

**NATIONAL POLLUTANT  
DISCHARGE ELIMINATION SYSTEM (NPDES)  
STORM WATER PROGRAM  
QUESTIONS AND ANSWERS**

**January 21, 2004**

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## **A. THE STORM WATER PROGRAM AND NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) AUTHORITY**

### **A1. What is the National Pollutant Discharge Elimination System (NPDES) Storm Water Program?**

Polluted storm water runoff is a leading cause of impairment to the nearly 40 percent of surveyed U.S. water bodies which do not meet water quality standards. Over land or via storm sewer systems, polluted runoff is discharged, often untreated, directly into local water bodies. When left uncontrolled, this water pollution can result in the destruction of fish, wildlife, and aquatic life habitats; a loss in aesthetic value; and threats to public health due to contaminated food, drinking water supplies, and recreational waterways.

Mandated by Congress under the Clean Water Act, the NPDES Storm Water Program addresses non-agricultural sources of storm water discharges that adversely affect the quality of our nation's waters. The Program relies upon discharging entities implementing various control measures to prevent harmful pollutants in their storm water runoff from reaching water bodies, as prescribed in storm water permits.

### **A2. What is required of regulated entities under the NPDES Storm Water Program?**

The regulated entities must obtain coverage under an NPDES storm water permit and implement storm water pollution prevention plans (SWPPPs) or storm water management programs (both using best management practices (BMPs)) that effectively reduce or prevent the discharge of pollutants into receiving waters.

### **A3. What kinds of storm water discharges are required to have NPDES storm water permit coverage?**

The NPDES storm water permit regulations, promulgated by EPA, cover the following classes of storm water dischargers on a nationwide basis:

- operators of Municipal Separate Storm Sewer Systems (MS4s) located in “urbanized areas” as delineated by the Bureau of the Census,
- industrial facilities in any of the 11 categories that discharge to an MS4 or to waters of the United States; all categories of industrial activity (except construction) may certify to a condition of “no exposure” if their industrial materials and operations are not exposed to storm water, thus eliminating the need to obtain storm water permit coverage,
- operators of construction activity that disturbs 1 or more acre of land; construction sites less than 1 acre are covered if part of a larger plan of development.

### **A4. If a discharge enters a separate storm sewer system, where does it go?**

Separate storm sewer systems typically discharge directly to a stream, river, or other water body, without treatment.

**A5. What is the difference between storm water permitting in States with approved NPDES State permit programs and storm water permitting in those States without NPDES State permit programs?**

Federal storm water regulations establish minimum requirements nationwide. The NPDES program is administered by EPA in States without approved programs. A State permitting authority may impose more stringent requirements or decide to expand the scope of its program to meet State priorities.

**A6. Which States and Territories administer the storm water program, and where does EPA administer the program?**

Most States and the Virgin Islands administer the program throughout most of their jurisdictions. The storm water program is administered through EPA regional offices for the five non-delegated States (Alaska, Idaho, Massachusetts, New Hampshire, New Mexico), the District of Columbia, and all Territories except the Virgin Islands. EPA also administers the NPDES program for entities located in most Indian Country; for Federal facilities in Delaware, Colorado, Vermont, and Washington; for oil and gas activities, agricultural production activities and silvicultural activities in Oklahoma; and oil, gas and geothermal activities in Texas. Regulated entities in NPDES States should contact the appropriate State permitting authority for guidance, application forms, general permits, and other materials.

**A7. What is the difference between Phase I and Phase II of the NPDES storm water program?**

In the Water Quality Act of 1987, Congress mandated that EPA establish a storm water control program in two phases. Phase I application requirements were published on November 16, 1990, and Phase II regulations were published December 8, 1999.

Phase I regulates storm water discharges from medium and large MS4s, construction activities of 5 acres or larger (or less than 5 acres if part of a common plan of development or sale), and industrial activities.

Phase II extends the regulations to storm water discharges from small MS4s, and construction activities that disturb equal to or greater than 1 acre of land (or less than 1 acre if part of a common plan of development or sale). Phase II also revises the original no exposure provision to be a conditional exclusion applicable to all categories of industrial activity (except construction activity) when there is no exposure of industrial materials and activities to storm water.

**A8. How did the Intermodal Surface Transportation Efficiency Act affect Phase I industrial activities?**

Provisions of the Intermodal Surface Transportation Efficiency Act (ISTEA) temporarily exempted Phase I industrial activities operated by municipalities with populations less than 100,000 people (with the exception of power plants, airports, and uncontrolled sanitary landfills), from the need to obtain a storm water discharge permit. This exemption ended on March 10, 2003, and these operations must now have industrial permit coverage for storm water discharges.

**A9. Does Phase II of the storm water program regulate all storm water discharges not regulated under Phase I?**

No. Those discharges that are regulated under Phase II of the storm water program include small MS4s in “Urbanized Areas” and construction sites disturbing one to five acres.

**A10. Is there a Phase III of the storm water program?**

No. However, the storm water program as developed under Phases I and II will continue to bring additional facilities and communities into the program, and will continue to adapt to water quality needs, within the framework of the Phase I and Phase II Rules.

**A11. If a permit application deadline arrives, but the permitting authority has not yet finalized an applicable general permit, what should a facility do?**

Because the facility is required to apply for a permit, EPA recommends that the operator submit an individual permit application to the permitting authority requesting storm water permit coverage. EPA also recommends, where feasible, that the operator attempt to meet either conditions of the previous general permit or minimal Federal requirements for storm water discharges. These efforts would be seen as “good faith” in the event of 3<sup>rd</sup> party litigation. The permitting authority most likely will hold the individual permit application until a general permit is issued; at that time the operator may withdraw the individual permit application and submit a Notice of Intent (NOI) for general permit coverage.

**A12. Are all storm water discharges to sanitary sewers exempt from storm water permitting requirements? Does this include discharges to combined sewer systems?**

Any storm water discharge to a sanitary sewer is exempt from storm water permit application requirements. It may, however, be subject to pretreatment program requirements under Section 307(b) of the CWA, or local sewer use by-laws or ordinance. Storm water discharges to combined sewer systems are also exempt from NPDES storm water permitting but may be subject to pretreatment requirements as well as being subject to requirements that are part of a long term control plan for the combined sewer system. Storm water should never be discharged to a sanitary sewer system without approval of the system operator. States may have programs that are more stringent or inclusive than the Federal requirements.

**A13. Can an applicant claim confidentiality on information contained in an NPDES permit application?**

No. Under 40 CFR 122.7(b), the permitting authority will deny claims of confidentiality for the name and address of any permit applicant or permittee, permit applications, permits, and effluent data.

**A14. What is an NOI? What does submittal of an NOI mean?**

A Notice of Intent (NOI) for a General Permit is similar to a permit application, in that it is a request for NPDES coverage, and contains information about the proposed discharge. An NOI differs from a permit application in that it is submitted after the general permit is issued. NOI is EPA's term. Some States use different terms for their applications for general permit coverage.

The NOI serves as the operator's notice to the permitting authority that the operator intends the discharge to have coverage under the General Permit. By signing and submitting the NOI, the operator is certifying that a Storm Water Pollution Prevention Plan (SWPPP) or Storm Water Management Plan (SWMP) has been developed, that the discharge meets all of the conditions specified in the General Permit, and that the operator intends to continue to meet those requirements. A fraudulent or erroneous NOI invalidates permit coverage. An incomplete NOI delays permit coverage until such time as the NOI has been completed. Although an NOI is generally much easier to complete, the operator assumes significant responsibility for ensuring that permit coverage for his or her discharge is valid.

Some permitting authorities do not automatically grant permit coverage upon submittal or receipt of the NOI; the operator must wait for confirmation from the permitting authority that permit coverage has been granted. Some permitting authorities grant permit coverage automatically after a stipulated waiting period. Some permitting authorities grant permit coverage immediately upon submittal or receipt of the NOI. Check with your permitting authority for additional guidance.

**A15. If storm water goes into a roadside ditch, and is then conveyed to waters of the United States, is it a point source?**

Yes, the storm water is a point source by nature of the discharge and because it went into a ditch which is considered a conveyance system. Point sources are pollutants added to waters of the United States through a discernible, confined, and discrete conveyance which could include sheet flow over a graded surface, and could also include runoff from urban areas.

**A16. Are the storm water rules found in the Code of Federal Regulations (CFR)?**

Yes, 40 CFR is where all environmental rules are located. Storm water is found at 122.26 and 122.30-37.

## **B. GUIDANCE SOURCES AND MATERIALS**

### **B1. Are there any materials that provide easy to understand information on the storm water regulations?**

EPA's storm water website has guidance materials on many different facets of the storm water program: [http://cfpub.epa.gov/npdes/home.cfm?program\\_id=6](http://cfpub.epa.gov/npdes/home.cfm?program_id=6).

### **B2. Where do I find guidance on sampling storm water?**

Guidance on procedural methods for conducting storm water sampling is provided in the *NPDES Storm Water Sampling Guidance Manual* (EPA 833-B-92-001, July 1992) , which is available at the storm water website.

### **B3. Where can I find information on storm water compliance?**

In addition to EPA's website and many State websites, try these websites:

Storm Water Resource Locator, <http://www.envcap.org/swrl/>

Construction Storm Water Advisor, <http://ecm.ncms.org/stormadvisor/intro.htm>

The Storm Water Managers Center, <http://www.stormwatercenter.net/>

Construction Industry Compliance Assistance Web Site: <http://www.cicacenter.org/>

## **C. WATERS OF THE U.S.**

### **C1. What types of water bodies are considered Waters of the U.S.?**

40 CFR 122.2. Waters of the United States or waters of the U.S. 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 intrastate 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 (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

States generally also define “Waters of the State”. Those definitions may be more extensive than “Waters of the U.S.”, and State permitting authorities may extend NPDES coverage to those additional waters.



**C2. Is a storm water discharge directly to an aquifer considered to be to waters of the U.S. for purposes of needing an NPDES permit? What if the discharge reappears in a nearby stream?**

If contamination from storm water that entered the aquifer shows up in a nearby stream, it could be considered a discharge to waters of the U.S. due to the hydrologic connection. States also may consider groundwater to be a water of the State, and require a permit for the discharge. Direct injection of storm water into the ground via a well (known as a Class V well) is regulated through the Underground Injection Control (UIC) program. This program mandates protections to underground sources of drinking water. See [www.epa.gov/ogwdw000/uic/classv.html](http://www.epa.gov/ogwdw000/uic/classv.html).

## **D. BEST MANAGEMENT PRACTICES (BMPs)**

### **D1. Storm water general permits typically do not include numeric effluent limits. How do BMPs relate to water quality standards?**

Under the NPDES storm water program, there is a progression of approaches used to ensure that water quality standards are achieved: 1) setting technology-based standards; 2) defining maximum extent practicable abatement measures and technology (giving the permitting authority flexibility in how to achieve it); 3) establishing performance standards to address problem parameters; and 4) establishing numeric effluent limits. The storm water program utilizes a BMP framework, which is a combination of approaches 1, 2 and 3, because EPA feels that the vast majority of storm water discharges can be adequately controlled to meet water quality standards by managing activities that have the potential to contribute pollutants. As an evaluation of effectiveness, storm water permits, at the discretion of the permitting authority, may include visual inspections, evaluation of environmental indicators or measurable goals, effluent monitoring, or in-stream monitoring.

### **D2. What is a storm water Best Management Practice (BMP)?**

A BMP is a technique, process, activity, or structure used to reduce the pollutant content of a storm water discharge. BMPs include simple nonstructural methods, such as good housekeeping and preventive maintenance. BMPs may also include structural modifications, such as the installation of bioretention measures. BMPs are most effective when used in combination with each other, and customized to meet the specific needs (drainage, materials, activities, etc.) of a given operation. The focus of EPA's general permits is on preventive BMPs, which limit the release of pollutants into storm water discharges. BMPs can also function as treatment controls.

EPA has published guidance materials to assist in the selection of appropriate BMPs in the preparation of storm water pollution prevention plans including: *The National Menu of BMPs for Storm Water Phase II* (<http://cfpub.epa.gov/npdes/stormwater/menuofbmps/menu.cfm>), *Storm Water Management for Industrial Activities; Developing Pollution Prevention Plans and Best Management Practices* ([www.epa.gov/npdes/pubs/owm0236a.pdf](http://www.epa.gov/npdes/pubs/owm0236a.pdf)) and *Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices* (EPA 832-R-92-005) (<http://cfpub.epa.gov/npdes/stormwater/swppp.cfm>). Some EPA manuals are also available from the Office of Water Resource Center at (202) 566-1729 (email: [center.water-resource@epa.gov](mailto:center.water-resource@epa.gov)). There is also a *National Stormwater BMP Database* with information on BMP effectiveness (<http://www.bmpdatabase.org/>).

## **E. IMPAIRED WATERS AND TOTAL MAXIMUM DAILY LOADS (TMDLs)**

### **E1. What is a 303(d) list?**

Compiled according to section 303(d) of the Clean Water Act, this is a list of all known impaired waters in a State, and is based on water quality assessments conducted by the State and other parties. States update their 303(d) lists every 2 years.

### **E2. If a waterbody is not on a 303(d) list does that imply that it is not impaired?**

Generally, if a waterbody is not on a State's 303(d) list the waterbody is deemed to not be impaired for purposes of permitting. However, the State may simply not have enough information to make a determination if a waterbody is impaired or not. States update their 303(d) lists every 2 years. A previously unlisted waterbody may be added to the list if new information indicates that it is impaired.

### **E3. How are Total Maximum Daily Loads (TMDLs) developed?**

TMDLs are established in accordance with the listing and priority-setting process provided by section 303(d) of the CWA and 40 CFR 130.7. The TMDL is determined through the review of monitoring data and watershed modeling, and information on the assimilative capacity of the waterbody for the pollutant of concern. Allocations are based on knowledge of existing discharges, projected future discharges and growth, and other criteria depending upon the situation. The tools that are used depend upon the complexity of the situation. See <http://www.epa.gov/OWOW/tmdl/decisions/dec2.html> for more information.

### **E4. When seeking permit coverage is it the permit applicant's responsibility to find out if a water body is impaired, or the responsibility of the permitting authority to inform the applicant of impairment status?**

It is the responsibility of a discharger during the process of seeking permit coverage to ascertain if the waterbody into which he/she will discharge is impaired.

### **E5. How can a prospective permittee find out if a waterbody is impaired or has an approved Total Maximum Daily Load (TMDL)?**

This information must be obtained from your State TMDL authority. In States that are the permitting authority, generally the same State environmental agency also develops State 303(d) lists and TMDLs. Many of these States have websites with lists of impaired waterbodies and TMDLs, or with information on who to contact. Your permitting authority can also provide this contact information. For States where EPA is the permitting authority, EPA has developed a website with contact information for the State TMDL authority, <http://cfpub.epa.gov/npdes/stormwater/tmdl.cfm>.

Once you have determined that your receiving water is impaired and/or has an approved TMDL, you may still need clarification from the TMDL authority on how that status affects your discharge, i.e. whether there are additional requirements you must meet. If so, these additional requirements (e.g. wasteload allocation, monitoring) must be incorporated into your Storm Water Pollution Prevention Plan (SWPPP) or your Storm Water Management Plan (SWMP), and implemented accordingly.

**E6. What are the permit requirements for meeting a Total Maximum Daily Load (TMDL) wasteload allocation?**

Permit requirements for implementing wasteload allocations in approved TMDLs will vary across waterbodies, discharges, and pollutants of concern. A TMDL is essentially a customized water quality improvement plan for an individual waterbody. The solutions (i.e. allocations) can take many different forms - narrative, numeric, specified BMPs - and may be augmented by other special requirements such as monitoring. General permits require that all permitted discharges meet wasteload allocations, but the specifics of those requirements must be obtained from the TMDL authority, and incorporated into the Storm Water Pollution Prevention Plan (SWPPP) or Storm Water Management Plan (SWMP). It is the responsibility of the operator to find out what these requirements are, but the permitting and TMDL authorities will provide assistance upon request.

**E7. How can a permittee determine and demonstrate that his/her discharge is meeting the Total Maximum Daily Load (TMDL) requirements?**

There are 2 general ways in which a permittee can demonstrate that TMDL allocations are being met: 1) as with any permit requirement, it must be incorporated into the SWPPP or SWMP, be implemented and maintained, and documented by inspections, reports, and/or monitoring, and/or 2) if stipulated in the TMDL, monitoring or other evaluations must be conducted by the permittee, and documented in inspections or reports. If a permittee determines that the discharge is not in compliance with the TMDL allocation, the permittee must improve controls on the discharge and re-evaluate. TMDL authorities may also conduct evaluations of their own, and provide feed-back to dischargers.

**E8. If a new discharger wants to discharge to an impaired water for which a Total Maximum Daily Load (TMDL) has not yet been developed, can the discharge be covered by a general permit?**

If the discharge does not contain the pollutant for which the waterbody is impaired, the discharge can be authorized under a general permit.

However, if the discharge does contain the pollutant for which the waterbody is impaired, 40 CFR 122.4(i) expressly prohibits the issuance of a permit to a new source or a new discharger, if its discharge will cause or contribute to the violation of water quality standards, unless the operator of the proposed discharge can demonstrate that there are sufficient pollutant load

allocations to allow for the discharge, and that other discharges to the water body are under compliance schedules to bring the water body into compliance with water quality standards.

Permitting authorities have developed different policies for dealing with the situation when these conditions are not attainable. Please check with your permitting authority for additional guidance on this issue.

**E9. How should an MS4 deal with a discharge to a water body for which there is a Total Maximum Daily Load (TMDL)?**

The TMDL must specify discharge conditions or requirements, generally expressed as a waste load allocation, for all discharges of the pollutant of concern to the relevant water body. The allocation may be numeric or narrative (e.g. specific BMPs), and may take any reasonable form. The MS4 operator must incorporate the stipulated requirements into the storm water management plan, and implement them accordingly. If the TMDL is subsequently revised, the operator must implement the new allocation.

**E10. If a Total Maximum Daily Load (TMDL) does not provide an allocation for storm water discharges from existing or new activity can the discharge be authorized under the general permit?**

If the pollutant of concern will be present in the discharge, and the TMDL has provided an allocation of zero (0) to this source of storm water, or to storm water in general, then the discharge can not be authorized.

However, many TMDLs have failed to make allocations to storm water discharges for reasons other than the intention to disallow them. In many TMDLs storm water discharges were either over-looked, were not distinguished from nonpoint sources, or were considered too difficult to estimate, and therefore allocations were not articulated. These TMDLs should be revised to include allocations for storm water.

Permitting authorities generally have policies to compensate for TMDLs that fail to provide allocations to storm water. Existing discharges generally can continue to receive authorization (at the discretion of the permitting authority), although the permitting authority may have specific provisions that the operator must meet. The permitting authority can often justify this authorization because the discharge existed at the time the TMDL pollutant load estimates were made, and therefore the discharges were, by default, included in those estimates even if they were not specifically identified. The operator may need to comply with an allocation made generally to the load (nonpoint sources), and should reasonably expect assistance from the TMDL and/or permitting authority(s) in interpreting that allocation and translating it into discharge requirements. The operator is responsible for requesting that assistance prior to submitting the Notice of Intent (NOI). If the TMDL is subsequently revised, the operator must implement the new allocation.

The permitting authority may or may not authorize a new discharge. That authorization is much more difficult to justify, unless there is an allocation to new growth that is not yet used up and can be reasonably applied to a storm water discharge. The operator may apply for an individual permit, understanding that the permitting authority will still have to find an allocation for the discharge, and this may not be feasible. The operator may request that the TMDL be revised, but this process may not be initiated immediately, and could take some time regardless. Check with your permitting authority for additional guidance.

**E11. May permitting authorities designate cities for regulation under the MS4 storm water program if a new Total Maximum Daily Load (TMDL) is approved?**

Yes. Future TMDLs may trigger additional designations.

## **F. ENDANGERED SPECIES**

### **F1. What is the definition of harm for endangered species? Where is more information available about this?**

The term “harm” includes any act which actually kills or injures fish or wildlife, with emphasis on acts including significant habitat modification or degradation that significantly impairs essential behavioral patterns of fish or wildlife. Additional information is available from the U.S. Fish and Wildlife Service(USFW): <http://endangered.fws.gov/policies/index.html>.

### **F2. Are Federal facilities affected by the Endangered Species Act (ESA) requirements in authorized States where permits are issued by the State? How can these include the ESA requirements, which include Federal approval on Federal land?**

All Federal facilities are subject to ESA requirements if the facility has a permit obligation, irrespective of who is the permitting authority. Under Section 7 of the ESA, EPA is required to consult with the National Marine Fisheries Service (NMFS) and USFW (the Services) specifically when Federal facility permitting is involved. A memorandum of agreement between EPA and the Services explains that EPA can approve or deny permits based on ESA compliance.

### **F3. What happens if the USFW or NMFS finds during the 7 day NOI review period for construction projects, that a project is likely to have an impact on an endangered or threatened species?**

If one of the Services has reason to believe that a construction project may adversely affect a protected species or habitat, the Service will notify EPA before the end of the 7 day review period. EPA will withhold permit authorization. The hold on the project will be immediately available to the operator on EPA’s electronic NOI website. EPA will also send the operator a letter denying authorization, and explaining how the Service wants to proceed.

The Service may request that the operator initiate a consultation with the Service on an endangered or threatened species or critical habitat. The Service may request to see the project’s Storm Water Pollution Prevention Plan, and/or documentation of the operator’s eligibility certification for endangered and threatened species and critical habitat. When EPA is provided documentation of concurrence by the Service, EPA will authorize storm water permit coverage.

### **F4. Does the 7 day NOI review period apply to industrial and municipal storm water permitting? Will States be implementing an ESA review period?**

Currently the ESA review process applies only to construction activities requesting storm water permit coverage under EPA’s Construction General Permit in locations where EPA is the permitting authority. Similar provisions may be included in future EPA permits. State permitting authorities are not subject to the same “Federal action” requirements with respect to the ESA. Therefore, although construction projects in NPDES-delegated States are still subject

to provisions of the ESA, these provisions are not generally linked to the storm water permitting process.

Some States do have NOI review periods for reasons other than ESA assessments. These review periods are sometimes 30 or 60 days, or until the permitting authority has completed its NOI review.

**F5. What if a storm water BMP, such as an infiltration pond, becomes habitat to endangered species?**

There is not yet clear guidance on the issue as to when a specific treatment system becomes critical habitat. Based on the ESA, however, if the BMP is within a designated evolutionary significant unit (ESU) for the listed species, then any harm, whether it be killing or destruction of habitat or conditions that adversely impact recovery of the species, would be considered a “takings” and subject to ESA enforcement.



## **G. FEDERAL FACILITIES**

### **G1. Do Federal facilities have to go to EPA for their permits in authorized States?**

There are only 4 States in which the State has general NPDES authority, but EPA retains permitting authority for Federal facilities: Colorado, Delaware, Vermont and Washington.

### **G2. Are military bases and other Federal facilities regulated under the NPDES storm water program?**

Yes. Federal facilities need to follow the requirements as they apply to their activities. The construction activity permit program, the MS4 permit program, and the industrial permit program all apply to military and other Federal installations.

### **G3. Army National Guard units have vehicle maintenance facilities. They conduct maintenance on jeeps, hum-vees, etc. Is this an industrial activity? If so, under what category (and SIC code), and under what circumstances would they be considered “industrial?”**

This is classified as regulated industrial activity if the shop is categorized by the SIC codes listed in the transportation category of facilities engaged in industrial activity [i.e., SIC codes 40, 41, 42 (except 4221-25) 43, 44, 45 and 5171]. Only the vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication) and equipment cleaning areas (such as truck washing areas) are regulated under the industrial storm water program.

### **G4. How should military installation construction programs be addressed?**

If the military facility has construction activities that will disturb one acre or more, it will need to obtain permit coverage from the appropriate NPDES permitting authority. In addition, if the military installation qualifies as an MS4, it will need to apply and enforce its own erosion and sediment control requirements under the construction minimum measure of its storm water management program.

## **H. OBTAINING PERMIT COVERAGE FROM EPA**

### **H1. What is the procedure to apply for coverage under EPA's industrial or construction general permits?**

Dischargers of storm water associated with industrial activity and discharges from construction activity disturbing 1 or more acres of land, located in areas where EPA is the permitting authority, must submit a Notice of Intent (NOI) to be authorized to discharge under the appropriate EPA general permit. The NOI is a document requesting basic information about the nature of the facility and its storm water discharges, and should be submitted to EPA's NOI Center after the operator has developed a SWPPP and completed all necessary eligibility procedures and certifications. NOIs for construction activities can be submitted electronically. Electronic submittal for industrial activities will be available in early 2004. For more information on permit application procedures see [http://cfpub.epa.gov/npdes/home.cfm?program\\_id=6](http://cfpub.epa.gov/npdes/home.cfm?program_id=6).

### **H2. What is the procedure to apply for coverage under EPA's Municipal Separate Storm Sewer System (MS4) permits?**

EPA Regions issue their own small MS4 general permits, and issue individual permits to medium and large MS4s. An operator of an MS4 in an area where EPA is the permitting authority should contact the appropriate EPA Regional Office for information on permitting procedures, <http://www.epa.gov/epahome/locate2.htm>.

### **H3. Will a facility automatically be covered by an EPA general permit upon submittal of a Notice of Intent (NOI)?**

For construction activities requesting coverage under EPA's CGP, permit coverage begins seven days after EPA posts the NOI at <http://www.epa.gov/npdes/stormwater/cgp> unless the operator has not been notified that coverage is denied or delayed pending further endangered species determination. For industrial activities requesting coverage under the MSGP, permit coverage begins two days after the NOI is post marked, provided the form is complete and the storm water discharges from the facility are eligible for coverage as established by the permit conditions. For small MS4s requesting coverage under an EPA general permit, the permit will state when permit coverage begins, such as after notice from the permitting authority that review is complete, or after a specified waiting period, unless the MS4 hears otherwise.

### **H4. Does EPA have a fee for submitting a permit application or NOI?**

EPA does not levy general permit fees at this time.

## **I. PERMITS ISSUED BY STATES**

### **I1. To what extent do State general permit requirements differ from EPA general permit requirements?**

All NPDES permits must meet minimum technical and water quality-based requirements of the Clean Water Act (CWA). Permit requirements for authorized NPDES States, however, may vary considerably because of State-specific requirements. Permittees in authorized NPDES States should consult with their permitting authorities regarding particular State conditions.

### **I2. Do State permitting authorities have a fee for submitting a permit application or NOI?**

Many authorized NPDES States levy permitting fees, and should be contacted directly to find out the type (e.g. application; annual) and amount of the fee.

### **I3. Can an authorized NPDES State adopt a Federal general permit?**

Yes. Permitting authorities may adopt an EPA general permit. The State would need to issue the permit following the necessary State and Federal permit issuance procedures.

### **I4. Can a State adopt an EPA general permit by reference or rule?**

No. A permitting authority must issue the permit under its own rules.

### **I5. Do States have to issue general permits?**

No. States may cover all NPDES discharges under individual permits. The permitting authority is obligated to develop a permitting program for all regulated discharges, and may choose how to achieve this.

### **I6. If my facility is located in an NPDES-authorized State, can EPA issue a permit?**

No. The permit must be issued by the State if they are authorized for the applicable part of the NPDES program. In some States, EPA issues certain permits, e.g. for federal facilities and Tribes, while the State issues all other permits.

## **J. INDIVIDUAL VS GENERAL PERMITS**

### **J1. Do permitting authorities have the option of providing coverage under general permits to facilities that have submitted individual permit applications?**

Yes. Permitting authorities may choose to cover facilities that have submitted individual permit applications under general permits. Facilities that are covered by a general permit may petition the permitting authority to be covered under an individual permit by submitting an individual permit application with reasons supporting the request to the permitting authority, pursuant to 40 CFR 122.28(b)(3)(iii).

### **J2. What are the benefits/drawbacks of pursuing an individual storm water permit instead of a general permit?**

An individual storm water permit may be advantageous, because it is designed to reflect a facility's site-specific conditions, whereas general permits are much broader in scope. General permits may be advantageous because regulated facilities know, in advance of submitting their NOI, the requirements of the permit. In addition, coverage under a general permit may be automatic (depending on how the permit is written), whereas the individual permitting process takes longer.

### **J3. Can a facility that has submitted an individual permit application obtain general permit coverage upon issuance of a general permit in its State?**

Yes. An eligible facility may opt for coverage under a general permit by submitting an NOI. Authorized States may require a written request for withdrawal from the individual permit application process.

## **K. CONSTRUCTION**

### **K1. Who and What are Regulated?**

#### **1a. Who is responsible for applying for a construction storm water permit?**

The operator is responsible for applying for the permit as required by 40 CFR 122.21(b). The operator is the person who has operational control over construction plans and specifications, and/or the person who has day-to-day supervision and control of activities occurring at a construction site. In some cases, the operator may be the owner or the developer; in other cases the operator may be the general contractor; in some cases both entities will be considered operators. Some States require a single entity, usually the land owner or easement holder, to be the permittee for a given construction project. Other States and EPA require all relevant entities to obtain permit coverage, as co-permittees, for a given construction project. Contact your permitting authority for clarification on who must apply.

#### **1b. What are the responsibilities of subcontractors at the construction site under storm water construction general permits?**

Subcontractors may have no permit-specified responsibilities, or may be required to implement the measures stated in the pollution prevention plan and to certify that he/she understands the terms and conditions of the permit requirements. Generally, subcontractors are not required to submit NOIs. Permittees may develop their own sets of requirements for subcontractors as a way of ensuring that permit conditions are be met. You must contact your permitting authority for clarification on subcontractor requirements.

#### **1c. Is there a difference in permit requirements for large and small construction activities?**

The permit requirements are not different for projects less than 5 acres and those larger than 5 acres. ALL sites 1 acre and larger (or less than 1 acre, but part of a larger common plan of development or sale) are subject to the same construction storm water permit requirements. However, depending on decisions made by the permitting authority, small sites (those less than 5 acres) may be eligible for permit waivers, or may not need to submit an NOI.

#### **1d. Do construction activities at facilities already covered under an NPDES permit (such as a wastewater treatment plant) need storm water coverage for construction activities?**

Yes. Facilities engaging in construction activities need coverage under a construction storm water permit, unless all the storm water requirements are included in a facility's existing NPDES permit.

**1e. If you are building a large retention basin and it will not discharge to waters of the U.S. do you need a permit?**

If the basin exceeds 1 acre in size you will need coverage under a construction storm water permit for the construction activities, regardless of whether the basin itself is designed for post-construction releases. If post-construction the basin is associated with industrial activities, and you have a release or a potential for a release, for example with a 100-year storm to waters of the United States, you must have coverage under a storm water industrial permit. If the basin is associated with a regulated MS4, there may be additional permit requirements.

**1f. Is routine maintenance considered a construction activity needing a permit?**

40 CFR, Section 122.26 (15) (i) states that storm water discharges from construction activity do not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

**1g. Does clearing for fire hazard minimization require a construction permit?**

An existing fire break that is being maintained would be routine maintenance, and would not need storm water permit coverage. However, creating a new break or reducing fuels (clearing dead trees and under story) is considered construction, and must have permit coverage.

**1h. What is the difference between road maintenance and road construction?**

Road construction is the initial development and disturbance to build or expand or enhance the road, whereas maintenance is the upkeep of the road.

**1i. Is re-paving of roads a construction activity?**

Re-paving is not regulated under the storm water program unless one or more acres of underlying and/or surrounding soil are cleared, graded or excavated as part of the re-paving operation.

**1j. Does dirt road decommissioning need to be covered by a construction permit?**

If the dirt road decommissioning includes activities such as clearing, grading, and excavating, then a permit is needed for any site disturbing more than 1 acre of land.

**1k. If a city is conducting construction activity, does it need a permit?**

The city is subject to permit requirements for all projects disturbing 1 acre or more of land, and would also be responsible for ensuring that its own local erosion and sediment control requirements are enforced.

**1l. If a city constructs a storm drain pipe system that disturbs 1 or more acres, is it subject to permit requirements?**

Yes, this activity would be considered construction. Work performed on an existing storm drain system, however, would be considered maintenance and would not require a permit.

**1m. If a homeowner or builder creates a construction-related discharge within a development, is the developer responsible for it, or the homeowner or builder?**

This depends upon how the permitting authority has structured the permitting accountability, and who holds permit coverage.

**1n. Are there any construction activities that are exempt from permit coverage?**

Construction activities less than 1 acre are exempt, unless they are associated with a common plan of development or sale.

**1o. Are Superfund remediation activities exempt from construction permit requirements?**

Under Superfund, an operator must meet the requirements of all Federal programs, but does not have to apply for a permit.

**1p. Does the construction category only include construction of industrial buildings?**

No, any construction activity, including clearing, grading, and excavation, that results in the disturbance of one acre or more of land (or less than one acre if included in a larger common plan of development or sale) must obtain permit coverage.

**1q. Do Federal storm water regulations for construction activity require control of storm water discharges after construction?**

No. A construction storm water permit is intended to regulate construction site runoff during construction rather than after final stabilization is achieved. The construction storm water permit does not authorize post-construction storm water discharges which originate from the site after construction activities have been completed. Other regulations (Federal industrial or municipal storm water regulations; State or local regulations) may regulate post-construction storm water discharges.

**1r. What agricultural activities are exempt from construction storm water regulations, and which would need permit coverage?**

As stated in 40 CFR 122.3(e), pollutants from nonpoint source agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest

lands, but not CAFOs, are exempt under the storm water regulations. This exemption does not extend to the construction of buildings. Construction of any building that disturbs 1 acre or more of agricultural or agriculture-related operations must obtain coverage under a construction permit for storm water discharges.

**1s. Is clearing of lands specifically for agricultural purposes regulated construction activity under the storm water program?**

No, although the clearing of land may be greater than one acre, any amount of clearing for agricultural purposes is not considered an industrial activity under the storm water regulations. Section 402(l)(1) of the 1987 Water Quality Act exempts agricultural storm water discharges from NPDES permitting requirements including storm water permitting. This exemption only applies, however, if the clearing of land is solely for agricultural purposes.

**1t. If a construction activity that disturbs one acre or more commences on a site covered by an existing industrial storm water permit, are the storm water discharges from the construction area covered by the existing permit or is a separate permit required?**

Industrial storm water permits do not cover construction activities. If the existing industrial permit is an individual permit, then the operator must either request a modification of the existing permit to include the construction storm water discharges or apply for coverage under a separate permit that specifically addresses that construction activity. If the permittee decides to modify the existing individual permit, permit modifications must be approved prior to initiating any construction activity. If the existing permit is a storm water industrial general permit, the operator should submit an NOI for coverage under a storm water general permit for construction activities.

**1u. Are long-term maintenance programs for flood control channels (such as vegetation removal) or similar roadside maintenance programs subject to permitting if one or more acres are disturbed?**

If grading, clearing or excavation activities disturb one or more acres of land, either for an individual project or as part of a long-term maintenance plan, then the activity is subject to storm water permit application requirements.

**1v. For a construction activity that uses off-site “borrow pits” for excavation of fill material or sand and gravel, should the number of disturbed acres at the borrow pit be added to the number of acres at the construction site to determine the total number of disturbed acres?**

Yes, off-site borrow pits that are utilized for the removal of general fill material (e.g., dirt) are considered part of the “larger common plan of development” and must be addressed by the SWPPP. Where the same operator uses an off-site location to support construction activities at



multiple sites, permit coverage may be obtained by identifying the site and including controls for this common site in at least one of the SWPPPs for the individual construction projects.

However, if a borrow pit is specifically used for the removal of materials such as sand, gravel, and clay, the pit is considered a mine and is classified under SIC code 14. Such sites would be regulated as industrial activity as defined at 40 CFR 122.26(b)(14)(iii).

**1w. Is demolition considered a construction activity?**

Yes. Demolition activities that disturb one or more acres of land are subject to storm water construction permit application requirements.

**K2. Larger Common Plan of Development or Sale**

**2a. What is meant by a “larger common plan of development or sale?”**

A “larger common plan of development or sale” is a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan. For example, if a developer buys a 20-acre lot and builds roads, installs pipes, and runs electricity with the intention of constructing homes or other structures sometime in the future, this would be considered a larger common plan of development or sale. If the land is parceled off or sold, and construction occurs on plots that are less than one acre by separate, independent builders, this activity still would be subject to storm water permitting requirements if the smaller plots were included on the original site plan.

**2b. Under what size restrictions does the larger common plan of development or sale stipulation come into play?**

A permit is required if 1 or more acres of land will be disturbed, regardless of the size of any of the individually-owned or developed sites.

**2c. Under Phase II is the 5-acre threshold gone?**

No. Anything between 1 and 5 acres, or less than 1 acre, but part of a larger common plan of development or sale that exceeds 1 acre is considered small construction. Permit requirements between large and small construction do not vary. However, small construction activities may be eligible for permit waivers. Some permitting authorities may also opt to not require NOIs for small construction, although those projects must still comply with all permit requirements.

**2d. If a contractor has permit coverage as part of a larger common plan of development or sale, when the project is done does a Notice of Termination (NOT) need to be filed by this individual operator?**

An NOT needs to be filed for each permitted section of a larger common plan of development or sale corresponding to the NOIs that were submitted for that project.

**2e. Are two projects on contiguous parcels, managed and operated by two separate entities, considered to be part of a larger common plan of development or sale?**

If there is documentation that the two projects operate separately, they would be considered two separate developments, rather than a larger common plan of development or sale. If, however, there is documentation or an announcement (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, etc.) that the projects operated as a single unit of development they would be considered part of a larger common plan of development or sale.

**2f. If there are several road projects going on at the same time that are under the same owner and are being constructed under common specifications, and are contiguous but widely distributed, are they considered to be a larger common plan of development or sale?**

Generally these projects would be considered a common plan of development. Linear construction projects like roads and pipelines are frequently “widely distributed,” but still must have permit coverage. Extenuating circumstances may be left to the judgement of the permitting authority.

**2g. If a developer has 4 acres and sells off a ½ acre lot to another developer, does the new developer need a permit even though that lot is less than 1 acre?**

Yes, because the ½ acre lot is part of a larger common plan of development or sale that is larger than one acre.

**2h. What is a larger common plan of development or sale at a facility like a university or military base? Is any construction considered to be part of the “larger common plan” or is there some sort of break point where unrelated projects at different parts of the facility can be considered separate plans of development? How would this be related to projects undertaken by cities where different road projects can be separate plans?**

The “plan” in a larger common plan of development or sale is broadly defined as any announcement or documentation or physical demarcation indicating that construction activities may occur on a specific plot of land. On a military base or university the same criteria would apply. The fact that the entire military base or university is owned by one entity is not the

controlling factor. Similarly, unrelated road projects within a given city would not be considered common plan projects.

### **K3. Storm Water Pollution Prevention Plan (SWPPP)**

#### **3a. Are Storm Water Pollution Prevention Plan (SWPPP) required for construction projects between 1 and 5 acres?**

Yes, SWPPPs are required for all sites under the NPDES construction storm water program component.

#### **3b. Do EPA or other permitting authorities approve construction Storm Water Pollution Prevention Plans (SWPPPs)?**

EPA and many permitting authorities do not approve SWPPPs. A few State permitting authorities do approve SWPPPs prior to authorizing permit coverage. The SWPPPs must be maintained on site during the life of the construction activity, available to contractors, other site staff, and to EPA, State or local officials to use SWPPPs as part of the compliance inspection process. Permitting authorities often review and comment on SWPPPs during compliance and enforcement proceedings.

#### **3c. Who determines if a SWPPP is adequate?**

The construction operator is responsible for developing an adequate SWPPP, using guidance provided by the permitting authority. Compliance inspections are also conducted to determine SWPPP adequacy.

#### **3d. How often do construction SWPPPs need to be reviewed?**

There is no time-line set forth in the NPDES storm water regulations for SWPPP review. The review frequency should be based on scheduled inspections and identified needs such as changes in operations. The CGP requires that SWPPPs be revised whenever a changes in design, construction method, operation, or maintenance procedure occurs.

#### **3f. Do SWPPPs require annual reporting?**

No, SWPPPs developed for construction sites do not include annual reporting requirements.

#### **3g. Are Best Management Practices (BMPs) supposed to be identified in the SWPPP?**

Yes, the SWPPP should describe all proposed BMPs. If they are not implemented immediately, it should identify when and under what circumstances they will be used.

**3h. What if you don't know what BMPs you are going to use, can you leave them out of the SWPPP?**

No. The SWPPP would not be complete without identification of BMPs, nor should you commence construction activities until you have identified all necessary BMPs. Your SWPPP should be updated whenever you make modifications to your BMPs.

**3i. What discharge location inspection requirements apply to limited access areas, especially those associated with linear construction?**

Under EPA's CGP, Section 3.10.E recognizes that, in certain limited circumstances, not all discharge locations will be accessible without damaging existing storm water controls and/or stabilization practices and, thus, a complete site inspection may not be practicable. In those instances, inspection personnel must inspect nearby downstream locations to the extent such inspections are practicable in order to assess the effectiveness of the erosion control measures as identified in the SWPPP. In some instances, visually inspecting from an assessable location (e.g., using binoculars from road crossings or edges of parking lots or interior roads) may be appropriate for physically inaccessible portions of the site. This practicability standard also may be applied to linear construction inspections (Section 3.10.F.), which already limit inspections to 0.25 miles above and below site access points. In those instances where an inspection may cause further environmental impacts (e.g., compromising temporarily or permanently stabilized areas, requiring vehicles to cross creeks, wetlands, or other sensitive topography, etc.), compromise the inspection personnel's safety, or present other impracticabilities, the inspection personnel may consider nearby downstream (or overlook point) inspections and document the particular impracticability preventing such inspections 0.25 miles above and below such access point. Documentation of each inspection should identify those areas that were inspected, and how, and the reasons why any portions of the site were deemed to be inaccessible.

**K4. Stabilization**

**4a. What is a stabilized gap in time?**

A stabilized gap in time is a period of time during which construction activities have ceased and the entire site is stabilized, however future construction activity is planned and so permit coverage remains active.

**4b. How is the term *final stabilization* defined under the storm water program?**

The 2003 CGP defines "final stabilization" as follows:

1. All soil disturbing activities at the site have been completed and either of the two following criteria are met:
  - a. a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70 percent of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or

- b. equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.
2. When background native vegetation will cover less than 100 percent of the ground (e.g., arid areas, beaches), the 70 percent coverage criteria is adjusted as follows: if the native vegetation covers 50 percent of the ground, 70 percent of 50 percent ( $0.70 \times 0.50 = 0.35$ ) would require 35 percent total cover for final stabilization. On a beach with no natural vegetation, no stabilization is required.
3. In arid and semi-arid areas only, all soil disturbing activities at the site have been completed and both of the following criteria have been met:
- a. Temporary erosion control measures (e.g., degradable rolled erosion control product) are selected, designed, and installed along with an appropriate seed base to provide erosion control for at least three years without active maintenance by you,
- b. The temporary erosion control measures are selected, designed, and installed to achieve 70 percent vegetative coverage within three years.
4. For individual lots in residential construction, final stabilization means that either:
- a. The homebuilder has completed final stabilization as specified above, 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.
5. For construction projects on land used for agricultural purposes (e.g., pipelines across crop or range land, staging areas for highway construction, etc.), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to “water of the United States,” and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization criteria (1) or (2) or (3) above.

**4c. During a permitted construction project, once the unstabilized portion of a site totals less than 1 acre, must permit coverage be maintained?**

Yes. The permit requirements remain in effect until construction activities are complete, appropriate stabilization has been achieved, and a Notice of Termination (NOT) has been filed.

**K5. Compliance and Enforcement**

**5a. What if a private citizen believes that a construction site is discharging to a local stream? Can the private citizen ask the construction site operator for a copy of the Storm Water Pollution Prevention Plan (SWPPP)?**

Operators do not have to provide SWPPPs to citizens, although they are certainly encouraged to do so. The operator does have to provide the SWPPP to the permitting authority upon request. The citizen should inform the permitting authority of the probable violation of the construction storm water permit. SWPPPs may be requested from the permitting authority by anyone under the Freedom of Information Act.

**5b. What can a citizen do if the permitting authority does not require the construction operator to bring a discharge into compliance?**

A citizen suit can be filed if the owner does not have a permit and should have; if they are not complying with the terms of their SWPPP, or the SWPPP is not adequate to protect water quality.

**K6. Waivers**

**6a. Are construction waivers available?**

Waivers are not available for construction activity disturbing five acres or greater, but regulated construction activity disturbing less than five acres are potentially eligible for waivers. There are 3 types of waivers available to construction activities on 1-5 acres: (1) Rainfall Erosivity Waiver, (2) Total Maximum Daily Load (TMDL) Waiver, (3) Equivalent Analysis Waiver. Not all permitting authorities offer all 3 waivers. You should check with your permitting authority to determine if, and under what conditions, these waivers may be available. EPA's provides for all three. Details are available in Appendix D of the CGP.

**6b. If a site smaller than 5 acres is located in a desert area where it almost never rains, is it always exempt from storm water permitting requirements?**

No. The R- factor is not based only on rainfall amount; it is also based on rainfall intensity, season, and soil type.

**6c. If a sediment Total Maximum Daily Load (TMDL) has been approved for the watershed, how could a small construction site qualify for a waiver?**

It is not likely that construction activities would qualify for a waiver in this situation. However, the waiver may be based on the following: (1) There is low predicted rainfall potential ( i.e., construction activity occurs during a negligible rainfall period), where the rainfall erosivity factor is less than 5 during the period of construction; or (2) The TMDL determined that construction storm water controls were not necessary. In some cases, a construction site that discharges to waters that are the subject to an approved sediment TMDL might be more appropriately covered by an individual construction permit.

**6d. For purposes of the Total Maximum Daily Load (TMDL) waiver, how can modeling accurately reflect the potential impact of sediment without consideration of BMPs?**

In applying for the Total Maximum Daily Load (TMDL) waiver, an applicant would have to be conservative and assume no BMPs.

**6e. With respect to a waiver, is there any type of a qualifier or consideration of receiving waters? A small amount of erosion runoff into a salmon spawning stream would be different than more erosion runoff into a seasonal pond on a piece of flat farm property.**

The revised universal soil loss equation (RUSLE) does not include a factor for receiving water impacts, but the permitting authority has the discretion to suspend the waiver in circumstances such as protection of high quality or sensitive waters.

## **K7. Notice of Termination (NOT)**

**7a. How does a storm water permitted construction operator terminate coverage?**

To terminate permit coverage the operator must submit a Notice of Termination (NOT) to the permitting authority. A permittee may submit an NOT when:

- Disturbed soils at the construction site have been finally stabilized and temporary erosion and sediment control measures have been removed (or will be removed at an appropriate time),
- Storm water discharges from construction activities have been eliminated, or
- The permittee is no longer an operator of the site.

Some State permitting authorities may have other criteria. Please consult your permitting authority for additional guidance.

**7b. If the construction activity extends beyond the term of the general permit, does a Notice of Termination (NOT) have to be submitted or is there an automatic termination? If a site has been left unfinished for 7-8 years, is the fact that the permit expired enough to qualify as termination?**

If the permit expires before construction is complete, the permittee must file an NOI for coverage under the new general permit. In States where NOT submittal is required (including where EPA is the permitting authority), an NOT must be submitted when the project is completed or abandoned. Expiration of the general permit is not analogous to permit coverage termination.

**7c. After completion of the construction project is there a deadline to submit a Notice of Termination (NOT)?**

No. There is no specified deadline for submittal of the NOT. However, it would be in the construction permittee's best interest to submit the NOT as soon as possible after construction is completed and final stabilization achieved, so that permit requirements, such as regular inspections, no longer need be carried out.

**7d. For storm water management BMPs, where the BMP is meant to be a permanent feature of the site, when should the NOT be submitted?**

The installation and stabilization of the BMP would be covered under the construction permit concluding with the submission of a Notice of Termination (NOT) when the site, including the BMP, meets the final stabilization criteria as defined in the permit.

**K8. General**

**8a. What is the purpose of the 7-day review period for the construction Notice of Intent (NOI)?**

EPA will not authorize coverage under the Construction General Permit (CGP) until 7 days after the NOI has been received by the NOI Center. The 7-day review period is for the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (the Services) to review the project for potential impacts to threatened or endangered species or critical habitat, per the Endangered Species Act. If one of the Services notes a potential impact, it will notify EPA, who will delay authorization until the Service and the construction site operator can resolve the concern. In some cases, a proposed project will be reviewed by EPA for potential water quality concerns. If the Services or EPA note no problems, CGP authorization will be automatically granted at the end of the 7th day.

**8b. Do you have to receive a response on your NOI before proceeding with your project?**

Some States require notification from the permitting authority prior to commencement of construction activities. Operators obtaining coverage from EPA may not initiate any clearing grading or other construction-related activities until the 7 day waiting period for Endangered Species Act reviews has passed. Operators may view the commencement and completion of this waiting period on EPA's NOI website.

**8c. Is there a design standard for post-construction storm water BMPs?**

There is not a general Federal standard for post-construction storm water BMPs. There are often State or local design standards. EPA requires that storm water discharges permitted under the NPDES program meet water quality standards, but does not stipulate specific design standards for individual BMPs.

**8d. When restoring the runoff water quality to pre-development conditions, does this mean immediately before grading starts, or historically?**

Pre-development is considered to be the condition of the site right before construction. While this is not a regulatory requirement (it is a "recommendation"), the permittee should attempt to recover pre-development conditions where possible. States can require a greater degree of



restoration, especially since pre-development hydrologic conditions are often already notably altered or impaired.

**8e. Are construction activities required to be in compliance with National Environmental Policy Act (NEPA) requirements before an operator submits a Notice of Intent (NOI)?**

All documentation has to be reviewed and approved before the NOI is submitted, including the Storm Water Pollution Prevention Plan (SWPPP) and ESA/NHPA certification. For Federal facilities or construction activities using Federal funding, compliance with NEPA is required when initiating a new source review. NEPA provisions do not apply to State issued permits.

**8f. Will some construction projects need individual permits?**

This decision may be made by the permitting authority on a case by case basis. Individual permits may be issued if there is discharge to impaired waters, or where there is a numeric waste load allocation. Most storm water dischargers from construction activities will be covered under general permits.

**8g. If a construction activity that disturbs less than one acre occurs on site of a regulated industrial activity, currently covered by EPA's industrial storm water general permit, does the regulated industry have to modify its pollution prevention plan to include controls for the area of construction?**

Yes. Regulated industrial activities, covered by EPA's storm water industrial general permit, must revise their pollution prevention plan to address all new sources of pollution and runoff on site, including those from construction activities. However, if less than one acre of land is disturbed, a separate storm water permit for the construction activity is not required.

**8h. For projects such as a 100-mile highway construction project, what location should be provided on the NOI?**

For EPA permits, the midpoint of a linear construction project should be used as the site location on the NOI form. For construction projects that span across more than one State, the project must meet the application requirements of each State. States may have different requirements for stipulating project location; please consult the relevant guidance.

**8i. Who is responsible for completing the inspection report on construction projects?**

The operator, or NPDES permit holder, or his or her authorized agent is responsible. See CFR 40, Section 122.21(b).

### **8j. How often does the construction operator need to inspect practices on site?**

EPA's CGP 2003 requires inspections: (1) at least once every 7 calendar days, or (2) at least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater. Inspection frequency may be reduced to at least once every month if (1) the entire site is temporarily stabilized, (2) runoff is unlikely due to winter conditions, or (3) construction is occurring during seasonal arid periods in arid and semi-arid areas.

Some States have different and/or more stringent inspection requirements. You should consult with your permitting authority to determine your inspection requirements.

### **8k. What is the duration of an NPDES permit issued for a construction activity?**

Construction permits, like other NPDES permits, are effective for 5 years. If the construction activity continues beyond the five year permit term, the owner/operator must apply for coverage under a new permit.

If the permit expires before a replacement permit can be issued, the permit will be administratively "continued." A permittee is automatically covered under the continued permit, without needing to submit anything to EPA until the earliest of: the permit being reissued or replaced; submittal of a NOT; issuance of an individual permit; the Director issuing a formal decision to not reissue the permit at which time coverage must be sought under an alternative permit.

### **8l. Do storm water construction general permits authorize non-storm water discharges?**

EPA's CGP allows for the following non-storm water discharges, provided that the discharges meet all permit requirements:

1. Discharges from fire-fighting activities;
2. Fire hydrant flushings;
3. Waters used to wash vehicles where detergents are not used;
4. Water used to control dust in accordance with Subpart 3.4.G;
5. Potable water including uncontaminated water line flushings;
6. Routine external building wash down that does not use detergents;
7. Pavement wash waters 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;
8. Uncontaminated air conditioning or compressor condensate;
9. Uncontaminated ground water or spring water;
10. Foundation or footing drains where flows are not contaminated with process materials such as solvents;
11. Uncontaminated excavation dewatering;
12. Landscape irrigation.

Other types of discharges must obtain coverage under another NPDES permit.

States may have different requirements, and should be consulted to determine if non-storm water discharges can be authorized under a construction storm water general permit.