

## **Appendix A: South Dakota General NPDES Permit**

Permit No.: SDR100000

SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT  
AND NATURAL RESOURCES  
JOE FOSS BUILDING  
523 EAST CAPITOL AVENUE  
PIERRE, SOUTH DAKOTA 57501-3181

**GENERAL PERMIT FOR STORM WATER DISCHARGES  
ASSOCIATED WITH CONSTRUCTION ACTIVITIES**

**Authorization to Discharge Under the  
Surface Water Discharge System**

In compliance with the provisions of the South Dakota Water Pollution Control Act and the Administrative Rules of South Dakota (ARSD) Chapters 74:52:01 through 74:52:11, operators of storm water discharges from **construction** activities, located in the State of South Dakota are authorized to discharge in accordance with the conditions and requirements set forth herein.

This General Permit shall become effective on **February 1, 2010**.

This General Permit and the authorization to discharge shall expire at midnight,  
**January 31, 2015**.

Signed this **31st** day of **December, 2009**



Authorized Permitting Official

Steven M. Pirner  
Secretary  
Department of Environment and Natural Resources

*Note – This page will be replaced  
with a copy containing the  
assigned permit number once  
coverage is authorized.*

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## 1.0 DEFINITIONS

“**ARSD**” means the Administrative Rules of South Dakota.

“**Best Management Practices**” (“**BMPs**”) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control construction site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

“**Commencement of Construction Activities**” means the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction-related activities (e.g., stockpiling of fill material).

“**Concrete Washout**” as used in the General Permit refers to any wash waters derived from the cleaning of concrete trucks and/or equipment.

“**Control Measures**” as used in this General Permit, refers to any Best Management Practice or other method used to minimize erosion and sedimentation, and thereby minimize the discharge of pollutants to waters of the state.

“**DENR**” means the South Dakota Department of Environment and Natural Resources.

“**Discharge**” as used in the General Permit is as an addition of any pollutant or combination of pollutants to surface waters of the state from any point source. Construction sites disturbing one or more acres are point sources. Therefore, any water flowing off the construction site constitutes a discharge and must be covered by a Surface Water Discharge permit.

“**Final Stabilization**” means one of the following:

1. All soil disturbing activities at the site have been completed and a uniform perennial vegetative cover with a density of 70% of the native cover for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures (such as the use of gravel, riprap, gabions, or geotextiles) have been employed; or
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 sites with no natural vegetation, no vegetative stabilization is required.
3. For construction projects on land used for agricultural purposes, final stabilization may be accomplished by returning the disturbed land to its pre-construction agricultural use. Areas disturbed that were not previously used for agricultural

activities, such as buffer strips immediately adjacent to “waters of the state,” and areas that are not being returned to their pre-construction agricultural use shall meet the final stabilization criteria in (1) or (2) above.

A **“Larger Common Plan of Development or Sale”** means a contiguous area of one or more acres where multiple separate and distinct construction activities are planned to occur at different times on different schedules under one plan.

**“Minimize”** means to reduce and/or eliminate to the extent achievable using control measures (including Best Management Practices) that are technologically available and economically achievable and practicable in light of best industry practice.

**“MS4” or “Municipal Separate Storm Sewer System”** is defined at 40 CFR §122.26(b)(8) to mean a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

1. Owned and operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;
2. Designed or used for collecting or conveying storm water;
3. Which is not a combined sewer; and
4. Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR §122.2.

**“Municipality”** means a city, town, county, district, sanitary district, or other public body created by or under state law with jurisdiction over the disposal of sewage, industrial wastes, or other wastes.

**“NOI”** means Notice of Intent to be covered by this General Permit (See Attachment A).

**“Nonpoint Source”** means a source of pollution that is not defined as a point source.

**“NOT”** means Notice of Termination (See Attachment B).

**“Operator”** means the owner, party, person, general contractor, corporation, or other entity that has day-to-day operational control over a construction project. The operator, along with the owner, is responsible for ensuring compliance with all conditions of the General Permit and with development and implementation of the “Storm Water Pollution Prevention Plan”.

**“Point Source”** means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged.

**“Pollutant”** means any dredged spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, munitions, chemical wastes, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, cellar dirt, or any industrial, municipal, or agricultural waste discharged into waters of the state. This term does not mean sewage from watercraft; or water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state after it is determined that such injection or disposal will not result in the degradation of ground or surface water resources.

**“Qualified Local Program”** is a municipal program for storm water discharges associated with construction sites that has been formally approved by DENR to act in lieu of the state program.

**“Regulated Substance”** means the compounds designated by DENR under South Dakota Codified Law, §§ 23A-27-25, 34A-1-39, 34A-6-1.3(17), 34A-11-9, 34A-12-1 to 34A-12-15, inclusive, 38-20A-9, 45-6B-70, 45-6C-45, 45-6D-60, and 45-9-68, including pesticides and fertilizers regulated by DENR of Agriculture, the hazardous substances designated by the EPA pursuant to section 311 of the Federal Water Pollution Control Act Amendments of 1972, Pub.L. 92-500 as amended by the Clean Water Act of 1977, Pub.L. 95-217, the toxic pollutants designated by Congress or the EPA pursuant to section 307 of the Toxic Substances Control Act, Pub.L. 99-519, the hazardous substances designated by the EPA pursuant to section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub.L. 96-510, and petroleum, petroleum substances, oil, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other wastes, crude oils, substances, or additives to be utilized in the refining or blending of crude petroleum or petroleum stock, and any other oil or petroleum substance. This term does not include sewage and sewage sludge.

**“Runoff Coefficient”** means the percentage of precipitation that appears as runoff. The value of the coefficient is determined on the basis of climatic conditions and physiographic characteristics of the drainage area and is expressed as a constant between zero and one.

**“Secretary”** means the Secretary of Department of Environment and Natural Resources, or an authorized representative.

**“Storm Water”** means, for the purpose of this General Permit, storm water runoff, snow melt runoff, or surface runoff and drainage.

**“Storm Water Associated with Construction Activity”** means the discharge of storm water runoff from construction activities including, but not limited to, clearing, grading, and excavating, that result in land disturbance of one or more acres of total land area, or which may

be part of a larger common plan of development or sale if the larger common plan will ultimately disturb one or more acres of land.

**“Storm Water Associated with Industrial Activity”** means storm water runoff, snow melt runoff, or surface runoff and drainage from industrial activities as defined in 40 CFR § 122.26(b)(14).

**“Storm Water Management Plan”** means a plan developed by a municipal separate storm sewer system to address the six minimum control measures described in the MS4 storm water regulations.

**“SWD”** means Surface Water Discharge.

**“SWPPP”** means Storm Water Pollution Prevention Plan. A SWPPP identifies potential sources of storm water pollution at a construction site and specifies structural and non-structural controls that will be in place to minimize negative impacts caused by storm water discharges associated with construction activity. The purpose of these controls is to minimize erosion and run-off of pollutants and sediment. See Section 4.0 for details on the requirements for a SWPPP.

**“TMDL” or “Total Maximum Daily Load”** means the sum of the individual wasteload allocations (WLAs) for point sources and load allocations (LAs) for nonpoint sources and natural background. If a receiving water has only one point source discharger, the TMDL is the sum of that point source WLA plus the LAs for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure.

**“Waters of the State”** means all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state.



## 2.0 COVERAGE UNDER THIS PERMIT

### 2.1 Permit Area

This General Permit shall apply to storm water discharges from construction sites located within the state of South Dakota.

### 2.2 Discharges Covered

The following discharges shall be covered under this General Permit:

1. All discharges of storm water associated with construction activity from construction sites resulting in the disturbance of one or more acres of total land area.
2. Storm water discharges from operators disturbing less than one acre that are part of a larger common plan of development or sale that, combined, disturb one or more acres.
3. Discharges from construction sites less than one acre that have been designated by the Secretary as needing a permit.
4. Storm water construction discharges mixed with a storm water discharge from an industrial source, where:
  - a. The industrial source is located on the same site as the construction activity; and
  - b. The storm water discharges from an industrial source is covered by a separate surface water discharge general permit or individual permit.
5. The following non-storm water discharges may also be authorized by this General Permit:
  - a. Discharges from fire fighting activities;
  - b. Uncontaminated ground water; and
  - c. Waters used as a best management practice to control dust or wash vehicles at the construction site.

These non-storm water discharges shall be identified in the SWPPP, along with an explanation of pollution prevention measures that will be implemented.

### 2.3 Discharges Not Covered

The following discharges are not authorized by this General Permit:

1. **Post Construction Discharges.** This General Permit does not authorize storm water discharges after construction activities have been completed and final stabilization at the site is achieved. Industrial and post-construction storm water discharges may need to be covered by a separate storm water permit.

2. **Discharges Mixed with Non-Storm Water.** This General Permit does not authorize discharges of non-storm water, except as provided in Section 2.2.
3. **Section 404 Permitted Discharges.** This General Permit does not authorize a permittee to discharge fill material into waters of the state. Such discharges are required to obtain a Section 404 federal Clean Water Act permit from the U.S. Army Corps of Engineers.
4. **Discharges Threatening Water Quality.** This General Permit does not authorize storm water discharges from construction sites the Secretary determines will cause, or have reasonable potential to cause or contribute to, violations of water quality standards. In such cases, the Secretary may deny coverage under the General Permit or require the permittee to obtain an individual Surface Water Discharge permit.
5. **Discharges of Regulated Substances.** This General Permit does not authorize the discharge of regulated substances, hazardous substances, or oil resulting from on-site spills. Permittees are subject to federal reporting requirements of 40 CFR Part 110, Part 117, and Part 302 relating to spills or other releases of oils or hazardous substances. Spills in excess of reportable quantities shall be properly reported as stated in Section 5.1.

#### 2.4 Obtaining Authorization

1. To request coverage under this General Permit, the owner shall complete a Notice of Intent (NOI) form, included in Attachment A, and submit it to the address indicated on the form.
  - a. The owner shall identify the contractor responsible for the day-to-day operation of the construction site, if different from the owner. The Contractor Certification Form included in Attachment C shall be submitted to DENR once the contractor has been identified. A new Contractor Certification Form shall be submitted if additional or different contractors will be responsible for day-to-day operation at the construction site.
  - b. This information shall be submitted at least 15 days **prior** to when the work commences at the site.
  - c. Incomplete NOIs will not be processed and will be returned.
2. Upon receipt of a complete NOI, the Secretary shall make the decision to grant or deny coverage or request additional information. If the Secretary grants coverage under the General Permit, a letter of authorization will be sent to the permittee.
3. A copy of the Secretary's authorization letter and the cover page of the General Permit shall be posted at the construction site in a prominent place for public viewing (such as alongside a building permit) from the date construction activities are initiated until final stabilization is achieved and coverage under this General Permit is terminated.

4. When a new owner purchases a construction site after submittal of a NOI, the current permittee is responsible for notifying the new owner(s) of the General Permit requirements and the importance of achieving final stabilization on the site. Permit coverage shall be transferred to the new owner. Attachment D includes a form for transferring permit coverage for all or a portion of a project or development to a new owner.
5. Owners are not prohibited from submitting late NOIs. When a late NOI is submitted, authorization is only for discharges that occur after General Permit coverage is granted. The Secretary reserves the right to take appropriate enforcement actions for any unpermitted activities that may have occurred between the time the construction commenced and authorization of storm water discharges is granted.
6. Upon the effective date of the new General Permit, the existing General Permit will be terminated. If permittees authorized under the existing General Permit need to continue coverage under the new General Permit, a Notice of Intent for Reauthorization and Certification of Applicant shall be submitted prior to the issuance of the new General Permit. The Notice of Intent for Reauthorization and Certification of Applicant form is found in Attachment E.

## **2.5 Additional Notification**

Facilities that are operating under approved local sediment and erosion plans, grading plans, or storm water management plans shall also submit signed copies of the NOI to the local agency approving such plans at least 15 days prior to commencing work, or sooner where required by local rules.

## **2.6 Terminating Coverage**

1. Permittees wishing to terminate coverage under this General Permit shall submit a Notice of Termination (NOT) signed in accordance with Section 6.9. The Notice of Termination form is found in Attachment B. Compliance with this General Permit is required until a NOT is submitted and General Permit coverage has been terminated.
2. Permittees shall not submit a NOT until all storm water discharges authorized by this General Permit are eliminated and final stabilization has been achieved on all portions of the site for which the permittee is responsible.
3. All permittees shall submit a NOT within thirty (30) days after final stabilization has been achieved.
4. The General Permit allows for co-permittees on a site. However, if a permittee has transferred coverage to a new owner and no longer has responsibility for any portion of the site, a NOT shall be submitted by the previous owner terminating coverage under the General Permit.

### **3.0 EFFLUENT LIMITS**

Effective immediately and lasting through the life of the General Permit, all permittees shall comply with the effluent limits below. All permittees are expected to meet the following effluent limits to minimize the pollutants present in the discharges associated with construction activity.

#### **3.1 Precipitation Design Event**

All sediment and erosion controls shall be selected, designed, and installed to minimize the pollutants present in runoff from a rainfall event of up to two (2) inches in a 24-hour period.

#### **3.2 Sediment Controls**

The permittee is required to implement sediment controls based on the amount of land disturbed by the project. The sediment control requirements are as follows:

1. For drainage locations serving less than 10 disturbed acres at one time, sediment basins and/or sediment traps shall be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions) of the construction area.
2. For common drainage locations that serve an area with 10 or more acres disturbed at one time, a temporary or permanent sediment basin shall be provided. This basin shall provide storage for a calculated volume of runoff from the disturbed drainage area from a 2-inch precipitation event in a 24-hour period.
3. Where it is not possible to construct a temporary sediment basin for drainage locations that serve 10 or more disturbed acres at one time, smaller sediment basins and/or sediment traps or equivalent controls shall be used. At a minimum, equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions).

The permittee shall document in the SWPPP its rationale for using alternative sediment controls instead of a sediment basin. This rationale will be reviewed during inspections of the construction site.

#### **3.3 Maintenance of Sediment Controls**

The permittee shall maintain all sediment controls in effective working order. If any controls are not operating effectively, the permittee shall perform maintenance on the controls as necessary to maintain the continued effectiveness of the storm water controls and before the next anticipated storm event or within seven (7) days of identifying the need for maintenance, whichever comes first.

1. The erosion and sediment controls required for compliance with the effluent limits shall be maintained from the beginning of the construction activity until final stabilization is complete. At a minimum, the permittee shall:

- a. Remove sediment from sedimentation ponds when design capacity has been reduced by 50% or more.
  - b. Remove sediment from silt fences and other sediment controls before the deposit reaches 50% the above-ground height.
2. All erosion and sediment control measures and other protective measures identified in the SWPPP shall be maintained in effective operating condition. If the site inspections required by Section 3.12 identify BMPs that are not operating effectively, maintenance shall be performed as stated above.

### **3.4 Off-Site Sediment Tracking and Dust Control**

The permittee shall minimize dust generation and vehicular tracking of soil off-site. At a minimum, street sweeping shall be performed if other best management practices are not adequate to minimize sediment from being tracked on to the street.

### **3.5 Off-Site Accumulations**

1. If sediment escapes the construction site, the permittee shall remove the off-site accumulations of sediment at a frequency sufficient to minimize impacts.
2. The permittee shall revise the SWPPP and implement controls to minimize further off-site sedimentation.

### **3.6 Inlet Protection**

All storm drain inlets that receive storm water flows from the construction site shall be protected with appropriate best management practices during construction to minimize the discharge of pollutants from the site. The inlet protection shall be maintained until all sources with the potential for discharging to the inlet have reached final stabilization.

### **3.7 Erosive Velocity Control**

The permittee shall place velocity dissipation devices at discharge points and along the length of a runoff conveyance, as necessary, to provide a non-erosive flow and protect the receiving water body's natural, pre-construction uses and characteristics, both physical and biological.

### **3.8 Soil Stockpiles**

Temporary soil stockpiles shall have silt fence or other effective controls to minimize sediment runoff, at a minimum. Soil stockpiles shall not be placed in surface waters, including storm water conveyances such as curb and gutter systems, or conduits and ditches, or where likely to be disturbed during storm events.

### **3.9 Erosion Control and Stabilization**

The permittee shall stabilize disturbed portions of the site as soon as possible with appropriate BMPs, but in no case more than 14 days after construction activity has temporarily or permanently ceased on any portion of the site. An exception to this effluent limit is allowed if earth-disturbing activities will be resumed within 21 days. All other exceptions shall be approved on an individual basis by the Secretary.

### **3.10 Construction and Waste Materials**

The permittee shall properly handle, store, and dispose of litter, construction debris, construction chemicals, and concrete washout to minimize pollutants entering storm water discharges. Permittees are required to minimize the discharge of solid materials to waters of the state (except where authorized by a Section 404 permit from the United States Army Corps of Engineers).

### **3.11 Spills / Releases in Excess of Reportable Quantities**

1. The permittee shall have the capacity to control, contain, and remove spills at the site. If spills do occur, the permittee shall modify the SWPPP and implement controls to minimize the potential for contamination of the storm water.
2. Spills in excess of reportable quantities shall be properly reported as stated in Section 5.1.

### **3.12 Site Inspections**

1. An inspection of the site shall be conducted at least once every seven (7) calendar days and within 24 hours of the end of storm that is 0.5 inches or greater, or a snowmelt event that causes surface erosion. Once a site has been temporarily stabilized and construction has ceased for the winter, such inspections shall be conducted at least once per month.
2. The inspections shall be conducted by personnel who are familiar with the General Permit conditions and with the proper installation and operation of storm water controls.
3. The inspection shall include disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials, structural control measures, and locations where vehicles enter or exit the site. These areas shall be inspected for evidence of, or the potential for, pollutants entering the drainage system, and erosion and sediment control measures identified in the SWPPP shall be observed to ensure that they are operating correctly and sediment is not tracked off-site.
4. The permittee shall maintain records of each inspection and resulting maintenance activities, including:
  - a. Date and time of inspections;
  - b. Name(s) and title(s) of personnel conducting the inspections;
  - c. Findings of inspections;
  - d. Corrective actions taken;
  - e. Dates and amount of all rainfall events greater than 0.5 inches in 24 hours; and
  - f. Documentation of any changes made to the SWPPP.

Where an inspection does not identify any incidents of non-compliance, the report shall contain a certification that the site is in compliance with the SWPPP and this General Permit. The report shall be signed in accordance with the signatory requirements in Section 6.9.

5. The SWPPP shall be revised if the site inspections identify any non-compliance with the effluent limits. The changes shall be implemented at the site within seven (7) calendar days following the inspection.

## **4.0 STORM WATER POLLUTION PREVENTION PLAN**

### **4.1 Deadlines for SWPPP Preparation and Compliance**

The Storm Water Pollution Prevention Plan, also referred to as “the SWPPP,” shall be developed **prior** to the submittal of the NOI and shall be implemented for all construction activity.

For permitted sites that had been covered under the July 1, 2002 General Permit, and reauthorized under this General Permit, the SWPPP shall be updated to reflect the conditions and requirements of this General Permit by **July 1, 2010**.

### **4.2 Contents of SWPPP**

The SWPPP shall be developed to ensure compliance with the Effluent Limits in Part 3.0. The SWPPP shall include, at a minimum, the following items:

#### **1. Site Description**

Each SWPPP shall provide the information indicated below:

- a. A description of the overall project and the type of construction activity;
- b. A description of potential pollutant sources;
- c. Estimates of the total area of the site and the total area that is expected to be disturbed by excavation, grading, grubbing, or other construction activities during the life of the project;
- d. A description of the intended sequence of activities which disturb soil;
- e. A description of the soil within the disturbed area(s);
- f. The name of the surface water(s) at or near the disturbed area that could potentially receive discharges from the project site; and
- g. A site map indicating:
  - (1) Drainage patterns with flow directions marked with arrows,
  - (2) Approximate slopes anticipated after major grading activities;
  - (3) Areas of soil disturbance, noting any phasing of construction activities;
  - (4) Location of major structural and nonstructural controls identified in the SWPPP;
  - (5) Location of areas where stabilization practices are expected to occur;
  - (6) Surface waters, including an aerial extent of wetland acreage;



- (7) Locations where storm water is discharged to surface water;
- (8) Locations of any spills, leaks, or soil contamination that could impact the storm water runoff from the site; and
- (9) Areas of concern including, but not limited to: fueling stations, waste storage, and concrete washout areas. The permittee shall provide designated areas for these activities.

## 2. **Controls**

For each major activity identified in the site description, the SWPPP shall describe the necessary control measures, along with the timeframe for implementing the controls and who is responsible for implementation. The description and implementation of controls shall address the following minimum components:

### a. **Erosion and Sediment Controls**

#### (1) **Stabilization Practices**

The SWPPP shall include a description and schedule of interim and permanent stabilization practices. The SWPPP shall also include a record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures will be initiated. Site plans should ensure that existing vegetation is preserved where possible and that disturbed portions of the site are stabilized. Stabilization measures shall be initiated in accordance with Section 3.9.

#### (2) **Structural Diversion Practices**

The SWPPP shall include a description of structural practices to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree possible. Placement of structural diversion practices in floodplains and wetlands should be avoided to the degree possible. The installation of these devices may be subject to Section 404 of the federal Clean Water Act.

### b. **Storm Water Management**

The SWPPP shall include a description of best management practices that will be installed during the construction process to control pollutants in storm water discharges occurring after construction operations have been completed. The SWPPP shall include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels. Such practices may include structural methods such as storm water ponds, open vegetated swales and natural depressions to allow infiltration of runoff onsite, and sequential systems that combine several practices.

**c. Other Controls**

(1) The SWPPP shall include a description of procedures to maintain vegetation, erosion and sediment control measures, and other protective measures identified in the SWPPP. This includes minimizing tracking of sediments off-site and generation of dust.

(2) The SWPPP shall include a description of chemicals, construction materials, and waste materials expected to be stored on-site, with updates as appropriate. The SWPPP shall also include a description of controls to minimize pollutants from these materials, including storage practices to minimize exposure of the materials to storm water, and spill prevention measures and response.

**d. Compliance with Local Requirements**

Permittees shall include applicable local erosion and sediment requirements in their SWPPP. The SWPPP shall be modified if the permittee is notified the local requirements have changed.

**3. Maintenance**

All erosion and sediment control measures and other protective measures identified in the SWPPP shall be maintained in effective operating condition. If site inspections required in Section 3.12 identify BMPs that are not operating effectively, maintenance shall be performed in accordance with Section 3.3.

**4.3 Keeping SWPPPs Current**

1. The permittee shall amend the SWPPP whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the potential for the discharge of pollutants to the waters of the state. The SWPPP shall also be amended if the SWPPP proves to be ineffective at minimizing pollutants present in the storm water.
2. The Secretary may notify the permittee at any time that the SWPPP does not meet the minimum requirements of this Section. This notification will identify the provisions of the General Permit that are not being met by the SWPPP and identify which provisions require modifications in order to meet the minimum requirements. Within seven (7) days of notification, the permittee shall make the required changes to the SWPPP and shall submit to the Secretary a written certification that the requested changes have been made. The Secretary may take appropriate enforcement action for the period of time the permittee was operating under a SWPPP that did not meet the minimum requirements of this General Permit.
3. If the inspections required in Section 3.12 identify necessary changes to the SWPPP, the SWPPP shall be revised and the changes implemented no later than seven (7) calendar days following the inspection.

## **5.0 SPECIAL CONDITIONS**

### **5.1 Unauthorized Release of Regulated Substances**

1. This General Permit does not authorize the discharge of any regulated substance listed in the Administrative Rules of South Dakota (ARSD) § 74:34:01:03, including but not limited to fertilizers, pesticides, and petroleum substances such as oil and gasoline. If a release occurs, the permittee is required to notify DENR's Ground Water Quality Program at (605) 773-3296 or Emergency Management at (605) 773-3231 within 24 hours of having knowledge of the discharge.
2. A written report of the unauthorized release of any regulated substance, including quantity discharged and the location of the discharge, shall be sent to DENR within 14 days of the discharge.
3. The SWPPP shall identify and address the following measures: ways to prevent the reoccurrence of such releases; the proper response to such releases if and when they do occur; and steps to prevent pollutants from contaminating storm water runoff. The SWPPP shall be modified and changes implemented, as appropriate.

### **5.2 Larger Common Plan of Development**

1. When individual lots that were included as a portion of the original common plan are sold before completion of the entire plan, the current permittee shall ensure the lot is properly stabilized in accordance with Section 3.9 prior to transfer of ownership. The current permittee is responsible for notifying the new owners of the General Permit requirements and the importance of achieving final stabilization on the site.
2. Attachment D includes a form for transferring General Permit coverage for all or a portion of a project or development to a new owner. Upon transfer of coverage, an individual lot owner becomes a co-permittee and is the primary party responsible for permit compliance on their lot until final stabilization is reached.
3. A co-permittee may submit a NOT requesting DENR terminate coverage when all construction is complete for their individual lot or land area and the lot has reached final stabilization. Permit coverage will continue in full force and effect for all remaining co-permittees until each lot or disturbed area in the entire project has reached final stabilization and a NOT has been submitted for each lot.

### **5.3 Qualified Local Programs**

1. To receive approval as a qualified local program, DENR will review the local requirements to ensure they comply with both state and federal requirements. DENR may authorize minor variations and alternative standards in lieu of the specific conditions of the General Permit based upon the unique comprehensive control measures established in the qualifying local program. DENR will review each qualifying local program for recertification during the renewal of its municipal separate storm sewer system permit.
2. If a construction site is within the jurisdiction of a qualifying local program, the

operator shall submit a Notice of Intent to DENR to be covered under the General Permit and comply with all requirements of the qualifying local program. **Compliance with the qualifying local program requirements is deemed to be compliance with this General Permit. A violation of qualifying local program requirements is also a violation of this General Permit.**

3. List of Qualifying Local Programs: At this time only the City of Sioux Falls is meeting DENR's minimum requirements. If additional municipalities are approved as a Qualifying Local Program in the future, a modification to this General Permit will be offered for public comment in the municipality's local newspaper.

## **6.0 STANDARD PERMIT CONDITIONS**

### **6.1 Duty to Comply**

1. The permittee shall comply with all conditions of this General Permit. Any permit noncompliance constitutes a violation of the South Dakota Water Pollution Control Act and the federal Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal. The permittee shall give the Secretary advance notice of any planned changes at the permitted facility or of an activity that may result in permit noncompliance.
2. Any person who violates a General Permit condition or makes any false statement, representation, or certification, may be subject to enforcement action under SDCL, Chapter 34A-2.
3. The permittee is responsible for complying with all local ordinances and requirements. Local governments may have additional or more stringent requirements than those included in this General Permit.

### **6.2 Continuation of the Expired General Permit**

1. An expired general permit continues in force and effect until a new general permit is issued. Any permittee with coverage under the General Permit at the time of expiration will continue to have coverage until a new General Permit is issued.
2. If the permittee wishes to continue an activity regulated by this General Permit after its expiration date, the permittee must submit a Notice of Intent. Periodically during the term of this permit and at the time of reissuance, the permittee may be requested to reaffirm its eligibility to discharge under this General Permit.

### **6.3 Need to Halt or Reduce Activity Not a Defense**

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this General Permit.

### **6.4 Duty to Mitigate**

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

### **6.5 Removed Substances**

Collected solids, sludges, grit, or other pollutants removed in the course of treatment shall be properly disposed of in a manner to prevent any pollutant from entering waters of the state.

### **6.6 Duty to Provide Information**

1. The permittee shall furnish to the Secretary, within a reasonable time, any information which the Secretary may request to determine whether cause exists for

modifying, revoking and reissuing, or terminating this General Permit, or to determine compliance with this General Permit. The permittee shall also furnish to the Secretary, upon request, copies of records required to be kept by this General Permit.

2. The permittee shall make the SWPPP available upon request to the Secretary, EPA, and, in the case of storm water that discharges through a municipal separate storm sewer system, to the operator of the municipal system.

#### **6.7 Other Information**

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

#### **6.8 Retention of Records**

1. The permittee shall retain on-site, or make readily available, a copy of the SWPPP and DENR's letter granting coverage under this General Permit from the date of project initiation to the date of final stabilization.
2. The permittee shall retain copies of SWPPPs, inspection records, all reports required by this General Permit, and records of all data used to complete the NOI and NOT for a period of at least three (3) years from the date that the site is finally stabilized. This period may be extended by request of the Secretary at any time.
3. All reports and documents required by this General Permit shall, upon request of the Secretary, be submitted to the South Dakota Department of Environment and Natural Resources at the address below:

SD Department of Environment & Natural Resources  
Surface Water Quality Program  
PMB 2020  
Joe Foss Building  
523 East Capitol  
Pierre, SD 57501-3182

#### **6.9 Signatory Requirements**

1. All Notices of Intent and Notices of Termination submitted to the Secretary shall be signed and certified by the following signatory official:
  - a. For a corporation: by a responsible corporate officer;
  - b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively;
  - c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official; or

- d. The owner of the project.
2. All other reports required by the General Permit, SWPPPs, and other information requested by the Secretary shall be signed by a person described above, or by a duly authorized representative of that person. A person is a duly authorized representative only if:
    - a. The authorization is made in writing by a person described above and submitted to the Secretary. The authorization shall specify either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company.
    - b. If an authorization under this section is no longer accurate because a different contractor has responsibility for the overall operation of the construction site, a new Contractor Certification Form shall be submitted to the Secretary prior to, or together with, any reports, information, or applications to be signed by that authorized representative.
  3. The following certification statement shall be included with all documents signed under this section:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

#### **6.10 Oil and Hazardous Substance Liability**

Nothing in this General Permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the federal Clean Water Act.

#### **6.11 Property Rights**

The Secretary's issuance of coverage under this General Permit does not convey any property rights of any sort, any exclusive privileges, any authorization to damage, injure or use any private property, any authority to invade personal rights, any authority to violate federal, state, or local laws or regulations, or any taking, condemnation or use of eminent domain against any property owned by third parties. The State does not warrant that the permittee's compliance with this General Permit and operation under this General Permit will not cause damage, injury or use of private property, an invasion of personal

rights, or violation of federal, state, or local laws or regulations. The permittee is solely and severally liable for all damage, injury, or use of private property, invasion of personal rights, infringement of federal, state, or local laws and regulations, or taking or condemnation of property owned by third parties, which may result from actions taken under the General Permit.

#### **6.12 Severability**

If any portion of this General Permit is found to be void or is challenged, the remaining permit requirements shall remain valid and enforceable.

#### **6.13 Requiring an Individual Permit or an Alternative General Permit**

The Secretary may either deny coverage or require any person requesting coverage under the General Permit to apply for, and obtain, an individual Surface Water Discharge permit. Cases where an individual permit may be required include, but are not limited to the following:

1. The permittee is not in compliance with the conditions of the General Permit;
2. A change has occurred in the availability of demonstrated technologies or practices for the control or abatement of pollutants applicable to construction sites;
3. Effluent limitation guidelines are promulgated for point sources covered by this General Permit;
4. A water quality management plan containing requirements applicable to construction sites is approved;
5. The discharge is a significant contributor of pollution to waters of the state or it presents a health hazard; and
6. The discharge is to an impaired water body where the best management practices are not sufficient to implement the assigned waste load allocations.

#### **6.14 Proper Operation and Maintenance**

The permittee shall at all times properly operate and maintain all systems of treatment and controls that are used to achieve compliance with the conditions of this General Permit. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by the permittee, only when necessary to achieve compliance with the conditions of the General Permit.

#### **6.15 Inspection and Entry**

Upon the presentation of credentials and other documents as may be required by law, the permittee shall allow the Secretary, the EPA Regional Administrator, or the operator of a municipal separate storm sewer system receiving discharges from the site, to:



1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this General Permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this General Permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this General Permit; and,
4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the South Dakota Water Pollution Control Act (SDCL 34A-2), any substances or parameters at any location.

**6.16 Permit Actions**

This General Permit may be modified, revoked and reissued, or terminated by the Secretary for cause. A request by a permittee for such changes does not stay any permit condition.