STATEMENT OF BASIS

Permit Number: SDR100000

Permit Type: General Permit for Stormwater Discharges Associated with Construction Activities

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This document is intended to explain the basis for the requirements contained in the draft General Permit for Stormwater Discharges Associated with Construction Activities (General Permit). This document provides guidance to aid in complying with the stormwater regulations as listed in the General Permit requirements. This guidance is not a substitute for reading the draft General Permit and understanding its requirements as they apply to your project or site.

SUMMARY OF MAJOR CHANGES FROM PREVIOUS PERMIT ISSUANCE

Major changes that have been made to the draft General Permit include, but are not limited to:

- All references to South Dakota Department of Environment and Natural Resources (SDDENR) have been updated to South Dakota Department of Agriculture and Natural Resources (SDDANR). This is due to the merger between the departments that went into effect April 19, 2021.
- All South Dakota Codified Laws (SDCL) referencing SDDENR have been updated to SDDANR. This is due to the merger between the departments that went into effect April 19, 2021.
- Updated Section 2.7 Electronic Reporting Requirements to require electronic submission of forms and documents required under the General Permit via the United States Environmental Protection Agency's (U.S. EPA) National Pollution Discharge Elimination System (NPDES) eReporting Tool (NeT).
- Updated the Administrative Rules of South Dakota (ARSD) regarding Municipal Separate Storm Sewer Systems (MS4) in the Definitions section.
- Addition of Section 3.22 Prohibition of Bypass and Emergency Discharges to reflect the required ARSD.
- Updated Section 7.2.2 regarding reporting requirements to reflect the required ARSD.
- Addition of Section 7.3.4 regarding the records of monitoring information to reflect the required ARSD.
- Addition of Section 7.6 Reporting Compliance and Noncompliance to reflect the required ARSD.
- Addition of Section 7.7 Effluent Violation, Bypass, and Emergency Discharge Requirement to reflect the required ARSD.

- Removal of redundant spill procedure reporting in Section 8.4.2.c. Upset Conditions because spill reporting procedures are covered in Section 7.1.

- Some additional formatting and clarification updates were made that do not affect the content and intent of the General Permit; not all of those changes are noted in the draft General Permit.

- No significant changes to the information being requested in the forms were made; however, forms were updated to reflect the merger from SDDENR to SDDANR and to align with the information requested electronically.

BACKGROUND INFORMATION

Introduction

Construction activities have the potential to produce pollutants that may contaminate stormwater runoff. Clearing land of grass, trees, shrubs, rocks, and other ground cover can change natural water runoff patterns and increase erosion. The disturbed soil, if not managed properly, can easily be washed off the construction site during storms, allowing sediment to enter water bodies. Sediment is one of the leading causes of water quality impairment nationwide. The deposition of sediment has contributed to reducing water depth in small streams, lakes, and reservoirs, which can impair a waterbody's beneficial uses. Sediment runoff rates from unmanaged construction sites are typically 10 to 20 times greater than those from agricultural lands, and 1,000 to 2,000 times greater than those from forest lands. During a short period of time, construction activity, when not managed properly, can contribute more sediment to streams than can be deposited naturally over several decades, causing physical and biological harm to waterbodies.

Some construction activities require the use of toxic or hazardous materials which contain pollutants such as pesticides, toxic chemicals, metals, and oil that may be harmful to humans, fish, wildlife, and plants. When these materials are not properly handled or stored, the resulting leaks and spills can pollute stormwater and negatively impact waters protected for drinking water, recreation, aquatic life, and other beneficial uses.

In 1972, Congress passed the Federal Water Pollution Control Act, commonly referred to as the federal Clean Water Act (CWA). The goal of the CWA was to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. The CWA further states that the discharge of any pollutant by any person shall be unlawful except in compliance with other provisions of the statute. To achieve these goals, the CWA requires control of discharges of pollutants from point sources through the issuance of the NPDES permits.

In 1987, Congress amended the CWA to require implementation of a comprehensive national program for addressing stormwater discharges. On November 16, 1990, the U.S. EPA promulgated Phase I of the national program. Under Phase I, the U.S. EPA established the permitting requirements for discharges of "stormwater associated with construction activity," which the U.S. EPA included in its definition of "stormwater discharges associated with industrial activity." Construction activities that disturb five or more acres of land were designated as point source discharges that must receive a permit for any discharge of pollutants into waters of the United States.

On December 8, 1999, U.S. EPA promulgated Phase II of the stormwater regulations, expanding the point source discharge definition to include small construction activities that disturb between one and five acres of land.

On December 1, 2009, U.S. EPA published final regulations establishing technology-based Effluent Limitations Guidelines (ELGs) and New Source Performance Standards (NSPS) for the Construction & Development (C&D) point source category, which became effective on February 1, 2010. Litigation was initiated challenging the 2009 rule and EPA reached settlement agreements with the parties. The C&D rule was amended on March 6, 2014, in accordance with the settlement agreements. All NPDES construction permits issued by the U.S. EPA or states after this date must incorporate the requirements in the C&D rule.

The intent of the stormwater regulations is to improve and protect water quality by minimizing pollutants in stormwater runoff. The discharge of pollutants into surface waters of the state from construction activities disturbing one or more acres is considered a point source and shall obtain a Surface Water Discharge (SWD) permit from the SDDANR. Stormwater runoff consists of rainwater and melted snow that runs off the land and directly, or indirectly by way of storm sewers, enters surface waters of the state, such as lakes, rivers, streams, wetlands, and ponds. The term "construction activity" includes point source discharges from areas undergoing operations such as clearing, grading, and excavation. Construction activities can include road building, construction of residential houses, office buildings, industrial sites, or demolition. The term construction activity does not include agricultural, silviculture, or maintenance activities.

Permit Description

The current General Permit was issued under South Dakota's SWD regulations on April 1, 2018, and expired March 31, 2023. The General Permit was administratively extended, pending the reissuance of the permit.

SDDANR proposes to reissue the General Permit. The General Permit contains requirements that are based on technology-based effluent limitations, best management practices, South Dakota's Surface Water Quality Standards (SDSWQS), and other conditions applicable to the types of stormwater generated by construction activities.

Stormwater runoff from construction activities disturbing one or more acres of land is designated as a "point source" by Phases I and II of EPA's stormwater regulations. All point sources discharging pollutants into surface waters of the state shall have a SWD permit. Due to the nature of scheduling these construction activities, obtaining an individual SWD permit would significantly impact the timing of a project. The General Permit regulations within ARSD 74:52:02:46 provide for the issuance of general permits for stormwater point sources. Therefore, SDDANR has issued a General Permit for these activities in order to:

1. Facilitate the scheduling of these activities by reducing the administrative delays in their authorization;
2. Establish uniform criteria for management practices and effluent limits for discharges from these activities; and
3. Promote consistent permitting with respect to these activities.

Coverage Under the General Permit
The draft General Permit authorizes the following discharges of stormwater from new or ongoing construction activities located in South Dakota:

1. Stormwater discharges associated with construction activity from construction sites greater than or equal to one (1) acre, including stormwater runoff, snowmelt runoff, and surface runoff and drainage.
2. Stormwater discharges from individual sites that are part of a common plan of development or sale that will ultimately disturb one (1) or more acres of land.
3. Stormwater discharges from construction sites less than one (1) acre that have been designated by the Secretary as needing a permit.
4. Stormwater discharges from construction support activities provided: 1) The support activity is directly related to the construction site required to have permit coverage; 2) The support activity does not continue to operate beyond the completion of the construction activity at the project it supports; 3) The support activity is included in the Stormwater Pollution Prevention Plan (SWPPP); 4) Control measures are implemented for discharges from the support activity area; and 5) A separate permit is obtained for support activities continuing past the initial permitted project timeframe.

Electronic Reporting Requirements
On October 22, 2015, the U.S. EPA published a rule in the federal register making electronic reporting of permit and compliance monitoring information mandatory for all NPDES permits. These are referred to as SWD permits in South Dakota. The final rule became effective December 21, 2015.

Phase II of the final rule requires authorized state NPDES programs begin electronically collecting, managing, and sharing construction stormwater permitting information by December 21, 2025. This information includes General Permit reports such as: Notice of Intent (NOI); Notice of Termination (NOT); and all other remaining NPDES program forms and reports.

Currently, the SDDANR is approved to use NeT to allow electronic reporting under 40 CFR 122, 403, and 503. Requirements to request and terminate permit coverage are listed below.

New Construction Projects
To request coverage under the draft General Permit, which is required to be signed and notarized by the construction project owner, shall be submitted to the SDDANR at least 15 calendar days prior to the commencement of construction activities.

Note: You must identify the person(s) responsible for day-to-day operations at the construction site. A Contractor Authorization form must be submitted to SDDANR as soon as a contractor is identified. This form is required to be submitted by all entities responsible for earthwork activities or installation and maintenance of stormwater controls. As an operator of the site, any contractor performing work at the site also has responsibility for compliance with the terms of the General Permit.

SDDANR will review each complete NOI submission and determine whether to grant or reject coverage.

Existing Construction Projects
For existing construction operations already covered under the current General Permit, you will need to submit the NOI for Reauthorization to continue coverage under the reissued General Permit. Coverage under the current General Permit will expire on the effective date of the reissued General Permit. If you do not submit the NOI for Reauthorization prior to the effective date of the General Permit, your coverage under the current General Permit will be terminated and any stormwater discharges associated with construction activity at the site will not be authorized and could be subject to enforcement.

Secretary Designation
While most construction sites less than one acre do not significantly impact surface waters in South Dakota, this is not universally true. In some cases, the Secretary of the SDDANR may require smaller construction sites to obtain coverage under a permit. In making this determination, the Secretary will consider the beneficial uses of the receiving waters, the slope of the project, the management of the site, and other appropriate factors. SDDANR is making the draft General Permit available to these designated sites. Alternatively, the owner of the designated site may request an individual permit for the site.

Oil and Gas Exemption
Title 40 CFR 122.26(a)(2) states that the U.S. EPA may not require a permit for discharges of stormwater runoff from mining operations or oil and gas exploration, production, processing or treatment operations, or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

Therefore, owners of oil and gas field activities are exempt from the permitting requirements for any construction activity at these facilities. However, SDDANR expects these operations to employ best management practices to minimize the discharge of pollutants from the site and ensure the SDSWQS are maintained.

RECEIVING WATERS

The SDSWQS (ARSD 74:51:03:01 and 74:51:03:06) designate beneficial uses for all surface waters of the state. These classifications designate the minimum quality at which the surface waters of the state are to be maintained and protected. All waterbodies in South Dakota have been assigned one or more of the following beneficial uses:

1. Domestic water supply waters;
2. Coldwater permanent fish life propagation waters;
3. Coldwater marginal fish life propagation waters;
4. Warmwater permanent fish life propagation waters;
5. Warmwater semipermanent fish life propagation waters;
6. Warmwater marginal fish life propagation waters;
7. Immersion recreation waters;

8. Limited contact recreation waters;
9. Fish and wildlife propagation, recreation, and stock watering waters;
10. Irrigation waters; and
11. Commerce and Industry waters.

The draft General Permit was developed to ensure these beneficial uses are maintained and protected.

ANTIDEGRADATION

SDDANR has fulfilled the antidegradation review requirements for this draft General Permit. In accordance with South Dakota's Antidegradation Implementation Procedure and the SDSWQS, no further review is required. The results of SDDANR's review are included in Attachment 1.

TOTAL MAXIMUM DAILY LOAD

Section 303(d) of the CWA requires states to develop Total Maximum Daily Loads (TMDLs) for waters at levels necessary to achieve and maintain water quality standards. TMDLs are calculations of the amount of pollution a waterbody can receive and still maintain applicable water quality standards. TMDLs are necessary for waters that do not meet or are not expected to meet water quality standards with the application of technology-based controls for point sources. TMDLs address specific waterbodies, segments of waterbodies, or even entire watersheds, and are pollutant specific. TMDLs must allow for seasonal variations and a margin of safety, which accounts for any lack of knowledge concerning the relationship between pollutant loads and water quality.

The draft General Permit is a SWD permit that requires best management practices to ensure the surface water quality standards are met and maintained. Therefore, the draft General Permit will be able to authorize discharges to waterbodies that are listed as impaired or have an approved TMDL. However, if SDDANR determines a specific site has the potential to cause or contribute to an impairment of the surface water quality standards or best management practices (BMPs) are not sufficient, SDDANR can require the owner to implement additional controls and/or obtain an individual discharge permit.

EFFLUENT LIMITS

Under the CWA, dischargers shall comply with both technology-based and water quality-based effluent limits.

The CWA allows states and the U.S. EPA to meet the requirement for technology-based limits using non-numeric, or "narrative," effluent limits in permits where appropriate. The U.S. EPA has developed regulations allowing the use of narrative best management practices as effluent limits (40 CFR 122.44(k)). On March 6, 2014, the U.S. EPA promulgated the final technology-based C&D Effluent Guidelines in 40 CFR 450. The draft General Permit includes narrative effluent limits, including best management practices, to ensure the federal effluent limitations guideline requirements are met. SDDANR has included additional narrative effluent limitations to ensure the SDSWQS are met.

All permittees and their contractors shall comply with the effluent limits specified below. These limits are based on the C&D Effluent Guidelines (40 CFR 450), SDCL, ARSD, SDSWQS, the permit writer's judgment, and current General Permit limits.

1. **Proper Operation and Maintenance**. You must properly operate and maintain all the sediment and erosion controls used to meet the conditions of the draft General Permit. This limit is based on ARSD 74:52:03:02(5) and the current General Permit limits.

2. **Erosion and Sediment Control Requirements**. You must design, install, and maintain effective erosion and sediment controls to minimize soil erosion and the discharge of pollutants during earth-disturbing activities. The controls must be designed for a 2-year, 24-hour precipitation event. Your controls must be able to control stormwater volume, velocity, and peak flow rates and account for the anticipated soil characteristics at the site. This limit is based on 40 CFR 450.21(a)(1), (2), and (5), and the current General Permit limits.

3. **Installation Requirements**. You must install the erosion and sediment controls prior to the commencement of land disturbing activities. All other controls must be installed as soon as site conditions on the site allow. The controls must be installed using good engineering practices and should follow the manufacturer's specifications. You must document any deviations from the manufacturer's specifications in the SWPPP. This limit is based on the permit writer's judgement and the current General Permit limits.

4. **Perimeter Controls**. You must have effective down gradient sediment controls and controls for any side slope boundaries. This limit is based on the permit writer's judgement and the current General Permit limits.

5. **Sediment Basins**. If you use a sediment basin at the site to control the discharge of sediment, the basin must meet the following requirements:

    a. The sediment basin must be designed, constructed, and operated in accordance with any local ordinances;

    b. The outlet structures must withdraw water from the surface of the sediment basin to allow for proper sediment removal in the pond;

    c. You must use erosion control and velocity dissipation devices to prevent erosion within the basin and at the inlets and outlets from the basin; and

    d. Sediment basins must be situated outside of surface waters and any natural buffers. Basins must be designed to avoid collecting water from wetlands and other waterbodies.

    This limit is based on 40 CFR 450.21(f) and the current General Permit limits.

6. **Minimize Sediment Track-Out**. You must minimize the track-out of sediment from the construction site where vehicles leave the site. To comply, you must:

a. Restrict vehicle use to properly designated access points;

b. Use appropriate stabilization techniques at every construction site access point so sediment removal occurs prior to vehicle exit; and

c. Where sediment has been tracked out from your site onto offsite streets, other paved areas, and/or sidewalks, remove the deposited sediment by the end of the same workday in which the track-out occurs. You must remove the track-out by sweeping, shoveling, vacuuming these surfaces, or by using other similarly effective means of sediment removal. You are prohibited from hosing or sweeping tracked-out sediment into storm drain inlets, surface waters of the state, or any stormwater conveyance unless the conveyance is connected to a sediment basin, sediment trap, or similar effective control. You must obtain approval from the owner of the sediment traps before hosing or sweeping sediment into those controls.

This limit is based on the permit writer's judgement and the current General Permit limits.

7. **Remove Offsite Accumulation**. If sediment escapes the construction site, you must begin removing the offsite accumulations by the end of the same workday. You must revise your SWPPP and implement controls to minimize further offsite accumulation. This limit is based on the permit writer's judgement and the current General Permit limits.

8. **Minimize Dust**. You must minimize the generation of dust at the construction site to avoid pollutants from being deposited into surface waters of the state. This limit is based on the permit writer's judgement and the current General Permit limits.

9. **Minimize Run-On**. You must minimize run-on to your construction site. This limit is included to minimize, not eliminate, the volume of water managed at the site where practicable and represents a best management practice to further reduce the likelihood of erosion and sedimentation. This limit is based on the permit writer's judgement and the current General Permit limits.

10. **Provide Natural Buffers**. You must provide natural buffers if disturbed portions of the construction site are within 50 feet of a lake assigned immersion recreation or limited contact recreational beneficial uses in ARSD 74:51:02:02 and listed in ARSD 74:51:02:04; or a river or stream assigned any of the warmwater or coldwater fish life propagation beneficial uses in ARSD 74:51:03:02 and ARSD 74:51:03:04 to 74:51:03:27, inclusive. The draft General Permit requires a 50-foot undisturbed natural buffer, or equivalent controls. Equivalent controls are outlined in Appendix F of EPA's 2022 Construction General Permit. This limit is based on 40 CFR 450.21(a)(6) and the current General Permit limits.

11. **Preserve Topsoil**. You must preserve the native topsoil on your site, unless infeasible. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed. This limit is based on 40 CFR 450.21(a)(8) and the current General Permit limits.

12. **Minimum Steep Slope Disturbance**. You must minimize the disturbance of slopes that are greater than a three horizontal to one vertical (3:1) slope, unless infeasible. This limit is based on 40 CFR 450.21(a)(4) and the current General Permit limits.

13. **Protect Storm Drain Inlets**. You must protect all storm drain inlets that receive stormwater flows from the construction site to minimize the discharge of pollutants from the site. You must maintain the inlet protection until you have permanently stabilized all sources that have the potential to discharge pollutants to the inlet. If local officials require you to remove the inlet controls during the winter, you must install alternative controls to prevent sediment from entering the storm drain inlet. This limit is based on the permit writer's judgement and the current General Permit limits.

14. **Erosive Velocity Control**. You must use erosion controls and velocity dissipation devices where necessary along the length of stormwater conveyance channels, if utilized onsite, and outlets to minimize erosion of the channel, adjacent stream bank, slope, and downstream waters. You must provide energy dissipation best management practices prior to connecting pipe or culvert outlets to surface waters. Conveyances that collect and channelize the stormwater runoff can result in high flows leaving the site at a concentrated point. This can cause erosion and scour downstream of the construction site, which in turn discharges pollutants to surface waters. You must install controls to manage both the peak flowrates and the total stormwater volume leaving the site. This limit is based on 40 CFR 450.21(a)(1), (2), and (5), and the current General Permit limits.

15. **Minimize Soil Compaction**. In areas where final vegetative stabilization or infiltration will occur, you must ensure the areas allow proper drainage following construction. You must either restrict vehicle and equipment use in these locations to avoid soil compaction or condition areas of compacted soil prior to seeding or planting. This limit is based on 40 CFR 450.21(a)(7) and the current General Permit limits.

16. **Minimize Exposed Soil**. You must schedule and sequence soil disturbing activities to minimize the amount and duration of soil exposure to erosion and sedimentation by wind, rain, surface runoff, and vehicle tracking. You should consider factors such as high precipitation seasons when scheduling soil disturbing activities. This limit is based on 40 CFR 450.21(a)(3) and the current General Permit limits.

17. **Protect Stockpiles**. For any stockpiles or land clearing debris, you must take the following steps:

    a. Locate the stockpiles and debris outside of any natural buffers established in paragraph 10 above (Provide Natural Buffers) and away from any stormwater conveyances, drain inlets, and areas where stormwater flow is concentrated;

    b. Protect the stockpile or debris from contact with stormwater run-on by using temporary sediment controls, berms, or other best management practices;

    c. Properly maintain and position stockpiles to minimize dust generation and wind transport of sediment; and,

d. Minimize stormwater runoff by properly positioning stockpiles and/or debris or installing effective sediment controls.

e. You are prohibited from placing stockpiles in surface waters of the state.

This limit is based on the SDSWQS (ARSD 74:51:01:06), SDCL 34A-2-21, and the current General Permit limits.

18. **Stabilization Requirements**. You are required to stabilize exposed portions of your site once construction has ceased, both temporarily and permanently.

    a. You must begin soil stabilization measures the following workday whenever earth-disturbing activities have permanently or temporarily ceased on any portion of the site. Earth-disturbing activities have permanently ceased when you complete clearing, grading, and excavation within any area of your site that will not include permanent structures. Earth-disturbing activities have temporarily ceased when you cease clearing, grading, and excavation within any area for a period of at least 14 calendar days, but will resume such activities in the future.

    b. You must complete temporary stabilization as soon as practicable, but no later than 14 calendar days after initiating soil stabilization measures. This includes,

        i. All activities necessary to initially seed or plant the area to be stabilized for vegetative stabilization practices.

        ii. The installation or application of all non-vegetative measures.

        iii. As soon as practicable after seeding or planting, select, design, and install non-vegetative erosion controls (e.g., mulch or rolled erosion control products) to prevent erosion on the seeded or planted areas while vegetation establishes.

    c. You must meet the criteria for final stabilization, as defined in the draft General Permit:

        i. ***Final Stabilization*** *– on areas not covered by permanent structures, means either (1) vegetation has been established that provides a uniform (i.e., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70% of the natural background vegetative cover, (2) permanent non-vegetative stabilization methods have been implemented to provide effective cover for exposed portions of the site, or (3) disturbed portions of a construction site on land used for agricultural purposes must be returned to pre-construction agricultural use.*

ii. If you are seeding or planting vegetation to stabilize the site, you must minimize the presence of invasive (aka noxious) species within your site. The following seven (7) weeds are declared to be noxious statewide: Canada thistle, hoary cress, leafy spurge, perennial sow thistle, purple loosestrife, Russian knapweed, and salt cedar (ARSD 12:62:03:01.06). Refer to the following SDDANR webpage for more information: https://danr.sd.gov/Conservation/PlantIndustry/WeedPest/WeedandPestInfo/StateNoxious/default.aspx

This limit is based on 40 CFR 450.21(b) and the current General Permit limits.

19. **Maintenance Requirements**. You must ensure that all erosion and sediment controls remain in effective operating condition until final stabilization is complete. At a minimum, you must:

a. Remove sediment from any sedimentation basins when the design capacity has been reduced by 50% or more.

b. Remove sediment from sediment controls before the deposit reaches 50% of the above-ground height of the control.

c. Repair vegetative buffers if they become silt-covered, contain rills, or are otherwise rendered ineffective.

d. Repair and stabilize eroded areas by the end of the same workday they are identified. If repair is infeasible, you must implement alternative control measures.

e. Clean inlet protection devices when sediment accumulates, or when the filter becomes clogged, or performance is compromised.

f. You must ensure all controls remain in effective operating condition and are protected from activities that would reduce their effectiveness.

g. All nonfunctional BMPs must be repaired, replaced, maintained, or supplemented with functional BMPs. If a nonfunctioning BMP is supplemented, the nonfunctional BMP shall be removed.

If you find a problem or if your inspections identify that control measures are not operating effectively, you must make the necessary repairs or modifications as follows:

a. If you discover a problem that does not require repair or replacement, you must initiate work to fix the problem on the same day. If the problem is identified at a time in the workday when it is too late to complete the corrective actions, you must initiate work to fix the problem on the following workday or before the next anticipated runoff event, whichever comes first.

b. If you need to install new erosion or sediment controls or need to complete repairs, you must complete the work before the next anticipated runoff event or by no later than seven (7) calendar days from the time the problem is discovered, whichever comes first.

c. You must modify your SWPPP within seven (7) calendar days of completing the work. The SWPPP must address any changes to the controls and must detail the necessary steps to prevent similar damage in the future.

This limit is based on 40 CFR 450.21(a)(1) and (5), and the current General Permit limit.

20. **Pollution Prevention Procedures**. You must design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of pollutants from the activities listed below. Spills must be reported as required in Section 7.1 of the draft General Permit.

a. ***Prohibited Discharges***. You are prohibited from discharging the following from your construction site, based on 40 CFR 450.21(e):

i. Wastewater from washout and cleanout of concrete, stucco, paint, form release oils, curing compounds, and other construction materials.

ii. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance.

iii. Detergents, soaps, or solvents used in vehicle and equipment washing.

iv. Toxic or hazardous substances from a spill or other release.

v. Waste, garbage, floatable debris, construction debris, and sanitary waste.

b. ***Fueling and Maintenance of Equipment and Vehicles***. If you fuel or maintain equipment and vehicles at your site, you must minimize the discharge of spilled or leaked materials from the area where these activities take place. This limit is based on the SDSWQS (ARSD 74:51:01:10) and 40 CFR 450.21(e)(3).

c. ***Washing of Equipment and Vehicles***. You must provide an effective means of minimizing the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other types of washing. The washing must be limited to a defined area of the site and must be properly disposed. This limit is based on 40 CFR 450.21(d)(1).

d. ***Management of Construction Products, Chemicals, Materials, and Wastes***. You must properly store, handle, and dispose of any construction products and materials, chemicals, landscape materials, and wastes in order to minimize the exposure to stormwater. Products or wastes that are either not a source of contamination to stormwater or are designed to be exposed to stormwater are not held to this requirement. This limit is based on 40 CFR 450.21(d)(2) and (3), and SDCL 34A-2-21. Requirements are as follows:

i. You must cover or otherwise protect any materials that have the potential to leach pollutants in order to minimize contact with stormwater and prevent the discharge of pollutants.

ii. Clean up spills by the end of the same workday in which the spill occurred, using dry clean-up methods where possible, and dispose of used materials properly. Do not clean surfaces or spills by hosing the area down. Eliminate the source of the spill to prevent a discharge or continuation of an ongoing discharge.

iii. For registered pesticides and fertilizers, you must comply with all application and disposal requirements included on the label. Pesticides and fertilizers must be stored under cover or other effective means designed to minimize contact with stormwater. You must document any departures from the manufacturer's specifications for applying fertilizers and pesticides.

iv. Store all diesel fuel, oil, hydraulic fluids, other petroleum products, and other chemicals and products in water-tight container.

v. Hazardous or toxic wastes that may be present at construction sites include, but are not limited to, paints, solvents, petroleum-based products, wood preservatives, additives, curing compounds, acids, and alkaline materials. For these materials and wastes, you must:

(1) Separate hazardous or toxic wastes and materials from construction and domestic waste.

(2) Store hazardous or toxic wastes and materials in sealed containers and provide secondary containment as applicable. These containers must be constructed of suitable materials to prevent leakage and corrosion. These containers must be labeled in accordance with the applicable Resource Conservation and Recovery Act (RCRA) requirements and all other applicable federal, state, or local requirements.

(3) Dispose of hazardous or toxic wastes in accordance with the manufacturer's recommended method of disposal and in compliance with federal, state, and local requirements.

vi. You must provide effective containment for all liquid and solid wastes generated by washout operations including, but not limited to, concrete, stucco, paint, form release oils, curing compounds, and other construction materials related to the construction activity. For these materials and wastes, you must comply with the following requirements:

(1) Designate areas to be used for washout and cleanout activities. The containment must be designed so that it does not result in runoff from washout operations or during runoff events;

(2) Install signs adjacent to each washout facility directing site personnel to use the proper facilities for concrete disposal and other washout wastes;

(3) Direct all wash water into a leak-proof container or leak-proof pit;

(4) Do not dump liquid wastes in the storm sewers; and,

(5) Clean up and properly dispose of any accumulated wastes in designated waste containers.

vii. You must provide proper waste disposal receptacles of sufficient size and number to handle construction wastes including, but not limited to, packaging materials, scrap construction materials, masonry products, timber, pipe, electrical cuttings, plastics, Styrofoam®, concrete, and other trash or building materials.

viii. For sanitary waste, you must position portable toilets so they are secure and will not be tipped or knocked over. You must properly remove and dispose of wastes from the portable toilets.

These limits are based on 40 CFR 450.21, the SDSWQS, SDCL and the current General Permit limits.

21. **Construction Dewatering**. You are prohibited from discharging from dewatering activities, including discharges from dewatering of trenches and excavation, unless the discharges are managed by the following controls:

a. You shall not discharge toxic pollutants in toxic amounts. This limit is based on the SDSWQS (ARSD 74:51:01:12).

b. Your discharge shall not impart a visible film or sheen to the surface of the receiving water or adjoining shoreline. This limit is based on the SDSWQS (ARSD 74:51:01:10).

c. Your discharge shall not contain visible pollutants. You must visually monitor the discharge for suspended solids. This limit is based on the SDSWQS (ARSD 74:51:01:06). If you observe suspended solids in the discharge, you must implement the following requirements:

i. You must install additional BMPs and update your SWPPP to reduce the visible solids.

ii. You must sample the dewatering discharge for total suspended solids on a daily basis until there is no longer a discharge of visible solids. The samples must be analyzed in accordance 40 CFR 136, which may require sending the sample to an off-site laboratory for analysis. If the total suspended solids value exceeds 53 mg/L in any sample or measurement, you must cease the dewatering discharge to surface waters of the state until you can demonstrate the additional BMPs are sufficient to eliminate the visible pollutants. You must also document this in your SWPPP. Sampling is only required when there are visible pollutants in the dewatering discharge.

d. You must use BMPs to minimize or prevent stream channel scouring or erosion caused by dewatering discharges. This limit is based on 40 CFR 450.21(a)(1) and the current General Permit limits.

e. You cannot add chemicals to the discharge without prior approval from the SDDANR. This limit is based on the SDSWQS (ARSD 74:51:01:12) and the current General Permit limits.

f. You must obtain a Temporary Water Right. Contact SDDANR at (605) 773- 3352 for more information and to obtain a temporary water right.

These limits are based on 40 CFR 450.21(c), the SDSWQS, and the current General Permit limits.

STORMWATER POLLUTION PREVENTION PLAN (SWPPP)

You are required to develop and implement a SWPPP prior to commencing construction. The objective of the SWPPP is to identify and document potential sources of sediment and other sources of pollution associated with construction activity, and to ensure practices are implemented and maintained to reduce the contribution of pollutants in stormwater discharges from the construction site to surface waters of the state and storm sewer systems. Your SWPPP must describe all control measures that are, or will be, installed and maintained that are site-specific to meet the conditions of the draft General Permit. You are required to certify you have developed the SWPPP when you submit the NOI and are required to implement the necessary sediment and erosion controls before initiating construction.

The SWPPP details the BMPs you will implement to meet the effluent limits specified in the draft General Permit. The draft General Permit requirements for the SWPPP were designed for maximum flexibility to allow the development of needed stormwater controls based on the specifics of the site. Some of the factors to consider when developing your SWPPP include:

1. Local ordinances;
2. Local building codes;
3. Precipitation patterns for the area at the time the project will be underway;
4. Soil types;
5. Slopes;
6. Sensitivity of nearby waterbodies;
7. Safety concerns of the stormwater controls (e.g., potential safety hazards of water in stormwater retention ponds to humans and wildlife, and the potential of drawing birds to retention ponds and the hazards they pose to aircraft); and
8. Coordination with other site operators.

A large number of sites are already covered under the current General Permit. While the draft General Permit is consistent with SDDANR's requirements under the current General Permit, there are some changes. Existing permittees will have **three (3) months** from the effective date of the General Permit to update their SWPPP to reflect the requirements of the reissued General Permit.

The draft General Permit requires the stormwater controls be described in the SWPPP and implemented onsite. A more thorough description of pollution prevention measures and BMPs is provided in *Developing Your Pollution Prevention Plan: A Guide for Construction Sites* (U.S. EPA, 2016). An electronic version of this document is available from the U.S. EPA website (https://www.epa.gov/npdes/developing-stormwater-pollution-prevention-plan-swppp) or a hardcopy of the summary document may be obtained from the SDDANR or U.S. EPA upon request. SDDANR also has SWPPP templates available on the following webpage: https://danr.sd.gov/OfficeOfWater/SurfaceWaterQuality/stormwater/StormWaterConstruction.aspx

SELF MONITORING REQUIREMENTS

Qualified Person to Conduct Inspections

Erosion and sediment control and/or stormwater management certification is not required by SDDANR and the definition of qualified inspection personnel is not changing in the draft General Permit. However, those who wish to be considered a qualified person to conduct stormwater inspections, must, at a minimum, be a person knowledgeable in the principles and practice of erosion and sediment controls and pollution prevention, who possesses the appropriate skills and training to assess conditions at the construction site that could impact stormwater quality, and the appropriate skills and training to assess the effectiveness of any stormwater controls selected and installed to meet the requirements of the draft General Permit.

Although not required, SDDANR encourages inspection personnel consider reviewing available training resources. The U.S. EPA's 2022 Construction General Permit includes training requirements for inspection personnel; therefore, the U.S. EPA has developed an electronic construction inspection training course that consists of five training modules and a final exam that is available at no cost. This training is accessible to everyone, not just U.S. EPA permittees, and can be found on the U.S. EPA's website here: https://www.epa.gov/npdes/construction-inspection-training-course.

The South Dakota Department of Transportation (SDDOT) requires that all SDDOT contracts have a certified Erosion Control Supervisor who understands the requirements for erosion and sediment control for construction and, therefore, conducts Erosion and Sediment Control Certification training annually. More information on the Erosion and Sediment Control Certification course through SDDOT can be found on their website: https://dot.sd.gov/

Inspection Requirements

You shall ensure that qualified personnel (someone who is knowledgeable about your SWPPP and proper operation of erosion and sediment controls) inspect the site at least once every seven (7) days and within twenty-four (24) hours after any rain event that is 0.25 inches or greater or a snowmelt event that generates runoff. Where runoff is unlikely due to winter conditions (i.e., the site is covered with snow, ice, or frozen ground) *and* the site has been temporarily stabilized, you shall conduct such inspections at least once every month. You must resume weekly inspections by no later than March 1st of each year until the site is permanently stabilized and you have submitted a NOT. The inspection shall include:

1. Verify that the required General Permit information is posted;
2. All disturbed areas of the construction site that have not reached final stabilization;

3. All sediment and erosion control measures;
4. Vegetated buffers;
5. Areas used for storage of materials;
6. Areas where stormwater typically flows within the site;
7. All points of discharge from the site;
8. All dewatering activities at the site; and
9. Locations where vehicles enter or exit the site.

You, or a qualified inspector knowledgeable about stormwater controls, shall inspect these areas for evidence of, or the potential for, pollutants entering the drainage system and erosion. You, or the inspector, shall also inspect sediment control measures to ensure that they are operating correctly and that sediment is not tracked offsite. You must also inspect stabilized areas to ensure that stabilization measures are still in place and effective.

If a discharge is occurring during the inspection, you, or the qualified inspector, are required to:

1. Identify all points where there is a discharge;
2. Observe and document the visual quality of the stormwater discharge and note the characteristics of the discharge; and
3. Document whether the control measures are operating effectively.

SDDANR also recommends that you perform a "walk through" inspection of the construction site before any anticipated storm event that could potentially cause a significant amount of runoff. These types of inspections help to ensure the effective implementation of sediment and erosion controls.

Record-Keeping Requirements

You shall maintain on site, or make readily available, the SWPPP and a copy of the SDDANR's letter granting coverage under the draft General Permit from the date construction activities are initiated until final stabilization is achieved and coverage under the draft General Permit is terminated. You shall retain copies of the SWPPP, all reports required by the draft General Permit, and records of all data used to complete the NOI and NOT for this permit for a period of at least three (3) years from the date that the site is finally stabilized. The Secretary may request extension of this period at any time.

ELECTRONIC REPORTING REQUIREMENTS

On October 22, 2015, the U.S. EPA published in the federal register a rule that has made electronic reporting of permit and compliance monitoring information mandatory for all NPDES permits. These are referred to as SWD permits in South Dakota. The final rule became effective December 21, 2015.

Phase II of the final rule requires that authorized state NPDES programs begin electronically collecting, managing, and sharing construction stormwater permitting information by December 21, 2025. This includes general permit reports such as NOI, NOT, and all other remaining NPDES program forms and reports.

SDDANR is approved to accept electronic submissions via NeT.

1. You must use NeT to electronically submit forms and documents required under this General Permit to. Access to NeT is located here: https://cdx.epa.gov/cdx.

Exception: If you are unable to meet the electronic reporting requirements due to extenuating circumstances, such as technology availability, you may apply for a temporary electronic reporting waiver through SDDANR. If the waiver is approved, the electronic reporting requirement will be waived according to SDDANR's procedures.

CONSTRUCTION DEWATERING

The draft General Permit provides for discharges from dewatering activities as long as you employ the following controls:

1. Dewatering that is done within the boundaries of the project site and does not enter waters of the state does not require additional permit coverage.
2. You shall not discharge toxic pollutants in toxic amounts.
3. Your discharge shall not impart a visible film or sheen to the surface of the receiving water or adjoining shoreline.
4. Your discharge shall not contain visible pollutants. You must visually monitor the discharge for suspended solids. If you observe suspended solids in the discharge, you must implement the following requirements:
    a. You must install additional BMPs and update your SWPPP to reduce the visible solids.
    b. You must sample the dewatering discharge for total suspended solids on a daily basis until there is no longer a discharge of visible solids. The samples must be analyzed in accordance with 40 CFR 136. If the total suspended solids value exceeds 53 mg/L in any sample or measurement, you must cease the dewatering discharge to surface waters of the state until you can demonstrate the additional BMPs are sufficient to eliminate the visible pollutants.
5. You must use BMPs to minimize or prevent stream channel scouring or erosion caused by dewatering discharges.
6. You cannot add chemicals to the discharge without prior approval from the SDDANR.
7. You must obtain a Temporary Water Use Permit. Contact the SDDANR at (605) 773-3352 for more information and to obtain a temporary water use permit.

TERMINATION OF COVERAGE

After you complete construction activities in an area, you shall permanently stabilize the site as soon as possible to prevent further soil erosion. When construction activities are complete and final stabilization has been achieved, you are required to submit a NOT to SDDANR. The NOT indicates that all earthmoving activities have ended and the site has achieved final stabilization as required by the draft General Permit. You shall maintain coverage under the draft General Permit until all disturbed areas on the entire project site have achieved final stabilization, as defined in the draft General Permit:

Final Stabilization *– on areas not covered by permanent structures, means either (1) vegetation has been established that provides a uniform (i.e., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70% of the natural background vegetative cover, (2) permanent non-vegetative stabilization methods have been implemented to provide effective cover for exposed portions of the site, or (3) disturbed portions of a construction site on land used for agricultural purposes must be returned to pre-construction agricultural use.*

REQUIRING AN INDIVIDUAL PERMIT

Based upon a number of different situations (e.g., applicable numeric effluent limitations resulting from a TMDL, or a determination that the operator has the potential to cause or contribute to a water quality standard excursion), SDDANR may determine that coverage under an individual permit is necessary. If you are currently discharging under this General Permit and SDDANR 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 you by SDDANR.

Additionally, any permittee may apply for an individual permit rather than applying for coverage under this draft General Permit. Any permittee applying for an individual permit shall submit an individual application for coverage with reasoning supporting the request. SDDANR will review the request and will determine if individual permit coverage is appropriate. If SDDANR issues an individual permit to a permittee currently covered under this General Permit, or coverage under an alternative general permit is obtained, coverage under the draft General Permit is terminated on the effective date of the new permit.

If a permittee, covered under the current General Permit, requests an alternative permit and is denied, coverage under the draft General Permit may also be terminated on the date of such denial, unless otherwise specified by SDDANR.

ENDANGERED SPECIES

This is a renewal of an existing general permit. No listed endangered species are expected to be impacted by activities related to this draft General Permit.

DRAINAGE ISSUES

Local governments have the authority to regulate drainage. You are responsible for getting any necessary drainage permits from the county *prior* to discharging.

GENERAL PERMIT EXPIRATION

A five-year general permit is recommended. Prior to the expiration of the draft General Permit, all permittees covered under the General Permit will be requested to submit a NOI for Reauthorization Form (Appendix E of the draft General Permit).

If the General Permit should expire before a new permit is reissued, the terms and conditions of the expired General Permit will remain effective and enforceable until the effective date of the reissued general permit. SDDANR will continue the General Permit coverage for each facility

covered under the draft General Permit upon the expiration date, provided the facility has submitted a NOI for Reauthorization Form to continue coverage prior to the General Permit expiration.

GENERAL PERMIT CONTACT

This Statement of Basis and the draft General Permit were developed by Jill Riedel, Engineer III, for the Water Quality Program. Any questions pertaining to this Statement of Basis or the draft General Permit can be directed to the Water Quality Program by phone at (800) 737-8676 or by email at stormwater@state.sd.us.

August 15, 2023

ATTACHMENT 1

Antidegradation Review

Permit Type: **General Permit for Stormwater Discharges Associated with Construction Activities**

Permit #: **SDR100000**

Receiving Stream: **Varies** Classification: **Varies**

APPLICABILITY

1. Is the permit or the stream segment exempt from the antidegradation review process under ARSD 74:51:01? Yes ☐ No ☒ If no, go to question #2. If yes, check those reasons why the review is not required:

☐ Existing facility covered under a surface water discharge permit is operating at or below design flows and pollutant loadings;

☐ *Existing effluent quality from a surface water discharge permitted facility is in compliance with all discharge permit limits;

☐ *Existing surface water discharge permittee was discharging to the current stream segment prior to March 27, 1973, and the quality and quantity of the discharge has not degraded the water quality of that segment as it existed on March 27, 1973;

☐ *The existing surface water discharge permittee, with DANR approval, has upgraded or built new wastewater treatment facilities between March 27, 1973, and July 1, 1988;

☐ The existing surface water discharge permittee discharges to a receiving water assigned only the beneficial uses of (9) and (10); the discharge is not expected to contain toxic pollutants in concentrations that may cause an impact to the receiving stream; and DANR has documented that the stream cannot attain a higher use classification. This exemption does not apply to discharges that may cause impacts to downstream segments that are of higher quality;
Receiving water meets Tier 1 waters criteria. Any permitted discharge must meet water quality standards;
The permitted discharge will be authorized by a Section 404 Corps of Engineers Permit, will undergo a similar review process in the issuance of that permit, and will be issued a 401 certification by the department, indicating compliance with the state's antidegradation provisions; or

☐ Other:

FORMAL REVIEW

1. Is the stream segment classified as an OSRW? Yes ☐ No ☒ If no, go to question #3. **If yes, no change in water quality allowed. No further review required.**

2. Will there be an insignificant change in water quality? Yes ☒ No ☐ If no, go to question #4. **If yes, no further review required. List reason why discharge is insignificant**

- ☒ Only temporary change in water quality will result from the discharge; **Antidegradation will not apply to this draft General Permit due to the intermittent and temporary nature of most stormwater runoff from construction sites and the expected limited impact of the discharge**
- ☐ Resulting change in water quality from the discharge will only affect a water quality parameter that is only regulated by a narrative standard and the discharge will not adversely impact the stream's beneficial uses;
- ☐ Volume of the proposed discharge is small compared to the flow in the stream. The ratio of the average stream flow to discharge flow is greater than 50:1;
- ☐ The increase in pollutant loading at critical low flow is expected to be less than 20% of the stream's assimilative capacity;
- ☐ The resulting change in water quality from the discharge is less than one standard deviation of the mean concentration of the ambient water quality; or
- ☐ Other: _____

ANTIDEGRADATION REVIEW SUMMARY

The outcome of the review is:

- ☐ A formal antidegradation review was not required for reasons stated in this worksheet. Any permitted discharge must ensure water quality standards will not be violated.
- ☐ The review has determined that degradation of water quality should not be allowed. Any permitted discharge would have to meet effluent limits or conditions that would not result in any degradation estimated through appropriate modeling techniques based on ambient water quality in the receiving stream, or pursue an alternative to discharging to the waterbody.
- ☒ The review has determined that the discharge will cause an insignificant change in water quality in the receiving stream. The appropriate agency may proceed with permit issuance with the appropriate conditions to ensure water quality standards are met.
- ☐ The review has determined, with public input, that the permitted discharge is allowed to discharge effluent at concentrations determined through a total maximum daily load (TMDL). The TMDL will determine the appropriate effluent limits based on the upstream ambient water quality and the water quality standard(s) of the receiving stream.
- ☐ The review has determined that the discharge is allowed. However, the full assimilative capacity of the receiving stream cannot be used in developing the permit effluent limits or conditions. In this case, a TMDL must be completed based on the upstream ambient water quality and the assimilative capacity allowed by the antidegradation review.
- ☐ Other: _____

3. Describe any other requirements to implement antidegradation or any special conditions that are required as a result of this antidegradation review:
Antidegradation will not apply to this draft General Permit due to the intermittent and temporary nature of most stormwater runoff from construction sites and the expected limited impact of the discharge.

Jill M. Riedel	August 7, 2023
Reviewer	Date
Jeanne Goodman	August 15, 2023
Team Leader	Date