 or more. In the permit application regulations, EPA defined the term "storm water discharge associated with industrial activity" in a comprehensive manner to cover a wide variety of facilities. This definition greatly expanded the number of industrial facilities subject to the NPDES program.

EPA published a final NPDES general permit for storm water discharges from construction activities that are classified as "associated with industrial activity" on September 25, 1992, (57 FR 44412). The general permit established Notice of Intent (NOI) requirements, special conditions, requirements to develop and implement storm water pollution prevention plans, and requirements to conduct site inspections for facilities with discharges authorized by the permit. Today's notice requests comments on the draft reissuance of the above referenced general permit for discharges of storm water from construction activities "associated with industrial activity" in the State of Florida.

**ADDRESSES:** Persons wishing to comment upon or object to any aspects of this permit reissuance or wishing to request a public hearing, are invited to submit the same in writing within sixty (60) days of this notice to the Office of Environmental Assessment, United States Environmental Protection Agency, Region 4, Atlanta Federal Center, 100 Alabama Street, S.W., Atlanta, GA 30303-3104, Attention: Ms. Lena Scott.

**DATES:** Comments relative to this draft permit are not required; however, if you wish to submit comments, the comments must be received by June 16, 1997.

**FOR FURTHER INFORMATION CONTACT:** Contact Mr. Floyd Wellborn, telephone number (404) 562-9296, or Mr. Michael Mitchell, telephone number (404) 562-

9303, or at the following address: United States Environmental Protection Agency, Region 4, Water Management Division, Surface Water Permits Section, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303.

**SUPPLEMENTARY INFORMATION:**

**Procedures for Reaching a Final Permit Decision**

Pursuant to 40 CFR 124.13, any person who believes any condition of the permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments in full, supporting their position, by the close of the comment period. All comments on the proposed NPDES general permit received within the 60-day period will be considered in the formulation of final determinations regarding the permit reissuance.

After consideration of all written comments and the requirements and policies in the Act and appropriate regulations, the EPA Regional administrator will make determinations regarding the general permit reissuance. If the determinations are substantially unchanged from those announced by this notice, the Administrator will so notify all persons submitting written comments. If the determinations are substantially changed, the Administrator will issue a public notice indicating the revised determinations.

A formal hearing is available to challenge any NPDES permit issued according to the regulations at 40 CFR 124.15 except for a general permit as cited by 40 CFR 124.71. Persons affected by a general permit may not challenge the conditions of a general permit as a right in further Agency proceedings. They may instead either challenge the general permit in court, or apply for an individual permit as specified at 40 CFR 122.21 as authorized at 40 CFR 122.28, and then request a formal hearing on the issuance or denial of an individual permit.

**Administrative Record**

The proposed NPDES general permit, fact sheet and other relevant documents are on file and may be inspected any time between 9:00 a.m. and 4:00 p.m., Monday through Friday at the address shown below. Copies of the draft NPDES general permit, fact sheet or other relevant documents may be obtained by writing the United States Environmental Protection Agency, Region 4, Atlanta Federal Center, 100 Alabama Street, S.W., Atlanta, GA 30303-3104, Attention: Ms. Lena Scott, or calling (404) 562-9607.

**Draft NPDES Permits for Storm Water Discharges from Construction Activities that are Classified as "Associated with Industrial Activity"**

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**PREFACE**

The CWA provides that storm water discharges associated with industrial activity from a point source (including discharges through a municipal separate storm sewer system) to waters of the United States are unlawful, unless authorized by an National Pollutant Discharge Elimination System (NPDES)

permit. The terms "storm water discharge associated with industrial activity", "point source" and "waters of the United States" are critical to determining whether a facility is subject to this requirement. Complete definitions of these terms are found in the definition section (Part X) of this permit.

#### *Part I. Coverage Under this Permit*

##### A. Permit Area

The permit covers all areas administered by Region 4 in the State of Florida.

##### B. Eligibility

1. This permit may authorize all discharges identified in the pollution prevention plan of storm water associated with industrial activity from construction sites, (those sites or common plans of development or sale, including unpaved roads, that will result in the disturbance of five or more acres total land area),<sup>1</sup> (henceforth referred to as storm water discharges from construction activities) occurring after the effective date of this permit (including discharges occurring after the effective date of this permit where the construction activity was initiated before the effective date of this permit), except for discharges identified under paragraph I.B.3.

2. This permit may authorize storm water discharges from construction sites that are mixed with storm water discharges associated with industrial activity from industrial sources other than construction, where:

a. the industrial source other than construction is located on the same site as the construction activity;

b. storm water discharges associated with industrial activity from the areas of the site where construction activities are occurring are in compliance with the terms of this permit; and

c. storm water discharges associated with industrial activity from the areas of the site where industrial activity other than construction are occurring (including storm water discharges from dedicated asphalt plants and dedicated concrete plants) are in compliance with the terms, including applicable NOI or application requirements, of a different NPDES general permit or individual permit authorizing such discharges.

3. Limitations on Coverage. The following storm water discharges from construction sites are not authorized by this permit:

a. storm water discharges associated with industrial activity that originate from the site after construction activities have been completed and the site has undergone final stabilization;

b. discharges that are mixed with sources of non-storm water, other than discharges identified in Part III.A of this permit which are in compliance with Part V.D.5 (non-storm water discharges) of this permit;

c. storm water discharges associated with industrial activity that are subject to an existing NPDES individual or general permit or which are issued a permit in accordance with paragraph VI.L (requiring an individual permit or an alternative general permit) of this permit. Such discharges may be authorized under this permit after an existing permit expires, provided the existing permit did not establish numeric limitations for such discharges;

d. storm water discharges from construction sites that the Director (EPA) has determined to be or may reasonably be expected to be contributing to a violation of a water quality standard;

e. storm water discharges from construction sites if the discharges may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat (see Appendix C);

f. discharges of storm water associated with industrial activity from construction sites not specifically identified in the pollution prevention plan in accordance with Part V of this permit. Such discharges not identified in the plan are subject to the upset and bypass rules in Part VII of this permit.

##### C. Authorization

1. A discharger must submit a Notice of Intent (NOI) in accordance with the requirements of Part II of this permit, using an NOI form provided by the Director (or a photocopy thereof), in order for storm water discharges from construction sites to be authorized to discharge under this general permit.<sup>2</sup>

2. Where a new operator is selected after the submittal of an NOI under Part II, a new NOI must be submitted by the operator in accordance with Part II, using an NOI form provided by the Director (or a photocopy thereof).

3. Unless notified by the Director to the contrary, dischargers who submit an NOI in accordance with the requirements of this permit are authorized to discharge storm water from construction sites under the terms and conditions of this permit 2 days

after the date that the NOI is postmarked. The Director may deny coverage under this permit and require submittal of an application for an individual NPDES permit based on a review of the NOI or other information (see Part VII.L of this permit).

#### *Part II. Notice of Intent Requirements*

##### A. Deadlines for Notification

1. Except as provided in paragraphs II.A.2, II.A.3, and II.A.4, individuals who intend to obtain coverage under this general permit for storm water discharges from a construction site (where disturbances associated with the construction project commence before October 1, 1997), including unpaved rural roads, shall submit a Notice of Intent (NOI) in accordance with the requirements of this Part by December 31, 1997;

2. Individuals who intend to obtain coverage under this general permit for storm water discharges from a construction site, including unpaved rural roads, where disturbances associated with the construction project commence after October 1, 1997, shall submit an NOI in accordance with the requirements of this Part, at least 2 days prior to the commencement of construction activities (e.g. the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities). Prior to submitting this NOI, the owner of a storm water management system must receive a State of Florida storm water permit from either the Florida Department of Environmental Protection (FDEP) or a Florida Water Management District (FWMD);

3. For storm water discharges from construction sites, including unpaved rural roads, where the operator changes (including projects where an operator is selected after an NOI has been submitted under Parts II.A.1 or II.A.2), an NOI in accordance with the requirements of this Part shall be submitted at least 2 days prior to when the operator commences work at the site; and

4. EPA will accept an NOI in accordance with the requirements of this Part after the dates provided in Parts II.A.1, 2 or 3 of this permit. In such instances, EPA may bring appropriate enforcement actions.

##### B. Contents of Notice of Intent

The Notice(s) of Intent shall be signed in accordance with Part VII.G of this permit by all of the entities identified in Part II.B.2 and shall include the following information:

1. The mailing address, and location (including the county) of the

<sup>1</sup> On June 4, 1992, the United State Court of Appeals for the Ninth Circuit remanded the exemption for construction sites of less than five acres to the EPA for further rulemaking. (Nos. 90-70671 and 91-70200).

<sup>2</sup> A copy of the approved NOI form is provided in Appendix A of this notice.

construction site for which the notification is submitted. Where a mailing address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township and range to the nearest quarter section;

2. The name, address and telephone number of the operator(s) with day to day operational control that have been identified at the time of the NOI submittal, and operator status as a Federal, State, private, public or other entity. Where multiple operators have been selected at the time of the initial NOI submittal, NOIs must be attached and submitted in the same envelope. When an additional operator submits an NOI for a site with a existing NPDES permit, the NOI for the additional operators must indicate the number for the existing NPDES permit;

3. The location of the first outfall in latitude and longitude to the nearest 15 seconds and the name of the receiving water(s) into which that outfall discharges, or if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water(s). (All other outfalls must be listed in the pollution prevention plan as required by Part V.);

4. The permit number of any NPDES permit(s) for any discharge(s) (including any storm water discharges or non-storm water discharges) from the site;

5. An indication of whether the owner or operator has existing quantitative data which describes the concentration of pollutants in storm water discharges (existing data should not be included as part of the NOI); and

6. An estimate of project start date and completion dates, estimates of the number of acres of the site on which soil will be disturbed, and a certification that a storm water pollution prevention plan has been prepared for the site in accordance with Part V of this permit. (A copy of the plans or permits should not be included with the NOI submission). The applicant shall submit a narrative statement certifying that the storm water pollution prevention plan for the facility provides compliance with approved State of Florida issued permits, erosion and sediment control plans and storm water management plans. The applicant shall also submit a copy of the cover page of the State permit issued by FDEP or a FWMD to the facility for the storm water associated with construction activity.

#### C. Where to Submit

1. Facilities which discharge storm water associated with industrial activity must use a NOI form provided by the Director (or photocopy thereof). The form in the **Federal Register** notice in which this permit was published may be photocopied and used. Forms are also available by calling (404) 562-9296. NOIs must be signed in accordance with Part VII.G of this permit. NOIs are to be submitted to the Director of the NPDES program in care of the following address: Storm Water Notice of Intent (4203), 401 M Street, S.W., Washington, DC 20460.

2. A copy of the NOI or other indication that storm water discharges from the site are covered under an NPDES permit, and a brief description of the project shall be posted at the construction site in a prominent place for public viewing (such as alongside a building permit).

#### D. Additional Notification

Facilities which are operating under approved State or local sediment and erosion plans, grading plans, or storm water management plans shall also submit signed copies of the Notice of Intent to the State or local agency approving such plans in accordance with the deadlines in Part II.A of this permit (or sooner where required by State or local rules). Facilities which discharge storm water associated with construction activities to a municipal separate storm water system within Broward, Dade, Duval, Escambia, Hillsborough, Orange, Palm Beach, Pinellas, Polk or Sarasota Counties shall submit a copy of the NOI to the operator of the municipal separate storm sewer system. Included within these counties, the Florida Department of Transportation (FDOT), incorporated municipalities, and Chapter 298 Special Districts shall also be notified where they own or operate a municipal separate storm sewer system receiving storm water discharges associated with construction activity covered by this permit.

#### E. Renotification

Upon issuance of a new general permit, the permittee is required to notify the Director of his intent to be covered by the new general permit.

#### Part III. Special Conditions, Management Practices, and other Non-Numeric Limitations

##### A. Prohibition on Non-Storm Water Discharges

1. Except as provided in paragraph I.B.2 and III.A.2, all discharges covered

by this permit shall be composed entirely of storm water.

2. a. Except as provided in paragraph III.A.2.(b), discharges of material other than storm water must be in compliance with a NPDES permit (other than this permit) issued for the discharge.

b. The following non-storm water discharges may be authorized by this permit provided the non-storm water component of the discharge is in compliance with paragraph V.D.5 and the storm water management system is designed to accept these discharges and provide treatment of the non-storm water component sufficient to meet Florida water quality standards: discharges from fire fighting activities; fire hydrant flushings; waters used to wash vehicles or control dust in accordance with Part V.D.2.c.(2); potable water sources including waterline flushings; irrigation drainage; routine external building washdown which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; and foundation or footing drains where flows are not contaminated with process materials such as solvents. Discharges resulting from ground water dewatering activities at construction sites are not covered by this permit. The applicant may seek coverage for these discharges under NPDES General Permit No. FLG830000, published on July 17, 1989. (54 FR 29986) and modified on August 29, 1991 (56 FR 42736).

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

1. The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. This permit does not relieve the permittee of the reporting requirements of 40 CFR part 117 and 40 CFR part 302. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR 117 or 40 CFR 302, occurs during a 24 hour period:

a. The permittee is required to notify the National Response Center (NRC) (800-424-8802; in the Washington, DC metropolitan area 202-426-2675) in accordance with the requirements of 40 CFR 117 and 40 CFR 302 as soon as he or she has knowledge of the discharge;

b. The permittee shall submit within 14 calendar days of knowledge of the

release a written description of: the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken in accordance with Part III.B.3 of this permit to EPA Region 4 Office at the address provided in Part VI.C (addresses) of this permit; and

c. The storm water pollution prevention plan required under Part V of this permit must be modified within 14 calendar days of knowledge of the release to: provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

2. Spills. This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

#### Part IV. Unpaved Rural Roads

##### A. Applicability

The provisions of this part are applicable to the construction of roads, except roads constructed for silviculture and agricultural uses, that disturb five (5) acres or more and will remain unpaved after construction is complete.

##### B. Construction

Construction of unpaved rural roads where the possibility of a point source discharge to surface waters exists, must comply with all applicable portions of this permit and the document *Silviculture Best Management Practices*, 1993 Florida Department of Agriculture & Consumer Services, or most current version or revisions of this document. In addition, the following conditions apply:

1. Water turnouts, drainage systems designed to reduce the volume and velocity of ditch flow, shall be constructed in conjunction with the roadside drainage ditches in accordance with Appendix 7 of the above referenced document.

2. All water turnouts must direct diverted flow onto vegetated areas where it can be adequately dispersed. The turnouts shall not direct diverted flow or road runoff into waters of the United States.

##### C. Notice of Termination

Where a site has been finally stabilized and all storm water discharges from construction activities that are authorized by this permit are eliminated (see Part IX.A.5. for the definition of eliminated), or where the

operator of all storm water discharges at a facility changes, the operator of the facility may submit a Notice of Termination that is signed in accordance with Part VII.G of this permit.

#### Part V. Storm Water Pollution Prevention Plans

A storm water pollution prevention plan shall be developed for each construction site covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction site. In addition, the plan shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges associated with industrial activity at the construction site and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

##### A. Deadlines for Plan Preparation and Compliance

The plan shall:

1. Be completed (including certifications required under Part V.E) prior to the submittal of an NOI to be covered under this permit and updated as appropriate;

2. The plan shall provide for compliance with the terms and schedule of the plan beginning with the initiation of construction activities.

##### B. Signature and Plan Review

1. The plan shall be signed in accordance with Part VII.G, and be retained on-site at the facility which generates the storm water discharge in accordance with Part V (retention of records) of this permit.

2. The permittee shall submit plans to the State agency which issued the storm water permit referenced in Part II.B.6. and shall make plans available upon request to the Director; a State or local agency approving sediment and erosion plans, grading plans, or storm water management plans; or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system.

3. The Director, or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum

requirements of this Part. Such notification shall identify those provisions of the permit which are not being met by the plan, and identify which provisions of the plan require modifications in order to meet the minimum requirements of this part. Within 7 days of such notification from the Director, (or as otherwise provided by the Director), or authorized representative, the permittee shall make the required changes to the plan and shall submit to the Director a written certification that the requested changes have been made.

##### C. Keeping Plans Current

The permittee shall amend the plan 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 United States, including the addition of or change in location of storm water discharge points, and which has not otherwise been addressed in the plan or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part V.D.2 of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. In addition, the plan shall be amended to identify any new contractor and/or subcontractor that will implement a measure of the storm water pollution prevention plan (see Part V.E). Amendments to the plan shall be prepared, dated, and kept as separate documents from the original plan. The amendments to the plan may be reviewed by EPA in the same manner as Part V.B above. Amendments to the plan must be submitted to the State agency which issued the State storm water permit.

##### D. Contents of Plan

The storm water pollution prevention plan shall include the following items:

1. *Site Description*. Each plan shall provide a description of pollutant sources and other information as indicated:

a. A description of the nature of the construction activity;

b. A description of the intended sequence of major activities which disturb soils for major portions of the site (e.g. grubbing, excavation, grading);

c. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading, or other activities;

d. An estimate of the runoff coefficient of the site before, during and

after construction activities are completed using "C" from the Rational Method, and existing data describing the soil or the quality of any discharge from the site and an estimate of the size of the drainage area for each outfall;

e. A site map indicating drainage patterns and approximate slopes anticipated after major grading activities, areas of soil disturbance, an outline of areas which may not be disturbed, the location of major structural and nonstructural controls identified in the plan, the location of areas where stabilization practices are expected to occur, surface waters (including wetlands), and locations where storm water is discharged to a surface water; and

f. The location in terms of latitude and longitude, to the nearest 15 seconds, of each outfall, the name of the receiving water(s) for each outfall and the amount of wetland acreage at the site.

2. **Controls.** Each plan shall include a description of appropriate controls and measures that will be implemented at the construction site. The plan will clearly describe for each major activity identified in Part V.D.1.b appropriate control measures and the timing during the construction process that the measures will be implemented. (For example, perimeter controls for one portion of the site will be installed after the clearing and grubbing necessary for installation of the measure, but before the clearing and grubbing for the remaining portions of the site. Perimeter controls will be actively maintained until final stabilization of those portions of the site upward of the perimeter control. Temporary perimeter controls will be removed after final stabilization). All controls shall be consistent with the requirements set forth in the State Water Policy of Florida (Chapter 62-40, Florida Administrative Code), the applicable storm water permitting requirements of the FDEP or appropriate FWMD, and the guidelines contained in the Florida Development Manual: A Guide to Sound Land and Water Management (FDEP, 1988) and any subsequent amendments. The description and implementation of controls shall address the following minimum components:

a. **Erosion and Sediment Controls.**

(1) **Performance Standards.** (a) The erosion and sediment controls must be capable of removing 80% of the Settleable Solids (SS) in storm water discharges from the site to Class III waters.

(b) The erosion and sediment controls must be capable of removing 95% of the SS in storm water discharges from the

site to sensitive waters such as potable water sources (class I waters), shellfish harvesting waters (Class II waters) and outstanding Florida waters.

(2) **Stabilization Practices.** A description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized. Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures. A record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site and when stabilization measures are initiated shall be included in the plan. Stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased.

(3) **Structural Practices.** A description of structural practices, to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site in accordance with the requirements set forth in Section 62-40, 420, FAC, and the applicable storm water regulations of the FDEP or appropriate FWMD. Such practices may include silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural practices should be placed on upland soils unless a State of Florida wetland resource management permit issued pursuant to Chapters 373 or 403, FS, and applicable regulations of the FDEP or FWMD authorize otherwise. The installation of these devices may be subject to Section 404 of the CWA.

(a) For common drainage locations that serve an area with more than 10 disturbed acres at one time, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. The 3,600 cubic feet of storage area per acre drained does not apply to flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the

disturbed area and the sediment basin. For drainage locations which serve more than 10 disturbed acres at one time and where a temporary sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent controls is not attainable, smaller sediment basins and/or sediment traps should be used. At a minimum, silt fences, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area.

(b) For drainage locations serving less than 10 acres, sediment basins and/or sediment traps should be used. At a minimum, silt fences or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area unless a sediment basin providing storage for 3,600 cubic feet of storage per acre drained is provided.

b. **Storm Water Management.** A description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. The description of controls shall be consistent with the requirements set forth in the State Water Policy of Florida (Chapter 62-40, FAC), the applicable storm water permitting regulations of the guidelines contained in the Florida Development Manual: A Guide to Sound Land and Water Management (FDEP, 1988), and any subsequent amendments. Structural measures should be placed on upland soils unless a State of Florida wetland resource management permit issued pursuant to Chapters 373 or 403, FS, and applicable regulations of the FDEP or FWMD authorize otherwise. The installation of these devices may be subject to Section 404 of the CWA. This NPDES permit only addresses the installation of storm water management measures, and not the ultimate operation and maintenance of such structures after the construction activities have been completed and the site has undergone final stabilization. Permittees are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with industrial activity have been eliminated from the site. However, all storm water management systems shall be operated and maintained in perpetuity after final stabilization in accordance with the requirements set forth in the State of Florida storm water permit issued for the site.

(1) Such practices may include: storm water detention structures (including

wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems (which combine several practices). Pursuant to the requirements of section 62-40, 420, FAC, the storm water management system shall be designed to remove at least 80 percent of the average annual load of pollutants which cause or contribute to violations of water quality standards (95 percent if the system discharges to an Outstanding Florida Water). The pollution prevention plan shall include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels.

(2) Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel for the purpose of providing a non-erosive velocity flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g. no significant changes in the hydrological regime of the receiving water). Equalization of the predevelopment and post-development storm water peak discharge rate and volume shall be a goal in the design of the post-development storm water management system.

c. Other Controls.

(1) Waste Disposal. No solid materials, including building materials, shall be discharged to waters of the United States, except as authorized by a Section 404 permit and by a State of Florida wetland resource management permit issued pursuant to chapters 373 or 403, FS, and the applicable regulations of the FDEP or FWMD.

(2) Off-site vehicle tracking of sediments and the generation of dust shall be minimized.

(3) The plan shall ensure and demonstrate compliance with applicable State and/or local waste disposal, sanitary sewer or septic system regulations.

(4) The plan shall address the proper application rates and methods for the use of fertilizers and pesticides at the construction site and set forth how these procedures will be implemented and enforced.

d. Approved State or Local Plans.

(1) Facilities which discharge storm water associated with industrial activity from construction activities must include in their storm water pollution prevention plan procedures and requirements specified in applicable sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by

State or local officials. Permittees shall provide a certification in their storm water pollution prevention plan that their storm water pollution prevention plan reflects requirements applicable to protecting surface water resources in sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State or local officials. Permittees shall comply with any such requirements during the term of the permit. This provision does not apply to provisions of master plans, comprehensive plans, non-enforceable guidelines or technical guidance documents that are not identified in a specific plan or permit that is issued for the construction site.

(2) Storm water pollution prevention plans must be amended to reflect any change applicable to protecting surface water resources in sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State or local officials for which the permittee receives written notice. Where the permittee receives such written notice of a change, the permittee shall provide a recertification in the storm water pollution prevention plan that the storm water pollution prevention plan has been modified to address such changes.

(3) Dischargers seeking alternative permit requirements shall submit an individual permit application in accordance with Part VII.L of the permit at the address indicated in Part V.C of this permit for the appropriate Regional Office, along with a description of why requirements in approved State or local plans or permits, or changes to such plans or permits should not be applicable as a condition of an NPDES permit.

3. *Maintenance.* A description of procedures to ensure the timely maintenance of vegetation, erosion and sediment control measures and other protective measures identified in the site plan in good and effective operating conditions.

4. *Inspections.* Qualified personnel (provided by the discharger) shall inspect all points of discharge into waters of the United States or to a municipal separate storm sewer system and all disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site at least once every seven calendar days and within 24 hours of the end of a storm that is 0.25 inches or greater. Where sites have been finally stabilized, or during seasonal arid periods in arid areas (areas with an

average annual rainfall of 0-10 inches) and semi-arid areas (areas with an average annual rainfall of 10-20 inches) such inspection shall be conducted at least once every month.

a. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the storm water system. The storm water management system and erosion and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in meeting the performance standards set forth in State Water Policy (chapter 62-40, FAC) and the applicable storm water permitting regulations of the FDEP or appropriate FWMD. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.

b. Based on the results of the inspection, the site description identified in the plan in accordance with paragraph V.D.1 of this permit and pollution prevention measures identified in the plan in accordance with paragraph V.D.2 of this permit shall be revised as appropriate, but in no case later than 7 calendar days following the inspection. Such modifications shall provide for timely implementation of any changes to the plan within 7 calendar days following the inspection.

c. A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph V.D.4.b of the permit shall be made and retained as part of the storm water pollution prevention plan for at least three years from the date that the site is finally stabilized. Such reports shall identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G of this permit.

5. *Non-Storm Water Discharges—* Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A.2 of this permit that are combined with storm water discharges associated with industrial

activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

#### E. Contractors

1. The storm water pollution prevention plan must clearly identify for each measure identified in the plan, the contractor(s) and/or subcontractor(s) that will implement the measure. All contractors and subcontractors identified in the plan must sign a copy of the certification statement in Part V.E.2 of this permit in accordance with Part VII.G of this permit. All certifications must be included in the storm water pollution prevention plan.

2. *Certification Statement.* All contractors and subcontractors identified in a storm water pollution prevention plan in accordance with Part V.E.1 of this permit shall sign a copy of the following certification statement before conducting any professional service identified in the storm water pollution prevention plan:

"I certify under penalty of law that I understand the terms and conditions of the general National Pollutant Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification."

The certification must include the name and title of the person providing the signature in accordance with Part VII.G of this permit; the name, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

#### Part VI. Retention of Records

A. The permittee shall retain copies of storm water pollution prevention plans and all reports required by this permit, and records of all data used to complete the Notice of Intent to be covered by this permit, for a period of at least three years from the date that the site is finally stabilized. This period may be extended by request of the Director at any time.

B. The permittee shall retain a copy of the storm water pollution prevention plan required by this permit at the construction site from the date of project initiation to the date of final stabilization.

C. *Addresses.* Except for the submittal of NOIs (see Part II.C of this permit), all written correspondence directed to the U.S. Environmental Protection Agency concerning discharges in any State, Indian land or from any Federal Facility covered under this permit, including the

submittal of individual permit applications, shall be sent to the address listed below: U.S. EPA, Region 4, Water Management Division, Storm Water Staff, Atlanta Federal Center, 61 Forsyth St., SW, Atlanta, GA 30303.

#### Part VII. Standard Permit Conditions

##### A. Duty to Comply

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

##### 2. Penalties for Violations of Permit Conditions.

a. *Criminal.* (1) *Negligent Violations.* The CWA provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(2) *Knowing Violations.* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 year, or both.

(3) *Knowing Endangerment.* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than \$250,000, or by imprisonment for not more than 15 year, or both.

(4) *False Statement.* The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than 2 years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$20,000 per day of violation, or by imprisonment of not

more than 4 years, or by both. (See Section 309.c.4 of the Clean Water Act).

b. *Civil Penalties.*—The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed \$25,000 per day for each violation.

c. *Administrative Penalties.*—The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

(1) Class I penalty. Not to exceed \$10,000 per violation nor shall the maximum amount exceed \$25,000.

(2) Class II penalty. Not to exceed \$10,000 per day for each day during which the violation continues nor shall the maximum amount exceed \$125,000.

##### B. Continuation of the Expired General Permit

This permit expires at midnight on October 1, 2002. However, an expired general permit continues in force and effect until a new general permit or an individual permit is issued. Permittees must submit a new NOI in accordance with the requirements of Part II of this permit, using an NOI form provided by the Director (or photocopy thereof) between August 1, 2002 and October 1, 2002 to remain covered under the continued permit after October 1, 2002. Facilities that have not obtain coverage under the permit by October 1, 2002 cannot become authorized to discharge under the continued permit.

##### C. 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.

##### D. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

##### E. Duty to Provide Information

The permittee shall furnish within a reasonable time to the Director; an authorized representative of the Director; a State or local agency approving sediment and erosion plans, grading plans, or storm water management plans; or in the case of a storm water discharge associated with

industrial activity which discharges through a municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system, any information which is requested to determine compliance with this permit or other information.

#### F. Other Information

When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, he or she shall promptly submit such facts or information.

#### G. Signatory Requirements

All Notices of Intent, storm water pollution prevention plans, reports, certifications or information either submitted to the Director or the operator of a large or medium municipal separate storm sewer system, or that this permit requires be maintained by the permittee, shall be signed as follows:

1. All Notices of Intent shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (1) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000 (in second-quarter 1980 dollars) if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

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

a. The authorization is made in writing by a person described above and submitted to the Director.

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

c. Changes to authorization. If an authorization under paragraph II.B.3. is no longer accurate because a different operator has responsibility for the overall operation of the construction site, a new notice of intent satisfying the requirements of paragraph II.B. must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

d. Certification. Any person signing documents under paragraph VI.G 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 gathered and evaluated 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."

#### H. Penalties for Falsification of Reports

Section 309(c)(4) of the Clean Water Act provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or by both.

#### I. Penalties for Falsification of Monitoring Systems

The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years,

or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

#### J. 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 CWA or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

#### K. 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 nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

#### L. 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.

#### M. Transfers

Coverage under this permit is not transferable to any person except after notice to the Director. The Director may require termination of permit coverage by the current permittee in accordance with Part IX of this permit; and the subsequent submission of a Notice of Intent to receive coverage under the permit by the new applicant in accordance with Part II of this permit.

#### N. Requiring an Individual Permit or an Alternative General Permit

1. The Director may require any person authorized by this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the Director to take action under this paragraph. Where the Director requires a discharger authorized to discharge under this permit to apply for an individual NPDES permit, the Director shall notify the discharger in writing that a permit application is required. This notification shall include a brief statement of the reasons for this decision, an application form, a

statement setting a deadline for the discharger to file the application, and a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. Applications shall be submitted to the appropriate Regional Office indicated in Part V.C of this permit. The Director may grant additional time to submit the application upon request of the applicant. If a discharger fails to submit in a timely manner an individual NPDES permit application as required by the Director under this paragraph, then the applicability of this permit to the individual NPDES permittee is automatically terminated at the end of the day specified by the Director for application submittal.

2. Any discharger authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. In such cases, the permittee shall submit an individual application in accordance with the requirements of 40 CFR 122.26(c)(1)(ii), with reasons supporting the request, to the Director at the address for the appropriate Regional Office indicated in Part V.C of this permit. The request may be granted by issuance of any individual permit or an alternative general permit if the reasons cited by the permittee are adequate to support the request.

3. When an individual NPDES permit is issued to a discharger otherwise subject to this permit, or the discharger is authorized to discharge under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Director.

#### O. State/Environmental Laws

1. 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 established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

2. No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

#### P. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

#### Q. Inspection and Entry

The permittee shall allow the Director or an authorized representative of EPA, the State, or, in the case of a construction site which discharges through a municipal separate storm sewer, an authorized representative of the municipal operator or the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;
2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment); and
4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA, any substances or parameter at any location on the site.

#### R. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. 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.

#### S. Planned Changes

The permittee shall amend the pollution prevention plan as soon as

possible identifying any planned physical alterations or additions to the permitted facility.

#### T. Twenty-Four Hour Reporting

(1) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause: the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

#### U. Bypass

##### (1) Definitions.

- (i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
- (ii) Severe property damage means substantial physical damage to property 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.

##### (2) 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 the provisions of paragraphs S(3) and S(4).

##### (3) Notice.

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

(ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph R. of this section (24-hour notice).

##### (4) Prohibition of bypass.

- (i) Bypass is prohibited, and the Director 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 judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) the permittee submitted notices as required under paragraph S(3) of this section.

(ii) The Director may approve an anticipated bypass after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph S(4)(i) of this section.

#### Part VIII. Reopener Clause

A. If there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with industrial activity covered by this permit, the discharger may be required to obtain individual permit or an alternative general permit in accordance with Part I.C of this permit or the permit may be modified to include different limitations and/or requirements.

B. Permit modification or revocation will be conducted according to 40 CFR 122.62, 122.63, 122.64 and 124.5.

C. This permit may be modified, or alternatively, revoked and reissued, to comply with any applicable provisions of the Phase II storm water regulations once they are issued.

#### Part IX. Termination of Coverage

##### A. Notice of Termination

Where a site has been finally stabilized and all storm water discharges from construction sites that are authorized by this permit are eliminated (see Part IX.A.5. for the definition of eliminated), or where the operator of all storm water discharges at a facility changes, the operator of the facility may submit a Notice of Termination that is signed in accordance with Part VII.G of this permit. The Notice of Termination shall include the following information:

1. The mailing address, and location of the construction site for which the notification is submitted. Where a mailing address for the site is not available, the location can be described in terms of the latitude and longitude of the approximate center of the facility to the nearest 15 seconds, or the section, township and range to the nearest quarter section;

2. The name, address, and telephone number of the operator seeking termination of permit coverage;

3. The NPDES permit number for the storm water discharge identified by this Notice of Termination;

4. An identification of whether the storm water discharges associated with industrial activity have been eliminated or the operator of the discharges has changed; and

5. The following certification signed in accordance with Part VII.G (signatory requirements) of this permit:

"I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by a NPDES general permit have otherwise been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water associated with industrial activity by the general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this notice of termination does not release an operator from liability for any violations of this permit or the Clean Water Act."

For the purposes of this certification, elimination of storm water discharges associated with industrial activity means that all disturbed soils at the identified facility have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, or that all storm water discharges associated with construction activities from the identified site that are authorized by a NPDES general permit have otherwise been eliminated.

B. All Notices of Termination are to be sent, using the form provided by the Director (or a photocopy thereof)<sup>3</sup>, to the following address: Storm Water Notice of Termination, Surface Water Permits & Facilities Branch, 100 Alabama St., SW, Atlanta, GA 30303.

##### C. Additional Notification

A copy of the Notice of Termination shall be sent to the State agency which issued the State storm water permit for the site and, if the storm water management system discharges to a municipal separate storm sewer system within Broward, Dade, Duval, Escambia, Hillsborough, Lee, Leon, Manatee, Orange, Palm Beach, Pasco, Pinellas, Polk, Sarasota or Seminole Counties, to the owner of that system. Included

<sup>3</sup> A copy of the approved NOT form is provided in Appendix A of this notice.

within these counties, the Florida Department of Transportation (FDOT), incorporated municipalities, and chapter 298 Special Districts also shall be notified where they own or operate a municipal separate storm sewer system receiving storm water discharges associated with construction activity covered by this permit.

#### Part X. Definitions

**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.

**Commencement of Construction**—The initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

**CWA** means Clean Water Act or the Federal Water Pollution Control Act

**Dedicated portable asphalt plant**—A portable asphalt plant that is located on or contiguous to a construction site and that provides asphalt only to the construction site that the plant is located on or adjacent to. The term dedicated portable asphalt plant does not include facilities that are subject to the asphalt emulsion effluent limitation guideline at 40 CFR 443.

**Dedicated portable concrete plant**—A portable concrete plant that is located on or contiguous to a construction site and that provides concrete only to the construction site that the plant is located on or adjacent to.

**Director** means the Regional Administrator of the Environmental Protection Agency or an authorized representative.

**Final Stabilization** means that all soil disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures has been established or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

**Flow-weighted composite sample** means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

**Large and Medium municipal separate storm sewer system** means all

municipal separate storm sewers that are either: (i) located in an incorporated place (city) with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census (these cities are listed in Appendices F and G of 40 CFR Part 122); or (ii) located in the counties with unincorporated urbanized populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties (these counties are listed in Appendices H and I of 40 CFR Part 122); or (iii) owned or operated by a municipality other than those described in paragraph (i) or (ii) and that are designated by the Director as part of the large or medium municipal separate storm sewer system.

*NOI* means notice of intent to be covered by this permit (see Part II of this permit.)

*NOT* means notice of termination (see Part IX of this permit).

*Point Source* means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

*Runoff coefficient* means the fraction of total rainfall that will appear at the conveyance as runoff.

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

*Storm Water Associated with Industrial Activity* means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program. For the categories of industries identified in paragraphs (i) through (x) of this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; 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; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping

and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in paragraph (xi) of this definition, the term includes only storm water discharges from all areas (except access roads and rail lines) listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the: storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. 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) of this definition) 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 storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) of this definition);

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 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 no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990)

and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator;

(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 scrapyards, 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 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (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 a 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, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-25, (and which are not otherwise included within categories (i)-(x)).<sup>4</sup>

*Waters of the United States* means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands";

(c) All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;

(f) The territorial sea; and

(g) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to

meet the requirements of CWA are not waters of the United States.

**Robert F. McGhee,**

*Director, Water Management Division.*

**Draft NPDES Permits for Storm Water Discharges from Construction Activities that are Classified as "Associated with Industrial Activity"; Fact Sheet**

**DATES:** These general permits shall be effective on April 16, 1997. Deadlines for submittal of Notices of Intent to be authorized to discharge under these permits are as follows:

(1) On or before October 1, 1992, for storm water discharges associated with industrial activity from construction sites where disturbances associated with a construction project occur on or before October 1, 1992, and final stabilization is completed after October 1, 1992;

(2) For storm water discharges associated with industrial activity from construction sites where disturbances associated with a construction project do not occur until after October 1, 1992, at least 2 days prior to the commencement of construction; and

(3) For storm water discharges associated with industrial activity from construction sites where the original permittee at the site changes or an additional operator submits an NOI for coverage as a copermittee, a new NOI shall be submitted at least 2 days prior to when the new operator commences work at the site.

The final general permits provide additional dates for compliance with the terms of the permit.

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*I. Introduction*

In 1972, the Federal Water Pollution Control Act (also referred to as the Clean Water Act (CWA)) was amended to provide that the discharge of any pollutants to waters of the United States from any point source is unlawful, except if the discharge is in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. In 1987, § 402(p) was added to the CWA to establish a comprehensive framework for addressing storm water discharges under the NPDES program. Section 402(p)(4) of the CWA clarifies the requirements for EPA to issue NPDES

permits for storm water discharges associated with industrial activity. On November 16, 1990 (55 FR 47990), EPA published final regulations which define the term "storm water discharge associated with industrial activity".

In 1992, EPA issued a general permit for discharges of storm water from construction activities "associated with industrial activity" to reduce the administrative burden of issuing an individual NPDES permit to each construction activity.

*II. Coverage of General Permits*

Section 402(p) of the Clean Water Act (CWA) clarifies that storm water discharges associated with industrial activity to waters of the United States must be authorized by an NPDES permit. On November 16, 1990, EPA published regulations under the NPDES program which defined the term "storm water discharge associated with industrial activity" to include storm water discharges from construction activities (including clearing, grading, and excavation activities) that result in the disturbance of five or more acres of total land area, including areas that are part of a larger common plan of development or sale (40 CFR 122.26(b)(14)(x)).<sup>5</sup> The term "storm water discharge from construction activities" will be used in this document to refer to storm water discharges from construction sites that meet the definition of a storm water discharge associated with industrial activity.

This draft general permit may authorize storm water discharges from existing construction sites (facilities where construction activities began before October 1, 1997, and final stabilization is to occur after October 1, 1997) and new construction sites. New construction sites are those facilities where disturbances associated with construction activities commence after October 1, 1997. To obtain authorization under today's permits, a discharger must submit a complete NOI and comply with the terms of the permit. The terms of the permit, including the requirements for submitting an NOI, are discussed in more detail below.

The following discharges are not authorized by these final general permits:

- Storm water discharges associated with industrial activity that originate

<sup>4</sup> On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exclusion for manufacturing facilities in category (xi) which do not have materials or activities exposed to storm water to the EPA for further rulemaking. (Nos. 90-70671 and 91-70200).

<sup>5</sup> On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exemption for construction sites of less than five acres to the EPA for further rulemaking (*Natural Resources Defense Council v. EPA*, Nos. 90-70671 and 91-70200, slip op. at 6217 (9th Cir. June 4, 1992).

from the site after construction activities have been completed and the site has undergone final stabilization;

- Non-storm water discharges (except certain non-storm water discharges specifically listed in today's general permits). However, today's permits can authorize storm water discharges from construction activities where such discharges are mixed with non-storm water discharges that are authorized by a different NPDES permit;

- Storm water discharges from construction sites that are covered by an existing NPDES individual or general permit. However, storm water discharges associated with industrial activity from a construction site that are authorized by an existing permit may be authorized by today's general permit after the existing permit expires, provided the expired permit did not establish numeric limitations for such discharges;

- Storm water discharges from construction sites that the Director has determined to be or may reasonably be expected to be contributing to a violation of a water quality standard; and

- Storm water discharges from construction sites if the discharges are likely to adversely affect a listed endangered or threatened species or a species that is proposed to be listed as endangered or threatened or its critical habitat.

### III. Summary of Options for Controlling Pollutants

Most controls for construction activities can be categorized into two groups: 1) sediment and erosion controls; and 2) storm water management measures. Sediment and erosion controls generally address pollutants in storm water generated from the site during the time when construction activities are occurring. Storm water management measures generally are installed during and before completion of the construction process, but primarily result in reductions of pollutants in storm water discharged from the site after the construction has been completed. Additional measures include housekeeping best management practices.

#### A. Sediment and Erosion Controls.

Erosion controls provide the first line of defense in preventing offsite sediment movement and are designed to prevent erosion through protection and preservation of soils. Sediment controls are designed to remove sediment from runoff before the runoff is discharged from the site. Sediment and erosion controls can be further divided into two

major classes of controls: stabilization practices and structural practices. Major types of sediment and erosion practices are summarized below. A more complete description of these practices is given in "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices", U.S. EPA, 1992.

1. *Sediment and Erosion Controls: Stabilization Practices.* Stabilization, as discussed here, refers to covering or maintaining an existing cover over soils. The cover may be vegetation, such as grass, trees, vines, or shrubs. Stabilization measures can also include nonvegetative controls such as geotextiles, riprap, or gabions (wire mesh boxes filled with rock). Mulches, such as straw or bark, are most effective when used in conjunction with establishing vegetation, but can be used without vegetation. Stabilization of exposed and denuded soils is one of the most important factors in minimizing erosion while construction activities occur. A vegetation cover reduces the erosion potential of a site by absorbing the kinetic energy of raindrops that would otherwise disturb unprotected soil; intercepting water so that it infiltrates into the ground instead of running off the surface; and slowing the velocity of runoff, thereby promoting deposition of sediment in the runoff. Stabilization measures are often the most important measures taken to prevent offsite sediment movement and can provide large reductions suspended sediment levels in discharges and receiving waters.<sup>6</sup> Examples of stabilization measures are summarized below.

a. *Temporary Seeding.* Temporary seeding provides for temporary stabilization by establishing vegetation at areas of the site where activities will temporarily cease until later in the construction project. Without temporary stabilization, soils at these areas are exposed to precipitation for an extended time period, even though work is not occurring on these areas. Temporary seeding practices have been found to be up to 95 percent effective in reducing erosion.<sup>7</sup>

b. *Permanent Seeding.* Permanent seeding involves establishing a sustainable ground cover at a site. Permanent seeding stabilizes the soil to reduce sediment in runoff from the site by controlling erosion and is typically

<sup>6</sup> "Performance of Current Sediment Control Measures at Maryland Construction Sites", January 1990, Metropolitan Washington Council of Governments.

<sup>7</sup> "Guides for Erosion and Sediment Control in California," USDA, Soil Conservation Service, Davis CA, Revised 1985.

required at most sites for aesthetic reasons.

c. *Mulching.* Mulching is typically conducted as part of permanent and temporary seeding practices. Where temporary and permanent seeding is not feasible, exposed soils can be stabilized by applying plant residues or other suitable materials to the soil surface. Although generally not as effective as seeding practices, mulching by itself, does provide some erosion control. Mulching in conjunction with seeding provides erosion protection prior to the onset of vegetation growth. In addition, mulching protects seeding activities, providing a higher likelihood of successful establishment of vegetation. To maintain optimum effectiveness, mulches must be anchored to resist wind displacement.

d. *Sod Stabilization.* Sod stabilization involves establishing long-term stands of grass with sod on exposed surfaces. When installed and maintained properly, sodding can be more than 99 percent effective in reducing erosion<sup>8</sup>, making it the most effective vegetation practice available. The cost of sod stabilization (relative to other vegetative controls) typically limits its use to exposed soils where a quick vegetative cover is desired and sites which can be maintained with ground equipment. In addition, sod is sensitive to climate and may require intensive watering and fertilization.

e. *Vegetative Buffer Strips.* Vegetative buffer strips are preserved or planted strips of vegetation at the top and bottom of a slope, outlining property boundaries, or adjacent to receiving waters such as streams or wetlands. Vegetative buffer strips can slow runoff flows at critical areas, decreasing erosion and allowing sediment deposition.

f. *Protection of Trees.* This practice involves preserving and protecting selected trees that exist on the site prior to development. Mature trees provide extensive canopy and root systems which help to hold soil in place. Shade trees also keep soil from drying rapidly and becoming susceptible to erosion. Measures taken to protect trees can vary significantly, from simple measures such as installing tree fencing around the drip line and installing tree armoring, to more complex measures such as building retaining walls and tree wells.

2. *Sediment and Erosion Controls: Structural Practices.* Structural practices involve the installation of devices to

<sup>8</sup> "Guides for Erosion and Sediment Control in California", USDA—Soil Conservation Service, Davis CA, Revised 1985.

divert flow, store flow, or limit runoff. Structural practices have several objectives. First, structural practices can be designed to prevent water from crossing disturbed areas where sediment may be removed. This involves diverting runoff from undisturbed upslope areas through use of earth dikes, temporary swales, perimeter dike/swales, or diversions to stable areas. A second objective of structural practices can be to remove sediment from site runoff before the runoff leaves the site. Approaches to removing sediment from site runoff include diverting flows to a trapping or storage device or filtering diffuse flow through silt fences before it leaves the site. All structural practices require proper maintenance (removal of sediment) to remain functional.

a. Earth Dike. Earth dikes are temporary berms or ridges of compacted soil that channel water to a desired location. Earth dikes should be stabilized with vegetation.

b. Silt Fence. Silt fences are a barrier of geotextile fabric (filter cloth) used to intercept sediment in diffuse runoff. They must be carefully maintained to ensure structural stability and to remove excess sediment.

c. Drainage Swales. A drainage swale is a drainage channel lined with grass, riprap, asphalt, concrete, or other materials. Drainage swales are installed to convey runoff without causing erosion.

d. Sediment Traps. Sediment traps can be installed in a drainage way, at a storm drain inlet, or other points of discharge from a disturbed area.

e. Check Dams. Check dams are small temporary dams constructed across a swale or drainage ditch to reduce the velocity of runoff flows, thereby reducing erosion of the swale or ditch. Check dams should not be used in a live stream. Check dams reduce the need for more stringent erosion control practices in the swale due to the decreased velocity and energy of runoff.

f. Level Spreader. Level spreaders are outlets for dikes and diversions consisting of an excavated depression constructed at zero grade across a slope. Level spreaders convert concentrated runoff into diffuse runoff and release it onto areas stabilized by existing vegetation.

g. Subsurface Drain. Subsurface drains transport water to an area where the water can be managed effectively. Drains can be made of tile, pipe, or tubing.

h. Pipe Slope Drain. A pipe slope drain is a temporary structure placed from the top of a slope to the bottom of

a slope to convey surface runoff down slopes without causing erosion.

i. Temporary Storm Drain Diversion. Temporary storm drain diversions are used to re-direct flow in a storm drain to discharge into a sediment trapping device.

j. Storm Drain Inlet Protection. Storm drain inlet protection can be provided by a sediment filter or an excavated impounding area around a storm drain inlet. These devices prevent sediment from entering storm drainage systems prior to permanent stabilization of the disturbed area.

k. Rock Outlet Protection. Rock protection placed at the outlet end of culverts or channels can reduce the depth, velocity, and energy of water so that the flow will not erode the receiving downstream reach.

l. Other Controls. Other controls include temporary sediment basins, sump pits, entrance stabilization measures, waterway crossings, and wind breaks.

#### B. Storm Water Management Measures.

Storm water management measures are installed during and prior to completion of the construction process, but primarily result in reductions of pollutants in storm water discharged from the site after the construction has been completed. Construction activities often result in significant changes in land use. Such changes typically involve an increase in the overall imperviousness of the site, which can result in dramatic changes to the runoff patterns of a site. As the amount within a drainage area increases, the amount of pollutants carried by the runoff increases. In addition, activities such as automobile travel on roads can result in higher pollutant concentrations in runoff compared to preconstruction levels. Traditional storm water management controls attempt to limit the increases in the amount of runoff and the amount of pollutants discharged from a site associated with the change in land use.

Major classes of storm water management measures include infiltration of runoff onsite; flow attenuation by vegetation or natural depressions; outfall velocity dissipation devices; storm water retention structures and artificial wetlands; and storm water detention structures. For many sites, a combination of these controls may be appropriate. A summary of storm water management controls is provided below. A more complete description of storm water management controls is found in "Storm Water Management for Construction Activities: Developing

Pollution Prevention Plans and Best Management Practices", U.S. EPA, 1992, and "A Current Assessment of Urban Best Management Practices" Metropolitan Washington Council of Governments, March 1992.

1. *Onsite Infiltration*. A variety of infiltration technologies, including infiltration trenches and infiltration basins, can reduce the volume and pollutant loadings of storm water discharges from a site. Infiltration devices tend to mitigate changes to predevelopment hydrologic conditions. Properly designed and installed infiltration devices can reduce peak discharges, provide ground water recharge, augment low flow conditions of receiving streams, reduce storm water discharge volumes and pollutant loads, and protect downstream channels from erosion. Infiltration devices are a feasible option where soils are permeable and the water table and bedrock are well below the surface. Infiltration basins can also be used as sediment basins during construction.<sup>9</sup> Infiltration trenches can be more easily placed into under-utilized areas of a development and can be used for small sites and infill developments. However, trenches may require regular maintenance to prevent clogs, particularly where grass inlets or other pollutant removing inlets are not used. In some situations, such as low density areas of parking lots, porous pavement can provide for infiltration.

2. *Flow Attenuation by Vegetation or Natural Depressions*. Flow attenuation provided by vegetation or natural depressions can provide pollutant removal and infiltration and can lower the erosive potential of flows.<sup>10</sup> In addition, these practices can enhance habitat values and the appearance of a site. Vegetative flow attenuation devices include grass swales and filter strips as well as trees that are either preserved or planted during construction.

Typically the costs of vegetative controls are less than other storm water practices. The use of check dams incorporated into flow paths can provide additional infiltration and flow attenuation.<sup>11</sup> Given the limited capacity to accept large volumes of runoff, and potential erosion problems associated with large concentrated flows, vegetative controls should

<sup>9</sup> "Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs", July, 1987, Metropolitan Washington Council of Governments.

<sup>10</sup> "Urban Targeting and BMP Selection", United States EPA, Region V, November 1990.

<sup>11</sup> "Standards and Specifications for Infiltration Practices", 1984, Maryland Water Resources Administration.

usually be used in combination with other storm water devices.

Grass swales are typically used in areas such as low or medium density residential development and highway medians as an alternative to curb and gutter drainage systems.<sup>12</sup>

**3. Outfall Velocity Dissipation Devices.** Outfall velocity dissipation devices include riprap and stone or concrete flow spreaders. Outfall velocity dissipation devices slow the flow of water discharged from a site to lessen erosion caused by the discharge.

**4. Retention Structures/Artificial Wetlands.** Retention structures include ponds and artificial wetlands that are designed to maintain a permanent pool of water. Properly installed and maintained retention structures (also known as wet ponds) and artificial wetlands<sup>13</sup> can achieve a high removal rate of sediment, BOD, organic nutrients and metals, and are most cost-effective when used to control runoff from larger, intensively developed sites.<sup>14</sup> These devices rely on settling and biological processes to remove pollutants. Retention ponds and artificial wetlands can also create wildlife habitat, recreation, and landscape amenities, as well as corresponding higher property values.

**5. Water Quality Detention Structures.** Storm water detention structures include extended detention ponds, which control the rate at which the pond drains after a storm event. Extended detention ponds are usually designed to completely drain in about 24 to 40 hours, and will remain dry at other times. They can provide pollutant removal efficiencies that are similar to those of retention ponds.<sup>15</sup> Extended detention systems are typically designed to provide both water quality and water quantity (flood control) benefits.<sup>16</sup>

#### C. Housekeeping BMPs

Pollutants that may enter storm water from construction sites because of poor housekeeping include oils, grease, paints, gasoline, concrete truck washdown, raw materials used in the

manufacture of concrete (e.g., sand, aggregate, and cement), solvents, litter, debris, and sanitary wastes. Construction site management plans can address the following to prevent the discharge of these pollutants:

- Designate areas for equipment maintenance and repair;
- Provide waste receptacles at convenient locations and provide regular collection of wastes;
- Locate equipment washdown areas on site, and provide appropriate control of washwaters;
- Provide protected storage areas for chemicals, paints, solvents, fertilizers, and other potentially toxic materials; and
- Provide adequately maintained sanitary facilities.

#### IV. Summary of Permit Conditions

These general permits contain Notice of Intent requirements, a prohibition on discharging sources of non-storm water, requirements for releases of hazardous substances or oil in excess of reporting quantities, requirements for developing and implementing storm water pollution prevention plans, and requirements for site inspections.

##### A. Notice of Intent Requirements

NPDES general permits for storm water discharges associated with industrial activity require that dischargers submit a Notice of Intent (NOI) to be covered by the permit prior to the authorization of their discharges under such permit (see 40 CFR 122.28(b)(2)). Consistent with these regulatory requirements, today's draft permit proposes NOI requirements. These requirements are consistent with the previously issued general permit. Dischargers that submit a complete NOI are not required to submit an individual permit application for such discharge, unless the Director specifically notifies the discharger that an individual permit application must be submitted.

Dischargers who want to obtain coverage under these permits must submit NOIs using the form provided by EPA (or a photocopy thereof). The NOI form is provided in Appendix A of this notice and can be photocopied for use in submittals. NOI forms are also available from the EPA Region 4 Office (see the ADDRESSES section of today's notice). Completed NOI forms must be submitted to the following address: Storm Water Notices of Intent(4203), 401 M Street, S.W., Washington, DC 20460

Dischargers operating under approved State or local sediment and erosion plans, grading plans, or storm water management plans, must, in addition to filing copies of the NOI with EPA, submit signed copies of the NOI to the

State or local agency approving such plans by the deadlines stated below.

##### 1. Deadlines for Submitting NOIs

Deadlines for submittal of NOIs to be authorized to discharge under these permits are as follows:

- On or before October 1, 1997, for storm water discharges from construction sites where disturbances associated with a construction project occur on or before October 1, 1997, and final stabilization<sup>17</sup> is completed at the site after October 1, 1997;
  - At least 2 days prior to the commencement of construction activities (e.g., the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities), where such activities commence after October 1, 1997; and
  - For storm water discharges from construction sites where the operator changes, (including projects where an operator is selected after an NOI has been submitted), an NOI shall be submitted at least 2 days prior to when the operator commences work at the site.

EPA will accept an NOI at a later date. However, in such instances, EPA may bring appropriate enforcement actions.

**2. Authorization.** Dischargers who submit a complete NOI in accordance with the requirements of these permits are authorized to discharge storm water from construction sites under the terms and conditions of this permit 2 days after the date that the NOI is postmarked, unless notified by EPA.

EPA may deny coverage under this permit and require submittal of an individual NPDES permit application based on a review of the completeness and/or content of the NOI or other information (e.g., water quality information, compliance history, etc.). Where EPA requires a discharger authorized under the general permit to apply for an individual NPDES permit or an alternative general permit, EPA will notify the discharger in writing that a permit application is required. Coverage under this general permit will automatically terminate if the discharger fails to submit the required permit application in a timely manner. Where the discharger does submit a requested permit application, coverage under this general permit will automatically terminate on the effective date of the issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee.

**3. Contents of the NOI.** A photocopy of the NOI in Appendix A of today's notice may be completed and submitted

<sup>12</sup> "Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs", Metropolitan Washington Council of Governments, July 1987.

<sup>13</sup> See "Wetland basins for Storm Water Treatment: Discussion and Background", Maryland Sediment and Storm water Division, 1987 and "The Value of Wetlands for Non-point Source Control—Literature Summary", Strecker, E., et al., 1990.

<sup>14</sup> "Controlling Urban Runoff, A Practical Manual for Planning and Designing Urban BMPs", Metropolitan Washington Council of Governments, 1987.

<sup>15</sup> "Urban Targeting and BMP Selection", United States EPA, Region V, November 1990.

<sup>16</sup> "Urban Surface Water Management", Walesh, S.G., Wiley, 1989.

<sup>17</sup> The term "final stabilization" is defined in today's permits and is discussed in more detail in the Notice of Termination section of today's fact sheet.

to EPA's central address to obtain authorization to discharge under today's permits. The NOI form requires the following information:

- The mailing address of the construction site for which the notification is submitted. Where a mailing address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township, and range to the nearest quarter;

- The site owner's name, address, and telephone number;
- The name, address, and telephone number of the operator(s) with day-to-day operational control who have been identified at the time of the NOI submittal, and their status as a Federal, State, private, public, or other entity. Where multiple operators have been selected at the time of the initial NOI submittal, NOIs must be attached and submitted in the same envelope. When an additional operator submits an NOI for a site with a preexisting NPDES permit, the NOI of the additional operator must indicate the preexisting NPDES permit number for discharge(s) from the site;

- The name of the receiving water(s), or if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water(s);

- The permit number of any NPDES permit(s) for any other discharge(s) (including any other storm water discharges or any non-storm water discharges) from the site;

- An indication of whether the operator has existing sampling data that describe the concentration of pollutants in storm water discharges. Existing data should not be included as part of the NOI and should not be submitted unless and until requested by EPA; and

- An estimate of project start date and completion dates, estimates of the number of acres of the site on which soil will be disturbed, and a certification that a storm water pollution prevention plan has been prepared for the site in accordance with the permit and that such plan complies with approved State and/or local sediment and erosion plans or permits and/or storm water management plans or permits. A copy of the plans or permits should not be included with the NOI submission, and should not be submitted unless and until requested by EPA.

The NOI must be signed in accordance with the signatory requirements of 40 CFR 122.22. A complete description of these signatory requirements is provided in the instructions accompanying the NOI (see Appendix A).

**4. Additional Notification.** In addition to submitting the NOI to EPA, facilities operating under approved State or local sediment and erosion plans, grading plans, or storm water management plans are required to submit signed copies of the NOI to the State or local agency approving such plans by the deadlines

stated above. Failure to do so constitutes a violation of the permit.

## B. Special Conditions

**1. Prohibition on Non-Storm Water Discharges.** Today's draft permit do not authorize non-storm water discharges that are mixed with storm water except for specific classes of non-storm water discharges specified in the permits. Non-storm water discharges that can be authorized under today's draft permit include discharges from firefighting activities; fire hydrant flushings; waters used to wash vehicles or control dust in accordance with permit requirements; potable water sources including waterline flushings; irrigation drainage; routine external building washdown that does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; and foundation or footing drains where flows are not contaminated with process materials such as solvents.<sup>18</sup>

To be authorized under the final issued permit, sources of non-storm water (except flows from firefighting activities) must be specifically identified in the storm water pollution prevention plan prepared for the facility. (Plan requirements are discussed in more detail below). Where such discharges occur, the plan must also identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water components of the discharge. For example, to reduce pollutants in irrigation drainage, a plan could identify low maintenance lawn areas that do not require the use of fertilizers or biocides; for higher maintenance lawn areas, a plan could identify measures such as limiting fertilizer use based on seasonal and agronomic considerations, decreasing biocide use with an integrated pest management program, introducing natural vegetation or more hearty species, and reducing water use (thereby reducing the volume of irrigation drainage).

This permit will not require pollution prevention measures to be identified and implemented for non-storm water flows from firefighting activities since these flows will usually occur as unplanned emergency situations where it is necessary to take immediate action to protect the public.

<sup>18</sup> These discharges are consistent with the allowable classes of non-storm water discharges to municipal separate storm sewer systems (40 CFR 122.26(d)(iv)(D)).

The general prohibition on non-storm water discharges in today's draft permit ensures that non-storm water discharges (except for those classes of non-storm water discharges that are conditionally authorized) are not inadvertently authorized by these permits. Where a storm water discharge is mixed with process wastewaters or other sources of non-storm water prior to discharge, and the discharge is currently not authorized by an NPDES permit, the discharge cannot be covered by today's permits and the discharger should (1) submit the appropriate application forms (Forms 1 and 2C) to obtain permit coverage or (2) discontinue the discharge.

**2. Releases of Reportable Quantities of Hazardous Substances and Oil.** Today's draft permit provides that the discharge of hazardous substances or oil from a facility must be eliminated or minimized in accordance with the storm water pollution plan developed for the facility. Where a permitted storm water discharge contains a hazardous substance or oil in an amount equal to or in excess of a reporting quantity established under 40 CFR 110, 40 CFR 117, or 40 CFR 302, during a 24-hour period, today's permits require the following actions:

- The permittee must notify the National Response Center (NRC) (800-424-8802; in the Washington, D.C. metropolitan area 202-426-2675) in accordance with the requirements of 40 CFR 110, 40 CFR 117, and 40 CFR 302, as soon as they have knowledge of the discharge;

- The permittee must modify the storm water pollution prevention plan for the facility within 14 calendar days of knowledge of the release to provide (1) A description of the release, (2) the date of the release, and (3) the circumstances leading to the release. In addition, the permittee must modify the plan, as appropriate, to identify measures to prevent the reoccurrence of such releases and to respond to such releases.

- Within 14 calendar days of the knowledge of the release, the permittee must submit to EPA (1) A written description of the release (including the type and estimated amount of material released), (2) the date that such release occurred, (3) the circumstances leading to the release, and (4) any steps to be taken to modify the storm water pollution prevention plan for the facility.

Where a discharge of a hazardous substance or oil in excess of reporting quantities is caused by a non-storm water discharge (e.g., a spill of oil into a separate storm sewer), the spill is not authorized by this permit. The discharger must report the spill as required under 40 CFR 110. In the event of a spill, the requirements of Section 311 of the CWA and otherwise applicable provisions of Sections 301 and 402 of the CWA continue to apply.

This approach is consistent with the requirements for reporting releases of hazardous substances and oil-requirements that make a clear distinction between hazardous substances typically found in storm water discharges and those associated with spills that are not considered part of a normal storm water discharge (see 40 CFR 117.12(d)(2)(i)).

#### C. Unpaved Rural Roads

Part IV of the permit and its conditions are intended to eliminate, prevent or minimize the discharge of pollutants to waters of the U.S. from the construction of unpaved roads. EPA believes that the discharge of storm water runoff from the construction of unpaved roads could be a significant source of pollutants to waters of the United States. Therefore, the discharge of storm water from the construction of unpaved roads greater than five (5) acres is not exempt from the requirements of 40 CFR § 122.26(a)(1)(ii) and (b)(14)(x) under the Intermodal Surface Transportation Efficiency Act of 1991. This action is in accordance with § 402(p)(2)(E) of the Clean Water Act (1987, as amended). If five (5) acres equals 217,800 ft<sup>2</sup> and area equals length times width, then the approximate length of road equal to five (5) acres would be 217,800 ft<sup>2</sup> divided by the road width. For example, assuming a road construction area width of 25 feet, five (5) acres of road would be approximately 1.65 miles.

The principle component of the Part IV requirements is the construction of drainage systems, water turn-outs, in accordance with the document, *Silviculture Best Management Practices*, 1993 Florida Department of Agriculture & Consumer Services, to reduce the volume and velocity of roadside ditch flow. The construction of the drainage systems in conjunction with the final cover conditions of the road constitute final stabilization under Part IX.A. of the permit. In addition, the turn-outs should be maintained to continue eliminating, preventing and/or minimizing the discharge of pollutants to waters of the U.S. All relevant portions of the pollution prevention plan requirements of Part V of the permit shall be applied to discharges of storm water from unpaved roads.

#### D. Storm Water Pollution Prevention Plan Requirements

The pollution prevention plans required by today's draft permit focuses on two major tasks: (1) Providing a site description that identifies sources of pollution to storm water discharges associated with industrial activity from

the facility and (2) identifying and implementing appropriate measures to reduce pollutants in storm water discharges to ensure compliance with the terms and conditions of these permits.

In developing these permits, the Agency reviewed a significant number of existing State and local sediment and erosion control and storm water management requirements. State and local data were reviewed for a wide range of climates and varying types of construction activities.

#### 1. Contents of the Plan

Storm water pollution prevention plans must include a site description; a description of controls that will be used at the site (e.g., erosion and sediment controls, storm water management measures); a description of maintenance and inspection procedures; and a description of pollution prevention measures for any non-storm water discharges that exist.

a. Site Description. Storm water pollution prevention plans must be based on an accurate understanding of the pollution potential of the site. The first part of the plan requires an evaluation of the sources of pollution at a specific construction site. The plan must identify potential sources of pollution that may reasonably be expected to affect the quality of storm water discharges from the construction site. In addition, the source identification components for pollution prevention plans must provide a description of the site and the construction activities. This information is intended to provide a better understanding of site runoff and major pollutant sources. At a minimum, plans must include the following:

- A description of the nature of the construction activity. This would typically include a description of the ultimate use of the project (e.g., low-density residential, shopping mall, highway).
- A description of the intended sequence of major activities that disturb soils for major portions of the site (e.g., grubbing, excavation, grading).
- Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading, or other activities. Where the construction activity is to be staged, it may be appropriate to describe areas of the site that will be disturbed at different stages of the construction process.
- Estimates of the runoff coefficient of the site after construction activities are completed as well as existing data describing the quality of any discharge from the site or the soil. The runoff coefficient is defined as the fraction of total rainfall that will appear at the conveyance as runoff. Runoff coefficients can be estimated from site plan

maps, which provide estimates of the area of impervious structures planned for the site and estimates of areas where vegetation will be precluded or incorporated. Runoff coefficients are one tool for evaluating the volume of runoff that will occur from a site when construction is completed. These coefficients assist in evaluating pollutant loadings, potential hydraulic impacts to receiving waters, and flooding impacts. They are also used for sizing of post-construction storm water management measures.

- A site map indicating drainage patterns and approximate slopes anticipated after major grading activities, areas of soil disturbance; an outline of areas that will not be disturbed; the location of major structural and nonstructural controls identified in the plan; the location of areas where stabilization practices are expected to occur; the location of surface waters (including wetlands); and locations where storm water is discharged to a surface water. Site maps should also include other major features and potential pollutant sources, such as the location of impervious structures and the location of soil piles during the construction process.

- The name of the receiving water(s), and areal extent of wetland acreage at the site.

b. Controls to Reduce Pollutants. The storm water pollution prevention plan must describe and ensure the implementation of practices that will be used to reduce the pollutants in storm water discharges from the site and assure compliance with the terms and conditions of the permit. Permittees are required to develop a description of four classes of controls appropriate for inclusion in the facility's plan, and implement controls identified in the plan in accordance with the plan. The description of controls must address (1) Erosion and sediment controls, (2) storm water management, (3) a specified set of other controls, and (4) any applicable procedures and requirements of State and local sediment and erosion plans or storm water management plans.

The pollution prevention plan must clearly describe the intended sequence of major activities and when, in relation to the construction process, the control will be implemented. Good site planning and preservation of mature vegetation are primary control techniques for controlling sediment in storm water discharges during construction activities as well as for developing a strategy for storm water management that controls pollutants in storm water discharges after the completion of construction activities. Properly staging major earth disturbing activities can also dramatically decrease the costs of sediment and erosion controls. The description of the intended sequence of major activities will typically describe the intended staging of activities on different parts of the site.

Permittees must develop and implement four classes of controls in the pollution prevention plan, each of which is discussed below.

i. Erosion and Sediment Controls. The requirements for erosion and sediment controls for construction activities in this permit have three goals: (1) to divert upslope water around disturbed areas of the site; (2) to limit the exposure of disturbed areas to the shortest duration possible; and (3) to remove sediment from storm water before it leaves the site. Erosion and sediment controls include both stabilization practices and structural practices.

#### Performance Standards

The erosion and sediment control practices must at a minimum:

(a) remove 80% of the Settleable Solids (SS) in storm water discharges from the site to Class III waters;

(b) remove 95% of the SS in storm water discharges from the site to sensitive waters such as potable water sources (class I waters), shellfish harvesting waters (Class II waters) and outstanding Florida waters.

The performance standards, as listed in Part V of the permit, are based on the Florida Water Policy established in the document, *Florida Section 6217 Informal Threshold Review*, September 14, 1994. These performance standards are intended to preserve the beneficial use of waters and to establish a relationship between the SWPPP requirements and Florida's Water Quality Standards.

**Stabilization Practices.** Pollution prevention plans must include a description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. The plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized as quickly as possible. Stabilization practices are the first line of defense for preventing erosion; they include temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetative buffer strips, and other appropriate measures. Temporary stabilization practices are often cited as the single most important factor in reducing erosion at construction sites.<sup>19</sup>

Stabilization also involves preserving and protecting selected trees that were on the site prior to development. Mature trees have extensive canopy and root

systems, which help to hold soil in place. Shade trees also keep soil from drying rapidly and becoming susceptible to erosion. Measures taken to protect trees can vary significantly, from simple measures such as installing tree fencing around the drip line and installing tree armoring, to more complex measures such as building retaining walls and tree wells.

Since stabilization practices play such an important role in preventing erosion, it is critical that they are rapidly employed in appropriate areas. These permits provide that, except in three situations, stabilization measures be initiated on disturbed areas as soon as practicable, but no more than 14 days after construction activity on a particular portion of the site has temporarily or permanently ceased. The three exceptions to this requirement are the following:

- Where construction activities will resume on a portion of the site within 21 days from when the construction activities ceased.
- Where the initiation of stabilization measures is precluded by snow cover, in which case, stabilization measures must be initiated as soon as practicable.
- In arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid area (areas with an average annual rainfall of 10 to 20 inches), where the initiation of stabilization measures is precluded by seasonal arid conditions, in which case, stabilization measures must be initiated as soon as practicable.

**Structural Practices.** The pollution prevention plan must include a description of structural practices to the degree economically attainable, to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site. Structural controls are necessary because vegetative controls cannot be employed at areas of the site that are continually disturbed and because a finite time period is required before vegetative practices are fully effective. Options for such controls include silt fences, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, sediment traps, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural measures should be placed on upland soils to the degree possible.

For sites with more than 10 disturbed acres at one time that are served by a common drainage location, a temporary or permanent sediment basin providing 3,600 cubic feet of storage per acre

drained, or equivalent control measures (such as suitably sized dry wells or infiltration structures), must be provided where economically attainable until final stabilization of the site has been accomplished. Flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization may be diverted around both the sediment basin and the disturbed area. The requirement to provide 3,600 cubic feet of storage area per acre drained does not apply to such diverted flows.

For the drainage locations which serve more than 10 disturbed acres at one time and where a sediment basin providing storage or equivalent controls for 3,600 cubic feet per acre drained is not economically attainable, smaller sediment basins or sediment traps should be used. At a minimum, silt fences, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area. Diversion structures should be used on upland boundaries of disturbed areas to prevent runoff from entering disturbed areas.

For drainage locations serving 10 or less acres, smaller sediment basins or sediment traps should be used and at a minimum, silt fences, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area. Alternatively, the permittee may provide a sediment basin providing storage for 3,600 cubic feet of storage per acre drained. Diversion structures should be used on upland boundaries of disturbed areas to prevent runoff from entering disturbed areas.

ii. Storm Water Management. The plan must include a description of "storm water management" measures<sup>20</sup>. These permits address only the installation of storm water management measures and not the ultimate operation and maintenance of such structures after the construction activities have been completed and the site has undergone final stabilization. Permittees are responsible only for the installation and maintenance of storm water management measures prior to final stabilization of the site and are not responsible for maintenance after storm water discharges associated with construction activities have been eliminated from the site.

Land development can significantly increase storm water discharge volumes and peak velocities where appropriate

<sup>19</sup> "New York Guidelines for Urban Erosion and Sediment Control", USDA, Soil Conservation Service, March 1988.

<sup>20</sup> For the purpose of the special requirements for construction activities, the term "storm water management" measures refers to controls that will primarily reduce the discharge of pollutants in storm water from sites after completion of construction activities.

storm water management measures are not implemented. In addition, storm water discharges will typically contain higher levels of pollutants, including total suspended solids (TSS), heavy metals, nutrients, and oxygen demanding constituents<sup>21</sup>.

Storm water management measures that are installed during the construction process can control the volume of storm water discharged and peak discharge velocities, as well as reduce the amount of pollutants discharged after the construction operations have been completed. Reductions in peak discharge velocities and volumes can also reduce pollutant loads, as well as reduce physical impacts such as stream bank erosion and stream bed scour. Storm water management measures that mitigate changes to predevelopment runoff characteristics assist in protecting and maintaining the physical and biological characteristics of receiving streams and wetlands.

Structural measures should be placed on upland soils to the degree attainable. The installation of such devices may be subject to Section 404 of the CWA if the devices are placed in wetlands (or other waters of the United States).

Options for storm water management measures that are to be evaluated in the development of plans include infiltration of runoff on site; flow attenuation by use of open vegetated swales and natural depressions; storm water retention structures and storm water detention structures (including wet ponds); and sequential systems that combine several practices.

The pollution prevention plan must include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels. The explanation of the technical basis for selecting practices should address how a number of factors were evaluated, including the pollutant removal efficiencies of the measures, the costs of the measure, site specific factors that will affect the application of the measures, the economic achievability of the measure at a particular site, and other relevant factors.

EPA anticipates that storm water management measures at many sites will be able to provide for the removal of at least 80 percent of total suspended solids (TSS)<sup>22</sup>. A number of storm water

management measures can be used to achieve this level of control, including properly designed and installed wet ponds, infiltration trenches, infiltration basins, sand filter system, manmade storm water wetlands, and multiple pond systems. The pollutant removal efficiencies of various storm water management measures can be estimated from a number of sources, including "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices," U.S. EPA, 1992, and "A Current Assessment of Urban Best Management Practice," prepared for U.S. EPA by Metropolitan Washington Council of Governments, March 1992. Proper selection of a technology depends on site factors and other conditions.

In selecting storm water management measures, the permittee should consider the impacts of each method on other water resources, such as ground water. Although storm water pollution prevention plans primarily focus on storm water management, EPA encourages facilities to avoid creating ground water pollution problems. For example, if the water table is unusually high in an area or soils are especially sandy and porous, an infiltration pond may contaminate a ground water source unless special preventive measures are taken. Under EPA's July 1991 Ground Water Protection Strategy, States are encouraged to develop Comprehensive State Ground Water Protection Programs (CSGWPPs). Efforts to control storm water should be compatible with State ground water objectives as reflected in CSGWPPs.

The evaluation of whether the pollutant loadings and the hydrologic conditions (the volume of discharge) of flows exceed predevelopment levels can be based on hydrologic models which consider conditions such as the natural vegetation which is typical for the area.

Increased discharge velocities can greatly accelerate erosion near the outlet of onsite structural measures. To mitigate these effects, these permits require that velocity dissipation devices be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive velocity flow from the structure to a water course. Velocity dissipation devices maintain and protect the natural physical and biological characteristics and functions of the watercourse, e.g., hydrologic conditions, such as the hydroperiod and hydrodynamics, that were present prior to the initiation of construction activities.

iii. Other Controls. Other controls to be addressed in storm water pollution

prevention plans for construction activities require that no non-storm water solid materials, including building material wastes, shall be discharged at the site, except as authorized by a Section 404 permit.

These final permits require that offsite vehicle tracking of sediments and the generation of dust be minimized. This can be accomplished by measures such as providing gravel or paving at access entrance and exit drives, parking areas, and unpaved roads on the site carrying significant amounts of traffic (e.g., more than 25 vehicles per day); providing entrance wash racks or stations for trucks; and/or providing street sweeping.

In addition, these permits require that the plan shall ensure and demonstrate compliance with applicable State and/or local sanitary sewer, septic system, and waste disposal regulations.<sup>23</sup>

iv. State and Local Controls. Many municipalities and States have developed sediment and erosion control requirements for construction activities. A significant number of municipalities and States have also developed storm water management controls. These general permits require that storm water pollution prevention plans for facilities that discharge storm water associated with industrial activity from construction activities include procedures and requirements of State and local sediment and erosion control plans or storm water management plans. Permittees are required to provide a certification that their storm water pollution prevention plan reflects requirements related to protecting water resources that are specified in State or local sediment and erosion plans or storm water management plans.<sup>24</sup>In

<sup>23</sup> In rural and suburban areas that are served by septic systems, malfunctioning septic systems can contribute pollutants to storm water discharges. Malfunctioning septic tanks may be a more significant surface runoff pollution problem than a ground water problem. This is because a malfunctioning septic system is less likely to cause ground water contamination where a bacterial mat in the soil retards the downward movement of wastewater. Surface malfunctions are caused by clogged or impermeable soils, or when stopped up or collapsed pipes force untreated wastewater to the surface. Surface malfunctions can vary in degree from occasional damp patches on the surface to constant pooling or runoff of wastewater. These discharges have high bacteria, nitrate, and nutrient levels and can contain a variety of household chemicals. This permit does not establish new criteria for septic systems, but rather addresses existing State or local criteria.

<sup>24</sup> Operators of storm water discharges from construction activities which, based on an evaluation of site specific conditions, believe that State and local plans do not adequately represent BAT and BCT requirements for the facility may request to be excluded from the coverage of the general permit by submitting to the Director an individual application with a detailed explanation

<sup>21</sup> See "Nationwide Urban Runoff Program", EPA, 1984.

<sup>22</sup> TSS can be used as an indicator parameter to characterize the control of other pollutants, including heavy metals, oxygen demanding pollutants, and nutrients, commonly found in storm water discharges.

addition, permittees are required to amend their storm water pollution prevention plans to reflect any change in a sediment and erosion site plan or site permit or storm water management site plan or site permit approved by State or local officials for which the permittee receives written notice. Where such amendments are made, the permittee must provide a recertification that the storm water pollution prevention plan has been modified. This provision does not apply to provisions of master plans, comprehensive plans, nonenforceable guidelines, or technical guidance documents, but rather to site-specific State or local permits or plans.

#### c. Maintenance

Erosion and sediment controls can become ineffective if they are damaged or not properly maintained. Maintenance of controls has been identified as a major part of effective erosion and sediment programs. Plans must contain a description of prompt and timely maintenance and repair procedures addressing all erosion and sediment control measures (e.g., sediment basins, traps, silt fences), vegetation, and other measures identified in the site plan to ensure that such measures are kept in good and effective operating condition.

#### d. Inspections

Procedures in a plan must provide that specified areas on the site are inspected by qualified personnel provided by the discharger a minimum of once every seven calendar days and within 24 hours after any storm event of greater than 0.5 inches. Areas of the site that must be observed during such inspections include disturbed areas, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site. Where sites have been temporarily or finally stabilized, or during seasonal arid periods in arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (with an average annual rainfall of 10 to 20 inches) the inspection must be conducted at least once every month.

Disturbed areas and areas used for storage of materials that are exposed to precipitation must be inspected for evidence of, or the potential for, pollutants entering the runoff from the site. Erosion and sediment control measures identified in the plan must be observed to ensure that they are

operating correctly. Observations can be made during wet or dry weather conditions. Where discharge locations or points are accessible, they must be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. This can be done by inspecting receiving waters to see whether any signs of erosion or sediment are associated with the discharge location. Locations where vehicles enter or exit the site must be inspected for evidence of offsite sediment tracking.

Based on the results of the inspection, the site description and the pollution prevention measures identified in the plan must be revised as soon as possible after an inspection that reveals inadequacies. The inspection and plan review process must provide for timely implementation of any changes to the plan within 7 calendar days following the inspection.

An inspection report that summarizes the scope of the inspection, name(s) and qualifications of personnel conducting the inspection, the dates of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken must be retained as part of the storm water pollution prevention plan for at least three years after the date of inspection. The report must be signed in accordance with the signatory requirements in the Standard Conditions section of this draft permit.

Diligent inspections are necessary to ensure adequate implementation of onsite sediment and erosion controls, particularly in the later stages of construction when the volume of runoff is greatest and the storage capacity of the sediment basins has been reduced.<sup>25</sup>

#### e. Non-Storm Water Discharges

The final issued permit may authorize storm water discharges from construction activities that are mixed with discharges from firefighting activities, fire hydrant flushings, waters used to wash vehicles or control dust in accordance with efforts to minimize offsite sediment tracking, potable water sources including waterline flushings, irrigation drainage from watering vegetation, routine exterior building washdown that does not use detergents, pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where

detergents are not used, air conditioning condensate, springs, and foundation or footing drains where flows are not contaminated with process materials such as solvents, provided the non-storm water component of the discharge is specifically identified in the pollution prevention plan. In addition, the plan must identify and ensure the implementation of appropriate pollution prevention measures for each of the non-storm water component(s) of the discharge.<sup>26</sup>

EPA believes that where these classes of non-storm water discharges are identified in a pollution prevention plan and where appropriate pollution prevention measures are evaluated, identified, and implemented, they generally pose low risks to the environment. The Agency also notes that it can request individual permit applications for such discharges where appropriate. The Agency is not requiring that flows from fire-fighting activities be identified in plans because of the emergency nature of such discharges coupled with their low probability and the unpredictability of their occurrence.

#### 2. Deadlines for Plan Preparation and Compliance

The final issued permit will establish the following deadlines for storm water pollution prevention plan development and compliance:

- The plan must be completed prior to the submittal of an NOI to be covered under this permit and updated as appropriate.
- For construction activities that have begun on or before October 1, 1997, except the plan shall provide for compliance with the terms and schedule of the plan beginning on October 1, 1997.
- For construction activities that have begun after October 1, 1997, the plan must provide for compliance with the terms and schedule of the plan beginning with the initiation of construction activities.

#### 3. Signature and Plan Review

Signature and plan review requirements are as follows:

- The plan must be signed by all permittees for a site in accordance with the signatory requirements in the Standard Permit Conditions section of the permit, and must be retained on site at the facility that generates the storm water discharge.
- The permittee must make plans available, upon request, to EPA, and

of the reasons supporting the request, including any supporting documentation showing that certain permit conditions are not appropriate.

<sup>25</sup> "Performance of Current Sediment Control Measures at Maryland Construction Sites", January 1990, Metropolitan Washington Council of Governments.

<sup>26</sup> This is consistent with the allowable types of non-storm water discharges to municipal separate storm sewer systems (40 CFR 122.26(d)(2)(iv)(A)).

State or local agency approved sediment and erosion plans, grading plans, or storm water management plans. In the case of a storm water discharge associated with industrial activity that discharges through a municipal separate storm sewer system with an NPDES permit, permittees must make plans available to the municipal operator of the system upon request.

- EPA may notify the permittee at any time that the plan does not meet one or more of the minimum requirements. Within 7 days of such notification from EPA (or as otherwise requested by EPA), the permittee must make the required changes to the plan and submit to EPA a written certification that the requested changes have been made.

#### 4. Keeping Plans Current

The permittee must amend the plan whenever there is a change in design, construction, operation, or maintenance, that has a significant effect on the potential for the discharge of pollutants to waters of the United States or to municipal separate storm sewer systems. The plan must also be amended if it proves to be ineffective in eliminating or significantly minimizing pollutants in the storm water discharges from the construction activity. In addition, the plan shall be amended to identify any new contractor and/or subcontractor that will implement a measure of the storm water pollution prevention plan. Amendments to the plan will be reviewed by EPA as described above.

#### 5. Additional Requirements

These permits authorize a storm water discharge associated with industrial activity from a construction site that is mixed with a storm water discharge from an industrial source other than construction, only under the following conditions:

- The industrial source other than construction is located on the same site as the construction activity; and
- Storm water discharges from where the construction activities are occurring are in compliance with the terms of this permit.

#### 6. Contractors

The storm water pollution prevention plan must clearly identify for each measure identified in the plan, the contractor(s) and/or subcontractor(s) that will implement the measure. All contractors and subcontractors identified in the plan must sign a copy of the certification statement presented below before conducting any professional service at the site identified in the pollution prevention plan:

"I certify under penalty of law that I understand the terms and conditions of the general National Pollutant Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification."

All certifications must be included in the storm water pollution prevention plan.

#### E. Retention of Records

The permittee is required to retain records or copies of all reports required by this permit, including storm water pollution prevention plans and records of all data used to complete the NOI to be covered by the permit, for a period of at least three years from the date of final stabilization. This period may be extended by request of the Director.

#### F. Notice of Termination

A discharger may submit a Notice of Termination (NOT) to EPA in two sets of circumstances: 1) after a site has undergone final stabilization and the facility no longer discharges storm water associated with industrial activity from a construction site and 2) when the permittee has transferred operational control to another permittee and is no longer an operator for the site. NOTs must be submitted using the form provided by the Director (or a photocopy thereof). A copy of the NOT form is in Appendix B and can be photocopied for use. NOTs will assist EPA in tracking the status of the discharger.

Today's draft permit defines final stabilization for the purpose of submitting an NOT as occurring when all soil disturbing activities are completed and a uniform perennial vegetative cover with a density of 70 percent for the unpaved areas and areas not covered by permanent structures has been established or equivalent stabilization measures have been employed. Equivalent stabilization measures include permanent measures other than establishing vegetation, such as the use of rip-rap, gabions, and/or geotextiles.

A copy of the NOT, and instructions for completing the NOT, are provided in Appendix B of today's notice. The NOT form requires the following information:

- The mailing address of the construction site for which the notification is submitted. Where a mailing address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or

the section, township, and range to the nearest quarter.

- The site owner's name, address, and telephone number.
- The name, address, and telephone number of the operator addressed by the NOT, and operator status as a Federal, State, private, public, or other entity.
- The NPDES permit for the storm water discharge identified by the NOT.
- The following certification:

"I certify under penalty of law that disturbed soils at the identified facility have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, or that all storm water discharges associated with construction activities from the identified site that are authorized by an NPDES general permit have been eliminated or that I am no longer the operator of the construction activity. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water by the general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit."

Notices of Termination are to be sent to the following address: Storm Water Notice of Intent (4203), 401 M Street, S.W., Washington, DC 20460.

The NOT must be signed by the appropriate individual in accordance with the signatory requirements of 40 CFR 122.22. A description of these signatory requirements is provided in the instructions accompanying the NOT (see Appendix B).

Submission of a NOT, by itself, does not relieve permittees from the obligations of the permit, such as the requirement to stabilize the site. Appropriate enforcement actions may still be taken for permit violations where a permittee submits a NOT but the permittee has not transferred operational control to another permittee or the site has not undergone final stabilization.

#### G. Regional Offices

Notices of Intent to be authorized to discharge under these permits should be sent to: Storm Water Notice of Intent (4203), 401 M Street, S.W., Washington, DC 20460

Other submittals of information required under these permits or individual permit applications should be sent to the appropriate EPA Regional Office: *AL (Indian lands), FL, GA (Indian lands), KY (Indian lands), MS (Indian lands), NC (Indian lands), SC (Indian lands), TN (Indian lands)*, United States EPA, Region IV, Water Management Division, (SWPFB-15), Storm Water Staff, 100 Alabama Street,

S.W., Atlanta, GA 30303-3104, Contact: Floyd Wellborn, (404) 562-9296.

**H. Special Conditions in Specified States**

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the State in which the discharge originates certifies that the discharge will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the CWA.

**V. Cost Estimates**

The two major costs associated with pollution prevention plans for construction activities include the costs of sediment and erosion controls (see Table 1) and the costs of storm water management measures (see Table 2). Today's permits provide flexibility in developing controls for construction activities. Typically, most construction sites will employ several types of sediment and erosion controls and storm water management controls, but not all the controls listed in Tables 1 and 2. In general, sites that disturb a large area will incur higher pollution prevention costs.

**TABLE 1.—SEDIMENT AND EROSION CONTROL COSTS**

Temporary seeding ...	\$1.00 per square foot.
Permanent seeding ...	\$1.00 per square foot.
Mulching .....	\$1.25 per square foot.
Sod stabilization .....	\$4.00 per square foot.
Vegetative buffer strips.	\$1.00 per square foot.
Protection of trees .....	\$30.00 to \$200.00 per tree set.
Earth dikes .....	\$5.50 per linear foot.
Silt fences .....	\$6.00 per linear foot.
Drainage swales-grass.	\$3.00 per square yard.
Drainage swales-sod	\$4.00 per square yard.
Drainage swales-asphalt.	\$35.00 per square yard.
Drainage swales-concrete.	\$65.00 per square yard.
Check dams-rock .....	\$100 per dam.
Check dams-covered straw bales.	\$50 per dam.
Level spreader-earth-en.	\$4.00 per square yard.
Level spreader-concrete.	\$65.00 per square yard.
Subsurface drain .....	\$2.25 per linear foot.
Pipe slope drain .....	\$5.00 per linear foot.
Temporary storm drain diversion.	variable.
Storm drain inlet protection.	\$300 per inlet.

**TABLE 1.—SEDIMENT AND EROSION CONTROL COSTS—Continued**

Rock outlet protection	\$45 per square yard.
Sediment traps .....	\$500 to \$7,000 per trap.
Temporary sediment basins.	\$5,000 to \$50,000 per basin.
Sump pit .....	\$500 to \$7,000.
Entrance stabilization	\$1,500 to \$5,000 per entrance.
Entrance wash rack ..	\$2,000 per rack.
Temporary waterway crossing.	\$500 to \$1,500.
Wind breaks .....	\$2.50 per linear foot.

Practices such as sod stabilization and tree protection increase property values and satisfy consumer aesthetic needs.

Sources: "Means Site Work Cost Data", 9th edition, 1990, R.S. Means Company. "Sediment and Erosion Control, An Inventory of Current Practices", prepared by Kamber Engineering for U.S. EPA, April 1990.

**TABLE 2.—ANNUALIZED COSTS OF SEVERAL STORM WATER MANAGEMENT OPTIONS FOR CONSTRUCTION SITES**

Option	Annualized cost for 9-acre developed area	Annualized cost for 20-acre developed area
Wet Ponds	\$5,872	\$9,820.
Dry Ponds	3,240	5,907.
Dry Ponds with Extended Detention	3,110	5,413
Infiltration Trenches	4,134	6,359.

Estimates based on methodology presented in "Cost of Urban Runoff Quality Controls", Wiegand, C., Schueler, T., Chittenden, W., and Jellick, D., Urban Runoff Quality-Impact and Quality Enhancement Technology, Proceedings of an Engineering Foundation Conference, ASCE, 1986, edited by B. Urbonas and L.A. Roesner.

Costs are presented in 1992 dollars and were reviewed by the Office of Management and Budget during the previous issuance of this permit, September 25, 1992. Annualized costs are based on a 10 year period and 10 percent discount rate. Estimates include a contingency cost of 25 percent of the construction cost and operation and maintenance costs of 5 percent of the construction cost. Land costs are not included.

**VI. Economic Impact (Executive Order 12291)**

EPA has submitted this notice to the Office of Management and Budget for review under Executive Order 12291.

**VII. Paperwork Reduction Act**

EPA has reviewed the requirements imposed on regulated facilities in these final general permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et. seq. EPA did not prepare an Information Collection Request (ICR) document for today's permits because the information collection requirements in these permits have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

**VIII. Regulatory Flexibility Act**

Under the Regulatory Flexibility Act, U.S.C. 601 et. seq., EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No Regulatory Flexibility Analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's draft permit provides small entities with an application option that is less burdensome than individual applications or participating in a group application. The other requirements have been designed to minimize significant economic impacts of the rule on small entities and does not have a significant impact on industry. In addition, the permits reduce significant administrative burdens on regulated sources. Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that these permits will not have a significant impact on a substantial number of small entities.

**Appendix A**

Notice of Intent (NOI) Form (an NOI will not appear in today's proposed permit but will be included in the final issuance).

**Appendix B**

Notice of Termination (NOT) Form (an NOT will not appear in today's proposed permit but will be included in the final issuance).

**Appendix C—Endangered Species Guidance**

**I. Instructions**

A list of species that EPA has determined may be affected by the activities covered by the construction general permit will be included in the final issued permit. These species will be listed by county. In order to get construction general permit coverage, applicants must:

- Indicate in box provided on the NOI whether any species listed in this Addendum are in proximity to the facility, and
- Certify pursuant to Section I.B.3.e. of the construction general permit that their storm

water discharges, and BMPs constructed to control storm water runoff, are not likely, and will not be likely to adversely affect species identified in Addendum H of this permit.

To do this, please follow steps 1 through 4 below.

Step 1: Review the County Species List to Determine if any Species are Located in the Discharging Facility County

If no species are listed in a facility's county or if a facility's county is not found on the list, an applicant is eligible for construction general permit coverage and may indicate in the NOI that no species are found in proximity and provide the necessary certification. If species are located in the county, follow step 2 below. Where a facility is located in more than one county, the lists for all counties should be reviewed.

Step 2: Determine if any Species may be Found "in Proximity" to the Facility

A species is in proximity to a facility's storm water discharge when the species is:

- Located in the path or immediate area through which or over which contaminated point source storm water flows from industrial activities to the point of discharge into the receiving water.
- Located in the immediate vicinity of, or nearby, the point of discharge into receiving waters.
- Located in the area of a site where storm water BMPs are planned or are to be constructed.

The area in proximity to be searched/surveyed for listed species will vary with the size of the facility, the nature and quantity of the storm water discharges, and the type of receiving waters. Given the number of facilities potentially covered by the construction general permit, no specific method to determine whether species are in proximity is required for permit coverage under the construction general permit. Instead, applicants should use the method or methods which best allow them to determine to the best of their knowledge whether species are in proximity to their particular facility. These methods may include:

- *Conducting visual inspections:* This method may be particularly suitable for facilities that are smaller in size, facilities located in non-natural settings such as highly urbanized areas or industrial parks where there is little or no nature habitat; and facilities that discharge directly into municipal storm water collection systems. For other facilities, a visual survey of the facility site and storm water drainage areas may be insufficient to determine whether species are likely to be located in proximity to the discharge.
- *Contacting the nearest State Wildlife Agency or U.S. Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS) offices.* Many endangered and threatened species are found in well-defined areas or habitats. That information is frequently known to state or federal wildlife agencies. FWS has offices in every state. NMFS has regional offices in: Gloucester, Massachusetts; St. Petersburg, Florida; Long Beach, California; Portland, Oregon; and Juneau, Alaska.
- *Contacting local/regional conservation groups.* These groups inventory species and

their locations and maintain lists of sightings and habitats.

- *Conducting a formal biological survey.* Larger facilities with extensive storm water discharges may choose to conduct biological surveys as the most effective way to assess whether species are located in proximity and whether there are likely adverse effects.

If no species are in proximity, an applicant is eligible for construction general permit coverage and may indicate that in the NOI and provide the necessary certification. *If listed species are found in proximity to a facility, applicants must follow step 3 below.*

Step 3: Determine If Species Could Be Adversely Affected by the Facility's Storm Water Discharges or by BMPs To Control Those Discharges.

*Scope of Adverse Effects:* Potential adverse effects from storm water include:

- *Hydrological.* Storm water may cause siltation, sedimentation or induce other changes in the receiving waters such as temperature, salinity or pH. These effects will vary with the amount of storm water discharged and the volume and condition of the receiving water. Where a storm water discharge constitutes a minute portion of the total volume of the receiving water, adverse hydrological effects are less likely.
- *Habitat.* Storm water may drain or inundate listed species habitat.
- *Toxicity.* In some cases, pollutants in storm water may have toxic effects on listed species.

The scope of effects to consider will vary with each site. Applicants must also consider the likelihood of adverse effects on species from any BMPs to control storm water. Most adverse impacts from BMPs are likely to occur from the construction activities.

*Using earlier ESA authorizations for construction general permit eligibility:* In some cases, a facility may be eligible for construction general permit coverage because actual or potential adverse effects were addressed or discounted through an earlier ESA authorization. Examples of such authorization include:

- An earlier ESA section 7 consultation for that facility.
- A section 10(a) permit issued for the facility.
- An area-wide Habitat Conservation Plan applicable to that facility.
- A clearance letter from the Services (which discounts the possibility of an adverse impacts from the facility).

In order for applicants to use an earlier ESA authorization to meet eligibility requirements: (1) The authorization must adequately address impacts for storm water discharges and BMPs from the facility on endangered and threatened species, (2) It must be current because there have been no subsequent changes in facility operations or circumstances which might impact species in ways not considered in the earlier authorization, and (3) The applicant must comply with any requirements from those authorizations to avoid or mitigate adverse effects to species. Applicants who wish to pursue this approach should carefully review documentation for those authorizations ensure that the above conditions are met.

If adverse effects are not likely, an applicant is eligible for construction general permit coverage and may indicate in the NOI that species are found in proximity and provide the necessary certification. If adverse effects are likely, follow step 4 below.

Step 4: Determine If Measures Can Be Implemented To Avoid Any Adverse Effects

If an applicant determines that adverse effects are likely, it can receive coverage if appropriate measures are undertaken to avoid or eliminate any actual or potential adverse effects prior to applying for permit coverage. These measures may involve relatively simple changes to facility operations such as re-routing a storm water discharge to bypass an area where species are located.

At this stage, applicants may wish to contact the FWS and/or NMFS to see what appropriate measures might be suitable to avoid or eliminate adverse impacts to species.

If applicants adopt these measures, they must continue to abide by them during the course of permit coverage.

If appropriate measures are not available, the applicant is not eligible at that time for coverage under the construction general permit. Applicants should contact the appropriate EPA regional office about either:

- Entering into Section 7 consultation in order to obtain construction general permit coverage, or
- Obtaining an individual NPDES storm water permit.

[FR Doc. 97-9695 Filed 4-15-97; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collections Approved by Office of Management and Budget

April 8, 1997.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104-13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418-1379.

### Federal Communications Commission

*OMB Control No.:* 3060-0736.

*Expiration Date:* 03/31/2000.

*Title:* Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149.

*Form No.:* N/A.