

**Montana Department of Environmental Quality
Permitting and Compliance Division
Montana Pollutant Discharge Elimination System (MPDES)**

Fact Sheet

**General Permit for
Storm Water Discharges Associated with Construction Activity**

MPDES Permit Number: MTR100000

I. Status of Permit

This Fact Sheet supports the renewal of the existing MPDES “General Permit for Storm Water Discharges Associated with Construction Activity” (General Permit) which is required by the Administrative Rules of Montana (ARM) 17.30.1341(6) to have a fixed term not to exceed five years. MTR100000 was originally issued on November 17, 1992 and expired on August 31, 1997. The General Permit was then reissued on May 19, 1997 with an expiration date of August 31, 2002, and reissued again with an effective date of June 8, 2002 and an expiration date of December 31, 2006. MTR100000 was then reissued with the latest General Permit which was effective on April 16, 2007 and had an expiration date of December 31, 2011. The Department is proposing to reissue a fifth generation of this General Permit, and as required by ARM 17.30.1371, this document is the “Fact Sheet” for this reissued General Permit.

The Department will also complete a Programmatic Review / Environmental Assessment for the General Permit to fulfill its responsibilities under the Montana Environmental Policy Act (MEPA). The Department will provide an opportunity for public comment on the draft General Permit and draft Programmatic Environmental Assessment in accordance with ARM 17.30.1373.

This General Permit is issued by the Department under the authority of 75-5-402, Montana Code Annotated (MCA) and Sections 402 and 303 of the Federal Clean Water Act. ARM 17.30.1105 requires any person who discharges or proposes to discharge "storm water discharge associated with construction activity", as defined in ARM 17.30.1102(28), to get MPDES permit coverage.

Regulated construction activity storm water discharges are relatively shorter and finite MPDES permit authorizations, typically lasting from one to three years, as they pertain to the actual construction of something. At any given time, there are many hundreds of construction activities which require storm water discharges to be covered under this General Permit. Consequently, in addition to new authorizations under the General Permit during the next five-year General Permit

term, there are also hundreds of existing permittees required to renew their permit coverage under this General Permit as their construction projects are not yet completed (achieved “final stabilization” of disturbed areas as defined in ARM 17.30.1102(5)).

II. Description of Discharge and Discharging Facilities

This General Permit is applicable to storm water discharges associated with construction activity within the State of Montana, excluding Indian Reservations. “Storm water” is defined in ARM 17.30.1102(27). “Storm water discharge associated with construction activity” is defined in ARM 17.30.1102(28). For regulated activities under this definition, the term includes construction-related disturbance equal to or greater than one acre due to clearing, grading, excavating, stockpiling earth materials, and other placement or removal of earth material performed during construction projects through to final stabilization.

Without adequate control, based on Department experience and information related to construction sites, typical storm water discharges may contain pollutants which pose a threat to receiving state surface waters. Construction activities typically disturb the site's stabilizing vegetative cover and expose the remaining soil more to erosive elements such as rainfall and snowmelt runoff. Consequently, storm water runoff from construction activities may carry higher than normal loadings of sediment, but also other pollutants such as those from wastes, fueling, and/or washing at the construction site. The primary pollutant generated at construction sites is sediment including, total suspended solids, turbidity, and siltation. Pollutant concentrations may vary considerably with respect to construction sites, storm events, and location. Typically, sediment runoff rates from construction sites are 10 to 20 times greater than those from agricultural lands, and 1,000 to 2,000 times greater than those of forestlands (EPA 833-F-00-013, January, 2000). During a short period of time, construction activity can contribute more sediment to streams than is naturally deposited over several decades.

Sediment and other materials are defined as “other wastes” in 75-5-103(19), MCA. “Pollutant”, is defined in ARM 17.30.1102(19) as dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural wastes discharged into water. The terms “sewage”, “industrial waste”, and “other wastes” as defined in 75-5-103, MCA, are interpreted as having the same meaning as pollutant. The Montana Water Quality Act (MWQA) prohibits the discharge of these wastes to state waters without a current permit from the Department, as stated in 75-5-605(2), MCA.

III. Coverage

Pursuant to 75-5-402, MCA and requirements found in ARM Title 17, Chapter 30, Subchapters 11, 12, and 13, the Department regulates storm water discharges associated with construction activities. Specifically, ARM 17.30.1105(1)(a) requires MPDES permit coverage for "storm water discharge associated with construction activity" as defined in ARM 17.30.1102(28). Additionally, point source discharges could require MPDES permit coverage under ARM 17.30.1105(1)(e) or (f) if the Department determines that storm water controls are needed based on Waste Load Allocations that are part of Total Maximum Daily Loads (TMDLs) that address the pollutants of concern, or if the Department determines the discharge causes or contributes to an exceedance of applicable water quality standards.

Part 1.1 of the General Permit contains eligibility requirements. Based on the aforementioned statutes and rules, this includes a description of the two determining criteria (acreage of construction-related ground disturbance and discharge to state surface waters) which would trigger the need for coverage under the General Permit. In order to help the regulated community evaluate these two criteria and better avoid potential compliance problems which may result from not obtaining authorization under the General Permit when necessary, the Department has included additional explanation regarding these potential factors in Part 1.1. This will also help improve efficiency for both the regulated community and Department in obtaining necessary authorizations by further minimizing questions and uncertainties, while serving to capture a higher percentage of "storm water discharges associated with construction activity" requiring authorization and thereby potentially avoiding additional third-party complaints and/or non-filer compliance and enforcement issues. Along these same lines, further clarifying information is also provided regarding support activities for a construction project. Additionally, by placing such critical information up-front in the first few pages (Parts 1.1. and 1.2.) of the General Permit itself, it is more likely to be recognized and effectively acted upon by the regulated community.

"Larger common plan of development or sale" is defined in Part 5 of this permit. For purposes of interpreting this definition, a "plan" is considered to be any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, engineering plan sheet, permit application, zoning request, computer design, report/plan, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating that construction activities may occur within a specific geographic area. A common plan includes all support activities and areas of disturbance that were created exclusively for, and are a direct result of, the construction activity.

For clarification with respect to residential subdivisions and development, individual residential lots that are part of a larger common plan of development or sale are not required to maintain active permit coverage once all of the conditions below are met:

- The individual lot has been sold to a homeowner for private residential use;
- The lot is less than one acre of disturbed area;
- Construction activities on the individual lot that were conducted by the permittee for the larger development are completed;
- A certificate of occupancy (or equivalent) has been awarded to the homeowner; and
- The SWPPP for the permittee for the larger development has been updated to indicate the individual lot has reached final stabilization.

Part 1.1 of the General Permit also contains requirements which clarify allowable storm water discharges and allowable non-storm water discharges. Although the storm water regulated under this General Permit is typically rainfall or snowmelt runoff generated due to a particular “wet weather” precipitation event, there are some types of non-storm water discharges which are conventionally allowed to be discharged with the storm water, provided such a discharge is not subject to MPDES discharge permitting separately. The allowable non-storm water discharges stated in this General Permit are similar to those allowed under other MPDES storm water general permits to ensure compatibility and coordination in areas where regulated storm water discharges may co-exist, such as for regulated small municipal separate storm sewer systems in Montana’s seven largest urban areas.

Part 1.2 of the General Permit contains requirements for how an “owner or operator”, as defined in 75-5-103, MCA, obtains authorization under the General Permit based on the aforementioned statutes and rules. For the purposes of this permit, the “owner or operator” of the “storm water discharge associated with construction activity” which obtains authorization under this permit is identified as the “permittee”. Consequently, the term “permittee” is used throughout the permit.

In order to provide additional clarification, for the purposes of obtaining authorization under this permit, the following entities are considered an owner or operator:

- Owner or Developer – an owner or developer who is operating as the site manager or otherwise has supervision and control over the site, either directly or through a contract with an entity such as those listed below;
- General Contractor or Subcontractor – a contractor with contractual responsibility and operational control (including SWPPP implementation) to address the impacts construction activities may have on storm water quality; or
- Other Designated Agents / Contractors – other agents with contractual responsibility and operational control to address the impacts construction activities may have on storm water quality.

Part 1.2. also contains typical requirements pertaining to the continuation of the General Permit if it is not reissued or replaced prior to its expiration date based on ARM 17.30.1313, and it contains requirements pertaining to modification of an NOI based on new fee rule requirements contained in ARM 17.30.201.

Parts 1.3 and 1.4 of the General Permit contain requirements pertaining to the ongoing use and protocol for terminating permit coverage using the standard Department "Notice of Termination" (NOT) Form, and requirements for transferring General Permit coverage using the Department's ongoing standard "Permit Transfer Notification" (PTN) Form.

Through the authority of ARM 17.30.1105(5), certain construction activity discharges may qualify for a waiver instead of needing storm water discharge permitting under an MPDES permit. To help the regulated community understand and recognize this potential option, this "Storm Water Rainfall Erosivity Waiver" option is mentioned in Part 1.5. of the General Permit.

To elaborate, ARM 17.30.1105(5)(a) provides this waiver option for an owner or operator of a construction project which has a "storm water discharge associated with construction activity" (as defined in ARM 17.30.1102(28)), and a total construction-related disturbance of less than five acres of total land area, and which results in the construction activity having a Rainfall Erosivity Factor ("R" in the Revised Universal Soil Loss Equation - RUSLE) of less than five, as determined using a Department-approved method.

This form is used for construction activities (projects) which will initiate construction-related ground disturbance and achieve final stabilization within the same calendar year between the dates of March 1st and November 30th. Construction projects which initiate in, but do not achieve final stabilization in, this same period within a single calendar year are not eligible for this waiver.

A separate Rainfall Erosivity Waiver Form must be provided for each construction activity qualifying for the waiver. All portions of the construction activity's work which are part of the "larger common plan of development or sale" must be included in the determination stated on the Rainfall Erosivity Waiver Form. In other words, the waiver is available on a development-wide basis only, not for individual filings, phases, or other portions of the "larger common plan of development or sale".

Coverage under the permit is required if the construction project's R Factor ever becomes greater than five due to changes, or anticipated changes, in the project's construction period, such as due to unexpected delays. Also, if the overall construction project or "larger common plan of development or sale" becomes, or is anticipated to become, five or more acres of construction-related

disturbance, the project no longer qualifies for the Rainfall Erosivity Waiver.

Based on the Department's experience in permitting storm water discharges associated with construction activity in Montana, it needs to be emphasized that the vast majority of construction activities performed in Montana will likely not qualify for using this waiver form. This is primarily because, in addition to the earthwork and building phases, most construction projects depend on natural rainfall to establish vegetation and can take months or longer to achieve final stabilization.

For further information about the "Storm Water Rainfall Erosivity Waiver Form" and its limitations, the General Permit refers to the Department's storm water construction webpage through the Department's website at:

<http://www.deq.mt.gov>.

IV. Receiving Waters and Applicable Standards

Storm water discharges associated with construction activity regulated by this General Permit cover discharge of storm waters to state surface waters. Surface waters are defined in ARM 17.30.1102(32). Intermittent and ephemeral watercourses and drainages are state surface waters in accordance with 75-5-103(29), MCA.

The Montana Water Quality Act requires that permits issued pursuant to Title 17, Chapter 30, Subchapter 11 and 13 comply with the Montana surface water quality standards found in Subchapter 6.

New or increased sources (ARM 17.30.702(16)), must comply with Montana's Nondegradation Policy (75-5-303, MCA), and rules (ARM 17.30.701 et. seq.). Nondegradation requirements are discussed in Part VII of this Fact Sheet.

V. Effluent Limitations and Related Permit Conditions

Section 402 of the Montana Water Quality Act (75-5-402, MCA) authorizes the Department to regulate the discharges of sewage, industrial and other wastes into state surface waters. Pursuant to ARM 17.30.1201, the Department is required to establish effluent limitations, treatment standards, and other requirements for point sources discharging wastes to state waters. The Montana Board of Environmental Review has not adopted minimum treatment requirements for storm water discharges associated with construction activity. The discharge of sewage or industrial wastes is not allowed under the General Permit.

The General Permit is exclusive to "other wastes" as defined under 75-5-103(19) MCA, resulting from regulated activities, and receive, at a minimum, treatment to

restore and maintain the quality of surface waters (ARM 17.30.635(1), 75-5-305, MCA).

A. Technology-Based Effluent Limits (TBELs)

Sediment, turbidity, total suspended solids, and other parameters can potentially be increased through such construction activity storm water discharges. As stated in the Montana Water Quality Act it is not necessary that wastes be treated to conditions purer than the receiving waters as long as minimum treatment requirements have been set (75-5-306, MCA). As the effluent characteristics of storm water runoff can be highly variable and unpredictable, ARM 17.30.1345(1) and 17.30.1344 provide for the use of Best Management Practices (BMPs) where effluent limitations are infeasible. Based upon best professional judgement, the use of BMPs is the most appropriate type of control for this point source category. BMPs should be the most cost-effective means of removing the pollutants, or eliminating and/or minimizing contact between pollutants and storm water discharges associated with construction activity.

Based on the above, the Department has concluded that the most prudent, reasonable land, soil and water conservation practices, to protect surface waters of the state will be achieved through BMP-oriented narrative effluent limitations, and the development and implementation of a "Storm Water Pollution Prevention Plan" (SWPPP) as defined in ARM 17.30.1102(31). SWPPP submittal is a required component of the NOI Package pursuant to 75-5-401(1)(c) and the consequent ARM 17.30.1115(3). This SWPPP identifies site characteristics, potential pollutants, and various BMPs to minimize or prevent pollutants from entering storm water runoff and/or receiving state surface waters. The General Permit will require the permittee to develop and maintain BMPs and storm water management controls in accordance with a SWPPP (Parts 2 and 3 of the General Permit).

In the December 1, 2009 "Federal Register", the federal U.S. Environmental Protection Agency (EPA) promulgated new regulations entitled "Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category" (informally called the "C & D ELGs"). In the July 1, 2010 40 CFR publication, these are found under Subchapter N entitled "Effluent Limitations and Guidelines." These include 40 CFR Parts 450.21, 450.22, 450.23, and 450.24. These are generally incorporated by reference for use in MPDES permitting through the authority in ARM 17.30.1207. Consequently, most of these requirements, as presented and explained in the aforementioned Federal Register, were included in this General Permit.

More specifically, in this General Permit, narrative TBELs reflecting the "best practicable technology currently available" (BPT) found in 40 CFR Part

450.21 were literally brought in through Part 2.2. of the General Permit. These requirements are primarily oriented around BMPs.

40 CFR Part 450.22(c), (d), (e), (f), (g), and (h) were also brought into this General Permit in Part 2.2. as they refer back to Part 450.21. 40 CFR Part 450.22 requirements are “effluent limitations reflecting the best available technology economically achievable” (BAT). 40 CFR Part 450.22(a) and (b) were not brought into this General Permit at this time, as explained below.

40 CFR Part 450.23 was similarly brought into this General Permit in Part 2.2. as it also refers back to Part 450.21. Part 450.23 requirements are “effluent limitations reflecting the best conventional pollutant control technology” (BCT).

40 CFR Part 450.24 requirements are “new source performance standards reflecting the best available demonstrated control technology” (NSPS). This refers back to Part 450.22, which as explained below, resulted in only 40 CFR Parts 450.22 (c), (d), (e), (f), (g), and (h) being included in the General Permit.

Turbidity monitoring requirements brought in through 40 CFR Part 450.22(a) and (b), and the respective portion of Part 450.24, will be brought into General Permit MTR100000 at a later date. 40 CFR Part 450.22(a) and (b) pertain to turbidity monitoring, a numerical turbidity effluent limit, and an exemption for turbidity monitoring. This delay is because the numeric turbidity limit of 280 NTU stated in Part 450.22(a)(1) is undergoing litigation, reevaluation, and potential revision at this time at the federal EPA level. Without fixed and established federal requirements for this turbidity monitoring from the federal EPA, the Department considered it prudent to wait until these requirements are firmly determined before such requirements are included in General Permit MTR100000. There is a significant amount of effort in establishing a turbidity monitoring program with an enforceable limit for the Department and regulated community, and the Department needs to have more certainty with respect to these requirements to ensure a productive, efficient, and worthwhile effort for all involved.

In keeping with some more contemporary and recently issued similar permits from the EPA and other states, and in order to help ensure better compliance/enforceability with respect to these more strict TBELs and BMP requirements brought about through the incorporation of the federal C & D ELGs, the Department has included various improvements with respect to self-inspections, corrective actions, and the SWPPP in this General Permit.

B. Water Quality Based Effluent Limits

Based on ARM Title 12, Chapter 30, Subchapter 6, and with the exception of storm water discharges associated with construction activity into an ephemeral stream (defined in ARM 17.30.602(12)), for construction activity storm water discharges there are a few more pertinent water quality standards identified in Subchapter 6 which apply to state surface waters classified as A-Closed, A-1, B-1, B-2, B-3, C-1, C-2, I, and C-3 (ARM 17.30.621 through 629). In summary, these include:

1. No increases are allowed above naturally occurring concentrations of sediment or suspended sediment (except as permitted in 75-5-318, MCA), settleable solids, oils, or floating solids, which will or are likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife."
2. Standards pertinent to turbidity (defined in ARM 17.30.602(38)) for the above classifications range from no increase above naturally occurring turbidity to maximum increases of ten nephelometric turbidity units above naturally occurring turbidity, except as permitted in 75-5-318, MCA.
3. General Prohibitions found in ARM 17.30.637 including state surface waters being free from certain specified undesirable or harmful conditions, measures ensuring waste discharges and activities conducted will not potentially violate water quality standards, various BMP performance standards, and ephemeral stream treatment requirements.

Water quality standards found in ARM 17.30.621 through 629 do not apply to ephemeral streams.

It is the Department's position that Montana's surface water quality standards, including those stated above, can be maintained through compliance with the General Permit's TBELs, the development and implementation of a SWPPP, and other conditions in the General Permit. SWPPP requirements document various information about site characteristics including hydrology, potential sources of pollutants such as disturbed ground or wastes/products, and BMPs to minimize consequent pollutants in storm water runoff. The SWPPP allows for an iterative approach to BMP implementation whereby BMP effectiveness is tracked and evaluated through self-inspections, and corrective actions and improvements are made as necessary. The BMPs help minimize or

eliminate the generation or migration of pollutants to receiving state surface waters.

Part 2.3 of this General Permit does not authorize storm water discharges that the Department determines will cause, or have a reasonable potential to cause or contribute to an exceedance of applicable water quality standards. If the regulated storm water discharge causes or contributes to an exceedance of applicable water quality standards, the Department will notify the permittee that additional storm water controls are necessary or terminate coverage under the General Permit and require an MPDES individual permit.

Furthermore, requirements are incorporated into the General Permit in Part 3.11. to address listed impaired waterbodies and their pollutants of concern, with or without approved Total Maximum Daily Loads (TMDLs), under Section 303(d) of the Clean Water Act. More specifically, depending on whether the storm water discharges into a listed impaired receiving surface water(s), the permittee's SWPPP may need to include a section describing how the SWPPP will control discharges of pollutants of concern (for which the listed waterbody is impaired) and ensure storm water discharges will not cause or contribute to instream exceedances of water quality standards. This SWPPP must specifically identify BMPs that will collectively control the potential discharges of pollutants of concern. Information on impaired waterbodies may be obtained from the Department website: <http://cwaic.mt.gov/>.

If a TMDL has been approved for any waterbody into which the permittee discharges storm water, and the TMDL considered and addressed MPDES-regulated storm water discharges, then the Department must incorporate the Waste Load Allocation (WLA), as applicable, into the permit as required by 75-5-703, MCA.

Typically, the WLA is assumed to be accomplished by ensuring compliance with this General Permit for pertinent construction projects with authorized storm water discharges. In other words, with respect to addressing storm water discharges to a 303(d) listed or impaired water body, the Department believes General Permit requirements, including TBELs, SWPPP, self-inspections, and corrective action requirements, will typically be sufficient in addressing erosion and sediment control and other pollutant concerns.

C. Inspection, Corrective Action, Recordkeeping, and Reporting Requirements

Part 2.3. of the General Permit provides inspection requirements which the permittee's SWPPP Administrator must conduct during the effective period of the particular permit authorization. Self-inspections are a critical tool in evaluating and keeping track of BMP effectiveness, and consequently, in minimizing or preventing pollutant discharge from a site through storm water runoff. Proper BMP implementation through the SWPPP and these self-inspections are also critical in helping to ensure compliance with the TBELs stated in Part 2.1. of the General Permit.

As these inspections typically require site-specific knowledge and experience related to the requirements in this General Permit and associated BMPs, the Department is requiring self-inspections to be conducted by a "SWPPP Administrator" which meets the requirements in Part 3.2. of the General Permit. The SWPPP Administrator requirements in Part 3.2. include training requirements which will be phased in during the first year of the effective General Permit cycle in order to provide the regulated community more time to obtain this training.

In Part 2.3. inspection requirements, this General Permit includes an option for permittees to select either weekly routine inspections, or biweekly routine inspections in conjunction with post-storm event inspections after a certain-sized rainfall event or certain snowmelt events. It also includes a reduction in inspection frequency for inactive construction activity sites.

Regarding the size of a storm event which triggers the need for a post-storm event inspection, based on field evidence, it was clear that on many construction projects a relatively smaller storm event can cause significant problems with respect to BMPs and erosion/sediment control. In part, this is due to Montana's semi-arid climate, less vegetation, more topography, harder growing conditions for vegetation, more erosive soils, and unpredictability with respect to storm event size and duration over broader areas. Given the above factors, the requirement for post-storm event inspections was reduced from a 0.5-inch to 0.25-inch rainfall event, and a requirement was also added to strengthen these inspections with respect to snowmelt events.

Additionally, based on Department experience and inspections, it was evident there was a need to generally improve and expand self-inspection requirements. More requirements were necessary with respect to ensuring quality and completeness, including the inspection scope, documenting inspections, and ensuring corrective action was taken and documented where necessary. In particular, it was important to strengthen requirements with respect to BMP maintenance, replacement, and/or failures, as over the years the Department has observed that the

maintenance of BMPs has often been a problem area in ensuring compliance with the General Permit. Consequently, Part 2.3. of the General Permit contains some new requirements to better accomplish this. Inspection and BMP maintenance procedures must be documented in the SWPPP as required by Part 3.10. of the permit.

Other requirements in Parts 2.5 and 2.6. include ongoing and improved measures for keeping specified permit-related documentation at the site, and to notify the Department of a change in the SWPPP Administrator designated by the permittee. To elaborate, the Department has continued to experience problems and compliance issues with permittees not retaining the required documentation and/or having it readily available at the site. Consequently, the SWPPP Administrator must now be solely responsible for this recordkeeping requirement, and ensuring such documentation is readily available at the site. Depending on the particular construction project, the availability of the SWPPP Administrator, and/or whether office trailers or similar options exist at the actual site for retaining this required site documentation, other measures may need to be considered including the use of secure lock-boxes for the retention of such documentation at the site.

D. Special Conditions - Storm Water Pollution Prevention Plan Requirements

A Storm Water Pollution Prevention Plan (SWPPP), as defined in ARM 17.30.1102(31), must be developed for each facility or activity covered by this General Permit. A SWPPP is required directly through 75-5-401(1)(c) MCA and ARM 17.30.1115(3). As described above, the primary purpose of the SWPPP is to identify pertinent site characteristics, sources of pollution to storm water, and to implement BMPs to prevent pollutant migration to surface waters. Another important function of the SWPPP is to help ensure compliance with the effluent limitations in Part 2 of the General Permit. The BMPs selected in the SWPPP need to eliminate or minimize contamination of storm water runoff at their source and/or remove pollutants before discharge into state surface waters. Facilities must implement the provisions of the SWPPP required under this part as a condition of this permit (75-5-303 (3)(d), MCA). SWPPPs are intended to be "living documents", to be updated and accommodate "as-built" field changes, and to reflect current conditions and activities at the site. Periodic evaluation and ongoing improvements to the BMPs at the site can only help improve the quality of storm water runoff.

SWPPP BMPs must be developed using good standard engineering practices. They must include requirements stated in the General Permit. The SWPPP must be signed in accordance with ARM 17.30.1323 and the requirements stated in the General Permit.

The SWPPP requirements contained within MTR100000 have not changed significantly during the previous four five-year cycles of this General Permit. However, due to a number of factors, the Department has incorporated new improvements into the SWPPP during this General Permit reissuance cycle. These factors include:

- the promulgation of the new 2010 requirements (narrative TBELs) contained within the federal C & D ELGs;
- to ensure better compliance with respect to General Permit requirements
- to ensure more effective implementation of BMPs; and
- to generally contemporize and bring SWPPP requirements more in-line with similar permits from EPA and other permits within the region.

Consequently, based on historical EPA/State permits, guidance, and experience, the SWPPP has evolved over the past 20 years to contain the following elements within this General Permit:

1. SWPPP General Requirements;
2. SWPPP Administrator Requirements (including training);
3. Construction Activity and BMP Schedule and Phasing;
4. Site Description;
5. Site Map;
6. Identification and Summary of Potential Pollutant Sources;
7. Description of Best Management Practices (BMPs)
 - Structural BMPs for Erosion and Sediment Control
 - Non-Structural BMPs for Erosion and Sediment Control
 - Materials Handling
 - Dedicated Concrete or Asphalt Batch Plants
 - Waste Management and Disposal, Including Concrete Washout
 - Stabilization Measures
 - Minimize Ground Disturbance
 - Ground Water Dewatering
 - Operational Controls
 - Spill Prevention and Response Procedures
 - Off-Site Vehicle Trucking of Sediment
 - Local Sediment and Erosion Control Requirements;
8. Final Stabilization;

9. Post-Construction Storm Water Management;
10. Inspection and BMP Maintenance Procedures;
11. Water Quality Controls for Discharges to Impaired Waterbodies; and
12. SWPPP Revisions and Updates.

E. Standard Conditions and Definitions

Based on ARM 17.30.1342, standard conditions pertaining to all MPDES permits are included in Part 4 of this General Permit. Part 5 of the General Permit contains general definitions and abbreviations associated with the MPDES permit program and this General Permit

VI. Mixing Zones

A mixing zone is an area where the effluent mixes with the receiving water and certain water quality standards may be exceeded (ARM 17.30.502(6)). Because the General Permit regulates the discharge of pollutants through the development and implementation of technology-based controls (TBELs, BMPs, and SWPPP), a mixing zone is not applicable. As stated in Section V.B., facilities which cause a contribution to a violation of water quality standards must apply for an MPDES Individual Permit.

VII. Nondegradation

The activities covered by this General Permit have been determined to be non-significant based on 75-5-303 (3)(d) MCA, and 75-5-317(2)(b) MCA, whereas the SWPPP requirement stipulates that the SWPPP and associated BMPs will be implemented prior to the commencement of regulated activities covered under this General Permit. The SWPPP requirement also includes provision for the ongoing inspections and evaluation of BMPs to eliminate or minimize pollutants contained in storm water runoff. If the applicant provides information that indicates the proposed discharge will not meet conditions of ARM 17.30.715(1), the Department will require the operator to amend the SWPPP in order to comply with Montana's Nondegradation Policy and rules.

VIII. Total Maximum Daily Loads (TMDL)

On September 21, 2000, a U.S. District Judge issued an order stating that until all necessary total maximum daily loads (TMDLs) under Section 303(d) of the Clean Water Act are established for a particular water quality limited segment (WQLS), the State is not to issue any new permits or increase permitted discharges under the MPDES program. The order was issued in the lawsuit *Friends of the Wild Swan v. U.S. EPA, et al.*, CV 97-35-M-DWM, District of

Montana, Missoula Division. The Department finds that the renewal and re-issuance of this General Permit does not conflict with the order, because: (1) it is not a new permit, and (2) the permit prohibits storm water discharges that cause or contribute to a violation of water quality standards.

IX. Procedure for Coverage under the General Permit

Through the authority of 75-5-401(1)(c), and the rule requirements in ARM 17.30.1115, the Department uses a "Notice of Intent" (NOI) system to regulate this type of storm water discharge. Through the submittal of an NOI, the owner or operator acknowledges eligibility for coverage under this permit and agrees to comply with the conditions of this permit for their particular "storm water discharge associated with construction activity". ARM 17.30.1115 contains the procedures to be utilized with respect to this NOI-based system.

In order to obtain coverage under the General Permit, an "owner or operator" (as defined in 75-5-103(25)), must submit a complete "NOI Package" to the Department. The NOI Package collectively contains the information required through ARM 17.30.1115. A NOI Package includes the standard NOI form provided by the Department, a SWPPP, and the permit application fee based on ARM 17.30.201. Forms and information pertaining to this are available through the Department's website at <http://deq.mt.gov>.

The NOI form must be completed by the owner or operator of the construction project. The owner or operator means a person who owns, leases, operates, controls, or supervises a point source. A person includes the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, other entity (75-5-103(23), MCA). Persons completing an NOI form, other than an individual, must comply with the signatory requirements in ARM 17.30.1323 and Part 4.15. of the General Permit. The owner or operator assumes responsibility for all storm water discharges at the site.

The Department performs a completeness check of each NOI Package when it is received. This includes a check for completion of items on the NOI form, a check to ensure the SWPPP was provided and is signed as required in the General Permit, and a check to ensure the appropriate fee amount has been submitted.

Based on ARM 17.30.1115(4), authorization to discharge under the General Permit is effective upon receipt by the Department of the complete NOI Package. In order to ensure storm water discharges from the construction site are properly regulated prior to their occurrence, and due to the unpredictability associated with storm water (rainfall and snowmelt) discharges, the Department requires this NOI Package to be submitted prior to the initiation of construction activities at the site.

The NOI Package is not complete and the source is not covered under the General Permit until the Department receives the complete NOI Package (including fees).

Coverage under the General Permit remains in effect until the permittee submits a Notice of Termination (NOT) stating that the site has achieved final stabilization. The NOT form must be signed by the owner or operator or other authorized person in accordance with Part 4.15. of the General Permit. The permittee is responsible for payment of annual fees for each calendar year in which the source is covered under the General Permit.

For all permittees renewing continued coverage under MTR100000, they are not required to submit a new or an amended SWPPP, however, a valid SWPPP must be maintained at the site. They are just required to submit a complete renewal NOI form and a renewal application fee, if applicable, based on ARM 17.30.201.

X. References/ Information Sources

- (1) Administrative Rules of Montana Title 17, Chapter 30 *et seq.*
- (2) Montana Code Annotated Title 75, Chapters 5, Subchapters 1 through 6
- (3) Code of Federal Regulations 40 CFR Parts 122 through 133, and Part 450
- (4) Federal Register, Tuesday December 1, 2009 (federal C & D ELGs)
- (5) Montana DEQ MPDES Permit No. MTR100000, effective date April 16, 2007
- (6) Colorado Department of Public Health and Environment, Colorado Discharge Permit System Permit No. COR-030000, effective date July 1, 2007
- (7) Wyoming Department of Environmental Quality, Wyoming Pollutant Discharge Elimination System Permit No. WYR10-0000, effective date May 9, 2011
- (8) EPA Spring 2011 Draft NPDES General Permit for Discharges from Construction Activities
- (9) EPA 2012 Final NPDES General Permit for Discharges from Construction Activities

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