

**Department of Environmental Conservation  
Response to Comments**

**For**

**General Permit for Discharges from Large and Small  
Construction Activities  
(Construction General Permit)**

**APDES Permit No. AKR100000**

**Public Noticed October 8, 2015 – November 9, 2015**

**December 29, 2015**



**Alaska Department of Environmental Conservation  
Wastewater Discharge Authorization Program  
555 Cordova Street  
Anchorage, AK 99501**

## **1.0 Introduction**

### **1.1 Summary of Facility / Permit**

The Alaska Department of Environmental Conservation (Department or DEC) proposes to reissue an Alaska Pollutant Discharge Elimination System (APDES) Construction General Permit (CGP) for discharges from large and small construction activities. The permit authorizes and sets conditions on the discharge of pollutants from construction projects to waters of the United States. In order to ensure protection of water quality and human health, the permit describes control measures that must be used to control the types and amounts of pollutants discharged from construction sites with one acre or more of land disturbance. The CGP was issued in years 2003, 2008, and with the current CGP issued on July 1, 2011 with an expiration date of January 31, 2016.

### **1.2 Opportunities for Public Participation**

The Department of Environmental Conservation proposes to reissue an APDES wastewater discharge permit for discharges from large and small construction activities. To ensure public, agency, local government, and tribal notification and as well as opportunities for participation, the Department:

- identified the permit on the annual Permit Issuance Plan posted online at:  
<http://dec.alaska.gov/water/wwdp/index.htm>
- notified local governments and potentially affected tribes that the Department would be working on this permit via letter, fax and/or email
- posted a preliminary draft of the permit on-line for a 10-day applicant review August 8, 2015 and notified local governments, tribes, and other agencies
- formally published public notice of the draft permit on October 9, 2015 in Anchorage Dispatch News, Fairbanks Daily News Minor, and Juneau Empire News and posted the public notice on the Department's public notice web page
- posted the proposed final permit on-line for a 5-day applicant review
- sent email notifications via the APDES Program List Serve when the preliminary draft, draft, and proposed final permits were available for review

The Department received written comments from seven interested parties on the draft permit and supporting document. The Department also requested comment from the Departments of Natural Resources (DNR), Fish and Game (DFG), the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the U.S. Environmental Protection Agency (EPA).

This document summarizes the comments submitted and the justification for any action taken or not taken by DEC in response to the comments. Comments received during the final 5-day applicant review that did not result in substantial changes are not addressed within this document and may be discussed within the final fact sheet.

### 1.3 Final Permit

The final permit was adopted by the Department on January 29, 2015 with an effective date of February 1, 2016. There were changes from the public noticed permit to the final permit based on comments received. Significant changes are identified in the response to comments and reflected in the final fact sheet for the permit. Minor edits, such as format changes or correction of typos, were made to the permit and fact sheet for clarification and may not be specifically identified in this document.

## 2.0 General Support and Opposition for the Permit

### 2.1 Comment Summary

The Department received comments of general support and none in opposition to the permit.

**Response:**

DEC appreciates the comments of general support.

## 3.0 Comments on Permit Parts 1 to 11

### 3.1 Comment Summary

One commenter inquired if a Storm Water Pollution Prevention Plan (SWPPP) is required for projects with no possibility of discharging to a waters of the U.S.

**Response:**

A Notice of Intent (NOI) for Storm Water Discharges Associated with Construction Activity under an APDES Construction General Permit is not required for projects that do not have the potential to discharge storm water to a waters of the U.S. For projects that do not require an NOI, there are no additional requirements to prepare a project-specific SWPPP. *DEC inserted the word "storm water" into the eligibility requirement in Part 1.4.1.2 to provide additional clarification.*

### 3.2 Comment Summary

One commenter inquired if the revised permit allows permittees to conduct repairs in response to a disaster if it is not declared as a "disaster emergency".

**Response:**

Yes, see fact sheet, Section 4.1 Eligibility - Discharges of Storm Water Associated with Maintenance Activities. Depending on the purpose and nature of the maintenance project, some projects may not be required to submit an NOI under the permit. Maintenance projects typically involve the repair, rehabilitation, or replacement of existing structures or facilities with no new ground disturbance beyond the original footprint. Maintenance projects may involve minor deviations in the size, configuration, or alignment of the structure or facility. Such activities may include repaving a road with no surface expansion or disturbance of surrounding soils, replacing a bridge without widening it, or replacing a culvert with the same size and composition.

Discharges from construction activities conducted in response to a disaster (as defined in Alaska Statute 26.33.900) are conditionally authorized provided that permittees implement controls measures to the extent practicable and submit a NOI and SWPPP to DEC within 30 calendar days of initiating

construction activities. *DEC deleted the reference to “disaster emergencies” in Section 4.1.8 of the fact sheet.*

### 3.3 Comment Summary

One commenter inquired what is meant to “demonstrate compliance” with the terms and conditions of the permit when conducting emergency repairs.

**Response:**

Permittees conducting emergency repairs can “demonstrate compliance” with the permit by installing the appropriate erosion and sediment control measures, initiating soil stabilization if needed, and documenting in the project SWPPP the circumstances related to the emergency. *DEC added examples of demonstrating compliance to Section 4.1.8 of the fact sheet.*

### 3.4 Comment Summary

One commenter inquired if all waters in national/state parks and wildlife refuges are considered Outstanding Natural Resource Waters.

**Response:**

No, an Outstanding Natural Resource Water (or Tier 3 water) must be formally designated. No Outstanding Natural Resources Waters are currently designated in Alaska as of the date of this permit issuance. *DEC noted this in Part 2.1.6 of the permit and Section 4.2.1 of the fact sheet.*

### 3.5 Comment Summary

Several commenters inquired what the rationale is for permittees to submit a NOI or NOI modification to continue coverage under an expired permit.

**Response:**

*DEC removed the requirement for submitting a NOI modification within 365 calendar days prior to the permit expiration date to continue coverage under an expired permit and updated the fact sheet.*

The permit was clarified so that a permittee who is authorized to discharge under the permit prior to the expiration date, will automatically remain covered by the permit until the earliest of:

- Authorization for coverage under a reissued permit or replacement of this permit following a permittee’s timely and appropriate submittal of a complete NOI requesting authorization to discharge under the new permit and compliance with the requirements of the new permit;
- Submit a Notice of Termination (NOT);
- Issuance of an individual permit for the project’s discharges; or
- A formal permit decision by DEC to not reissue this general permit or not cover a particular discharger previously covered by the general permit, at which time DEC will identify a reasonable time period for covered dischargers to seek coverage under an alternative general permit or an individual permit. Coverage under this permit will cease at the end of this time period.

Per 18 AAC 83.155(c), the conditions of an expired permit continue in force until the effective date of a new permit if (1) the permittee has submitted a timely application for a new permit under 18 AAC 83.110, and the Department determines the application is complete under 18 AAC 83.110(d);

and (2) the Department, because of time, resource, or other constraints, but through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit. For an APDES general permit, an application is not required but a NOI must be submitted as set out in 18 AAC 83.210(b). A complete and timely NOI in compliance with the requirements of the general permit fulfills a discharger's duty to apply for a permit. If a permittee fails to submit a timely NOI for coverage under the reissued or replacement permit, the permittee's coverage will terminate on the date that the NOI is due.

### 3.6 Comment Summary

Do permittees need to request to continue permit coverage in the event that the permit is not reissued prior to the expiration date or will they automatically remain covered.

**Response:**

See comment 3.5.

### 3.7 Comment Summary

One commenter inquired if a modification is necessary when the SWPPP location changes during winter shutdown.

**Response:**

Yes, a NOI modification is required to update the SWPPP viewing location. *No changes were made to the permit or fact sheet based on this comment.*

### 3.8 Comment Summary

A commenter inquired if monitoring is required if only a portion of a 20 acre site drains to an impaired water.

**Response:**

No, monitoring is only required when a project disturbs 20 acres (contiguous or non- contiguous acres) that all drain to water body that is listed on Alaska's 303(d) List of Impaired Waters (i.e., Category 5) for sediment or turbidity. *DEC added language to Part 3.2.1.1 of the permit and Section 4.3.2 of the fact sheet for clarity.*

### 3.9 Comment Summary

One commenter reported a misquote of 40 CFR 450.21(a)(7) regarding minimizing soil compaction and recommended DEC insert correct regulatory language.

**Response:**

*DEC replaced "that topsoil be disturbed or removed" with "it be compacted" for consistency with the CFR cited in permit Part 4.1.3.7.*

### 3.10 Comment Summary

One commenter reported a discrepancy in the meaning of clearing between Part 4.2.1.1 and the definition in Appendix C.

**Response:**

DEC considers clearing to mean the cutting down and removal of trees and brush without disturbing the soil or root mass. Clearing can be mechanized (e.g., hydro axing) or non-mechanized as long as the soil

and root mass remain intact. *DEC removed “including clearing and grading” from Part 4.2.1.1 of the permit.*

### 3.11 Comment Summary

A commenter inquired if the provision in permit Part 4.3.1 (Storm Drain Inlet Protection Measures) applies to all inlets or only those that drain to a regulated Municipal Separate Storm Sewer Systems (MS4).

**Response:**

The provision applies to all inlets that carry storm water flow from the site directly to a surface water. *DEC replaced “Storm Drain Inlet” with “Storm Water Inlet” in the permit and the fact sheet and added the definition of storm water inlet to Appendix C of the permit.*

### 3.12 Comment Summary

A commenter asked for clarification of what it means to “prepping” the soil for initiation of vegetative or non-vegetative stabilization.

**Response:**

“Prepping” the soil means (a) for vegetative stabilization - performing all activities necessary to initially seed or plant the area to be stabilized by soil conditioning, application of seed or sod, planting of seedlings or other vegetation, application of fertilizer and (b) for non-vegetative stabilization – the installation or application of such physical, structural, or mechanical measures. *DEC added language to Part 4.5.1.1.1.1 of the permit for clarity.*

### 3.13 Comment Summary

A commenter asked for clarification of what constitutes “finalizing arrangements” to have a stabilization product fully installed to comply with the deadline to initiate stabilization.

**Response:**

“Finalizing arrangements” means completing actions necessary to implement the stabilization measures including, delivery of stabilization products, scheduling the installation of the product, and/or prepping the soil. *DEC added language to Part 4.5.1.1.1.5 of the permit for clarity.*

### 3.14 Comment Summary

One commenter questioned why “temporary stabilization” was removed from Part 4.5 Soil Stabilization of the permit.

**Response:**

DEC revised the entire section of Part 4.5 Soil Stabilization from the 2011 CGP to conform with the Construction and Development Effluent Guidelines in 40 CFR 450.21(b) requiring the timing of when stabilization of disturbed areas must be initiated and completed. *DEC added a definition for “stabilization” to Appendix C of the permit and incorporated the definitions of temporary and final stabilization within the definition of stabilization.*

### 3.15 Comment Summary

A commenter requested clarification in what “limited circumstances” is stabilization potentially not required.

**Response:**

DEC does not expect that temporary or permanent stabilization measures to be applied to areas that are intended to be left unvegetated or unstabilized following construction (e.g., dirt access roads, utility pole pads, areas being used for storage of vehicles, equipment, or materials). *No changes to the permit or fact sheet were made based on this comment.*

**3.16 Comment Summary**

One commenter considered it unrealistic to require maintenance of control measures during winter shutdown since personnel are typically not on site or conducting inspections.

**Response:**

*DEC deleted “and maintained” from Part 4.12.1 of the permit.*

**3.17 Comment Summary**

A comment was received that asked for clarification in the permit of what constitutes “adequate training” in regards to Part 4.14 where “A permittee must ensure that employees and subcontractors receive adequate training to ensure proper installation, maintenance, and removal of the control measures described in the SWPPP for the project.”

**Response:**

The permittee is responsible to determine the content, level of training, and delivery mechanism to its employees and subcontractors to meet the performance standard. The permit includes the qualifications and certifications for qualified personnel as defined in Appendix C. *No changes were made to the permit or fact sheet based on this comment.*

**3.18 Comment Summary**

One commenter inquired if the permit refers to all impaired waters or just those impaired by sediment and turbidity.

**Response:**

The permit applies to all impaired waters with a primary emphasis on sediment and turbidity. If the permittee discharges to a surface water that is impaired for sediment or a sediment-related parameter, such as turbidity or sediment, the permittee is required to comply with the requirements in Part 3.2. If the permittee discharges to an impaired water that is impaired for a parameter other than a sediment-related parameter or nutrients, DEC may inform the permittee per Part 7.1.2 if any permit provisions are necessary for the discharge to be controlled as necessary to meet water quality standards, including for it to be consistent with the assumptions of any available waste load allocation in any applicable Total Maximum Daily Load (TMDL), or if coverage under an individual permit is necessary. *No changes were made to the permit or fact sheet based on this comment.*

**3.19 Comment Summary**

A commenter requested clarification on how to estimate the total area of disturbance is calculated when there are off-site support activities that require permit coverage.

**Response:**

Area of disturbance includes, but is not limited to:

- Clearing of the land both for access (i.e., access roads) to the site as well as preparing the site for constructing the project,
- Constructing access roads to the site,
- Grading of the project site in total,
- Equipment staging area, maintenance are, and construction easement if they occur atop a soil surface which has not been included in the calculation for area of soil disturbance,
- Material and/or soil stockpiles if atop a soil surface (not if atop an impervious surface such as concrete or asphalt),
- Area of asphalt or concrete pavement removal if it is removed entirely to the soil surface,
- Area that is related to demolition and removal of existing structures if that demolition and removal is to the soil surface,
- Concrete truck clean-out areas if atop a soil surface.

Small construction activity (one or two homes) will not see the extensive grading operation that occurs with major housing developments. However, any clearing or grading activity would need to enter into calculating the amount of disturbed soil. If no clearing or grading takes place, then the building area footprint must be included. This includes areas of soil disturbance to construct driveways and parking stalls, Areas for stockpiling soil and material as well as the areas dedicated to parking construction equipment and trucks would be included in the calculation if the activity takes place atop a soil surface. Construction of access roads also enters into the calculation of soil disturbance area. *DEC added clarifying language to the permit for the definition of disturbed area and the fact sheet.*

### 3.20 Comment Summary

Clarification was requested as to who is responsible for the monitoring plan on projects with several permittees.

**Response:**

All permittees whose project with a discharge is to an impaired water body or per Part 7.1.2 of the permit where the permittee is notified by DEC of additional monitoring requirements. *No change to the permit or fact sheet were made based on this comment.*

### 3.21 Comment Summary

Clarification was requested if the main entrance signage needs to remain in place during winter shutdown.

**Response:**

*Yes. No change to the permit or fact sheet were made based on this comment.*

### 3.22 Comment Summary

A commenter requested clarification if permit coverage is required when storm water discharges enter a conveyance system leading to a waters of the United States (U.S.), and not just those regulated as Multiple Separate Storm Sewer Systems (MS4s).



**Response:**

Permit coverage is required for projects that meet both of the following conditions: 1) the project disturbs one or more acres of soil or is part of a large common plan of development that disturbs less than one acre and 2) the project discharge storm water to a waters of the U.S., either directly, indirectly through a piped or open ditch conveyance system, or into a MS4. For discharges that enter a storm sewer system prior to discharge, the water of the U.S. to which the permittee discharges is the first water of the U.S. that receives the stormwater discharge from the storm sewer system. *DEC added clarifying language to Parts 1.1 and 1.4.1.2 of the permit and Section 4.1.1 of the fact sheet.*

**3.23 Comment Summary**

A commenter inquired if when referring to “engineering plans,” if they are required to be stamped by a Professional Engineer registered in Alaska.

**Response:**

Yes. *No changes were made to the permit or fact sheet based on this comment.*

**3.24 Comment Summary**

A commenter requested clarification of how permit coverage of the project site happens when the operator/permittee changes during the project.

**Response:**

Part 10.2.2 of the permit requires that in order for the original permittee to file a NOT, a new permittee has assumed control according to Appendix A, Part 2.3 over all areas of the site that have not been finally stabilized (i.e., the new permittee must obtain coverage prior to the original permittee filing a NOT ). *No changes were made to the permit or fact sheet based on this comment.*

**3.25 Comment Summary**

Several commenters recommended DEC revise the definition of “storm event” to clarify when a storm event ends. Commenters suggested that a storm event should end after three days with less than 0.1 inch of precipitation.

**Response:**

*DEC revised the permit definition of a storm event for clarity.*

**3.26 Comment Summary**

A commenter inquired if surface roughening alone qualifies as a Best Management Practice (BMP) for temporary stabilization.

**Response:**

No, surface roughening should be used in combination with other BMPs. *DEC revised definition of stabilization for clarity.*

**3.27 Comment Summary**

A commenter requested if “low erodibility” can be clarified in the definition of “final stabilization” which allows for use of equivalent non-vegetative permanent stabilization measures as a means of final stabilization and the use of fill material with “low erodibility.”

**Response:**

Low erodibility typically ranges between 3% and 5% smaller than #200 sieve and would depend on the determination by the engineer familiar with the site. Examples include the use of riprap, gabions, porous backfill (ADOT&PF Specification 703-2.10), railroad ballast or subballast, ditch lining (ADOT&PF Specification 610-2.01), geotextiles, or fill material with low erodibility as determined by an engineer familiar with the site. The “with <3% smaller than #200 sieve” was deleted from the definition for ditch lining as it’s not part of the ADOT&PF specification.

**3.28 Comment Summary**

One commenter suggested that DEC require an inspection every seven days for projects located in areas of the state where the annual rainfall is relatively high.

**Response:**

*DEC modified the permit in Part 6.1.1.3 to include a provision for areas with high rainfall or for continuous precipitation or sequential storm events.*

**3.29 Comment Summary**

Part 7.3.3.1 of the permit requires sampling at all discharge points where storm water or authorized non-storm water is discharged offsite. The commenter requested clarification on “offsite” citing that for a large project some discharge points may be in a drainage that does not reach the impaired water body.

**Response:**

*The permit was revised to clarify “all discharge points where storm water or authorized non-storm water is discharged to an impaired water body or as directed per Part 7.1.2.”*

**3.30 Comment Summary**

Several commenters requested clarification on winter shutdown in regards to activities to be completed prior to Fall Freeze-up and when temporary stabilization is precluded by snow cover or frozen ground.

**Response:**

*DEC clarified the condition for when temporary stabilization is precluded prior to the anticipated date of Fall Freeze-up.*

**3.31 Comment Summary**

In reference to Part 3.2.1.1.4.4 of the permit, when sampling is required, after the rain event is over and the discharge has stopped, it would not be possible to take daily readings. In that case, the commenter inquired if they could stop sampling or would they need to do daily sampling as discharges occur in the future until the discharge limits are met.

**Response:**

*Daily sampling as discharges occur in the future until the discharge limits are met. No changes were made to the permit or fact sheet based on this comment.*

**3.32 Comment Summary**

Part 6.2.3 of the permit seems to imply that a project may shut down 14 days after the anticipated Fall Freeze date. The definition in Appendix C for Fall Freeze states "NOTE: this estimation of "Fall Freeze-up" is for planning purposes only. A commenter requested clarification for the need to implement control measures for winter shutdown of Part 4.12 Winter Considerations.

**Response**

*The permit was clarified to include the need for permit part 4.12 Winter Considerations and the control measures.*

**3.33 Comment Summary**

In Part 4.13.3 of the permit, if the requirements for different types of BMPs and sediment removal capacities are going to be called out separately, the requirement for storm drain inlets should be added.

**Response**

*DEC clarified the requirements for storm water inlets.*

**3.34 Comment Summary**

A commenter suggested to add discharges that do not meet the DEC Water Quality Standards to the prohibited discharge list identified in Part 4.7 of the permit.

**Response**

The listing of prohibited discharges in Part 4.7 of the permit are the prohibited discharges identified in 40 CFR §450.21(e) Construction and Development Effluent Guidelines. Part 1.4.4.2 of the permit includes a provision for discharges that may exceed water quality standards. *No changes were made to the permit or fact sheet based on this comment.*

**3.35 Comment Summary**

A commenter suggested equipment that is found to be leaking on a continuing basis either be repaired or removed from the project.

**Response**

Actions such as repairing or removing equipment that is leaking on a continuing basis is an example of a permittee implementing and maintaining effective good housekeeping measures to prevent and/or minimize the discharge of pollutants. Part 4.7.1.3 of the permit prohibits fuels and oils from discharging from the site, and Part 4.8 provides additional good housekeeping measures. *No changes were made to the permit or fact sheet based on this comment.*

**3.36 Comment Summary**

A commenter inquired if a project is to dispose of construction waste on-site would they need an additional permit.

**Response**

Part 4.8.6 of the permit makes mention for disposing or storing wastes in accordance with federal, state, or local requirements which may require additional permits. *No changes were made to the permit or fact sheet based on this comment.*

**3.37 Comment Summary**

A commenter requested clarification in the fact sheet regarding clearing of vegetation while the ground is frozen. The commenter indicated the permit language was easily understood that the intent of clearing – cutting of trees and brush while the ground is frozen that does not disturb the vegetative mat and expose soil is allowed prior to obtaining coverage under the permit as it does not violate the terms of the CGP.

**Response**

*The Section 4.4.2 of the fact sheet was clarified.*

**4.0 General Comments****4.1 Comment Summary**

Several commenters identified grammatical, typographic, and formatting errors within the permit and fact sheet.

**Response:**

*DEC corrected the errors as appropriate.*

**4.2 Comment Summary**

One commenter expressed concern that the footnotes may be overlooked and requested that they be added to the main text.

**Response:**

DEC believes it is appropriate to use footnotes to provide additional information about the permit, but does not alter permit conditions. *DEC incorporated several of the footnotes (2, 3, 4) into the main text of the permit.*

**4.3 Comment Summary**

Several commenters suggested changes to items in Appendix A.

**Response:**

Appendix A contains standard permit conditions for APDES nondomestic discharges that cannot be changed for each general permit. *No changes were made to the permit or fact sheet based on these comments.*

**4.4 Comment Summary**

Several commenters requested the addition and/or revision of acronyms and definitions.

**Response:**

*DEC added acronyms for “public water systems”, “drinking water protection areas”, and “effluent limit guideline” to Appendix B and the definitions of “effluent limit guideline”, “excavation dewatering”, “immediately”, and “business day” to Appendix C.*

**4.5 Comment Summary**

In the Permit Part 2.1.5 Projects Using Active Treatment Systems, a commenter inquired if the applicant needs to meet the 14 day notification requirement when the work is an emergency response type project meeting Part 1.4.5.

**Response:**

The project is automatically authorized per Part 1.4.5 of the permit. The applicant should submit the information as soon as possible while meeting the terms and conditions of the permit to the extent practicable depending on the disaster. *No change to the permit or fact sheet were made based on this comment.*

#### 4.6 Comment Summary

A commenter suggested for Permit Part 4.6.2 Active Treatment Systems to include the name(s) of the instructor(s) providing the training.

**Response:**

*DEC revised the permit to include the listing of the name of the instructor to be documented in the SWPPP.*

#### 4.7 Comment Summary

A commenter inquired how is the comparative downstream total calculated when the operator takes the sample at the point where the site storm water discharges instead of a mixed downstream sample.

**Response**

See Permit Part 3.2.1.1.3. *No change to the permit or fact sheet was made based on this comment.*

#### 4.8 Comment Summary

A commenter inquired what is the purpose of including Part 1.4.3 Authorized Non-Storm Water Discharges and SWPPP.

**Response**

Part 5.3.9 of the permit requires the SWPPP to identify all sources of allowable non-stormwater discharges listed in Part 1.4.3. The purpose of the requirements in Part 5.3.9 require permittees to create a comprehensive list of all non-stormwater discharges expected to occur from the site. Documentation in the SWPPP of all non-stormwater discharges from the site provides permittees with information that will help the permittee to minimize non-stormwater associated pollutant discharges, and to ensure that only authorized non-stormwater discharges occur. *No change to the permit or fact sheet was made based on this comment.*

#### 4.9 Comment Summary

A support activity may be an operated material site that is not continuously operated but is inactive between projects and/or it's use for maintenance activity (gravel road maintenance, etc.) that may have a discharge potential to waters of the U.S. Although inactive, it maintains stockpiles of material onsite for future uses. A commenter inquired if these material sites can be included in the project CGP permit coverage or must they have alternate permit coverage (i.e., Multi-Sector General Permit, MSGP)?

**Response:**

See the definition of support activities in the permit which includes a discussion for material borrow areas for clarification. If the support activity is a commercial operation serving multiple unrelated construction projects by different permittees, the MSGP may be a more appropriate permit for the support activity. *No change to the permit or fact sheet were made based on this comment.*

#### 4.10 Comment Summary

A commenter requested that in the Preliminary Draft a section labeled "Effect of Corrective Action" why it was deleted from the Public Notice Draft.

**Response:**

The section was deleted as Appendix A, Standard Conditions Part 3.4 Twenty-four Hour Reporting satisfies the requirement. *No change to the permit or fact sheet were made based on this comment.*

#### 4.11 Comment Summary

A commenter requested clarification of which noncompliance notifications are subject to reporting.

**Response:**

For an example of some types of notifications that are subject to reporting see Appendix A, Part 2.2 Anticipated Noncompliance, Part 3.4 Twenty-four Hour Reporting, and Part 3.5 Other Noncompliance Reporting. *No changes were made to the permit or fact sheet based on this comment.*

#### 4.12 Comment Summary

A commenter requested clarification when completing the NOI, how accurate do the estimated start date and end dates for the project.

**Response:**

DEC understands there are a number of factors that can influence the start and end dates. When providing an estimated start date or end date, estimates should be within 30 days. *No change was made to the permit and fact sheet based on this comment.*

#### 4.13 Comment Summary

A commenter requested clarification on if a homebuilder is constructing on 10 out of 80 of the lots in the subdivision more or less in succession but fairly continuously, would they file as a common plan of development or require individual NOI submissions, and does a ¼-mile distance between lots affect whether they can be grouped under one NOI.

**Response:**

A common plan of development or sale is a contiguous area where multiple separate and distinct construction activities may be taking place simultaneously or on different schedules, but under one master plan and one NOI submission would be sufficient. If the lot development is under a different operator who is developing individual lots, the distance between the lots may affect whether they can be grouped under one NOI. See Section 4.1.4 of the fact sheet for further clarification of a Common Plan of Development or Sale. *No changes were made to the permit or fact sheet based on this comment.*

### 5.0 Comments Received During the Five-Day Applicant Review Period

#### 5.1 Comment Summary

DEC received comments during the draft and proposed final comment periods. In Part 2.4.2.1.3, one commenter recommended that DEC remain consistent with the 2011 CGP and allow operators of permitted ongoing projects 150 calendar days after the effective date the of reissued permit to submit a new NOI to continue coverage or NOT to end coverage under the permit. During the proposed final comment period, a commenter requested the 150 calendar days to allow a few of their projects that have completed all ground disturbing activities and are waiting for establishment of vegetation to be able to finish under the existing permit and would largely be able to complete by the end of June.

**Response:**

Historically, the majority of NOT's are submitted in the months of July through December each year. The 2011 CGP became effective on July 1, 2011. Permittees of ongoing permitted projects were given 150 calendar days to submit an NOI or NOT to allow for establishment of vegetation throughout an

entire growing season, as the permit was issued during the middle of construction season and the extension would allow the majority of projects to file for NOT. Since the 2016 CGP will be effective February 1, extending the deadline to 150 days past the issuance date would not extend throughout the next growing season. *No changes were made the permit or fact sheet based on this comment.*

## 5.2 Comment Summary

During the draft and proposed final comment periods, a commenter suggested that in Part 2.4.4 for Unpermitted Ongoing Project/Late Notification, recommended that DEC require operators of unpermitted ongoing projects to cease construction activities and immediately stabilize until they obtain permit authorization.

### Response:

The permit provides adequate measures and direction for the operator to come into compliance by submitting for authorization to discharge. DEC reserves the right to take enforcement action for any unpermitted discharge or permit non-compliance that occurs between the commencement of construction and discharge authorization. *No changes were made to the permit or fact sheet based on this comment.*

## 5.3 Comment Summary

Comments were received during the draft and proposed final permit comment/review period inquiring if all projects are required to track rainfall.

### Response:

All projects are required to track rainfall (precipitation), see permit Part 6.7.

## 5.4 Comment Summary

Comments were received during the draft and proposed final permit comment/review period. Two commenters recommended slight revisions of the requirements for a Qualified Person for projects greater than or equal to 20 acres of disturbance. One commenter suggested DEC require that all Qualified Persons be AK-CESCL certified. The other commenter recommended removing the requirement for SWPPP Preparers to take a course in SWPPP Preparation when working on projects with over 20 acres of disturbance due to the limited availability of classes in the state.

### Response:

*DEC added the requirement for all Qualified Persons to be AK-CESCL certified for projects > 20 acres, and removed the requirement for SWPPP Preparers to have taken a SWPPP Preparation Class. DEC recommends SWPPP Preparers take additional training in SWPPP writing if classes are available.*

## 5.6 Comment Summary

Comments were received during the draft and proposed final permit comment/review period requesting clarification of when information from the nearest National Weather Station is “adequate”.

### Response:

The permittee may obtain the storm event information from a weather station that is representative of the location if the permittee does not properly maintain a rain gauge on the site. *DEC added clarifying language to Part 6.7.1.3 of the permit.*

**5.7 Comment Summary** Comments were received during the draft and proposed final permit comment/review period requesting clarification of the definition of “fill-only projects”.

**Response:**

*DEC revised the definition in the permit to clarify fill-only project means placement of low-erodible fill material over an undisturbed vegetative mat.*

**5.8 Comment Summary**

Comments were received during the draft and proposed final permit comment/review period suggesting that the time for initiating stabilization be shortened to seven days on construction sites where the annual rainfall is relatively high due to the increased risk of erosion due to rainfall.

**Response:**

The Construction and Development Effluent Limit Guidelines (ELG) 40 CFR §450.21(b) requires that stabilization be initiated immediately, or in context of the permit no later than the end of the next work day when the earth disturbing activities have temporarily or permanently ceased. After receiving additional comments during the proposed final permit, DEC reconsidered the impact of the increased risk of erosion where the rainfall precipitation is high, and incorporated the 2011 CGP distinction between the areas of the state where the annual precipitation is greater than 40 inches. *Changes were made to the final permit Part 4.5.1.1 and fact sheet Section 4.5.5 to incorporate the mean annual precipitation for initiating stabilization.* The deadline to initiate stabilization must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth disturbing activities have temporarily or permanently ceased on any portion of the site and will not resume for a period of seven or 14 calendar days depending on the mean annual precipitation of being 40 inches or greater, or less than 40 inches, respectively. Note: In the context of this provision, “immediately” means no later than the end of the next work day, following the day when the earth-disturbing activities have temporarily or permanently ceased.

Note: Earth-disturbing activities have temporarily ceased when clearing, grading, and excavation within any area of the site that will not include permanent structures will not resume (i.e., the land will be idle) for a period of seven or 14 or more calendar days (dependent on mean annual precipitation from above), but such activities will resume in the future.

The timeframe above begins counting as soon as you know that construction work on a portion of your site will be temporarily ceased. In circumstances where you experience unplanned or unanticipated delays in construction due to circumstances beyond your control (e.g., sudden work stoppage due to unanticipated problems associated with construction labor, funding, or other issues related to the ability to work on the site; weather conditions rendering the site unsuitable for the continuation of construction work) and you do not know at first how long the work stoppage will continue, your requirement to immediately initiate stabilization is triggered as soon as you know with reasonable certainty that work will be stopped for the time period above. At that point, you must comply with Parts 4.5.1.1 and 4.5.1.2.

The ELG allows the permitting authority to determine the period of time that stabilization must be completed. The 2016 CGP requires that stabilization activities be complete as soon as practicable (practicable as defined in Appendix C), but no later than 14 calendar days. *For final stabilization, the permit in Part 4.5.2.1 was clarified for final stabilization to be completed within seven calendar days of initiating final stabilization and that the permittee be is required to complete or continue maintenance of the stabilization measures.*



Note: DEC may determine, based on an inspection carried out under Part 6.6 and corrective actions required under Part 8.1.1.4 Corrective Action Required by DEC, that the level of sediment discharge on the site makes it necessary to require a faster schedule for completing stabilization. For instance, if sediment discharges from an area of exposed soil that is required to be stabilized are compromising the performance of existing storm water controls, DEC may require stabilization to correct this problem and may take appropriate enforcement action.

## 5.9 Comment Summary:

A commenter commented on permit Part 4.5.1.3.1 that the phrasing in this section alone does not indicate as clearly as it could that “alternative stabilization measures” must be installed and completed within 14 days in lieu of the perennial vegetative stabilization measures until the dry period is over. It would be much clearer if the phrasing from part 4.5.1.3.2.1 were included in 4.5.1.3.1 as well.

### Response:

*The permit Part 4.5.1.3.1 and fact sheet Section 4.4.5 was changed to include a condition for non-vegetative stabilization measures to immediately initiate, and within 14 calendar days complete the installation of non-vegetative stabilization measures to prevent erosion. The C&D rule allows for the fact that “alternative stabilization measures” can be used for arid, semi-arid, and drought-stricken areas, and this provision is consistent with the C&D rule.*

## 5.10 Comment Summary

One commenter viewed the exemption to the deadline for initiating and completing stabilization for arid, semi-arid, and drought-stricken areas as ambiguous and could allow projects occurring during the seasonally dry period to remain unstabilized for extended periods of time. The commenter requested clarification in permit Part 4.5.1.3.1 of how to determine the beginning and ending dates of the “seasonally dry period” and how is “seasonally dry period” defined.

### Response:

For arid, semi-arid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the permitting authority (see 40 CFR 450.21(b)). For projects occurring in arid or semi-arid area, or drought-stricken areas and if construction is occurring during a drought-stricken period, the permit includes conditions for the permittee to indicate in the SWPPP the beginning and ending dates of the drought-stricken period and the site conditions, and include the schedule for initiating and completing vegetative stabilization. *The terms “seasonally dry” were replaced with “drought-stricken” and “as soon as practicable” was replaced with “immediately” for clarity. In context of this provision, the term “immediately” means no later than the end of the next work day, following the day when the earth-disturbing activities have temporarily or permanently ceased.*

## 5.11 Comment Summary

A commenter requested if the list of examples DEC previously provided of limited circumstances where stabilization may not be required if the intended function of a specific area of the site necessitates that it remain disturbed.

### Response

*DEC updated the fact sheet Section 4.4.5 to clarify examples of limited circumstances.*

## 5.12 Comment Summary

A commenter requested further clarification on interpreting winter shutdown for conditions where temperatures commonly oscillate above and below freezing temperatures and how far out do freezing conditions need to be forecasted before a project can actually go into winter shutdown, and correspondingly, how long may the warm weather persist before a project needs to resume reduced inspection frequency.

### Response

If a project site is oscillating above and below freezing temperatures, the project site may not necessarily meet the eligibility for winter shutdown considerations. Refer to the definitions of Fall Freeze-up and Spring-Thaw in the permit for determining the planning dates for determining eligibility for Winter Shutdown. During construction the permittee will need to maintain control measures based on actual conditions. For planning purposes, the permittee is to consult the corresponding “Fall ‘Freeze’ Probabilities” and “Spring ‘Freeze’ Probabilities” for the weather station closest to the site on the website [www.wrcc.dri.edu/summary/Climsmak.html](http://www.wrcc.dri.edu/summary/Climsmak.html) and the corresponding 80% and 20% of the minimum temperature below or above 32.5 degrees. The permit Part 4.12 requires that the permittee prepare the site to manage storm water flows until construction activities resume. A permittee must ensure the following measures are complete prior to fall freeze-up until construction activities resume: temporary or permanent stabilization for conveyance channels; temporary or permanent stabilization for disturbed slopes, disturbed soils, and soil stockpiles; and proper installation of erosion and sediment control measures in anticipation of spring thaw.

Per permit Part 6.2.3, inspection frequency is to be resumed at least 21 calendar days prior to the anticipated spring thaw. During construction the permittee will need to maintain control measures based on actual conditions. *A change to the fact sheet Section 4.4.12 Winter Considerations (Part 4.12) was made that included a recommendation for the permittee to periodically monitor weather conditions at the project site or nearest weather station to anticipate abnormal weather patterns for an early spring thaw that may affect the integrity of the project site and control measures.*