



## ALASKA POLLUTANT DISCHARGE ELIMINATION SYSTEM

### GENERAL PERMIT FOR DISCHARGES FROM LARGE AND SMALL CONSTRUCTION ACTIVITIES FACT SHEET

Permit Number: AKR100000

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
Wastewater Discharge Authorization Program  
555 Cordova Street  
Anchorage, AK 99501**

Public Comment Start Date: October 19, 2009

Public Comment Expiration Date: November 18, 2009

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### **Reissuance of the General Permit for Discharges from Large and Small Construction Activities**

The Alaska Department of Environmental Conservation (the Department or ADEC) is reissuing a general permit for the discharges from large and small construction activities. The permit places conditions on the discharge of wastewater to waters of the United States. In order to ensure protection of water quality and human health, the permit places limits on the types and amounts of pollutants that can be discharged from the facility.

This Fact Sheet includes:

- information on public comment, public hearing, and appeal procedures
- a listing of proposed effluent limitations and other conditions for the facility
- technical material supporting the conditions in the permit

#### **Public Comment**

The U.S. Environmental Protection Agency (EPA) had issued a request on October 19, 2009, for public comment on modifying the 2008 Construction General Permit by extending the expiration date by one year. The permit was in the public comment period during the transfer of the authority over the permit from EPA to ADEC. See the Background section of the Fact Sheet for a more detailed description of the transfer of this permit and the public comment received.

ADEC developed the proposed final permit. The proposed final permit was made available for a 5-day review on the Alaska Online Public Notice System and posted on the ADEC Division of Water, Wastewater Discharge Authorization website <http://dec.alaska.gov/water/wwdp/index.htm> from December 22 to December 30, 2009. After the close of the proposed final permit review, the Department prepared a final permit that will become effective on January 31, 2010, in accordance with the states appeals process at 18 AAC 15.185.

The Department has both an informal review process and a formal administrative appeal process for waste disposal authorization decisions. An informal review request must be delivered to the Director of Water within 15 days of the permit decision. An adjudicatory hearing request must be delivered to the Commissioner of the Department within 30 days of the permit decision or a decision issued under the informal review process. Adjudicatory hearings will be conducted by an administrative law judge in the Office of Administrative Hearings within the Department of Administration. Visit <http://www.dec.state.ak.us/commish/ReviewGuidance.htm> for information on Administrative Appeals of Department decisions.

**APDES General Permit for Discharges from Large and Small Construction**

Activities –

Fact Sheet

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## **I. INTRODUCTION**

The Alaska Department of Environmental Conservation (ADEC) is reissuing a general permit that authorizes the discharge of pollutants in storm water discharges associated with construction activity (also known as the “construction general permit” or “CGP”). This permit was reissued by the U.S. Environmental Protection Agency (EPA) in 2008. EPA had the permit out for public comment on the day of transfer of the NPDES permitting for storm water from EPA to ADEC. This is more fully explained in Section II.

This fact sheet is written in an informal style that does not necessarily reflect verbatim the actual language used in the permit. It is intended to help the regulated community and members of the public understand the intent and basis of the actual permit language. If any discrepancy exists between this summary and the actual CGP language, the permittee must comply with the CGP as written.

Note that the permit and fact sheet references various federal regulations. These regulations are incorporated by reference into the state APDES rules in the Alaska Administrative Code (A.A.C.). As an aid to readers, however, the permit and fact sheet in some areas cite the federal regulations where specific regulatory language can be found.

## **II. BACKGROUND**

EPA developed a general permit for storm water discharges associated with construction activity in 2003 and reissued it in 2008 with an expiration date of June 30, 2010. On October 31, 2008, ADEC received authorization from EPA to implement the Alaska Pollutant Discharge Elimination System (APDES) in Alaska. The transfer of permitting authority was divided into four phases with Phase 1 transfer occurring at program approval. Phase 2 began on October 31, 2009, and included authority over storm water permitting. On October 19, 2009, EPA issued a notice in the Federal Register (Vol. 74, No. 200, Monday October 19, 2009, page 53494-53498) proposing a modification to the NPDES general permit for storm water discharges associated with construction activity in order to extend by one-year the expiration date of the permit (to June 30, 2011). The CGP was on public notice at the time of transfer.

In the Memorandum of Agreement between EPA and ADEC on the transfer of NPDES permitting Section 4.10 addresses how to handle NPDES permits on public notice at the time of transfer. Section 4.10 says, “An EPA-drafted NPDES permit on public notice at the time authority over that facility is transferred to the DEPARTMENT will remain under the jurisdiction of EPA. EPA will preside over the public hearing, if scheduled, close the public review period, prepare a response to comments, and prepare a final permit for the DEPARTMENT to issue.”

The EPA public comment period ended on November 18, 2009. Two comments were received; both supporting the extension. No comments were received specific to Alaska.

ADEC developed the proposed final permit. The proposed final permit was made available for a 5-day review on the Alaska Online Public Notice System and posted on the ADEC Division of Water, Wastewater Discharge Authorization website <http://dec.alaska.gov/water/wwdp/index.htm> from December 22 to December 30, 2009. No comments were received on the proposed final permit. After the close of the proposed final permit review, the Department prepared a final permit that will become effective on January 31, 2010, in accordance with the states appeals process at 18 AAC 15.185.

ADEC is reissuing the CGP for Alaska. The general permit is essentially the EPA 2008 CGP with the following changes to issue it as an APDES permit:

1. Changed the expiration date from June 30, 2010 to June 30, 2011;
2. Changed the format from NPDES format to APDES format;
3. Changed the permitting authority reference from EPA to ADEC;
4. Changed the place to submit Notices of Intent from EPA to ADEC;
5. Changed the use of the reference “you” and “your” to “permittee”;
6. Incorporated the requirements of ADEC 401 certificate of reasonable assurance for Storm Water Pollution Prevention Plan (SWPPP) submittal to ADEC (described in Part 10.F.1) into the permit in Part 5.13; and
7. Changed the federal standard permit conditions to the state standard permit conditions.

As the permitting authority, ADEC is issuing this permit to complete EPA’s modification of the permit expiration date and to revise the CGP text into the appropriate APDES format to replace EPA’s 2008 CGP that was administratively adopted as an APDES permit on October 31, 2009. This permit will be effective until June 30, 2011 and authorizes the discharge of pollutants in storm water discharges associated with construction activity. Table 1 provides a summary of the CGP since 2003.

ADEC will study and evaluate the new requirements of the Construction Effluent Limitation Guidelines (ELGs) issued by EPA on December 1, 2009, and will reissue the APDES CGP to comply with the Construction ELGs by June 30, 2011, or earlier.

The CGP, upon issuance, covers storm water discharges associated with both small and large construction activity. Small construction activity is covered in response to the Phase II Storm Water Regulations promulgated on December 8, 1999 (64 FR 68722). Specifically, the Phase II regulations add permitting requirements for storm water discharges from construction activities that disturb from one to five acres. Phase I Storm Water Regulations promulgated on November 16, 1990 (55 FR 47990) established

Table 1. Summary of CGP Effective Dates and NPDES Permitting Authority

<b>Time period in which NOI was submitted</b>	July 1, 2003 to June 30, 2008, 2008	June 30, 2008 to October 30, 2009	October 31, 2009 to January 30, 2010	January 31, 2010 to June 30, 2011
<b>The NOI was submitted to</b>	EPA	EPA	ADEC	ADEC
<b>CGP in effect (Permit that should be included in the SWPPP)</b>	EPA 2003	EPA 2008	EPA 2008 w/ ADEC Cover Page	ADEC 2010
<b>Permitting Authority</b>	EPA	EPA	ADEC	ADEC
<b>Revised expiration date of working under an NOI filed during the time period listed in line 1</b>	June 30, 2011	June 30, 2011	June 30, 2011	June 30, 2011

permitting requirements for storm water discharges from construction activities that disturb five acres or more. As used in this permit, “storm water associated with large construction activity” refers to the disturbance of five or more acres, as well as disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more (40 CFR §122.26(b)(14)(x)). “Storm water associated with small construction activity,” as defined in 40 CFR §122.26(b)(15), refers to the disturbance of equal to or greater than one and less than five acres of land for construction or the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres.

### III. SUMMARY OF PERMIT CONDITIONS

This section has been written in an informal style and follows the structure of the CGP, but does not reflect verbatim the actual language used in the permit. It is intended to help the regulated community and members of the public understand the intent and basis of the actual permit language. If any confusion or conflicts exist between this summary and the actual CGP language, the permittee must comply with the CGP as written.

The permit has been organized in a manner to clarify the difference between effluent limits (Part 3), inspection requirements (Part 4), and SWPPP documentation requirements

(Part 5). Throughout this fact sheet, ADEC uses consistent terms when referring to different responsible entities. For instance, the permit holder is referred to either as the “permittee” or “operator” in this fact sheet. Typically, the term “operator” will be used when discussing those actions required prior to permit authorization, while “permittee” will be used where the fact sheet is referring to provisions that affect a covered discharger.

## **A. Coverage Under This Permit**

### **1. Introduction (CGP Part 1.1)**

This Construction General Permit (CGP) authorizes storm water discharges from large and small construction-related activities that result in a total land disturbance of equal to or greater than one acre, where those discharges enter surface waters of the United States or a Municipal Separate Storm Sewer System (MS4). ADEC is also making this permit available, consistent with 40 CFR §122.26(b)(15(ii)), for storm water discharges from any other construction activity designated by ADEC based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the United States.

The CGP presents permit language in a more reader-friendly, plain language format. Throughout this fact sheet and the permit, ADEC uses consistent terms when referring to different responsible entities. For instance, the permit holder is referred to as the “permittee” in this fact sheet. Typically, the terms “owner or operator” will be used when discussing those actions required prior to permit authorization, while “permittee” will be used where the fact sheet is referring to provisions that affect a covered discharger.

The goal of the permit is to reduce or eliminate storm water pollution from construction activity through implementation of appropriate control measures. As used in this permit and fact sheet, the term “control measure” refers to any BMP or other method used to prevent or reduce the discharge of pollutants to waters of the United States.

### **2. Permit Area (CGP Part 1.2)**

This permit provides coverage within the state of Alaska, except the Indian Reservation of Metlakatla. ADEC does not have authority for discharges in the Metlakatla Reservation and owners or operators in this area must pursue permitting through EPA.

### **3. Eligibility (CGP Part 1.3)**

This section of the permit describes those requirements that are a pre-condition to obtaining coverage under this CGP. Specifically, only construction activities that meet the eligibility conditions in Part 1.3 can be covered by this permit. As such, if an owner or operator is not eligible for coverage under this CGP, but files an NOI requesting coverage, then any discharges are considered to be unpermitted and in violation of the Clean Water Act. However, once eligibility has been attained, if the operator does not

comply with the requirements of the CGP, the operator may be in violation of the CGP for otherwise eligible discharges.

*CGP Part 1.3.1 Allowable Storm Water Discharges.* This permit authorizes all discharges of storm water from large and small construction activities except those excluded under Limitations on Coverage (Part 1.3.3) in the CGP. Coverage under the CGP is authorized for:

- Storm water discharges associated with construction activities from either large or small construction sites (including storm water discharges from owners or operators disturbing less than one acre that are part of a larger common plan of development or sale that, combined, disturbs one acre or more);
- Storm water discharges from sites disturbing less than one acre, but designated by ADEC as needing coverage under the CGP;
- Storm water discharges from maintenance, pile driving, or fill-only projects that are associated with large or small construction activity;
- Storm water discharges from construction site support activities given that these support activities are directly related to the construction site with APDES CGP coverage; and
- Any discharge authorized by a different APDES permit commingled with discharges authorized by this permit and/or a discharge that does not require APDES permit authorization.

As noted above, ADEC added new language to clarify that discharges from ancillary activities, including maintenance, pile driving and fill-only projects associated with the construction activity and located within the boundaries of the construction sites are covered under the CGP. However, separate maintenance, pile driving and fill-only projects that are not associated with construction activity and do not disturb ground or store overburden on the ground surface do not need to obtain permit coverage.

Additionally, activities that occur on-site in support of construction activity are covered under the CGP. Specifically, the permit authorizes discharges from construction support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, etc.) for local project(s) with which an operator is currently involved (e.g., a concrete batch plant providing concrete to several different highway projects in the same county). Authorization of this discharge is contingent upon (1) the support activity not being a commercial operation serving multiple, unrelated construction projects and not operating beyond the completion of the last related construction project it serves; and (2) pollutant discharges from support activity areas are minimized in compliance with Part 1.3.1.4. ADEC clarifies that the term “commercial operation” as used above and in Part 1.3.1.4 of the permit refers to a concrete or asphalt batch plant, equipment staging yard, or material storage area that does not serve multiple unrelated construction projects and not operating beyond the completion of the last related construction project it serves.

*CGP Part 1.3.2 Allowable Non-Storm Water Discharges.* This permit authorizes certain non-storm water discharges associated with construction activity, provided that the non-storm water component is in compliance with Part 3.2 of the permit. Allowable non-storm water discharges include those listed in Part 1.3.2 of the CGP.

*CGP Part 1.3.3 Limitations on Coverage.* Not all storm water discharges from construction sites are authorized by this permit. Specifically excluded are:

- a. *CGP Part 1.3.3.1 Post Construction Discharges.* Storm water discharges originating from a site after construction activities have ceased, the site has achieved final stabilization, and a Notice of Termination has been submitted. If there will be a discharge of storm water associated with industrial activity, or some other regulated discharge from the completed project (e.g., wastewater from a newly-constructed chemical plant), coverage under another permit(s) must be obtained for those discharges.
- b. *CGP Part 1.3.3.2 Prohibition on Discharges Mixed With Non-Storm Water.* Storm water discharges that are mixed with non-storm water sources, other than those identified in and complying with the permit are not authorized for coverage under this permit. Non-storm water discharges that are authorized under a different APDES permit may be commingled with discharges authorized under this permit.
- c. *CGP Part 1.3.3.3 Discharges Covered by Another Permit.* Storm water discharges associated with construction activity that is covered under an individual permit or discharges required to be covered under an alternative general permit are not authorized for coverage under this permit.
- d. *CGP Part 1.3.3.4 Attainment of Water Quality Standards.* Federal regulations at 40 CFR §122.4(d) provide that no permit may be issued if the “conditions cannot ensure compliance with the applicable water quality requirements.” Unlike individual permits that include requirements tailored to site-specific considerations, general permits, while tailored to specific industrial processes or types of discharges (e.g., offshore oil and gas or storm water), do not contain site-specific requirements that address the water quality conditions of the waters receiving the discharge. Therefore, general permits rely on permittees to certify that they meet the eligibility conditions and implement requirements that will ensure compliance with the conditions of the permit. The permit requirements are intended to ensure that those seeking coverage under this general permit select, install, implement, and maintain control measures at their construction site that will be adequate and sufficient to meet water quality standards for all pollutants of concern.

For the CGP, eligibility provisions do not hinge on the owner or operator making a determination of compliance with applicable water quality standards. Rather, the

permit limits owners or operators from obtaining coverage under this permit if ADEC makes such a determination. In those instances when ADEC does make such a determination, ADEC may require the owner or operator to obtain coverage under an individual permit or may allow coverage under the CGP provided that the owner or operator includes appropriate controls and implementation procedures in its SWPPP. As is required in Part 3.6 of the CGP, operators are required to select, install, implement, and maintain control measures that minimize pollutants in the discharge. Except where ADEC requires specific additional measures, these control measures will be considered to be sufficiently stringent to ensure that discharges do not cause or contribute to an excursion above any applicable state water quality standard. As such, ADEC expects that compliance with the terms of the general permit will ensure compliance with water quality standards.

- e. *CGP Part 1.3.3.5 Discharging into Receiving Waters With an Approved or Established Total Maximum Daily Load (TMDL) Analysis.* A Total Maximum Daily Load (TMDL) is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. Under current regulations and EPA program guidance (40 CFR §130.2 and §130.7), states establish TMDLs that include wasteload allocations from point sources, and load allocations from nonpoint sources and natural background conditions. Wasteload allocations are defined as the portion of a receiving water's loading capacity that is allocated to point sources dischargers. TMDLs are established at levels necessary to attain and maintain the applicable narrative and numerical water quality standards with seasonal variations and a margin of safety that take into account any lack of knowledge concerning the relationship between effluent limitations and water quality. TMDLs are developed on a pollutant- and waterbody-specific basis. In some instances, TMDLs may combine multiple pollutants into one set of TMDL documents; however, the specific TMDL wasteload and load allocations are to be pollutant-specific. States are responsible for establishing TMDLs, which EPA approves. In some instances, EPA establishes the TMDLs. Once established or approved by EPA, TMDLs are implemented through water quality management plans and through ADPES permits.

Those seeking coverage under the CGP are responsible for determining whether specific conditions, over and above other requirements of the CGP, have been identified by the TMDL authority as necessary to ensure consistency with the assumptions and requirements of approved or established TMDLs. There may be documents accompanying the TMDL (e.g., an implementation plan) or other documents that indicate the TMDL writer's intent to allocate a load for an individual discharger or for a class of dischargers. To the extent such documents are available, the owner or operator should consider these materials when determining whether his/her discharge will be consistent with the TMDL. ADEC encourages the owner or operator to contact the state to seek clarification if

significant concerns exist over whether its activity will be consistent with a TMDL.

The CGP requires that the owner or operator determine whether an approved or established TMDL exists that specifically addresses its discharge and if so, take necessary actions to be consistent with the assumptions and requirements of that approved TMDL. To make this determination, the owner or operator will need to (1) determine the waterbody into which it discharges, (2) identify if there is an approved or established TMDL for that waterbody, (3) determine if that TMDL includes specific requirements (e.g., wasteload allocation or load allocation) applicable to its construction site, and (4) if so implement necessary steps to comply with them. ADEC generally agrees that construction activities should not be delayed because the TMDL authority failed to specify all sources of loading in the TMDL. ADEC is not requiring that construction activities be delayed until such time as a TMDL can be revised. ADEC has utilized a framework that allows the construction site owner or operator to obtain clarification from the TMDL authority on discharge provisions that would allow authorization under the CGP. ADEC established a website at [http://www.dec.state.ak.us/water/tmdl/tmdl\\_index.htm](http://www.dec.state.ak.us/water/tmdl/tmdl_index.htm) that includes links to state TMDL information and contacts. ADEC expects that permittees can access that website and identify either (1) the steps needed to be consistent with the assumptions and requirements of the TMDL or (2) a state or regional contact for making this determination.

ADEC recognizes that TMDLs vary in the complexity of their assumptions and quantification. In the process of determining whether or not an owner or operator is consistent with the TMDL, the state TMDL contact may request additional information. The TMDL may include details regarding recommended implementation activities such as certain narrative provisions such as implementation of specific BMPs; specified inspection, discharge monitoring or characterization, education, tracking or reporting requirements; or some combination of these or other conditions. Therefore, any implementation activities that apply to discharges from construction activity in the TMDL should be implemented at the construction site. Further, ADEC is clarifying that if the TMDL includes load allocations that the department later determines is for a discharge subject to this permit, then the load allocation is considered to be a wasteload allocation, and the construction owner or operator needs to implement control measures that are consistent with any specific requirements implementing this load allocation.

As described in the permit, ADEC will begin with the general assumption that where an approved TMDL does not include a specific allocation for storm water discharges, or where the TMDL authority clarifies that it did not include a specific allocation for storm water or for construction activities, selection, installation, and maintenance of control measures that meet the effluent limits in Part 3 of the

permit will be consistent with the assumptions and requirements of such TMDLs. Inferring that the TMDL authority did not intend to make it impossible to permit storm water discharges in the absence of any discussion on this topic in the TMDL is reasonable because both construction activity and rainfall are so ubiquitous that it is unlikely that a policymaker would make such a significant decision consciously through silence. ADEC will generally assume that such discharges were accounted for by the author of the TMDL, even if such discharges are not addressed specifically. Therefore, in the situation where an approved or established TMDL has not specified a wasteload allocation for construction storm water discharges, but has not specifically excluded these discharges, compliance with the effluent limits in Part 3 of the permit will generally be assumed to be consistent with the approved TMDL. Similarly, where an EPA approved or established TMDL has specified a general wasteload allocation for construction storm water discharges, but no specific requirements for individual construction sites have been identified, either in the TMDL, a watershed plan, or other similar document, then compliance with the effluent limitations in Part 3 will generally be assumed to be consistent with the approved TMDL. If the approved or established TMDL specifically precludes such discharges, the operator is not eligible for coverage under the CGP. In selecting this approach, ADEC is trying to balance the need to include permit conditions consistent with TMDLs with the need to clearly define permittee responsibilities.

f. *CGP Part 1.3.3.6 Endangered and Threatened Species and Critical Habitat Protection.*

Before submitting an NOI, the operator must ensure and document that discharges are not likely to jeopardize the continued existence of any Federally-listed endangered or threatened species or result in the adverse modification or destruction of habitat that is Federally-designated as critical under the Endangered Species Act (ESA). The U. S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) are responsible for administration of the ESA and as such are responsible for maintaining a list of protected species and critical habitat. Once listed as endangered or threatened, a species is afforded the full range of protections available under the ESA, including prohibitions on killing, harming or otherwise taking a species. In certain instances, FWS or NMFS may establish a critical habitat for a threatened or endangered species as a means to further protect those species. Critical habitat includes areas determined to be essential for the conservation of a species and may not necessarily be in an area currently occupied by the species. Some, but not all, listed species have designated critical habitat. Exact locations of such critical habitat are provided in the Services regulations at 50 CFR Parts 17 and 226. EPA has developed a four-step process (Appendix C) to make this determination. The project "owner" or developer performs the endangered species analysis during the planning stages of a project (i.e., before construction is scheduled to begin). By design, this effort should not have to be repeated by the contractors, homebuilders, utilities, etc.,

whose involvement in the project will not happen until later. See Appendix C of the permit for the ESA Review Procedures to determine eligibility prior to submittal of the NOI. ADEC recommends that the operator follow the Appendix C procedures at the earliest possible stage to ensure that measures to protect listed threatened and endangered species and designated critical habitat are incorporated early in the planning process. At a minimum, the operator must document fully the procedures used to determine eligibility prior to submittal of the NOI.

This permit provides for the possibility of multiple permittees at a construction site. Operators should be aware that in many cases they can meet the CGP eligibility requirements by relying on another operator's certification of eligibility as specified in Criterion F under Part 1.3.3.6 of the CGP.

By certifying eligibility under Criterion F of Part 1.3.3.6, the operator agrees to comply with any measures or controls upon which the other operator's certification under Criterion A, B, C, D, or E of Part 1.3.3.6 was based. This situation will typically occur where a developer or primary contractor conducts a comprehensive assessment of effects on listed species and critical habitat for the entire construction project, certifies eligibility under Criterion A, B, C, D, or E and that certification is relied upon by other operators (i.e., contractors) at the site. However, operators that consider relying on another operator's certification should carefully review that certification and any supporting information and assess whether there is any reason to believe that listed species or designated critical habitat not considered in the prior certification may be present or located in the project area (due, for example, to a new species listing or critical habitat designation). If an operator does not believe that the other operator's certification provides adequate coverage for the operator's storm water discharges and storm water discharge-related activities or for the operator's particular project area, the operator must provide its own independent certification under Criterion A, B, C, D, or E.

The project area will vary with the size and structure of the construction activity, the nature and quantity of the storm water discharges, the storm water discharge-related activities and the type of receiving water. Given the number of construction activities potentially covered by the CGP, no specific method to determine whether listed species may be located in the project area is required for coverage under the CGP. It is important to note that discussion or formal or informal consultation with FWS and/or NMFS should begin prior to submission of NOI if the construction operator is unclear about whether he or she can satisfy Appendix C without FWS and/or NMFS input.

The operator also has an independent ESA obligation to ensure that its activities do not result in any prohibited "take" of listed species. [Section 9 of the ESA prohibits a person from "taking" endangered wildlife (e.g., harassing or harming it). See ESA Sec 9: 16 U.S.C. §1538. The FWS has extended generally that

prohibition to threatened wildlife by regulation 50 CFR §17.31. This prohibition applies generally to all entities including private individuals, businesses, and governments. Section 9(a)(2) details the prohibited acts relating to endangered plants, which primarily apply on federal lands or to actions prohibited by State law.] Many of the measures required in the CGP and in these instructions to protect species may also assist operators in ensuring that their construction activities do not result in a prohibited take of species in violation of section 9 of the ESA. Operators who plan construction activities in areas that harbor endangered and threatened species are advised to ensure that they are protected from potential takings liability under ESA section 9 by either an ESA section 10 permit or by requesting formal consultation under ESA section 7 (as described in more detail in Step Four of the ESA Review Procedures in Appendix C of the CGP). Operators who seek protection from takings liability should be aware that it is possible that some specific construction activities may be too unrelated to storm water discharges to be afforded incidental take coverage through an ESA section 7 consultation that is performed to meet the eligibility requirements for CGP coverage. In such instances, operators should apply for an ESA section 10 permit. Where operators are not sure whether to pursue a section 10 permit or a section 7 consultation for takings protection, they should confer with the appropriate FWS or NMFS office.

This permit controls storm water discharges from small construction activities in addition to continuing to cover large construction activities. As noted earlier, the permit requires the development and implementation of a SWPPP to control pollutants in the discharges. This SWPPP must protect water quality in the affected waters, including designated aquatic life uses in those waters. Since the SWPPPs adequately protect water quality, including aquatic life, EPA has determined that the permit issuance will not adversely affect EFH. As such, in accordance with 50 CFR §600.920, EPA did not consult with NMFS concerning this action.

g. *CGP Part 1.3.3.7 Historic Properties.*

Operators are reminded that they must comply with applicable state, tribal, and local laws concerning the protection of historic properties and places. ADEC is continuing discussions with the Advisory Council on Historic Preservation and may modify the CGP at a later date based on those discussions.

#### **4. Waivers for Small Construction Activities (CGP Part 1.4)**

Phase II extends the requirements of the storm water program from construction sites disturbing five or more acres (large construction) to sites disturbing between one and five acres (small construction), although ADEC may also waive small construction sites that do not have adverse water quality impacts. To receive a waiver, the owner or operator of a small construction activity must certify to a low predicted rainfall erosivity or lack of water quality impacts. See Part IV.B. of this fact sheet for more information on waivers.

An owner or operator can qualify for the rainfall erosivity waiver when, for the period of construction activity, the value of the rainfall erosivity factor (R-Factor) is less than 5. If the construction activity extends past the dates specified in the waiver certification, the owner or operator must recalculate the waiver using the original start date and a new ending date. If the R-Factor is still under 5, a new waiver certification form must be submitted. If the recalculated R-Factor is greater than 5, an NOI must be submitted prior to the end of the waiver period for the owner or operator to be covered by the permit. Details of procedures for determining eligibility for the rainfall erosivity waiver are provided in Appendix B and Part IV.B. of this fact sheet.

A determination that storm water controls are not necessary may also be based on a total maximum daily load (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. The owner or operator must certify that the construction activity and the drainage area are addressed by the TMDL or equivalent analysis. Details of procedures for determining eligibility for these waivers are provided in Appendix B and Part IV.B of this fact sheet

## **B. Authorizations for Discharges of Storm Water From Construction Activity**

### **1. How to Obtain Authorization (CGP Part 2.1)**

Owners or operators of construction sites greater than one acre, or those designated by ADEC, are required to submit an NOI to obtain permit coverage (18 AAC 83.210). Submission of a complete and accurate NOI eliminates the need to apply for an individual permit for a regulated discharge, unless ADEC specifically notifies the discharger that an individual permit application must be submitted.

Each entity considered an owner or operator of construction activity must submit an NOI. ADEC encourages such operators to file an NOI using the Department's electronic NOI ("eNOI") system, available at <http://dec.alaska.gov/water/wnpssc/stormwater/index.htm>. The definitions of "owner or operator" and "facility or activity" have been included in the permit.

ADEC believes situations exist where a utility company installing service lines meets the definition of an owner or operator and must get permit coverage, although most of the time a utility would be considered a "subcontractor" (i.e., non-permittee). If a utility company is constructing a project for itself (e.g., main transmission line, transformer station) it must obtain permit coverage. Otherwise, as a non-permittee working at a construction site, ADEC encourages utility companies (as it does any subcontractor) to abide by the site's SWPPP provisions and minimize its impacts on storm water controls.

## **2. How to Submit the NOI (CGP Part 2.2)**

The permit requires owners or operators to either use ADEC's electronic NOI system (accessible at <http://dec.alaska.gov/water/wnpspc/stormwater/index.htm> ) or use a paper form (included at this website) and then submit that paper form to the address listed in Part 2.2 of the permit.

ADEC emphasizes that submitting an NOI via the electronic filing system will be the easiest and quickest way to obtain permit coverage because the system will automatically process the information, disallow incomplete submissions, and flag certain entries as possibly incorrect. Shortly after transmission of an eNOI to ADEC, the database can be accessed to verify receipt and posting of information. The 7-day NOI review period will typically begin the day a complete eNOI is transmitted.

## **3. Authorization to Discharge Date (CGP Part 2.3)**

This permit is considered to be issued on the date it is signed and will become effective 31 days afterward on January 31, 2010. This permit will remain in effect until midnight on June 30, 2011. Owners or operators are authorized to discharge storm water from construction activities under the terms and conditions of this permit seven days after acknowledgment of receipt that a complete NOI is posted on ADEC's APDES website <http://dec.alaska.gov/water/wnpspc/stormwater/index.htm>. The 7-day waiting period provides ADEC, FWS and NMFS an opportunity to evaluate NOIs and possibly delay authorization, for potential permit eligibility concerns (see Part 1.3), as part of a commitment to increase oversight of dischargers.

During the 7-day NOI review period following NOI posting on the website, ADEC may notify the NOI submitter that additional action must be taken before discharge authorization is obtained, based on concerns regarding eligibility as described in Part 1.3. All notifications of delays will be posted on the website by the seventh day, and will be followed by a mailed notification. For non-eNOI submissions, ADEC will attempt to contact the NOI submitter directly with information about delays as soon as possible (telephone, fax, email), in addition to the database posting, but it is the submitter's responsibility to ensure that authorization has been granted.

Actions to be taken depend on the nature of the eligibility concerns (e.g. water quality or impaired receiving waters). Additional actions may include a request to review the SWPPP a requirement to make revisions to the SWPPP or having to submit an application for an individual permit as per Part 2.6. For sake of expediency in obtaining coverage, any requests should be complied with as soon as possible. When so notified that additional actions must be taken, discharges are not authorized until notified of such by ADEC.

**4. Submission Deadlines (CGP Part 2.4)**

- a. Owners or operators of new projects (i.e., construction activity commenced after the effective date of this permit) must submit an NOI form at least seven days prior to commencement of construction activities.
- b. Previously permitted ongoing projects are not eligible for coverage under this permit. If the permittee previously received authorization to discharge for the project under the EPA (e.g. under the EPA 2003 CGP, or the EPA 2008 CGP), or from ADEC under the 2008 CGP following transfer of permitting authority from EPA to ADEC on October 31, 2009, the permittee's authorization to discharge will be automatically continued under the respective permit until the expiration of this permit (currently June 30, 2011) and the issuance of a new CGP by ADEC, or the termination of coverage by the permittee under the respective permit, whichever is earlier. Note: If the permittee is an operator of a permitted ongoing project and transfers ownership of the project, or a portion thereof, to a different operator, that operator will be required to submit a complete and accurate NOI for a new project in accordance with Part 2.2.
- c. ADEC is requiring owners or operators of construction projects that commenced operation prior to the effective date of this permit but that did not receive authorization to discharge under EPA's 2003 CGP or 2008 CGP to prepare and comply with an interim SWPPP consistent with the applicable requirements this permit.

In any of the above situations, permit coverage may be delayed past the 7-day waiting period upon notification as per Part 2.3.

- d. If an NOI is submitted after construction activity has begun, the owner or operator is authorized for discharges consistent with the authorization to discharge and submission deadlines detailed in Parts 2.3 and 2.4 of the permit but in no cases less than seven days after submission of a complete and accurate NOI to ADEC. ADEC may seek enforcement action for any unpermitted discharges or permit non-compliance that occurs between the time construction begins and discharge authorization.

**5. Continuation of the Expired General Permit (CGP Part 2.5)**

The permit specifies procedures for continued coverage under a general permit if the permit expires prior to a replacement permit being issued. In short, the expired permit would remain in full force and effect in accordance with 18 AAC 83.155. Any permittee granted coverage prior to the permit's expiration date will automatically remain covered by the continued permit until the earliest of:

- The permit being reissued or replaced;
- The permittee terminating coverage by submitting a Notice of Termination;
- Issuance of an individual permit for the permittee's discharges; or
- A formal decision by ADEC not to reissue the general permit, at which time the permittee must seek coverage under an alternative general permit or an individual permit.

However, should the permit expire prior to a replacement permit being issued, the existing permit will only cover those operators that submitted a complete and accurate NOI and met all the eligibility requirements prior to the expiration date of the permit. New construction projects requiring permit coverage after the expiration date of this permit are not eligible for coverage until a replacement permit is issued.

#### **6. Requiring Coverage Under an Individual Permit or an Alternative General Permit (CGP Part 2.6)**

Based upon a number of different situations (e.g., applicable numeric effluent limitations resulting from a TMDL, or a determination that the owner or operator has the potential to cause or contribute to a water quality standard excursion), ADEC may determine that coverage under an individual permit is necessary. If a permittee is currently discharging under this general permit and ADEC determines that individual coverage is required, written notification of this required change in permit coverage, including reasoning for this decision, an application form, and a deadline for filing the application, will be provided to the permittee by ADEC.

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

#### **C. Effluent Limits**

Background to the Use of Non-Numeric Effluent Limits This permit contains non-numeric effluent limitations that correspond to required levels of technology-based and water quality-based control for discharges under the CWA. The CWA authorizes ADEC to use non-numeric, or “narrative,” effluent limits in APDES permits. Control measures may be used as effluent limitations under ADEC regulations (18 AAC 83.475). This permit, like the 2008 CGP and previous CGPs, includes non-numeric effluent limits, including BMPs.

Use of Control Measures to Meet Effluent Limits EPA generally does not mandate the specific control measures operators must select, design and implement to meet non-numeric effluent limitations. It is up to the operator to determine what must be done to meet the applicable effluent limits. Control measures can be actions (including

processes, procedures, schedules of activities, prohibitions on practices and other management practices) or structural or installed devices to prevent or reduce water pollution. Control measures can be just about anything that “does the job” of preventing deleterious substances from entering the environment and of meeting applicable limits. In this permit, construction site operators are required to select, design, implement and maintain site-specific control measures to meet these limits. The permit along with this fact sheet provide examples of control measures, but construction sites operators must tailor these to their sites as well as improve upon them as necessary to meet permit limits. The examples emphasize prevention over treatment.

Definition of the Term “Minimize” The 2003 CGP did not include a definition of the term “minimize.” However, that permit used the term frequently, in addition to the terms “eliminate or reduce” and “prevent.” The permit also used phrases such as “where practicable” and “to the extent feasible,” without providing a consistent definition of those terms. In response to comments to the 2008 CGP EPA determined that it was beneficial to use these terms consistently, especially where the Agency intended that these words be used inter-changeably and moreover to reflect the applicable levels of control – “BPT,” “BAT” and “BCT.” The first level of control, “best practicable control technology currently available,” or “BPT” applies to all pollutants. CWA section 304(b)(1)(B); 33 U.S.C. § 1314(b)(1)(B). BPT represents the initial stage of pollutant discharge reduction, designed to bring all sources in an industrial category up to the level of the average of the best source in that category. See *EPA v. National Crushed Stone Ass’n*, 449 U.S. 64, 75-76 (1980). In the second level of control, all point sources are required to meet effluent limitations based on “best conventional pollutant control technology,” or “BCT” CWA section 304(b)(4)(B); 33 U.S.C. § 1314(b)(4)(B) or “best available technology economically achievable,” or “BAT” CWA section 301(b)(2)(A); 33 U.S.C. § 1311(b)(2)(A), depending on the types of pollutants discharged. BCT applies to conventional pollutants, listed at 40 C.F.R. § 401.16 [biological oxygen demand (BOD), pH, fecal coliform, and oil and grease]. BAT applies to toxic and non-conventional pollutants.

Consistent with the control level requirements of the CWA, in the 2008 CGP EPA clarified that the term “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. Therefore, wherever this term is used in Part 3, the permittee now has a consistent definition for what EPA and ADEC intend by this requirement.

Installation of Control Measures to Meet Effluent Limits The construction operator is required to select, install, and maintain control measures (e.g., Best Management Practices (“BMPs”), controls, practices, etc.) for each major construction activity identified in the project description of the SWPPP in order to meet the Part 3 effluent limits. All control measures must be properly selected, installed, and maintained in accordance with any relevant manufacturer specifications and good engineering practices.

The permittee must implement the erosion and sediment controls from commencement of construction activity until final stabilization is complete.

**1. Effluent Limits to Reduce Pollutants in Storm Water Discharges (CGP Part 3.1)**

All construction operators are required to implement control measures to minimize pollutants in storm water discharges. Inherent in this requirement (which was also included in the 2003 CGP) is that operators implement control measures to “minimize” discharges of pollutants from construction sites.

**CGP Part 3.1.1 - Sediment Controls**

Construction operators are required to implement certain sediment controls based on the amount of land being disturbed by the project. These controls are described in Part 3.1 in the effluent limits section to emphasize that these are performance-based effluent limitations of the permit, not to be confused with documentation requirements. The requirements are as follows:

**Sediment Basins:** For common drainage locations that serve an area with 10 or more acres disturbed at one time, a temporary (or permanent) sediment basin that provides storage for a calculated volume of runoff from the drainage area from a 2-year, 24-hour storm, or equivalent control measures, must be provided where attainable until final stabilization of the site. Where no such calculation has been performed, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, must be provided where attainable until final stabilization of the site. When computing the number of acres draining into a common location, it is not necessary to include flows from offsite areas and flows from on-site areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin. In determining whether installing a sediment basin is attainable, the operator may consider factors such as site soils, slope, available area on-site, etc. In any event, the operator must consider public safety, especially as it relates to children, as a design factor for the sediment basin, and alternative sediment controls must be used where site limitations would preclude a safe design.

For drainage locations which serve 10 or more disturbed acres at one time and where a temporary sediment basin or equivalent controls is not attainable, smaller sediment basins and/or sediment traps should 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).

For drainage locations serving less than 10 acres, smaller sediment basins and/or sediment traps should 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 unless a sediment basin providing storage for a calculated volume of

runoff from a 2-year, 24-hour storm or 3,600 cubic feet of storage per acre drained is provided.

#### CGP Part 3.1.2 - Off-Site Sediment Tracking and Dust Control

Construction operators are required to minimize vehicular tracking of soil off-site to paved surfaces and the generation of dust. Dust and dirt-tracking can be minimized by measures such as providing gravel or paving at entrance/ exit drive paths, parking areas and unpaved transit ways on the site carrying significant amounts of traffic; providing entrance wash racks or stations for trucks; and performing street sweeping. Inherent to describing measures to minimize sediment tracking is the implementation of measures to accomplish the same objective.

#### CGP Part 3.1.3 - Runoff Management

Construction operators are required to minimize runoff and the discharge of pollutants from exposed areas of the site. Structural controls may be necessary because vegetative controls cannot be employed where soil is continually disturbed and because of the lag time before vegetation becomes effective. Options for such controls include silt fences, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, sediment traps, reinforced soil retaining systems, gabions and temporary or permanent sediment basins. Placement of structural controls in flood plains should be avoided.

#### CGP Part 3.1.4 - Erosive Velocity Control

Land development can significantly increase storm water runoff volume and peak velocity if appropriate storm water management measures are not implemented. In addition, post-development storm water discharges will typically contain higher levels of pollutants, including total suspended solids (TSS), heavy metals, nutrients and high oxygen-demand components.

The evaluation of whether the pollutant loadings and the hydrologic conditions (the volume of discharge) of flows exceed pre-development levels can be based on hydrologic models that consider conditions such as the natural vegetation endemic to the area. Increased discharge velocities can greatly accelerate erosion near the outlet of structural measures. To mitigate these effects, velocity dissipation devices should be placed at discharge points and along the length of a runoff conveyance, as necessary, to provide a non-erosive flow. Velocity dissipation devices help protect a water body's natural, pre-construction physical and biological uses and characteristics (e.g., hydrologic conditions such as the hydro period and hydrodynamics).

#### CGP Part 3.1.5 - Post-Construction Storm Water Management

Construction operators are required to comply with applicable federal, state, tribal, or local requirements regarding the design and installation of post-construction storm water controls. This permit addresses only the installation of these measures; not the ongoing operation and maintenance of them after cessation of construction activities and final stabilization. Permittees are responsible only for the installation and maintenance of

storm water management measures until final stabilization of the site. When selecting storm water management measures, the operator should consider the amount of required maintenance and whether there will be adequate resources for maintaining them over the longer term. Some discharges of pollutants from post-construction storm water management structures may need to be authorized under an APDES permit (e.g., the construction project was an industrial facility in a sector covered by the APDES multi-sector general permit). The owner/operator of such discharges may ask ADEC if this requirement applies to them.

Storm water management measures installed during the construction process can control the volume and velocity of runoff, as well as reduce the quantity of pollutants discharged post-construction. Reductions in peak discharge velocity and volume can reduce pollutant loads, as well as diminish physical impacts such as stream bank erosion and stream bed scour. Storm water management measures that mitigate changes to pre-development runoff characteristics assist in protecting and maintaining the physical and biological characteristics of receiving streams and wetlands.

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

Options for storm water management measures include:

- On-site infiltration of precipitation;
- Flow attenuation by use of open vegetated swales and natural depressions;
- Storm water retention/detention structures (including wet ponds); and
- Sequential systems using multiple methods.

The SWPPP should include an explanation of the technical basis used to select post-construction control measures, where flows exceed pre-development levels. This explanation should address how a number of factors were evaluated, including the pollutant removal efficiencies of the measures, costs of the measures, site-specific factors that will affect the utility of the measures, whether the measures are economically achievable at a particular site and any other relevant factors.

Storm water control measures should be designed in accordance with any requirements established by the appropriate local, state, or tribal authority. ADEC also strongly encourages operators to use low impact development or green infrastructure practices that promote infiltration and reduce storm water volumes after development. Additional information on green infrastructure practices can be found at [www.epa.gov/npdes/greeninfrastructure](http://www.epa.gov/npdes/greeninfrastructure).

The pollutant removal efficiencies of various storm water management measures can be estimated from a number of sources, including “Stormwater Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices,” U.S. EPA, 1992, and “A Current Assessment of Urban Best Management Practices” prepared for U.S. EPA by Metropolitan Washington Council of Governments,

March 1992. Additional information on BMPs is available from EPA in an on-line document entitled, “National Menu of Best Management Practices for Stormwater Phase II” and found on the Internet at [www.epa.gov/npdes/menuofbmps/menu.htm](http://www.epa.gov/npdes/menuofbmps/menu.htm), EPA’s Urban Stormwater BMP Performance Tool ([www.epa.gov/npdes/urbanbmp](http://www.epa.gov/npdes/urbanbmp)), and from an on-line database entitled, “National Stormwater Best Management Practices (BMP) Database” sponsored by EPA and the American Society of Civil Engineers (ASCE) and available on the Internet at [www.bmpdatabase.org](http://www.bmpdatabase.org).

In selecting storm water management measures, the permittee should consider the impacts of each method on other water resources, such as ground water. Although SWPPPs focus primarily on storm water management of construction activity flow, ADEC encourages activities at sites that avoid creating groundwater pollution problems. For example, if the water table is high in an area or soils are especially porous, an infiltration pond may contaminate the groundwater unless special preventive measures are taken. In fact, certain storm water control practices may meet EPA’s definition of underground injection, triggering responsibilities under the Safe Drinking Water Act, as codified in 40 CFR Parts 144-146. Storm water controls, such as wet ponds, should also be designed to have minimal safety risks, especially to children.

#### CGP Part 3.1.6 - Construction and Waste Materials

Construction operators are required to prevent the discharge of solid materials to waters of the U.S. (except where authorized by a Section 404 CWA permit); to minimize exposure of construction and waste materials to storm water and the occurrence of spills; and to prevent litter, construction debris, and construction chemicals that could be exposed to storm water from becoming a pollutant source in storm water discharges. The examples provided include diesel fuel, hydraulic fluids, and other petroleum products.

#### CGP Part 3.1.7 - Non-Construction Wastes

Construction operators are required to minimize pollutant discharges from areas other than construction. The meaning is to clarify that not only is the operator required to describe sources of non-construction pollutants and control measures to be implemented, but also that the operator is required to implement such control measures.

#### CGP Part 3.1.8 – Erosion Control and Stabilization

The permit requires operators to stabilize disturbed portions of the site, and to initiate such measures within required timeframes. Stabilization practices are critical to preventing erosion. The permittee must ensure that existing vegetation is preserved wherever possible and that disturbed portions of the site are stabilized as quickly as practicable. Stabilization practices include seeding of temporary vegetation, seeding of permanent vegetation, mulching, geotextiles, sod stabilization, vegetative buffer strips, preservation of trees and mature vegetative buffer strips, and other appropriate measures. Temporary stabilization can be the single most important factor in reducing erosion at construction sites.

Stabilization also involves preserving and protecting selected trees on the site prior to development. Mature trees have extensive canopy and root systems, which help to hold soil in place. Shade trees also keep soil from drying rapidly and becoming susceptible to erosion. Measures taken to protect trees can vary significantly, from simple ones such as installing tree armoring and fencing around the drip line, to more complex measures such as building retaining walls and tree wells.

It is imperative that stabilization be employed as soon as practicable in critical areas. The CGP requires that, except in three situations, stabilization measures must be instituted on disturbed areas as soon as practicable, but no more than 14 days after construction activity has temporarily or permanently ceased on any portion of the site. The three exceptions to this requirement are the following:

- When construction activities will resume on a portion of the site within 14 days from suspension of previous construction activities;
- When the initiation of stabilization measures is precluded by snow cover or frozen ground, in which case they must be initiated as soon as practicable; and
- In arid areas (areas with an average annual rainfall of 0 to 10 inches), semi-arid areas (10 to 20 inches) and areas experiencing droughts, where the initiation of perennial vegetative stabilization measures is precluded by seasonal arid conditions. In this instance, stabilization measures must be initiated as soon as practicable.

#### CGP Part 3.1.9 - Spills / Releases in Excess of Reportable Quantities

Construction operators are not authorized to discharge 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. The construction site must have the capacity to control, contain, and remove such spills if they are to occur. Spills in excess of reportable quantities must still be reported. Also Section 311 of the CWA and certain provisions of Sections 301 and 402 of the CWA are also applicable.

### **2. Effluent Limits to Reduce Pollutants in Non-Storm Water Discharges (CGP Part 3.2)**

Permittees are required to minimize any non-storm water discharges authorized by this permit.

### **3. Effluent Limits Related to Endangered Species (CGP Part 3.3)**

Construction operators are required to protect federally-listed endangered or threatened species and federally designated critical habitat to maintain eligibility under Part 1.3.3.6. This provision simply clarifies that permittees are required, where applicable, to continue to protect species and/or critical habitat during permit coverage in order to maintain their eligibility under Part 1.3.3.6. This provision does not apply to those dischargers that certify under Part 1.3.3.6 that there are no listed species or designated critical habitat in their project areas.

#### **4. Attainment of Water Quality Standards (CGP Part 3.4)**

APDES regulations at 18 AAC 83.435 state that permits must contain conditions to achieve water quality standards. When ADEC determines a discharge will cause or contribute to an excursion above WQS, including failure to protect and maintain existing designated uses of receiving waters, ADEC will require the permittee to take one of three actions:

- Modify control measures to address the identified water quality concerns;
- Submit to ADEC valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining WQS; or
- Cease discharges from construction activity and apply for an individual permit.

If additional control measures are required, ADEC expects the permittee to vigilantly and in-good-faith follow and document the process for BMP selection, installation, implementation and maintenance and cooperate to eliminate the identified problem within a time frame stipulated by ADEC.

ADEC does not typically review information and data about specific discharges prior to authorization under the CGP. Instead, a general permittee determines whether its discharges are eligible for authorization under the general permit and, if so, certifies to that determination and implements control measures to achieve the effluent limits in Part 3. The permit language is included to ensure that those seeking coverage under this general permit select, install, implement, and maintain control measures at their construction site that will be adequate and sufficient to meet water quality standards for all pollutants of concern. Based on EPA's 1996 Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits (EPA 833-D-96-001), ADEC has determined that BMPs, when properly selected, installed, implemented, and maintained do provide effluent quality that can meet WQS. However, because proper selection, installation, implementation, and maintenance are so critical to the success of BMP effectiveness, simply "installing BMPs" at a construction site will often not provide adequate water quality protection. Therefore, the CGP requires permittees to select, install, implement, and maintain BMPs that minimize pollutants in the discharge. Unless notified otherwise by ADEC, compliance with this permit requirement will be assumed to be as stringent as necessary to ensure that discharges do not cause or contribute to an excursion above any applicable water quality standard.

#### **5. Consistency with Total Maximum Daily Loads (CGP Part 3.5)**

Part 1.3.3.5 of the CGP requires that permittees determine if discharges from the site are consistent with the assumptions and requirements of applicable EPA established or approved TMDLs for the receiving water into which they discharge. To make such a determination, permittees can access ADEC's TMDL website at [http://www.dec.state.ak.us/water/tmdl/tmdl\\_index.htm](http://www.dec.state.ak.us/water/tmdl/tmdl_index.htm) or contact the TMDL authority directly. Part 3.5 of the permit requires the permittee to implement control measures

necessary to be consistent with the assumptions and requirements of such TMDL. In certain instances, the TMDL may specifically identify each discharger contributing (or that will be contributing) pollutants to the receiving stream and the controls that are necessary for each discharger to meet the established waste load allocation. More likely for construction activities, the TMDL will identify a category of dischargers (e.g., construction activity or new development) and will identify the types of controls necessary to meet the cumulative waste load allocation for the group of dischargers. If the TMDL specifically identifies measures or controls, the operator must implement these. If specific measures or controls are not required in the TMDL, the permittee should continue to achieve the effluent limits in Part 3. If necessary, ADEC may notify the permittee that additional requirements are necessary to be consistent with the assumptions and requirements of the TMDL, or that an individual permit is required.

ADEC is incorporating this language to emphasize the importance of implementing control measures required to be consistent with the assumptions and requirements of the TMDL, where applicable. ADEC considers it to be inherent in a requirement to document measures taken to ensure that the discharge is consistent with the assumptions and requirements of a TMDL that such measures actually be implemented.

#### **6. Maintenance of Control Measures (CGP Part 3.6)**

Erosion and sediment controls can become ineffective if they are damaged or not properly maintained. The permit requires all erosion and sediment controls to be maintained in effective operating condition. If site inspections identify control measures that are not operating effectively, the permittee must document the problem pursuant to Part 4 of the permit and maintenance must be performed before the next storm event, whenever practicable. If maintenance before the next storm event is impracticable, maintenance must be completed as soon as practicable. The permit also requires that the operator remove sediment from sediment traps or sedimentation ponds when design capacity of that device has been reduced by 50 percent or more. In addition, construction operators are required to remove trapped sediment from a silt fence before the deposit reaches 50 percent of the above-ground fence height (or before it reaches a lower height based on manufacturer's specifications).

#### **7. Training of Employees (CGP Part 3.7)**

Permittees are required to train employees and subcontractors as necessary to make them aware of the applicable control measures implemented at the site so that they follow applicable procedures. This provision also clarifies that it is the permittee's responsibility to inform such subcontractors of their responsibilities while operating at a permitted site.

#### **8. Applicable State, Tribal, or Local Programs (CGP Part 3.8)**

Many states, tribes, municipalities, and counties have developed control measure requirements for construction activities. A significant number have also developed storm water management requirements. The CGP requires that storm water controls for sites that discharge storm water from construction activities be consistent with procedures and requirements of state/tribal and local control measure plans and storm water management

plans. The construction site's storm water control practices may incorporate portions of a state, tribe, or local program's requirements if these requirements are at least as strict as the CGP. If a construction site is located in an area covered by such a local program, then compliance with various aspects of the local program would constitute compliance with these aspects of the CGP.

## **D. Inspections**

The inspection requirements are a tool to be used by the operator to check its control measures and storm water control procedures. Each provision is discussed below.

### **1. Inspection Frequency (CGP Part 4.1)**

Permittees must inspect designated areas on the site regularly. For purposes of this part, ADEC defines "regularly" to mean either (1) at least once every 7 calendar days or (2) at least once every 14 calendar days and within 24 hours after any storm event of 0.5 inches or greater. ADEC also recommends that permittees perform a "walk through" inspection of the construction site before anticipated storm events (or series of events such as intermittent showers over a period of days) that could potentially yield a significant amount of runoff. Depending on local rainfall patterns, it is possible that either more or fewer inspections would be required under the option described in Part 4.1.1 as compared to the option provided in Part 4.1.2. In exchange for committing to more frequent inspections, the operator could plan and budget for one inspection per week and would not have to deal with uncertainties associated with an unknown number of additional inspections triggered by rain events and the need to have inspectors on standby. This flexibility would be especially valuable for unmanned locations. Proper operation and maintenance of storm water BMPs is independently required by Part 3.6 of the permit, so either inspection schedule is expected to provide adequate environmental protection.

### **2. Case-by-Case Reductions in Inspection Frequency (CGP Part 4.2)**

For sites that have undergone stabilization (temporary or final) or experience seasonal aridity (average annual rainfall of 0 to 10 inches) or semi-aridity (annual rainfall of 10 to 20 inches), inspections must be conducted at least once a month. Where construction activity has been halted due to frozen conditions, regular inspections are not required until one month before thawing is expected (i.e., snowmelt runoff would commence).

### **3. Inspection Waiver for Frozen Conditions (CGP Part 4.3)**

In areas of the country where frozen conditions are anticipated to continue for extended periods of time (i.e., more than one month) and land disturbance activities are suspended during these times, the inspection requirements are waived. This waiver is granted until one month before thawing conditions are expected to result in a storm water discharge from the site. The beginning and ending dates of the waiver period must be documented in the SWPPP.

#### **4. Qualified Personnel (CGP Part 4.4)**

Inspections must be performed by qualified personnel; either the operator's own personnel or consultants hired to perform the inspections. The inspectors must be knowledgeable and possess the skills to assess conditions at the construction site that could impact storm water quality and assess the effectiveness of sedimentation and erosion control measure chosen to control the quality of the sites storm water discharges.

#### **5. Scope of Inspections (CGP Part 4.5)**

Site inspections must comprise, at a minimum:

- Disturbed areas;
- Areas used for storage of materials exposed to precipitation;
- Evidence of, or the potential for, pollutants entering the storm water conveyance system;
- Discharge locations;
- Control measures; and
- Locations where vehicles enter or exit the site.

Where discharge points are accessible, they must be inspected to ascertain whether control measures are effective in preventing impacts to waters of the U.S. This can be done by inspecting the waters for evidence of erosion or sediment introduction. If discharge points are inaccessible, the permit requires that nearby downstream locations be inspected, if practicable.

Inspectors must determine whether control measures are effective in preventing impacts to the receiving water and look for evidence of or the potential for pollutants entering the drainage system.

#### **6. Reductions in Scope of Inspections for Stabilized Areas (CGP Part 4.6)**

The permit clarifies that once a definable area of the site has been finally stabilized, no further inspection requirements apply to that portion of the site. The permittee is required to implement storm water controls during construction activity, which ADEC defines as from commencement of construction activity until final stabilization. ADEC defines both of these terms in Appendix A of the CGP.

#### **7. Utility Line Inspections (CGP Part 4.7)**

For linear construction activities (e.g., utility line installation, pipeline construction), representative inspections are acceptable and allow for inspection of the project 0.25 miles above and below each access point where a roadway, undisturbed right-of-way, or other similar feature intersects the construction site and allows access to the construction site. This is to limit additional disturbance to soils that may increase the erosion potential resulting from vehicles compromising stabilized areas. For a discussion on when linear construction activities meet the definition of an owner or operator and must obtain permit coverage see Part III.B.1 of the fact sheet.

## **8. Inspection Report (CGP Part 4.8)**

Once an inspection has been performed, the permittee is required to prepare an inspection report and retain it for up to three years after the permit expires or is terminated. The inspection report must contain all elements listed in Part 4.8 of the permit and the report must be signed in accordance with the signatory requirements in Appendix F of the CGP.

## **E. Storm Water Pollution Prevention Plans (SWPPPs)**

Part 5 of the permit requires the owner or operator to develop a SWPPP to document the specific control measures that will be used to meet the limits contained in Part 3 of the permit, as well as documenting compliance with other permit requirements (e.g., recordkeeping and reporting). The SWPPP itself does not contain effluent limits; rather it constitutes a tool to assist both the permittee and inspectors in ensuring and documenting that effluent limits are met. This documentation must be kept up-to-date. Where control measures are modified or replaced, for instance in response to a corrective action, such changes must be documented in the SWPPP. If permittees fail to develop and maintain an up-to-date SWPPP, they will have violated the permit. This recordkeeping violation is separate and distinct from a violation of any of the other substantive requirements in the permit (e.g., effluent limits, inspection requirements).

To be covered under this permit, the initial SWPPP must be completed prior to submitting an NOI for permit coverage. Doing so helps to ensure that permittees have (1) taken steps to identify all sources of pollutant discharges in storm water and (2) implemented appropriate control measures to control these discharges in advance of permit coverage.

Generally, permittees must document the following: (1) a description of the site; (2) summary of potential pollutant sources; (3) description of control measures; and (4) and inspection procedures (including schedules).

### **1. Storm Water Pollution Prevention Plan Framework (CGP Part 5.1)**

The permit requires the construction owner or operator to develop a SWPPP that documents how he/she intends to implement storm water controls. The SWPPP must contain: (1) A site description that identifies sources of pollutants to storm water discharges associated with construction activity on site and (2) a description of storm water control measures used at the site to reduce pollutants in storm water discharges to ensure compliance with the effluent limits in Part 3.

The permit clarifies that the SWPPP does not contain effluent limitations; the technology and water quality-based effluent limitations are contained in Part 3 of this permit. ADEC emphasizes in Part 5.1 that the SWPPP is intended to document the selection, design, installation, and implementation of control measures that are being used to comply with the effluent limitations set forth in Part 3.

To ensure that the preparation, implementation, and oversight of the SWPPP is sufficient for effective pollution prevention, ADEC is requiring that the SWPPP be developed by a

qualified person, as defined in Appendix A of the permit, and be implemented as written, including any modifications for changes in design or field conditions, until submittal of the Notice of Termination.

## **2. SWPPP Contents: Site and Activity Description (CGP Part 5.2)**

### *CGP Part 5.2.1 - Construction Site Operators*

The SWPPP must identify all operators of the project site and the areas of the site over which each operator has control. This information should clearly identify the boundaries of each operator's responsibility.

### *CGP Part 5.2.2 - Nature of Construction Activity*

The SWPPP must be based on an accurate assessment of the potential for generating and discharging pollutants from the site. Hence, the permit requires a description of the site and intended construction activities in the SWPPP (to provide a better understanding of site runoff characteristics). At a minimum, the SWPPP must describe the nature of the construction activity, including:

- The function of the project (e.g., low-density residential, shopping mall, highway, etc.);
- The intended significant activities, presented sequentially, that disturb soil over major portions of the site (e.g., grubbing, excavation, grading);
- Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading or other activities, including off-site borrow/fill areas. It may be preferable to separately describe portions of the site as they are disturbed at different stages of the construction process; and
- A general location map able to identify the location of the activity and the waters of the United States within one mile of the activity.

### *CGP Part 5.2.3 - Site Map*

The SWPPP must contain a legible site map indicating: (1) anticipated drainage patterns and slopes after grading activities; (2) areas of soil disturbance and areas that will not be disturbed; (3) locations of major structural and nonstructural controls identified in the plan; (4) locations of planned stabilization measures; (5) off-site locations of equipment storage, material storage, waste storage and borrow/fill areas; (6) locations of surface waters (including wetlands); (7) locations of discharge points to surface waters; and (8) if applicable, locations where final stabilization has been accomplished and no further construction-phase permit requirements apply. Site maps should also include other major features and potential pollutant sources, such as locations of impervious structures and soil storage piles.

ADEC included as a parenthetical clarification that it is acceptable to include a statement that all areas of the site will be disturbed unless otherwise noted. This was added to clarify what is considered acceptable for indicating areas of soil disturbance and areas that will not be disturbed on the site map.

*CGP Part 5.2.4 - Construction and Waste Materials*

The SWPPP must include a description of the construction and waste materials expected to be stored on-site with updates as appropriate.

*CGP Part 5.2.5 - Locations of Other Industrial Storm Water Discharges*

The SWPPP must provide a description of any discharge associated with industrial activity other than construction (including storm water discharges from dedicated asphalt plants, concrete plants, etc.) and the location of that activity on the construction site.

**3. Description of Control Measures to Reduce Pollutant Discharges (CGP Part 5.3)**

A permittee must describe in its SWPPP the control measures it has implemented at its site to achieve each of the effluent limits in Parts 3 and to address discharges composed of allowable discharges listed in Parts 1.3.1 and 1.3.2 commingled with a discharge authorized by a separate APDES permit and/or a discharge that does not require APDES permit authorization. The description of the control measures implemented to meet the effluent limits must include a brief explanation of the measures implemented at the site, including how selection and design considerations were followed.

*CGP Part 5.3.1 - Control Measures*

The SWPPP must include a documentation of the control measures that will be implemented to reduce the pollutants in storm water discharges from the site and assure compliance with the effluent limits in Part 3.

The SWPPP must describe the intended sequence of major storm water controls and when, in relation to the construction process, they will be implemented. ADEC recognizes that many factors can impact the actual construction schedule, so the permittee need not include specific dates (e.g. plan could say install silt fence for area "A" before rough grading, rather than put up silt fences on August 15). Good site planning and preservation of mature vegetation are imperative for controlling pollution in storm water discharges both during and after construction activities. Properly staging major earth disturbing activities can also dramatically decrease the costs of control measures.

*CGP Part 5.3.2 - Stabilization*

The SWPPP must include a description of temporary and permanent stabilization practices for the site, including a schedule of when the practices will be implemented.

*CGP Part 5.3.3 - Post-Authorization Records*

The SWPPP requires that specific construction dates be documented and maintained as a way for the construction operator as well as ADEC to determine applicability and implementation status. Important dates include when grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, when stabilization measures are initiated, and beginning and ending period for winter shutdown. In addition, the permit contains language clarifying that permittees are

required to maintain documentation, with the SWPPP, of certain activities described in Part 5.3.3.

#### **4. Non-Storm Water Discharges (CGP Part 5.4)**

The SWPPP must identify appropriate pollution prevention measures for each of the eligible non-storm water components of the discharge covered by this permit when combined with storm water discharges associated with construction activity. The SWPPP must also include a description of the pollution prevention measures used to eliminate or reduce non-storm water discharges consistent with Part 3.2.

#### **5. Documentation of Permit Eligibility Related to Endangered Species (CGP Part 5.5)**

An operator's SWPPP must contain documentation of permit eligibility regarding the protection of endangered species and critical habitat. Documentation must include:

- information on whether federally-listed or endangered or threatened species or critical habitat are located near the site;
- whether such species or habitat may be adversely affected by the storm water discharges or related activities coming from the site;
- the results of the screening determination from Appendix C of the permit;
- confirmation of delivery of NOI to ADEC or to ADEC's electronic NOI system. This may include an overnight, express or registered mail receipt acknowledgment or electronic acknowledgment from ADEC's electronic NOI system;
- any correspondence for any stage of project planning between the operator and FWS or NMFS regarding listed species and critical habitat, including any notification that delays authorization to discharge; and
- a description of any storm water measures necessary to protect endangered or threatened species or critical habitat. Failure to implement these measures will result in ineligibility of coverage under this permit.

#### **6. Documentation of Permit Eligibility Related to Total Maximum Daily Loads (CGP Part 5.6)**

The SWPPP must include documentation supporting a determination of permit eligibility with regard to waters that have an EPA-established or approved TMDL.

#### **7. Copy of Permit Requirements (CGP Part 5.7)**

Copies of the permit, the signed and certified NOI submitted to ADEC, and a copy of the letter from ADEC indicating that a complete NOI has been received must be included in the SWPPP. This condition in the permit is intended to stress the importance of these documents for permittees to understanding permit responsibilities.

#### **8. Applicable State, Tribal, or Local Programs (CGP Part 5.8)**

Many states, tribes, municipalities and counties have developed control measure requirements for construction activities. A significant number have also developed storm water management requirements. The CGP requires that storm water controls for sites

that discharge storm water from construction activities be consistent with procedures and requirements of state/tribal and local control measure plans and storm water management plans. The construction site's storm water control practices may incorporate portions of a state, tribe, or local program's requirements if these requirements are at least as strict as the CGP. If a construction site is located in an area covered by such a local program, then compliance with various aspects of the local program would constitute compliance with these aspects of the CGP.

Part 5.8 of the permit requires the SWPPP to be updated as necessary to reflect any revisions to applicable federal, state, tribal, or local requirements that affect the storm water controls implemented at the site. The ability to reference other programs in the SWPPP is intended to reduce confusion between overlapping and similar requirements, while still providing for both local and national regulatory coverage of the construction site.

#### **9. Inspections (CGP Part 5.9)**

Permittees are required to retain with the SWPPP a record of each inspection for at least three years from the date that permit coverage expires or is terminated. The inspection report must also identify any actions taken in accordance with the Part 4 inspection requirements and must identify any incidents of non-compliance with permit conditions. If no incidents of non-compliance were found, the inspection report must contain a certification that the site is in compliance with the permit.

#### **10. Maintaining an Updated Plan (CGP Part 5.10)**

SWPPPs must be revised whenever storm water controls are modified in response to a change in design, construction method, operation, maintenance procedure, etc., may cause a significant effect on the discharge of pollutants to surface waters or municipal separate storm sewer systems.

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

Also, if an inspection reveals inadequacies, the site description and control measures identified in the SWPPP must be revised. All necessary modifications to the SWPPP must be made within seven calendar days following the inspection.

#### **11. Signature, Plan Review, and Making Plans Available (CGP Part 5.11)**

##### *CGP Part 5.11.1 - Retention of SWPPP*

A copy of the SWPPP must be kept at the construction site from the date of project initiation to the date of final stabilization. Permittees with day-to-day operational control over the plan's implementation must keep a copy of the plan readily available whenever they are on site (a central location, such as a construction trailer or truck accessible by all

on-site operators is sufficient). If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the plan's location must be posted near the main entrance at the construction site. A copy of the SWPPP must be readily available to authorized inspectors during normal business hours.

*CGP Part 5.11.2 - Main Entrance Signage*

A notice about the permit and SWPPP must be posted conspicuously near the main entrance of the site. If display near the main entrance is infeasible, the notice can be posted in a local public building such as the town hall or public library. For linear projects, the notice must be posted at a publicly accessible location near the active part of the construction project (e.g., where a pipeline project crosses a public road). The permit notice must include the following information:

- A copy of the completed Notice of Intent as submitted to ADEC,
- The current location of the SWPPP (if different than that submitted to ADEC in the NOI), and
- The current contact person and telephone number for scheduling times to view the SWPPP (if different than that submitted to ADEC in the NOI).

The permit does not require that the general public have access to the construction site nor does it require that copies of the SWPPP be available or mailed to members of the public. However, ADEC strongly encourages permittees to provide public access to SWPPPs at reasonable hours. Upon request, ADEC intends to assist members of the public in obtaining access to permitting information, including SWPPPs. ADEC believes this approach will create a balance between the public's need for information on projects potentially impacting their water bodies and the site permittees need for safe and unimpeded work conditions.

*CGP Part 5.11.3 - Availability of SWPPP*

Permittees must make SWPPPs available, upon request, to ADEC, state, tribal, or local agencies approving sediment and erosion plans, grading plans or storm water management plans; local government officials; the operator of an MS4 receiving discharges from the site; and representatives of the U.S. Fish and Wildlife Service or the National Marine Fisheries Service. Also, the operator must make SWPPPs available to ADEC or its authorized representative for review and copying during any on-site inspection.

*CGP Part 5.11.4 - Signature and Certification*

The SWPPP must be signed and certified in accordance with the signatory requirements in the Standard Permit Conditions section of the permit (Appendix F).

**12. Requirements for Different Types of Operators (CGP Part 5.12)**

The term “operator” is defined as one with operational control over construction plans and specifications or one with control over the day-to-day activities of the site. Operators

may also only have control over a portion of a larger project and several operators are then responsible for separate portions of the entire construction project.

- a. **Operators with Operational Control over Construction Plans and Specifications.**  
If an operator falls within this category, he or she must ensure that the SWPPP indicates the areas of the project where operational control over project specifications, including the ability to make modifications to plans and specifications occur. The operator must ensure that all other permittees implementing their respective storm water controls in the portion of the site over which they have control are notified of any modifications in a timely manner and ensure that the SWPPP contains the appropriate information indicating who has operational control.
- b. **Operators with Control over Day-to-Day Activities.**  
If an operator is responsible for the day-to-day operational control of the activities at a project site necessary to ensure compliance with the SWPPP, he or she must ensure the SWPPP meets the minimum requirements of Part 5 of the permit. The operator must also identify those responsible for implementation of control measures documented in the SWPPP, ensure the SWPPP indicates areas of the project where operational control of day-to-day activities are maintained, and identify the parties responsible for implementation of control measures identified in the plan.
- c. **Operators with Control over a Portion of a Larger Project**  
If an operator is responsible for only a portion of a larger construction project he or she must maintain compliance with all applicable effluent limits and conditions of this general permit for that portion of the project. This includes protection of endangered species and historic properties as well as implementation of control measures documented in the SWPPP. Operators have the option of developing and implementing either a comprehensive SWPPP that covers all operators at the construction site or an individual SWPPP covering only an individual operator's portion of the site (provided reference is made to the other operators of the site). Operators are encouraged to develop a comprehensive SWPPP to enhance cost sharing and coordination of BMPs. If operators choose to develop individual plans, cooperation between the permittees is encouraged to ensure storm water discharge controls are consistent between the sites. Regardless of development of an individual or comprehensive SWPPP, operators must ensure that individual activities do not negatively impact another operator's ability to achieve the effluent limits in Part 3 of the permit.

### **13. Submittal of SWPPP for Review (CGP Part 5.13)**

When ADEC issued 401 certificate of reasonable assurance for the EPA 2008 CGP, the Department added SWPPP submittal requirements for Alaska (see Part 10 F.1. of the EPA 2008 CGP); these submittal requirements are added here. The permit requires that an owner or operator submit the SWPPP to ADEC for review if the construction site is

located outside the local government boundaries for the Municipality of Anchorage, the Fairbanks North Star Borough, the City of Fairbanks, or the City of North Pole and disturbs five or more acres of land. This provision provides specific SWPPP submittal requirements applicable to ADEC; however, additional submittal requirements are described in Parts 5.13.2 – 5.13.5, which are applicable to certain local programs.

The SWPPP submittal requirements for hardrock mines are now included in the “Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity (MSGP).” Therefore, operators of a hardrock mine cannot file for coverage under the CGP and must file for coverage under the MSGP.

## **F. Termination of Coverage**

### **1. Submitting a Notice of Termination (CGP Part 6.1)**

Permittees must submit a completed Notice of Termination (NOT) either electronically (strongly encouraged) or by paper using the NOT form when one or more of the conditions listed in Part 6.2 of the permit are met. If the permittee received an NOI from EPA before October 31, 2009, the permittee must submit an NOT to ADEC.

The NOT includes:

- An NPDES or APDES permit tracking number for the storm water discharge;
- The basis for submission of the NOT, including: final stabilization has been achieved on all portions of the site for which the permittee is responsible; another owner or operator has assumed control over all areas of the site that have not been finally stabilized; coverage under an alternative APDES permit has been obtained; or, for residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner;
- The permittee’s name, address, and telephone number;
- The name of the project and street address (or a description of location if no street address is available) of the construction site for which the notification is submitted; and
- A certification statement signed and dated by an authorized representative as defined in Appendix F and the name and title of that authorized representative.

### **2. When to Submit a Notice of Termination (CGP Part 6.2)**

The NOT must be filed within 30 days after cessation of construction activities and final stabilization of the permittees portion of the site (or temporary stabilization for residential construction where a homeowner is assuming control of a property). The permittee must submit an NOT within 30 days after another owner or operator assumes liabilities for the site. That new owner or operator must submit an NOI for coverage. Permittees that have submitted and are covered by a low erosion potential waiver or TMDL waiver do not have to comply with the permit requirement to submit an NOT. Permittees may face enforcement action if an NOT is submitted without meeting one of the requirements unless there has been authorization under an alternative permit or a waiver for coverage under this permit has been approved.

**G. Retention of Records**

The permit requires that all records and reports required by the CGP be retained, including SWPPPs and information used to complete the NOI, for at least three years from the termination of coverage or expiration of the permit. This period may be extended by request of ADEC.

**H. Re-opener Clause**

This permit contains a re-opener clause allowing the permit to be re-opened and modified during the term of the permit consistent with the APDES regulations at 18 AAC 83.130, 18 AAC 83.135, 18 AAC 83.140, and 18 AAC 83.145. Generally, this would be triggered by a water quality concern, a change in NPDES statutes, or to incorporate new procedures or requirements developed by ADEC. Indication that a permittee is contributing to a water quality concern or generally not fulfilling his or her obligations under this permit, may result in a review of the permit and requirement to obtain an individual permit or alternative general permit, or have the limitations and/or requirements under this permit be modified.

**IV. APPENDICES****A. Abbreviations and Definitions (CGP Appendix A)***Abbreviations*

The permit also contains a list of acronyms found in the permit which aids in the understanding of the permit and its requirements. To better clarify permit-specific terms, ADEC added abbreviations for Alaska Department of Environmental Conservation (ADEC) and Alaska Pollutant Discharge Elimination System (APDES).

*Definitions*

The permit also contains definitions of statutory, regulatory, and other terms important for understanding the permit and its requirements. Appendix A of this permit provides definitions for permit-specific terms used in this permit. To better clarify permit-specific terms, ADEC has revised, deleted or added several definitions to Appendix A.

**B. Small Construction Waivers and Instructions (CGP Appendix B)***Rainfall Erosivity Waiver*

As described in section II of this fact sheet, EPA's Phase II storm water regulations allow waivers from permitting requirements for some construction projects in the 1-5 acre range that do not pose a potential threat to water quality.<sup>1</sup> ADEC adopted three types of

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<sup>1</sup> For more background on designation of small construction activity and available waivers, see discussion on "Discharges Associated with Small Construction Activity" starting on page 68771 of the December, 8 1999 Federal Register (64 FR 68771).

waivers that construction operators may qualify for in lieu of needing to obtain coverage under a construction general permit.

The first waiver, the Rainfall-Erosivity Waiver at 40 CFR §122.26(b)(15)(i)(A), is based on the “R” factor from the Revised Universal Soil Loss Equation (RUSLE) and applies to projects where (and when) negligible rainfall/runoff-erosivity is expected. The basis of the rainfall erosivity factor “R” was determined by EPA in the Phase II Rule in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning with the Revised Universal Soil Loss Equation (RUSLE), pages 21–64, dated January 1997; United States Department of Agriculture (USDA), Agricultural Research Service.

If a small construction project’s rainfall erosivity factor is less than 5 during the period of construction activity, the owner or operator must certify to ADEC that construction activity will occur only when the rainfall erosivity factor is less than 5. The period of construction activity begins at initial earth disturbance and ends with final stabilization. Where vegetation will be used for final stabilization, the date of installation of a stabilization practice that will provide temporary non-vegetative stabilization can be used for the end of the construction period, provided the owner or operator commits (as a condition of waiver eligibility) to periodically inspect and properly maintain the area until the criteria for final stabilization as defined in the construction general permit have been met. If use of this temporary stabilization eligibility condition was relied on to qualify for the waiver, signature on the waiver with its certification statement constitutes acceptance of and commitment to complete the final stabilization process. The owner or operator must submit a waiver certification to ADEC prior to commencing construction activities.

If the owner or operator of the construction activity is eligible for a waiver based on low erosivity potential, the owner or operator may submit a rainfall erosivity waiver certification form to the address listed in Part 2.2 of the APDES CGP and provide the following information on the waiver certification form in order to be waived from permitting requirements:

1. Name, address, and telephone number of the construction site operators;
2. Name (or other identifier), address, county or similar governmental subdivision, and latitude/longitude of the construction project or site;
3. Estimated construction start and completion (i.e., final stabilization) dates and total acreage (to the nearest quarter acre) to be disturbed;
4. The rainfall erosivity factor calculation that applies to the active construction phase at the permittees project site; and
5. A statement, signed, and dated by an authorized representative as provided in Appendix F that certifies that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five.

An owner or operator can access the waiver certification form from ADEC’s website at: (<http://dec.alaska.gov/water/wnpspc/stormwater/index.htm> ). The form must be sent to

the addresses listed in Part 2.2 of the permit. If the R factor is 5 or greater, the rainfall erosivity waiver is not available, and the owner or operator must apply for permit coverage per Part 2.1 of the APDES CGP, unless the project can qualify for one of the Water Quality Waivers described below. Also, if the small construction project continues beyond the projected completion date given on the waiver certification, the owner or operator must recalculate the rainfall erosivity factor for the new project duration. If the R factor is below five (5), the owner or operator must update all applicable information on the waiver certification and retain a copy of the revised waiver as part of the site SWPPP. The new waiver certification must be submitted prior to the projected completion date listed on the original waiver form to assure exemption from permitting requirements is uninterrupted. If at that time the new R factor is five (5) or above, the owner or operator must submit an NOI per Part 2 of the APDES CGP.

#### *TMDL or Equivalent Analysis Waiver*

The next two waivers are water quality waivers established at 40 CFR §122.26(b)(15)(i)(B) that are essentially based on an analysis that storm water discharges from small construction activities would not be expected to cause or contribute to exceedances of WQS. As described in Appendix B, operators may use these water quality waivers, where it is anticipated that the analysis would demonstrate that control measures for small construction activity were not needed based on: 1) a Total Maximum Daily Load for impaired waters addressing pollutant(s) of concern; or 2) for non-impaired waters, an equivalent analysis that either determines pollutant load allocations for small construction or determines that such load allocations were not necessary to protect water quality.

### **C. Endangered Species Act Review Procedures (CGP Appendix C)**

As discussed in section III.A.3 of this fact sheet, an operator must ensure and document that discharges are not likely to jeopardize the continued existence of any Federally-listed endangered or threatened species or result in the adverse modification or destruction of habitat that is Federally-designated as critical under the Endangered Species Act (ESA). Appendix C contains a four-step process that must be followed for determining whether a construction project is eligible for permit coverage, prior to submittal of the NOI. In order to become eligible for this permit, each operator must determine its compliance with one of six criteria (A – F). The four-step process for determining eligibility is summarized as:

Step 1. In this step, operators determine whether listed species / critical habitat are present in the “action area.” If there are or may be listed species / critical habitat in the action area, operators are required to do one or more of the following to verify the existence or absence of such species or habitat: conduct a visual inspection of the action area or conduct a formal biological survey.

Step 2. If species and/or critical habitat exist in the permittees action area, the operator must assess whether storm water discharges or storm water discharge-related activities

are likely to adversely affect listed threatened or endangered species or designated critical habitat that are present on or near the project area. Where the operator is able to determine that adverse effects are not likely, then he/she may certify eligibility under Criterion E. If the operator cannot yet make a determination that the discharge is not likely to adversely affect species and/or critical habitat, he/she would proceed to Step 3.

Step 3. The operator determines whether appropriate measures might be put into place to avoid or eliminate the likelihood of adverse effects prior to applying for CGP coverage.

Step 4. This step provides the methodology for operators intending to certify eligibility under Criteria B, C, D or F.

If operators cannot determine if they meet one of the endangered species eligibility criteria, the operator cannot submit an NOI to gain coverage under the CGP. In these instances, the operator may consider applying to ADEC for an individual APDES permit.

**D. Notice of Intent Form (CGP Appendix D)**

The Notice of Intent (NOI) Form is largely unchanged from the EPA 2008 CGP. A copy of the form can be found on ADEC's storm water website (referenced in the permit).

**E. Notice of Termination Form (CGP Appendix E)**

The Notice of Intent (NOI) Form is largely unchanged from the EPA 2008 CGP. A copy of the form can be found on ADEC's storm water website (referenced in the permit).

**F. Standard Permit Conditions (CGP Appendix F)**

Appendix F of the permit contains standard regulatory language that must be included in all APDES permits. These requirements are based on the regulations and cannot be challenged in the context of an individual APDES permit action. The standard regulatory language covers requirements such as monitoring, recording, reporting requirements, compliance responsibilities, and other general requirements.