

VOLUME I

This page intentionally left blank.

Appendix A: U.S. Army Corps of Engineers NW 39 Permit

This page intentionally left blank.



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
SOUTH DAKOTA REGULATORY OFFICE
28563 POWERHOUSE ROAD, ROOM 118
PIERRE, SOUTH DAKOTA 57501-6174

May 26, 2010



South Dakota Regulatory Office
28563 Powerhouse Road, Room 118
Pierre, South Dakota 57501

Basin Electric Power Coop
Attn: Cris Miller
1717 East Interstate Avenue
Bismarck, ND 58503

Dear Mr. Miller:

We have reviewed your request for Department of the Army authorization for the installation of natural gas pipeline, transmission line, water pipeline, plant site and well site; all components of the Deer Creek Station Project in multiple wetlands and creeks. The project site is located in several Sections, Townships, and Ranges, in Deuel and Brookings Counties, South Dakota.

Based on the information you provided, this office has determined that your work is authorized by the Department of the Army Nationwide Permit No. (39), found in the March 12, 2007 Federal Register (72 FR 11092), Reissuance of Nationwide Permits. Enclosed is a fact sheet that fully describes this Nationwide Permit and lists the General Conditions that must be adhered to for this authorization to remain valid. Please note that deviations from the original plans and specifications of your project could require additional authorization from this office.

Approved jurisdictional determinations (JD's) were completed for your project in March, 2010. The JD's are valid until March 19, 2015. The JD's will be made available to you upon request, or it may be viewed at our website. The link to the website is shown below.

You are responsible for all work accomplished in accordance with the terms and conditions of the Nationwide Permit. If a contractor or other authorized representative will be accomplishing the work authorized by the Nationwide Permit in your behalf, it is strongly recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the applicable Nationwide Permit. Any activity that fails to comply with all of the terms and conditions of the Nationwide Permit will be considered unauthorized and subject to appropriate enforcement action.

In compliance with General Condition 26, the attached Compliance Certification form must be signed and returned to the address listed upon completion of the authorized work and any required mitigation.

This verification is valid until the NWP is modified, reissued, or revoked. All of the existing NWPs are scheduled to be modified, reissued, or revoked prior to March 18, 2012. It is incumbent upon you to remain informed of changes to the NWPs. We will issue a public notice when the NWPs are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant NWP is modified or revoked, you will have twelve (12) months from the date of the modification or revocation of the NWP to complete the activity under the present terms and conditions of this NWP.

Should you at any time become aware that either an endangered and/or threatened species or its critical habitat exists within the project area, you must immediately notify this office.

You can obtain additional information about the Regulatory Program from our website:
<https://www.nwo.usace.army.mil/html/od-rsd/frame.html>

The Omaha District, Regulatory Branch is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete our Customer Service Survey found on our website at <http://per2.nwp.usace.army.mil/survey.html>. If you do not have Internet access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax.

If you have any questions concerning this determination, please feel free to contact this office at the above Regulatory Office address, or telephone Jacki Hine at (605) 224-8531 and reference action ID NWO-2009-2096.

Sincerely,



Steven E. Naylor
Regulatory Program Manager,
South Dakota

Enclosures
CF: Corbett, EDAW Inc

PERMIT COMPLETION AND COMPLIANCE CERTIFICATION

Permit Number: NWO-2009-2096

Name of Permittee: Basin Electric Power Coop

Date of Issuance: May 26, 2010

Upon **completion** of the activity(s) authorized by this permit, including any approved mitigation (if required), please sign this certification and return it to the following address:

US Army Corps of Engineers
South Dakota Regulatory Office
28563 Powerhouse Road, Room 118
Pierre, South Dakota 57501

Please note that your permitted activity is subject to a compliance inspection by a US Army Corps of Engineers representative. If you fail to comply with this permit, you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and the approved mitigation was completed in accordance with the permit.

Signature of Permittee

Date

**FACT SHEET
NATIONWIDE PERMIT 39**

COMMERCIAL AND INSTITUTIONAL DEVELOPMENTS. Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses, new ski areas, or oil and gas wells is not authorized by this NWP.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (Sections 10 and 404)

General Conditions: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer.

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.

15. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

16. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

17. Endangered Species. (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be

affected by the proposed work. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have “no effect” on listed species or critical habitat, or until Section 7 consultation has been completed.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWP.

(e) Authorization of an activity by a NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the U.S. FWS or the NMFS, both lethal and non-lethal “takes” of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at <http://www.fws.gov/> and <http://www.noaa.gov/fisheries.html> respectively.

18. Historic Properties. (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and so notified the Corps, the

non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

19. Designated Critical Resource Waters. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, and 50 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

20. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre and require pre-construction notification, unless the district engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. For wetland losses of 1/10 acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2 acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2 acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

21. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

22. Coastal Zone Management. *Not Applicable.*

23. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

24. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

25. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the

property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

(Transferee)

(Date)

26. Compliance Certification. Each permittee who received an NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;
- (b) A statement that any required mitigation was completed in accordance with the permit conditions; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

27. Pre-Construction Notification. *See attached pages.*

28. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

REGIONAL CONDITIONS, SOUTH DAKOTA

The U.S. Army Corps of Engineers has adopted the following regional conditions for activities authorized by nationwide permits within the State of South Dakota. However, the pre-construction notification requirements defined below are not applicable to Nationwide Permit 47.

1. Wetlands Classified as Fens

All nationwide permits, with the exception of 3, 5, 20, 27, 30, 32, 38, 45 and 47, are revoked for use in fens in South Dakota. For nationwide permits 3, 5, 20, 27, 30, 32, 38, and 45 permittees must notify the Corps in accordance with General Condition No. 27 (Notification) prior to initiating any regulated activity impacting fens in South Dakota.

Fens are wetlands that develop where a relatively constant supply of ground water to the plant rooting zone maintains saturated conditions most of the time. The water chemistry of fens reflects the mineralogy of the surrounding and underlying soils and geological materials. The substrate is carbon-accumulating, ranging from muck to peat to carbonates. These wetlands may be acidic to alkaline, have pH ranging from 3.5 to 8.4 and support a range of vegetation types. Fens may occur on slopes, in depressions, or on flats (i.e., in different hydrogeomorphic classes; after: Brinson 1993).

2. Waters Adjacent to Natural Springs

For all nationwide permits permittees must notify the Corps in accordance with General Condition No. 27 (Notification) for regulated activities located within 100 feet of the water source in natural spring areas in South Dakota. For purposes of this condition, a spring source is defined as any location where there is artesian flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source.

3. Spawning Areas

In order to further minimize adverse impacts in certain waters of the United States and to comply with General Condition No. 3, projects authorized under all available Section 404 Nationwide Permits that would occur in South Dakota's cold water streams must comply with the following regional condition:

In all South Dakota streams classified as cold water streams, when water flow is present, the discharge of dredged or fill material shall not take place between October 15 and April 1. The Corps of Engineers, the South Dakota Department of Game, Fish and Parks, or the South Dakota Department of Environment and Natural Resources can be contacted for the location of State classified cold water streams. The cold water fisheries rivers and streams in South Dakota may be found at <http://legis.state.sd.us/rules/DisplayRule.aspx?Rule=74:51:03>.

4. Historic Properties

The permittee and/or the permittee's contractor, or any of the employees, subcontractors or other persons working in the performance of a contract(s) to complete the work authorized herein, shall cease work and report the discovery of any previously unknown historic or archeological remains to the South Dakota Regulatory Office. Notification shall be by telephone or fax within 24 hours of the discovery and in writing within 48 hours. Work shall not resume until the permittee is notified by the South Dakota Regulatory Office.

Additional Information: Permittees are reminded of the existing General Condition No. 6 which prohibits the use of unsuitable material. In addition, organic debris, some building waste, and materials excessive in fines are not suitable material.

Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.

General Condition 27. Pre-Construction Notification.

(a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, as a general rule, will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) Forty-five calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 17 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) is completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed project;
- (3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation.

Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided result in a quicker decision.);

(4) The PCN must include a delineation of special aquatic sites and other waters of the United States on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters of the United States, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, where appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10 acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice

that they intend to provide substantive, site-specific comments. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination.

(5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.

(e) District Engineer's Decision: In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after

consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan.

Appendix B: South Dakota Department of Environment and Natural Resources NPDES Permit

This page intentionally left blank.

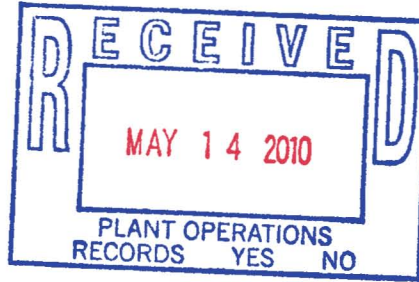


DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

May 11, 2010

Cris Miller
Basin Electric Power Cooperative
1717 E Interstate
Bismarck, ND 58501



Dear Mr. Miller:

Thank you for submitting your Notice of Intent for the general storm water discharges associated with construction activities permit. This letter grants you coverage under this permit for the project listed below in Brookings County, SD. This coverage does not relieve you from complying with other state and local requirements or from obtaining other required permits. You must maintain your site in compliance with the permit conditions. **Refer to Section 3.0 for effluent limits and Section 4.0 for Pollution Prevention Plan requirements.** Your facility Permit No. is **SDR10E809**. Please refer to this number in future correspondence.

Facility Information

Robert Weir - Contact Person
Deer Creek Station Project
44.3944, -96.5313
Brookings County, SD

Operator Information

20615 484th Ave.
White, SD 57276

Please check to be certain the above facility is the same as listed in the Notice of Intent.

Thank you for preserving the natural resources of South Dakota. If you have any questions or need any guidance, please contact me at (605) 773-3351 or 1-800-SDSTORM (737-8676).

Sincerely,

Bret C. Graves
Natural Resources Project Scientist
Surface Water Quality Program
South Dakota DENR

Permit No.: SDR10E809

**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. Pimer
Secretary
Department of Environment and Natural Resources

**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

TABLE OF CONTENTS

1.0	DEFINITIONS	1
2.0	COVERAGE UNDER THIS PERMIT.....	5
2.1	Permit Area	5
2.2	Discharges Covered	5
2.3	Discharges Not Covered	5
2.4	Obtaining Authorization	6
2.5	Additional Notification	7
2.6	Terminating Coverage.....	7
3.0	EFFLUENT LIMITS.....	8
3.1	Precipitation Design Event.....	8
3.2	Sediment Controls.....	8
3.3	Maintenance of Sediment Controls	8
3.4	Off-Site Sediment Tracking and Dust Control	9
3.5	Off-Site Accumulations	9
3.6	Inlet Protection.....	9
3.7	Erosive Velocity Control	9
3.8	Soil Stockpiles.....	9
3.9	Erosion Control and Stabilization.....	9
3.10	Construction and Waste Materials.....	10
3.11	Spills / Releases in Excess of Reportable Quantities.....	10
3.12	Site Inspections.....	10
4.0	STORM WATER POLLUTION PREVENTION PLAN	12
4.1	Deadlines for SWPPP Preparation and Compliance.....	12
4.2	Contents of SWPPP	12
4.3	Keeping SWPPPs Current	14
5.0	SPECIAL CONDITIONS	15
5.1	Unauthorized Release of Regulated Substances.....	15
5.2	Larger Common Plan of Development	15
5.3	Qualified Local Programs	15
6.0	STANDARD PERMIT CONDITIONS.....	17
6.1	Duty to Comply	17
6.2	Continuation of the Expired General Permit.....	17
6.3	Need to Halt or Reduce Activity Not a Defense	17
6.4	Duty to Mitigate	17
6.5	Removed Substances.....	17
6.6	Duty to Provide Information.....	17
6.7	Other Information	18
6.8	Retention of Records.....	18

6.9	Signatory Requirements	18
6.10	Oil and Hazardous Substance Liability	19
6.11	Property Rights	19
6.12	Severability	20
6.13	Requiring an Individual Permit or an Alternative General Permit	20
6.14	Proper Operation and Maintenance	20
6.15	Inspection and Entry	20
6.16	Permit Actions	21

ATTACHMENT A	NOTICE OF INTENT FORM
ATTACHMENT B	NOTICE OF TERMINATION FORM
ATTACHMENT C	CONTRACTOR CERTIFICATION FORM
ATTACHMENT D	TRANSFER OF PERMIT COVERAGE FORM
ATTACHMENT E	NOTICE OF INTENT FOR REAUTHORIZATION FORM

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

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: