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FACT SHEET

General NPDES Permit Authorizing Storm Water Discharges Associated with Construction Sites Entire State of Nebraska; NPDES #NER110000

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A. Introduction

The Nebraska Department of Environmental Quality is reissuing the general permit that authorizes the discharge of pollutants in storm water discharges associated with construction activity (also known as the “construction storm water general permit” or “CSW general permit”). The CSW general permit upon reissuance, covers storm water discharges associated with both small and large construction activity. Small construction activity is added in response to the Phase II Storm Water Regulations promulgated on December 8, 1999 (64 FR 68722). Specifically, the Phase II regulations add permitting requirements for storm water discharges from construction activities that disturb from one to five acres. Phase I Storm Water Regulations promulgated on November 16, 1990 (55 FR 47990) established permitting requirements for storm water discharges from construction activities that disturb five acres or more. Construction Activity as defined by this permit includes Large Construction Activity and Small Construction Activity. This includes a disturbance to the land that results in a change in the topography, existing soil cover (both vegetative and non-vegetative), or the existing soil topography that may result in accelerated Storm Water runoff, leading to soil erosion and movement of sediment into Waters of the State or urban drainage systems. Construction Activity includes the disturbance of less than one acre of total land area that is a part of a larger Common Plan of Development or Sale if the larger common plan will ultimately disturb one (1) acre or more and includes all areas of Support Activity. This CSW general permit replaces the previous construction storm water general permit that was issued July 1997.

B. Significant Changes from the 1997 CSW General Permit

1. The entire permit has been adapted in format, and in part language, to the EPA Construction General Permit.
2. Additional definitions have been added to the permit.
3. “Cognizant Official “ has been substituted with “Certifying Official” as the primary authorized signatory for the permit. This is to reflect the 2006 updates to Title 119 Chapter 13, Applications; Signatories.
4. Construction sites discharging to Combined Sewer Overflows (CSO) are required to obtain coverage under the CSW- General Permit.
5. Storm Water Pollution Prevention Plan (SWPPP) requirements have been modified as follows:
 - a. The SWPPP must be prepared by a qualified individual such as a Professional Engineer, Certified Landscape Architect, and / or Certified Professional in Erosion and Sediment Control.
 - b. Site inspections have been changed to “*once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.*”
 - c. Inspections must be conducted by qualified personnel (defined as one knowledgeable and possessing skills in the principles and practices of erosion and sediment control and who has the ability to assess the effectiveness of any sediment and erosion control measures selected to control the quality of storm water discharges from the construction site.
 - d. A copy of the SWPPP may also be retained at a location other than on the construction site. It must be at a location easily accessible during normal business hours to NDEQ from the first to day of construction activity to the date of final stabilization.
 - e. A sign or other notice must be posted conspicuously near the main entrance of the construction site. If it is infeasible to post at the main entrance, an alternative is provided.
 - f. Transfer of permit coverage is allowed under the new permit and includes a separate form as an attachment

- to the permit.
- g. The percent cover required for Final Stabilization has been changed from 95% of the site stabilized to a minimum density of 70% of the native background vegetative cover.
 - h. A Construction Storm Water Notice of Termination (CSW-NOT) form replaces the Construction Storm Water End form (CSW-END) as an attachment to the permit.
 - i. Includes coverage of land disturbances of 1 acre to 5 acres and those less than 1 acre if part of a larger common plan of development or sale as required by NDEQ Title 119.
 - j. A list of those municipalities currently operating under a Municipal Separate Storm Sewer System permit, are listed in Appendix B.
 - k. Construction Storm Water Notice of Intent (CSW-NOI) format has changed and now requires the SWPPP designer contact information.

C. Coverage Provided by General Permits

NDEQ Title 119 provides that storm water discharges associated with construction activity that discharge to **waters of the state** must be authorized by an NPDES permit. The term “discharge” when used in the context of the NPDES program means the discharge of pollutants (NDEQ Title 119, Chapter 1.040).

On November 16, 1990, EPA published regulations under the NPDES program that defined one facet of the phrase “storm water discharges associated with construction activity” as including discharges from construction activity (including clearing, grading and excavation activities) that result in the disturbance of five or more acres of total land area, including smaller areas that are part of a larger common plan of development or sale. These are commonly referred to as Phase I construction activities or “large” construction activities.

The regulation entitled “National Pollution Discharge Elimination System - Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges” (64 FR 68722) was published by EPA on December 8, 1999. This regulation, known as Phase II of the storm water program, expands the existing NPDES storm water program to address discharges that result in land disturbance of: equal to or greater than one and less than five acres; less than one acre if part of a larger common plan of development or sale that disturbs between one and five acres; and other construction activities designated by NDEQ based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the United States (NDEQ Title 119, Chapter 10).

To help clarify what projects must be addressed as part of a “common plan of development or sale” and what projects can be considered on their own merit, NDEQ is addressing the issue of non-contiguous construction activities. Where discrete construction projects within a larger common plan of development or sale are located at least 1/4 mile apart and the area between the projects is not being disturbed, each individual project can be treated as a separate plan of development or sale provided any interconnecting road, pipeline or utility project that is part of the same “common plan” is not concurrently being disturbed. For example, two oil and gas well pads separated by 1/4 mile could be treated as separate “common plans.” However, if the same two well pads and an interconnecting access road were all under construction at the same time, they would generally be considered as part of a single “common plan” for permitting purposes. If a utility company was constructing new trunk lines off an existing transmission line to serve separate residential subdivisions located more than 1/4 mile apart, the two trunk line projects could be considered to be separate projects.

For situations where a common plan of development or sale exists and a single SWPPP is developed for an entire site, the requirements and burdens associated with maintaining permit compliance can be commensurately reduced as portions of the site are stabilized. For example, BMPs may be removed and inspections ceased for a stabilized area, as long as the threat of pollutants in any discharges from the area resulting from construction or construction-related activities no longer exists. It is not necessary to revise the CSW-NOI in this situation. Instead, the construction operator must thoroughly document all activities leading up to and including final stabilization, so that an inspector will understand that BMPs and regular inspections are no longer needed in that area.

D. Coverage Under This Permit

1. Introduction

This CSW general permit authorizes storm water discharges from large and small construction-related activities that result in a total land disturbance of equal to or greater than one acre, where those discharges enter surface waters of the State or a Municipal Separate Storm Sewer System (MS4) or a Combined Sewer Overflow (CSO). NDEQ is also making this permit available, consistent with NDEQ Title 119 Chapter 1.118 for storm water discharges from any other construction activity designated by NDEQ based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the State. This permit expands coverage from the 1997 CSW general permit that provided coverage for large construction sites (i.e., those disturbing greater than 5 acres) to include both small and large construction activities (i.e., any project disturbing greater than one acre and less than one acre if part of a larger common plan of development). Similar to the 1997 CSW general permit, the goal of this permit is to reduce or eliminate storm water pollution from construction activity through development and implementation of an appropriate SWPPP to the Maximum Extent Practicable.

2. Permit Area

This permit provides **Coverage for Construction and Support Activity** throughout the State of Nebraska excluding tribal land within the State of Nebraska and as per limitations in Part I.C.3 of the permit.

3. Eligibility

This section of the permit describes those requirements that are a pre-condition to obtaining coverage under the CSW general permit. Specifically, only construction activities that meet the eligibility conditions in Part I.C can be covered by this permit. As such, if you are not eligible for coverage under the CSW general permit, but file a notice of intent (CSW-NOI) requesting coverage, then any discharges are considered to be unpermitted and in violation of the NDEQ's Title 119 and the Federal Clean Water Act. However, once eligibility has been attained, if the operator does not comply with the requirements of the CSW general permit, the operator may be in violation of the CSW general permit for otherwise eligible discharges.

4. Allowable Storm Water Discharges

This permit authorizes all discharges of storm water from construction activities except those excluded under Limitations on Coverage (Part I.C.3) in the CSW general permit. Activities that occur on-site in support of construction activity are covered under the CSW general permit. Specifically, the permit authorizes discharges from construction support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, etc.) for local project(s) with which an operator is currently involved (e.g., a concrete batch plant providing concrete to several different highway projects in the same county). Authorization of this discharge is contingent upon (1) the support activity not being a commercial operation serving multiple, unrelated construction projects and not operating beyond the completion of the last related construction project it serves; and (2) appropriate controls are identified in the SWPPP for the discharges from the support activity areas.

5. Allowable Non-Storm Water Discharges

This permit authorizes certain non-storm water discharges associated with construction activity, provided that the non-storm water component is in compliance with Part I.C.2 of the permit. Specifically, operators are required to identify in the SWPPP all allowable sources of non-storm water discharges and must identify and ensure the implementation of appropriate pollution prevention measures for these discharges. The operator should also eliminate or reduce these discharges to the extent feasible. Allowable non-storm water discharges include those listed in Part I.C.2 of the CSW general permit.

6. Limitations on Coverage

Not all storm water discharges from construction sites are authorized by this permit. Specifically excluded are:

- a. Post Construction Discharges

Storm water discharges originating from a site after construction activities have ceased, the site has achieved final stabilization, and a Notice of Termination has been submitted. If there will be a discharge of storm water associated with construction activity, or some other regulated discharge from the completed project (e.g., wastewater from a newly-constructed chemical plant), coverage under another permit(s) must be obtained for those discharges.

b. **Prohibition on Discharges Mixed With Non-Storm Water**

Storm water discharges that are mixed with non-storm water sources, other than those identified in and complying with the permit. Non-storm water discharges that are authorized under a different NPDES permit may be commingled with discharges authorized under this permit.

c. **Discharges Covered by Another Permit**

Storm water discharges associated with construction activity that are covered under an individual permit or discharges required to be covered under an alternative general permit.

d. **Attainment of Water Quality Standards**

NDEQ Title 119 Chapter 3 002 provides that no permit may be issued if the “conditions cannot ensure compliance with the applicable water quality requirements.” Unlike individual permits that include requirements tailored to site-specific considerations, general permits, while tailored to specific industrial processes or types of discharges (e.g. offshore oil and gas or storm water), do not contain site-specific requirements that address the water quality conditions of the waters receiving the discharge. Therefore, general permits rely on permittees to certify that they meet the eligibility conditions and implement requirements that will ensure compliance with the conditions of the permit. The permit requirements are intended to ensure that those seeking coverage under this general permit select, install, implement, and maintain BMPs at their construction site that will be adequate and sufficient to meet water quality standards for all pollutants of concern.

For the CSW general permit, eligibility provisions do not hinge on the operator making a determination of compliance with applicable water quality standards. Rather, the permit limits operators from obtaining coverage under this permit if NDEQ makes such a determination. In those instances when NDEQ does make such a determination, NDEQ may require the operator to obtain coverage under an individual permit or may allow coverage under the CSW general permit provided that the operator includes appropriate controls and implementation procedures in its SWPPP. As is required in Part IV.C of the CSW general permit, operators are required to select, install, implement, and maintain BMPs that minimize pollutants in the discharge. Except where specifically required by NDEQ to perform additional measures, these BMPs will be considered as stringent as necessary to ensure that discharges do not cause or contribute to an excursion above any applicable state water quality standard. As such, NDEQ expects that compliance with the terms of the general permit will ensure compliance with water quality standards.

7. Endangered and Threatened Species and Critical Habitat Protection

Before submitting an NOI, the operator must ensure and document that discharges are not likely to jeopardize the continued existence of any State or Federally-listed endangered or threatened species or result in the adverse modification or destruction of habitat that is State- or Federally-designated as critical under the Endangered Species Act (ESA).

8. Historic Properties

Operators are reminded that they must comply with applicable state, tribal, and local laws concerning the protection of historic properties and places.

9. Period of Coverage

The CSW general permit is effective for a period of five years from the issuance date. Delays or extensions of permit coverage are based on Part I.C of the CSW general permit.

E. Authorizations for Discharges of Storm Water From Construction Activity

Operators of construction sites that result in land disturbance of greater than one acre, or those designated by NDEQ, are required to obtain permit coverage (NDEQ Title 119, Chapter 10). Submission of a complete and accurate NOI eliminates the need to apply for an individual permit for a regulated discharge, unless NDEQ specifically notifies the discharger that an individual permit application must be submitted. Only NOI forms provided by NDEQ (or photocopies thereof) are valid. Applicants must be aware that by signing and dating the form they certify that they understand and are willing to comply with all terms and conditions of the NPDES permit for which they have applied, namely the Construction General Permit. These conditions include those found in Part I.C (Permit Eligibility) of the permit. It is acceptable to fill in information that will be the same for every project (e.g., a company's name, address) and make copies of the partially completed form for future use; however, an original signature is required to be included on each form submitted to NDEQ.

1. Notice of Intent Contents

An NOI must be submitted by owners/operators seeking authorization for storm water discharges from a construction site under the CSW general permit. Those required to obtain an individual storm water permit may not use an NOI, but must instead use the forms as described in Part IV.A of the permit. Applicable requirements are based on NDEQ Title 119, Chapter 25. A signature block is provided following a certification statement that everything on the NOI form is correct. Also, the NOI must include the name and title of the certifying official and date of signature. The NOI must be signed and certified in accordance with the signatory requirements of NDEQ Title 119, Chapter 13.

2. Submission Deadlines

Operators of new projects (i.e., construction activity commenced after the effective date of this permit) must submit the NOI form at least seven days prior to commencement of construction activities. Those construction sites covered under the 1997 CSW general permit have 90-days, from issuance date of the new permit, to submit a CSW-NOI under the new permit or terminate coverage on their site. Permit coverage for those sites that do not seek coverage under the new CSW general permit will terminate 90 days from the issuance date of the new CSW general permit.

F. Storm Water Pollution Prevention Plans

1. Storm Water Pollution Prevention Plan Framework

The SWPPP focuses on two major requirements: (1) Providing a site description that identifies sources of pollution to storm water discharges associated with construction activity on site; and (2) identifying and implementing appropriate measures to reduce pollutants in storm water discharges to ensure compliance with the terms and conditions of this permit. A SWPPP must be developed in accordance with sound engineering practices and must be developed specific to the site. For coverage under this permit, the SWPPP must be prepared before commencement of construction and then updated as appropriate. The permit also clarifies that once a definable area of the site has been finally stabilized, no further SWPPP requirements apply to that portion of the site as long as the SWPPP has been updated accordingly to identify that portion of the site as complete. You are required to implement the SWPPP during construction activity from commencement until final stabilization. Construction Activity and final stabilization are defined in the CSW general permit Part VII.

2. Pollution Prevention Plan Contents: Site and Activity Description

The SWPPP must be based on an accurate assessment of the potential for generating and discharging pollutants from the site. Hence, the permit requires a description of the site and intended construction activities in the SWPPP (to provide a better understanding of site runoff characteristics). Details of the site and activity SWPPP requirements are described in the CSW general permit Part III.B.

3. Pollution Prevention Plan Contents: Controls to Reduce Pollutants

- a. The SWPPP must describe the 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. The SWPPP must describe the intended sequence of major storm water control activities and when, in relation to the construction process, they will be implemented. NDEQ recognizes that many factors can impact the actual construction schedule, so the permittee need not include specific dates (e.g. plan could say install silt fence for area "A" before rough grading, rather than put up silt fences on August 15). Good site planning and preservation of mature vegetation are imperative for controlling pollution in storm water discharges both during and after construction activities. Properly staging major earth disturbing activities can also dramatically decrease the costs of sediment and erosion controls.
- b. Stabilization practices are critical to preventing erosion. The SWPPP must include a description of interim and permanent stabilization practices, including a schedule of their implementation. The permittee should ensure that existing vegetation is preserved wherever possible and that disturbed portions of the site are stabilized as quickly as practicable. Stabilization practices include seeding of temporary vegetation, seeding of permanent vegetation, mulching, geotextiles, sod stabilization, vegetative buffer strips, preservation of trees and mature vegetative buffer strips, and other appropriate measures. Temporary stabilization can be the single most important factor in reducing erosion at construction sites. Stabilization also involves preserving and protecting selected trees 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 ones such as installing tree armoring and fencing around the drip line, to more complex measures such as building retaining walls and tree wells.
- c. The SWPPP requires that specific construction dates be documented and maintained as a way for the construction operator as well as NDEQ to determine applicability and implementation status of SWPPP requirements. Important dates include when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated.
- d. The SWPPP must include a description of structures built to divert flows from exposed soils, and store or otherwise limit runoff and the discharge of pollutants from exposed areas of the site. Structural controls may be necessary because vegetative controls cannot be employed where soil is continually disturbed and because of the lag time before vegetation becomes 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, reinforced soil retaining systems, gabions and temporary or permanent sediment basins. Placement of structural controls in flood plains should be avoided.
- e. The SWPPP must include a description of any post-construction storm water management measures. This permit, however, addresses only the installation of these measures; not the ongoing operation and maintenance of them after cessation of construction activities and final stabilization. Permittees are responsible only for the installation and maintenance of storm water management measures until final stabilization of the site. When selecting storm water management measures, the operator should consider the amount of required maintenance and whether there will be adequate resources for maintaining them over the longer term. Maintenance plans of permanent management measures must be included in the SWPPP.

Some discharges of pollutants from post-construction storm water management structures may need to be authorized under an NPDES permit (e.g., the construction project was an industrial facility in a sector covered by the NPDES multi-sector general permit). The owner/operator of such discharges may ask NDEQ if this requirement applies to them.

Storm water management measures installed during the construction process can control the volume and velocity of runoff, as well as reduce the quantity of pollutants discharged post-construction. Reductions in peak discharge velocity and volume can reduce pollutant loads as well as diminish physical impacts such as stream

bank erosion and stream bed scour. Storm water management measures that mitigate changes to pre-development runoff characteristics assist in protecting and maintaining the physical and biological characteristics of receiving streams and wetlands.

Structural measures should be installed on upland areas to the extent feasible. The installation of such measures may be subject to section 404 of the CWA if they will be located in wetlands or other waters of the United States.

- f. Other controls to be addressed in SWPPPs for construction activities are for compliance with the requirement that solid materials, including building material wastes, not be discharged at the site except as authorized by a section 404 permit.
- g. The SWPPP must describe measures to minimize vehicular tracking of soil off-site to paved surfaces and the generation of dust. Dust and dirt-tracking can be minimized by measures such as providing gravel or paving at entrance/ exit drive paths, parking areas and unpaved transit ways on the site carrying significant amounts of traffic (for example, more than 25 vehicles per day); providing entrance wash racks or stations for trucks; and performing street sweeping.
- h. The SWPPP must also contain a description of practices to reduce pollutants from construction-related materials which are stored on site, including a description of said construction materials (with updates as appropriate). The plan should include a description of pollutant sources from areas untouched by construction and a description of controls and measures which will be implemented in those areas.
- i. The SWPPP must also contain a description of pollutant sources from areas other than construction (including storm water discharges from dedicated asphalt plants and dedicated concrete plants), and a description of controls and measures that will be implemented at those sites to minimize pollutant discharges.

4. Non-Storm Water Discharge Management

The SWPPP must identify and ensure implementation of appropriate pollution prevention measures for each of the eligible non-storm water components of the discharge covered by this permit when combined with storm water discharges associated with construction activity as listed in Title 119 Chapter 10 002.

5. Maintenance of Controls

Erosion and sediment controls can become ineffective if they are damaged or not properly maintained. The SWPPP requires all erosion and sediment control measures to be maintained in effective operating condition. If site inspections identify BMPs that are not operating effectively, maintenance must be performed within seven days and before the next storm event whenever practicable to maintain the continued effectiveness of storm water controls. The permit also requires that the permittee remove sediment from sediment traps or sedimentation ponds or basins when design capacity of that device has been reduced by 50 percent or more.

6. Documentation of Permit Eligibility Related to Endangered Species

An operator's SWPPP must contain documentation of permit eligibility regarding the protection of endangered and threatened species and critical habitat as described in Part III.F of the permit.

7. Copy of Permit Requirements

Copies of the CSW general permit, the signed and certified NOI submitted to NDEQ, and a copy of the letter from NDEQ indicating that a complete NOI has been received must be included in the SWPPP (The CSW-NOI with the

original signature must be submitted to NDEQ.) This condition in the permit is intended to stress the importance of these documents for operators to understanding permit responsibilities.

8. Applicable Local Requirements

Many municipalities and counties have developed sediment and erosion control requirements for construction activities. A significant number have also developed storm water management requirements. The CSW general permit requires that SWPPPs for sites that discharge storm water associated with construction activities be consistent with procedures and requirements of local sediment and erosion control plans and storm water management plans. The construction site's SWPPP may incorporate portions of local program's pollution prevention plan if these requirements are at least as strict as the CSW general permit.

9. Inspections

- a. Permittees must inspect designated areas at least once every 14 calendar days and within 24 hours after any storm event of 0.5 inches or greater. NDEQ also recommends that permittees perform a "walk through" inspection of the construction site before anticipated storm events (or series of events such as intermittent showers over a period of days) that could potentially yield a significant amount of runoff.
- b. Inspections must be performed by qualified personnel with either the operator's own personnel or consultants hired to perform the inspections. The inspectors must be knowledgeable and possess the skills to assess conditions at the construction site that could impact storm water quality and assess the effectiveness of sedimentation and erosion control measure chosen to control the quality of the sites storm water discharges.
- c. Site inspections must be performed as in Part IV of the permit.
- d. Where discharge points are accessible, they must be inspected to ascertain whether erosion control measures are effective in preventing impacts to waters of the State. This can be done by inspecting the waters for evidence of erosion or sediment introduction. If discharge points are inaccessible, the permit requires that nearby downstream locations be inspected, if practicable.
- e. Inspectors must determine whether erosion control measures are effective in preventing impacts to the receiving water and look for evidence of or the potential for pollutants entering the drainage system.
- f. For linear construction activities (e.g., utility line installation, pipeline construction), representative inspections are acceptable and allow for inspection of the project 0.25 miles above and below each access point where a roadway, undisturbed right-of-way, or other similar feature intersects the construction site and allows access to the construction site. This is to limit additional disturbance to soils that may increase the erosion potential resulting from vehicles compromising stabilized areas.
- g. Once an inspection has been performed, a report must be retained with the SWPPP for up to three years after the permit expires or is terminated. The report should include all items as per Part IV I.6 of the CSW general permit. The report must also identify any actions taken in accordance with SWPPP requirements and must identify any incidents of non-compliance with permit conditions. If no incidents of non-compliance were found, the report must contain a certification that the site is in compliance with the SWPPP and this permit. Finally, the report must be signed in accordance with the signatory requirements in Part VI D.6 of the CSW general permit.

10. Maintaining an Updated Plan

Storm water pollution prevention plans must be revised whenever a change in design, construction method, operation, maintenance procedure, etc., may cause a significant effect on the discharge of pollutants to surface waters, municipal separate storm sewer systems or a combined sewer overflow system.

The plan must also be amended if inspections or investigations by site staff, or by local, state, or federal officials determine that the discharges are ineffective in eliminating or significantly minimizing pollutants in storm water discharges from the construction site.

Also, if an inspection reveals inadequacies, the site description and pollution prevention measures identified in the SWPPP must be revised. All necessary modifications to the SWPPP must be made within seven calendar days following the inspection. If existing BMPs need to be modified or if additional BMPs are necessary, implementation must be completed consistent with Part III.E of the CSW general permit. Specifically, these changes must be completed before the next storm event whenever practicable. If implementation before the next storm event is impracticable, this situation should be documented in the SWPPP and the changes must be implemented as soon as practicable.

11. Signature, Plan Review, and Making Plans Available

- a. A copy of the SWPPP must be kept at the construction site from the date of project initiation to the date of final stabilization. Permittees with day-to-day operational control over the plan's implementation must keep a copy of the plan readily available whenever they are on site (a central location accessible by all on-site operators is sufficient). If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the plan's location must be posted near the main entrance at the construction site. A copy of the SWPPP must be readily available to authorized inspectors during normal business hours.
- b. A sign or notice about the permit and SWPPP must be posted conspicuously near the main entrance of the site. If display near the main entrance is infeasible, the notice can be posted in a local public building such as the town hall or public library. For linear projects, the notice must be posted at a publicly accessible location near the active part of the construction project (e.g., where a pipeline project crosses a public road). The permit notice must include the following information:
 - (1) A copy of the completed Notice of Intent as submitted to NDEQ;
 - (2) The current location of the SWPPP (if different than the that submitted to NDEQ in the CSW-NOI)
 - (3) The current contact person and telephone number for scheduling times to view the SWPPP (if different than that submitted to NDEQ in the NOI).

The permit does not require that the general public have access to the construction site nor does it require that copies of the plan be available or mailed to members of the public. However, NDEQ strongly encourages permittees to provide public access to SWPPPs at reasonable hours.

- c. Permittees must make SWPPPs available, upon request, to federal, state, or local agencies approving sediment and erosion plans, grading plans or storm water management plans; local government officials; the operator of a MS4 receiving discharges from the site. Also, the operator must make SWPPPs available to NDEQ or its authorized representative for review and copying during any on-site inspection.
- d. The SWPPP must be signed and certified in accordance with the signatory requirements in the Standard Permit Conditions section of the permit Part VI.D.6

12. Management Practices

- a. Control measures must be properly selected and installed in accordance with sound engineering practices and relevant manufacturer's specifications.
- b. Off-site accumulations of sediment must be regularly removed to minimize impacts.

- c. Litter, construction debris, and construction chemicals must be prevented from entering receiving waters.
- d. It is imperative that stabilization be employed as soon as practicable in critical areas. The CSW general permit requires that, except in three situations, stabilization measures must be instituted on disturbed areas as soon as practicable, but no more than 14 days after construction activity has temporarily or permanently ceased on any portion of the site. The three exceptions to this requirement are the following:
 - (1) When construction activities will resume on a portion of the site within 14 days from suspension of previous construction activities;
 - (2) When the initiation of stabilization measures is precluded by snow cover or frozen ground, in which case they must be initiated as soon as practicable; and
 - (3) In arid areas (areas with an average annual rainfall of 0 to 10 inches), semi-arid areas (10 to 20 inches) and areas experiencing droughts; where the initiation of perennial vegetative stabilization measures is precluded by seasonal arid conditions. In this instance, stabilization measures must be initiated as soon as practicable.
- e. Increased discharge velocities can greatly accelerate erosion near the outlet of structural measures. To mitigate these effects, velocity dissipation devices should be placed at discharge points and along the length of a runoff conveyance, as necessary, to provide a non-erosive flow. Velocity dissipation devices help protect a water body's natural, pre-construction physical and biological uses and characteristics (e.g., hydrologic conditions such as the hydro period and hydrodynamics).

13. Final Stabilization

Stabilization of exposed soil is one of the foremost means to minimize pollutant discharge during construction activities. Stabilization reduces erosion potential by intercepting water so that it infiltrates into the ground instead of running off the surface, slowing the velocity of runoff, thereby promoting deposition of sediment already being carried. Stabilization provides large reductions in the levels of suspended sediment in discharges and receiving waters.

Stabilization refers to covering or maintaining an existing cover over soil. Vegetative cover includes grass, trees, vines, shrubs, etc. Stabilization measures can also include non-vegetative controls such as geotextiles, riprap or gabions (wire mesh boxes filled with rock). Mulches such as straw or bark can be somewhat effective at stabilization in stand-alone fashion but are most effective when used in conjunction with vegetation.

When a construction project or an area within a construction project is completed, steps must be taken to permanently and finally stabilize it. For individual lots in residential construction, final stabilization means that either:

- a. The homebuilder has completed final stabilization, or
- b. The homebuilder has established temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and informing the homeowner of the need for, and benefits of final stabilization.

Part III.M of the CSW general permit gives details of final stabilization.

G. Special Conditions, Management Practices and Other Non-numeric

1. Requiring an Individual Permit or an Alternative General Permit

Based upon a number of different situations (e.g., applicable numeric effluent limitations resulting from a TMDL, or a determination that the operator has the potential to cause or contribute to a water quality standard excursion),

NDEQ may determine that coverage under an individual permit is necessary. If a permittee is currently discharging under this CSW general permit and NDEQ determines that individual coverage is required, written notification of this required change in permit coverage, including reasoning for this decision, an application form, and a deadline for filing the application, will be provided to the permittee by NDEQ.

Additionally, any permittee may apply for an individual permit rather than apply for coverage under this general permit. An individual application must be submitted for coverage under such a permit with reasoning supporting the request. If such reasoning is considered adequate by NDEQ, the request will be granted and an individual permit issued. If an individual permit or alternative NPDES permit is issued to the permittee currently covered under this general permit, coverage under the general permit is terminated on the effective date of the new permit. Alternatively, if a permittee, currently covered under the general permit, seeks coverage under an individual or alternative NPDES permit and is denied, coverage under the general permit is terminated on the date of such denial, unless otherwise specified by NDEQ.

2. Oil and Hazardous Substances / Spill Notification

The construction general permit requires the operator to prevent the discharge of hazardous substances or oil from a site in accordance with the SWPPP. Furthermore, if a permitted discharge contains a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under Title 126 *Rules and Regulations Pertaining to the Management of Waste* and federal reporting requirements of 40 CFR 110, 40 CFR 117, or 40 CFR 302. Details can be found in Part IV.B of the CSW general permit.

3. Attainment of Water Quality Standards After Authorization

The permittee shall not discharge pollutants to waters of the State that cause a violation of the standards established in NDEQ Titles 117 and 118. All discharges to waters of the State shall be free of toxic (acute or chronic) substances which alone or in combination with other substances, create conditions unsuitable for aquatic life outside the appropriate mixing zone.

At any time after authorization NDEQ may determine that your storm water discharges may cause, have reasonable potential to cause, or contribute to any excursion above any applicable water quality standard (WQS). If such a determination is made, NDEQ will require you to:

- a. Develop a supplemental BMP action plan describing SWPPP modifications to respond to the identified water quality concerns;
- b. Submit to NDEQ valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining WQS; or
- c. Cease discharges from construction activity and apply for an individual permit according to Part IV.A of the permit.

If a supplemental BMP action plan is required, NDEQ expects the operator to vigilantly and in-good-faith follow and document the process for BMP selection, installation, implementation and maintenance, and cooperate to eliminate the identified problem within a time frame stipulated by NDEQ.

NDEQ does not typically review information and data about specific discharges prior to authorization under the CSW general permit. Instead, a general permittee determines whether its discharges are eligible for authorization under the general permit and, if so, certifies to that determination and develops a SWPPP according to requirements in the general permit. The permit language is included to ensure that those seeking coverage under this general permit select, install, implement, and maintain BMPs at their construction site that will be adequate and sufficient to meet water quality standards for all pollutants of concern. Based on EPA's 1996 *Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits (EPA 833-D-96-001)*, EPA has determined that BMPs, when properly selected, installed, implemented, and maintained do provide effluent quality that can meet

WQS. However, because proper selection, installation, implementation, and maintenance are so critical to the success of BMP effectiveness, simply “installing BMPs” at a construction site will often not provide adequate water quality protection. Therefore the CSW general permit requires operators to select, install, implement, and maintain BMPs that minimize pollutants in the discharge. Unless notified otherwise by NDEQ, compliance with this requirement will be assumed to be as stringent as necessary to ensure that discharges do not cause or contribute to an excursion above any applicable water quality standard.

In addition, where **Total Maximum Daily Loads (TMDL)** have been approved, **BMPs** must be employed properly to address the pollutants of concern. Pollutants of concern on construction sites include bacteria, sediment, and nutrients. By compliance with this permit and the employment, inspection, and maintenance of **BMPs**, on construction activity sites, the TMDLs for these activities will be met.

4. Discharges Disturbing Endangered or Threatened Species, Historical Places or Archeological Sites and Discharges Applicable to Other Regulations

Details of these requirements can be found in Part IV.D,E,F of the CSW general permit.

5. Termination, Transfer, or Reassignment of Permit Coverage

Permittees must submit a completed Notice of Termination (CSW-NOT) that is signed and certified according to Part VI.D. of the CSW general permit when one or more of the conditions contained in Part V.A of the permit have been met. CSW-NOTs must be submitted using the form provided by NDEQ (Attachment 3 of the permit), or a photocopy thereof, and sent to the address specified in the CSW general permit. CSW-NOTs provide NDEQ with a useful mechanism to track the status of projects which are actively covered by the permit.

The CSW-NOT must be filed within 30 days after termination of construction activities and final stabilization of the permittee's portion of the site (or temporary stabilization for residential construction where a homeowner is assuming control of a property). Also, a CSW-NOT must be submitted within 30 days after another operator assumes site liabilities.

The permittee may face enforcement action if a CSW-NOT is submitted without meeting one of the requirements in Part V.A of the permit unless there has been authorization under an alternative permit. The CSW-NOT must be submitted to the address listed in Part V.D. of the permit.

The notice of transfer (CSW-Transfer) is used when all or part of permit coverage is to be transferred to another permittee as per Part V.C of the permit. The new permittee accepts responsibility for compliance with this permit for that portion of the project which has been transferred including when the transferred property is less than one acre of area. The CSW-Transfer form is attached with the permit. This form, or a copy of the form, must be used for transferring permit coverage. The permittees must submit a completed CSW-Transfer that is signed and certified and only original signatures are accepted.

6. Retention of Records

The permit requires that all records and reports required by the CSW general permit be retained, including SWPPPs and information used to complete the NOI, for at least three years from the termination of coverage or expiration of the permit as per NDEQ Title 119 Chapter 14. This period may be extended by request of NDEQ.

7. Re-opener Clause

This permit contains a re-opener clause allowing the permit to be re-opened and modified during the term of the permit consistent with the Title 119 Chapter 24 *Permit Transfer, Modification, Revocation, Reissuance, Continuation and Termination*. Generally, this would be triggered by a water quality concern, a change in NPDES statutes, or to incorporate new procedures or requirements developed by the NDEQ regarding such things as endangered and threatened species and critical habitat protection or historic preservation requirements to provide

for additional consideration of effects to properties either listed or eligible for listing in the National Register of Historic Places. Indication that a permittee is contributing to a water quality concern or generally not fulfilling his or her obligations under this permit, may result in a review of the permit and requirement to obtain an individual permit or alternative general permit, or have the limitations and/or requirements under this permit be modified.

8. Standard Permit Conditions

The Federal regulations require all NPDES permits to contain the standard conditions specified at Title 119 Chapter 14. This section of the permit references those conditions in Part VI of the CSW general permit.

9. Response to Comment from Public Hearing

Many of the changes in the new Construction Storm Water General Permit were predicated by the testimony in Public Hearing concerning the previous permit. This hearing was held on February 22, 2007. Much of the testimony indicated a desire for the NDEQ Construction General Permit to mirror the Federal EPA Construction General Permit. This idea was incorporated into the new permit.

The following are responses to that testimony and the changes made incorporated into the new permit. A full administrative record of the testimonies can be received by request from NDEQ's Record Management Unit.

a. Response to comments from Exhibit 6:

- (1) The Definition of Construction Activity has been included and is defined as both large and small construction activity including sites less than one acre as part of a larger common plan of development or sale.
- (2) The 2500 foot distance between site and receiving waters with a TMDL has been changed to state, as EPA does, that the permit authorizes pollutants from storm water entering Waters of the State. This is **not** a defined distance. All references to "2500 ft" have been deleted.
- (3) Threatened and Endangered Species determination must be obtained from Nebraska Game and Parks Commission. This determination requires the Commission's expertise in determining if habitat or species can be impacted by construction activities at the site or downstream of the construction site.
- (4) Comment #3 also applies to archeological sites as well. The term "or discovered" does not refer to future discoveries, only those that have been discovered prior to the construction activity.
- (5) Transfer options will be available to all sites.
- (6) Revocation for any cause has been omitted.
- (7) NDEQ has not as of yet included in any of our MS4 community permits designation of "Quality Local Program" status. This provision must be in place in the communities' permit before this status can be designated. The language for this program has been withdrawn from the most recent permit until such designations are made. Once a list of such designated programs is available, it will be incorporated into subsequent Construction General Storm Water Permits.
- (8) All waters of the State that are impacted by a construction site must be taken into account. NDEQ has adopted EPA's language concerning this, which does not use the word "directly".
- (9) Language including a schedule for temporary stabilization has been included in this new permit. *"...stabilization measures must be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased."*
- (10) The new permit addresses requirements for Federal, State and Local programs in the following way: *"The SWPPP must include a description of all post-construction storm water management measures that will be installed during the construction process to control pollutants in storm water discharges after construction operations have been completed. Such measures must be designed and installed in compliance with applicable federal, state, and local requirements."*
- (11) This language is identical to USEPA CGP. *"Weather information for the period since the last inspection (or since commencement of construction activity if the first inspection) including a best estimate of the beginning of each storm event, duration of each storm event, approximate amount of rainfall for each storm event (in inches), and whether any discharges occurred."*

- (12) Final Stabilization has been revised as follows: *“Condition where all soil disturbing activities at the site have been completed and a uniform perennial vegetative cover with a minimum density of 70 percent of the native background vegetative cover has been established on all non-impervious surfaces and areas not covered by permanent structures unless equivalent permanent stabilization (such as riprap, gabions, or geotextiles) measures have been employed.”*
- (13) The Changes in Discharge condition found in the Standard Conditions and Requirements has been retained. Other requests for removal of language in Standard Conditions have been denied based on regulatory requirement of this language as stated in Title 119, Chapter 14 and in addition, this is the same language used by USEPA.
- (14) All definitions have been revised to exclude the use of the 2500 ft to receiving water.

b. Response to comments in Exhibit 7:

- (1) Because compliance with this permit addresses the TMDL by using BMPs that provide the technology to prevent pollutants of concern from entering the waterbody, a TMDL listing was not necessary.
- (2) Qualified Local Program designation has been eliminated from the permit as per #7 above.
- (3) Incorporating the requirement that *“A SWPPP must be prepared prior to submission of an NOI as required in Part II.B. The SWPPP must be prepared by a qualified individual such as a Professional Engineer, Certified Landscape Architect, and /or Certified Professional in Erosion and Sediment Control”* will continue to be included in the Construction Storm Water General Permit. This provides quality assurance and accountability. NDEQ finds this to be a necessary component in this permit.
- (4) Many efforts are underway to educate municipalities, the construction industry, and citizens on the requirements of this permit. Additional compliance assistance tools are always under consideration.

c. Response to comments in Exhibits 8,9,10, and 11:

- (1) All references to Qualified Local Program have been deleted from the new permit. As per item #7 above, these provisions may be included in future Construction Storm Water General Permits.
- (2) The Transfer provisions in the permit have been revised
- (3) Revisions have been made to the CSW – TRANSFER Form removing Qualified Local Program language and incorporating the provisions of #19 above.

This permit includes a certification statement, signed by the certifying official (owner) that these provisions within the permit will be adhered to. Many contractors, sub-contractors, and others including utility personnel will have access to this property. The signatory takes on the responsibility that the BMPs required will be in place and functioning. Any disturbance of the BMPs by contractors and the like or by weather, accident, etc. must be repaired and the certifying official is responsible for that repair. Definitions have been maintained in accordance with the USEPA’s definition found in regulation and in the USEPA Construction General Permit.

10. Supporting Documentation

- a. NDEQ Title 117 - *Nebraska Surface Water Quality Standards* (Revised July 31, 2006);
- b. NDEQ Title 118 - *Ground Water Quality Standards and Use Classifications* (Revised March 26, 2006);
- c. NDEQ Title 119 - *Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System* (Revised May 16, 2005);
- d. USEPA *Technical Support Document for Water Quality-based Toxic Control* (EPA 505/2-90-001 PB91-127415, March, 1991);
- e. NDEQ *NPDES Permitting Procedure* document;
- f. 40 CFR, Part 122, 124, and 125, NPDES Regulations; and
- g. Nebraska Non-game and Endangered Species Conservation Act (Neb. Rev. Stat. §§ 37-430 through 317 – 438);

11. Information Requests

Inquiries concerning the permit, its basis or the public comment process may be directed to:

Tel. 402/471-8830 or 402/471-4220 Fax: 402/471-2909

A TDD operator is available at 711.

Copies of the application and other supporting material used in the development of the permit are available for review

and copying at the Department's office between 8:00 a.m. and 5:00 p.m. on weekdays.

Office Location:

Nebraska Department of Environmental Quality
The Atrium, Suite 400
1200 N Street
Lincoln, NE

Mailing Address:

Nebraska Department of Environmental Quality
Water Quality Division - Storm Water
PO Box 98922
Lincoln, Nebraska 68509-8922

12. Submission of Formal Comments or Requests for Hearing

The date on which the public notice period ends is specified in the public notice. During the public notice period, the public may submit formal comments or objections, and/or petition the Department to hold a public hearing concerning the issuance of the permit. All such requests need to: be submitted in written form, state the nature of the issues to be raised, and present arguments and factual grounds to support them. The Department shall consider all written comments, objections and/or hearing petitions, received during public comment period, in making a final decision regarding permit issuance.

Formal comments, objections and/or hearing requests need to be submitted to:

Nebraska Department of Environmental Quality
Water Quality Division - Storm Water
The Atrium, Suite 400
1200 N Street
Lincoln, Nebraska

Mailing Address:

Nebraska Department of Environmental Quality
Water Quality Division - Storm Water
P.O. Box 98922
Lincoln, Nebraska 68509-8922