

# **Exhibit A**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

OCT 31 2019

Ms. Kathryn Emery, Acting Director  
Division of Water and Waste Management  
West Virginia Department of Environmental Protection  
601 57<sup>th</sup> Street SE  
Charleston, West Virginia 25304

Re: Specific Objection to the Proposed Modification of the 2019 General Permit for Stormwater Discharges Associated with Construction Activities (WV0115924)

Dear Ms. Emery:

On August 12, 2019, the U.S. Environmental Protection Agency (EPA or the Agency), received a proposed modification to the above-referenced National Pollutant Discharge Elimination System (NPDES) permit (proposed permit modification) which was reviewed pursuant to 40 C.F.R. § 123.44 and the Memorandum of Agreement (MOA) between the West Virginia Department of Environmental Protection (WVDEP) and EPA Region III (May 10, 1982).

EPA has reviewed the proposed permit modification and has identified portions of it that do not meet the requirements of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* (CWA) and its implementing regulations. As a result, EPA objects to the issuance of this permit and is making this specific objection pursuant to 40 C.F.R. §§ 123.44(b) and (c) and Section II.E of the MOA. Detailed comments that must be addressed are enclosed and provide the basis for the objection. The enclosed comments identify the revisions needed for EPA to remove the objection, as well as the effluent limitations and conditions that the permit would include if it were issued by EPA, *see* 40 C.F.R. § 123.44(b)(2)(ii).

We look forward to working cooperatively with WVDEP to resolve the issues identified in an expeditious manner. Until the issues are resolved, WVDEP may not finalize the proposed modification to the 2019 CGP without written authorization from EPA as identified in 40 C.F.R. § 122.4(c). In accordance with 40 C.F.R. § 123.44(h), if the State does not resubmit a permit revised to meet the Region's objection within the times provided by that section, the Regional Administrator may issue the permit in accordance with the CWA and implementing regulations.

If you have any questions, please do not hesitate to contact me, or Michelle Price-Fay, Chief, Clean Water Branch, at (215) 814-3397.

Sincerely,

A handwritten signature in black ink that reads "Catherine A. Libertz".

Catherine A. Libertz, Director  
Water Division

Enclosure(s)



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## **EPA Detailed Comments for the proposed modification of the West Virginia General Permit for Stormwater Discharges Associated with Construction Activities (WV0115924)**

Based on EPA's review of the proposed permit modification, the following comments must be address in a revised submission.

### **1. Fact Sheet**

The fact sheet provided with the proposed permit modification is not consistent with the requirements in federal regulations at 40 CFR § 124.8. The federal regulations require fact sheets to include a discussion of the principal factual, legal, methodological and policy matters considered by the permitting authority in the preparation of the draft permit modification. The federal regulations also require fact sheets to include specific information such as: the dates for the public comment period, how and where to submit comments, procedures for a public hearing request, or relevant information for a point of contact at WVDEP. The fact sheet provided on August 12, 2019 does not meet these requirements.

To resolve this portion of our objection, WVDEP must revise the fact sheet and submit a document consistent with the requirements listed in 40 CFR § 124.8. If EPA were to issue the permit, it would ensure that the fact sheet met the requirements of the federal regulations, including 40 C.F.R. § 124.8(b).

### **2. Continuation of Coverage under the 2012 Construction General Permit**

The proposed permit modification inappropriately allows for coverage under an expired permit. Federal regulations at 40 CFR § 122.6(d) state “[s]tates authorized to administer the NPDES program may continue . . . State-issued permits until the effective date of the new permit.” Additionally, per 40 CFR § 122.46(b), the term of an NPDES permit shall not be extended by modification beyond the maximum duration of permits, which is five years. 40 CFR 122.6 allows permits to be administratively extended until the effective date of a new permit, but once that new permit takes effect the prior permit can no longer be used.

The 2012 Construction General Permit (CGP) expired January 3, 2018 and was administratively extended. In January 2019, the 2012 CGP was replaced by the reissued 2019 CGP, which had an effective date of February 9, 2019. As of February 9, 2019, coverage under the 2012 CGP was no longer available and the terms and conditions of that permit ceased to exist. WVDEP may not allow permittees to maintain coverage under this expired permit. The proposed permit modification allows for permittees to continue to operate under the terms of the 2012 CGP and modifies the February 2019 CGP to continue allowing permittees to follow terms and conditions of the 2012 CGP, extending the effective date of the 2012 CGP beyond five years, as well as having two permits in effect simultaneously. Both practices are inconsistent with federal regulations.

To resolve this portion of our objection, references to allowing permittees to continue to follow the terms and conditions of the 2012 CGP listed on pages 2 and 3 of the proposed permit modification must be removed. If EPA were to issue the permit, it would allow for a process, similar to EPA's CGP, (see CGP Part 1.4.3) that grants permittees additional time to submit their NOI for coverage under the



reissued permit. However, EPA would not allow permittees to continue to follow the requirements of an expired permit to be consistent with federal regulations.

### **3. Water Quality/Anti-degradation Concerns**

The proposed permit modification does not adequately protect water quality because it is inconsistent with state anti-degradation regulations at 60CSR5, which apply to all waters of the state and require that “existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.” § 60-5-3.1; see also 47 CSR 2-4.1.

The February 2019 CGP was protective of water quality because it contained the term “Sensitive Waters” and the requirement for enhanced best management practices (BMPs) for projects that discharged to those waterbodies needing additional protection, which it identified as Tier 2 and 3 waters, trout streams, and waters with established sediment related Total Maximum Daily Loads (TMDLs). The proposed permit modification reduces those protections in three ways: by limiting the categories of waters that require protection; by changing the definition of “trout streams”; and by not requiring enhanced BMPs for discharges to those waters needing additional protection. Each issue is discussed further below.

The proposed permit modification replaced the term “Sensitive Waters” contained in the February 2019 CGP with the narrower term “Special Waters”, reducing the categories of waters that are required to implement enhanced BMPs. Specifically, the February 2019 CGP defined “Sensitive Waters” as “Tier 2 and Tier 3 Streams, trout streams, or water bodies with an established sediment related TMDL.” The new term “Special Waters” in the proposed permit modification is defined as “Tier 3 waters, as those waters are defined and set forth in 47 C.S.R., Series 2; (ii) trout waters specifically identified in 47 C.S.R., Series 2 (excluding warm water streams, warm water fisheries stocked with trout or those without sufficient age classes of trout to demonstrate a population of trout through natural reproduction); and (iii) streams for which a sediment TMDL (but not those streams for which a TMDL for iron, aluminum or other parameters are developed, unless sediment is also addressed) has been completed.”

EPA’s first concern is that the term “Special Waters” does not protect Tier 2 waters, which the February 2019 CGP defined as “waters that maintains and protects ‘high quality’ waters – water bodies where the level of water quality exceeds levels necessary to support recreation and wildlife and the propagation and maintenance of fish and other aquatic life. Tier 2 is the default assignment for a waterbody not listed as impaired on the states [sic] 303(d) list.” The state regulations define Tier 2 waters as “high quality waters”, which in turn is defined as “those waters whose quality is equal to or better than the minimum levels necessary to achieve the national water quality goal uses”. See 47 W.V. C.S.R. 2-2.8 and 2-4.1.b.

Second, the definition of “Special Waters” explicitly excludes warm water trout streams. Furthermore, the proposed permit modification explicitly narrowed the definition of “Trout Streams” to exclude warm water streams, removing the requirement for enhanced BMPs on those waters. This revised definition is inconsistent with West Virginia law, which defines “Trout Waters” as “waters which sustain year-round trout populations. Excluded are those waters which receive annual stockings of trout but which do not support year-round trout populations.” 47 WV C.S.R. 2-2.19. The 2019 CGP definition of “Trout Streams” repeated this definition verbatim and cited to the definition in state law. The proposed permit modification, however, redefines “Trout Streams” as “Waters which sustain year-round trout populations. Excluded are those warm water streams, warm water fisheries stocked with trout or those without sufficient age classes of trout to demonstrate a population of trout through natural reproduction.” This redefinition excludes warm water streams and deletes the reference to state law.

Finally, the definition of “Enhanced BMPs” in section II.H.3.b.2.b of the proposed permit modification is virtually identical to the definition of “BMPs” in section II.H.3.b.2.a of the permit – the only appreciable difference is that inspections are required after a precipitation event greater than 0.25 inches in a 24-hour period instead of being required after a precipitation event greater than 0.50 inches in a 24-hour period; all other requirements are the same. As a result, there is no assurance that “Special Waters” will receive any greater protections than any other waters of the state.

To resolve this portion of our objection, WVDEP must maintain consistency with state water quality standards, which includes restoring the protections to Tier 2 and 3 waters and trout streams as defined by West Virginia law. If EPA were to issue the permit, it would clarify the differences between “BMPs” and “Enhanced BMPs” using clear, specific, and measurable language, and be consistent with the state’s water quality standards and anti-degradation requirements.

#### **4. Water Quality/TMDL Concerns**

The proposed permit modification revised the definition of “Special Waters” and added a definition of “Sediment TMDL” such that permittees would not be required to implement all applicable TMDL wasteload allocations (WLAs), contrary to federal regulations. As a result, the proposed permit modification will not protect water quality in West Virginia.

Federal regulations require that permits be written consistent with the assumptions and requirements of wasteload allocations (WLAs) in approved TMDLs. 40 C.F.R. § 122.44(d)(1)(vii)(B). WVDEP develops iron TMDLs to address, among other things, iron and biological impairments due to sediment.<sup>1</sup> These TMDLs assign WLAs to multiple sources, including construction stormwater sources. According to the definitions for “Sediment TMDL” and “Special Waters” in the proposed permit modification, there is potential that implementation will occur for only those WLAs for construction stormwater activities developed for surrogate iron TMDLs to address biological impairments caused by sediment<sup>2</sup>. Therefore, the requirements in the proposed permit modification for discharges to waters with TMDLs do not comply with the allocations for construction stormwater in West Virginia’s various applicable TMDLs and therefore do not comply with federal regulations.

To resolve this portion of our objection, the definition of “Special Waters” from the draft permit modification must be changed to the original definition for “Sensitive Waters” as it appeared in the February 2019 CGP. In addition, the definition of “Sediment TMDL” must be removed from the permit,

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<sup>1</sup> WVDEP uses a stressor identification process to demonstrate that biological impairment caused by sedimentation will be resolved through the attainment of total iron numeric water quality criteria. Thus, in West Virginia, iron is considered an appropriate surrogate for sediment when developing TMDLs for biological impairments – i.e., controlling iron controls sediment.

<sup>2</sup> As an example, the 2018 Hughes River Watershed TMDL has 177 iron TMDLs which include construction stormwater WLAs for iron because sediment is a source of iron impairment. Only 33 of the 177 iron TMDLs were surrogate iron TMDLs to address biological impairments due to sediment. According to the proposed permit modification, only the 33 iron TMDLs developed to address biological impairments due to sediment might be implemented. The remaining 144 iron TMDLs may not be implemented because these iron TMDLs were not expressly developed to address sediment impairments (even though sediment is a major source of iron).

as it was not included in the February 2019 CGP and restricts the applicable WLAs for which Enhanced BMPs would be implemented.

If EPA were to issue the permit, it would remove the definition of “Special Waters” and replace it with the original definition of “Sensitive Waters” from the February 2019 CGP. Additionally, EPA would remove the definition of “Sediment TMDL” and add language to ensure that all TMDL WLAs for construction stormwater are implemented for all pollutants.

## **5. Definition of Stormwater Discharge Associated with Small Construction Activity**

The proposed permit modification removes the term “clearing” from the list of activities that are require coverage under the CGP. In addition, the definition of “Construction Activity” in the proposed permit modification has been altered and the term “clearing” has been removed. These changes are not consistent with federal regulations. 40 CFR § 122.26(b)(15) includes the term “clearing” in the definition of construction activities that require NPDES permit coverage.

To resolve this portion of our objection, WVDEP must revise the permit to include the term “clearing” in both the eligibility condition and definition of “Construction Activity” to be consistent with the federal regulations. If EPA were to issue the permit, it would revise the eligibility condition and the definition of “Construction Activity” to be consistent with the federal regulations.

## **6. Post-Construction Requirement**

In accordance with 40 C.F.R. § 122.26(c)(1)(ii)(D), operators of stormwater discharges associated with small construction activity are required to provide a narrative description of “proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements.” The proposed permit modification is inconsistent with federal regulations because it does not include post-construction requirements.

To resolve this portion of our objection, the permit must be revised to include the requirement that permittees be required to submit at least a narrative description of post-construction management practices that are expected to be implemented once construction is complete. If EPA were to issue the permit, it would include the requirement that permittees be required to submit at least a narrative description of post-construction management practices that will occur once construction is complete.

## **7. Anti-backsliding**

The Clean Water Act prohibits backsliding in NPDES permits unless certain specific exceptions to that rule apply. *See* Section 402(o) of the CWA, 33 U.S.C. § 1342(o) (“[A] permit may not be renewed, reissued, or modified on the basis of effluent guidelines...subsequent to the original issuance of such a permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit...”). *See also* 40 C.F.R. § 122.44(l). Reducing the water quality protections that were provided by a previous permit that was in effect constitutes a less stringent condition and violates the prohibition against anti-backsliding. The proposed permit modification includes numerous changes, many of which are described in this objection letter, that reduce the water quality protections provided to West Virginia waters as compared to February 2019 CGP. Furthermore, according to EPA’s analysis, none of the exceptions provided by the federal regulations in 40 C.F.R. § 122.44(l)(i) apply to the proposed permit modification.

To resolve this portion of our objection, the Water Quality section in the proposed permit modification must be revised to restore water quality protections that were included in the Water Quality section of the February 2019 CGP (Part I.C). If EPA were to issue the permit, it would restore those water quality protections and remove the provisions of the permit that constitute backsliding.

## **8. Records Retention**

Part II.H.5 of the proposed modified permit states that the permittee does not have to retain certain records submitted to WVDEP. This is not consistent with federal regulations at 40 C.F.R. § 122.41(j)(2), which require the permittee to retain all records for a period of three (3) years from the date of the measurement, sample, report or application.

To resolve this portion of our objection, WVDEP must revise the permit and remove the language found in two instances in Part II.H.5 of the proposed permit modification that do not require records to be retained as required. If EPA were to issue the permit, it would revise the permit accordingly.

## **9. Signatory Requirements**

Part II.B.2.f of the proposed permit modification allows a Qualified Person (as defined in the permit) to sign inspection reports. This is not consistent with federal regulations at 40 C.F.R. § 122.22(b), which requires that all reports required by the permit be signed by the person(s) designated in 40 C.F.R. § 122.22(a). As defined in the draft permit modification, a “Qualified Person” is not listed in federal regulations as an allowable signatory.

To resolve this portion of our objection, WVDEP must revise the proposed permit modification to include the language from the February 2019 CGP that requires the proper signature for inspection reports consistent with regulations. If EPA were to issue the permit, it would revise the permit accordingly.

Finally, EPA offers the following recommendations for inclusion in the CGP.

### **1. Permit Language Recommendation**

EPA’s review of the proposed permit modification identified several areas where phrases such as “as soon as practicable” or “as soon as practical” were used. The inclusion of this type of language presents the following concerns: it is imprecise in its interpretation and thus makes enforcing the permit terms more difficult; it can lead to backsliding; and it is not consistent with EPA’s intent for clear, specific, and measurable language for NPDES permits. All references to “as soon as practical” or “as soon as practicable” should be revised so that the permit includes specific timeframes for completion of permit requirements.

### **2. Document Mark Ups**

In addition to this letter, EPA is also providing comments in track changes of the proposed permit modification and fact sheet, which will serve to convey additional recommendations that the Agency considers beneficial to enhancing the permit documents and provide opportunities for additional clarity.







**STATE OF WEST VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF WATER AND WASTE MANAGEMENT  
601 57th STREET SE  
CHARLESTON, WV 25304-2345**

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
WATER POLLUTION CONTROL PERMIT**

**Permit No WV0115924**

**Issue Date: January 10, 2019  
Effective Date: February 9, 2019  
Revised Date:  
Expiration Date: February 9, 2024**

**Subject: Stormwater Associated with  
Construction Activities**

**To Whom It May Concern:**

This is to certify that any establishment with discharges composed entirely of stormwater associated with construction activities disturbing one acre or greater of land area which may be regulated under the terms and conditions of this general permit, has satisfied the registration requirements, and which has not been required by the Director of the Division of Water and Waste Management to apply for an individual permit, is hereby eligible to allow stormwater discharges into the surface waters of the State under this General WV/NPDES Water Pollution Control Permit. Authorization to discharge under this permit must be provided by the Director.

Construction activities are land disturbing operations such as grubbing, grading, filling and excavation operations during site development for residential, commercial or industrial purposes. The following are not eligible for coverage under this NPDES General Permit:

1. Operations that result in the disturbance of less than one acre of total land area, which are not part of a larger common plan of development or sale.
2. Stormwater discharges associated with land disturbing activities that may reasonably be expected to be causing or contributing to a violation of a water quality standard as determined by the Director.

**Commented [A1]:** The definition of stormwater associated with construction activity found at 40 CFR 122.26(b)(15) includes clearing. Removal of that term from this permit does not comply with federal regulations.

3. Land disturbance activities already governed by other Department of Environmental Protection NPDES permits. This includes Division of Mining and Reclamation permits for coal mining and non-metallic quarries.
4. Landfills, except in the preparation of a new landfill and/or clay borrow areas.
5. Other activities exempt from NPDES permitting requirements as set forth in 40 C.F.R. 122.3 and 47 C.S.R. 10-3.2.b.4 (NPDES Program).
6. Land disturbing activities related to oil and gas activities as required by the Energy Policy Act of 2005. These activities include but are not limited to construction of drilling sites, waste management pits, and access roads, as well as construction of the transportation and treatment infrastructure such as pipelines, natural gas treatment plants, natural gas pipeline compressor stations, and crude oil pumping stations. These discharges are covered under a separate permit
7. Construction activities that result in a discharge of a reportable quantity release or that contribute pollutants (other than non-contaminated sediments) to a violation of a water quality standard are still subject to permit coverage.

**Commented [A2]:** List WV permit that provides coverage for these activities here.

**Commented [A3]:** This is confusing. The list includes activities not eligible for coverage under the permit. Yet this states that they are subject to permit coverage? Can this be reworded/explained better somehow? Also, how will potential permittees know whether they would contribute pollutants or would have a reportable quantity release?

This General WV/NPDES Water Pollution Control Permit is to allow stormwater discharges into the surface waters of the State while protecting water quality and is subject to the following terms and conditions:

The information submitted on and with the application form will hereby be made terms and conditions of the General Permit with like effect as if all such information were set forth herein, and other pertinent conditions set forth in Parts I, II, III, and IV and appendices A, B, and C.

Persons authorized to discharge storm water associated with the 2012 Permit WV0115924, Stormwater Associated with Construction Activities ("the 2012 Permit"), shall be authorized to complete and/or modify (e.g., SWPPP, GPP, Limits of Disturbance) such activities under the terms and conditions of the 2012 Permit, a copy of which is incorporated into this Permit as Appendix D. This authorization, granted in order to allow for an efficient transition of existing projects to this Permit, allows persons with projects authorized under the 2012 Permit before February 9, 2019 to modify or complete remaining authorized construction activities, and grants such persons authorization to complete all required work under the 2012 Permit terms and conditions, including final site stabilization and obtaining termination of the 2012 Permit terms and conditions.

**Commented [A4]:** Per 40 CFR 122.6(d), States authorized to administer the NPDES program may continue state-issued permits until the effective date of the new permits.

**Commented [A5]:** This is not allowable. The 2012 permit expired and has been replaced by the 2019 permit. Therefore, the terms of the 2012 CGP are no longer valid. New permit coverage may not be issued under an expired permit. Additionally, an expired permit may not be modified.

All such work under the 2012 Permit terms and conditions is expected to be completed on or before February 9, 2020. In the event a permittee cannot practicably complete previously authorized construction activities and associated site stabilization activities, and termination of permit coverage cannot be accomplished, by February 9, 2020, the permittee may request a single additional extension of up to 6 months to complete all work and obtain termination of the 2012 Permit terms and conditions. In the event such an extension is desired, a written request for an extension must be received by the Director no later than 45 days prior to February 9, 2020.

**Commented [A6]:** See above. Work may not continue under the 2012 permit for any amount of time since it has been replaced by the 2019 permit. Any permittees that maintained coverage under the 2012 permit wishing to continue coverage must apply under the 2019 permit.

**Commented [A7]:** Per 40 CFR 122.46(b), the term of an NPDES permit shall not be extended by modification beyond the maximum duration of five years.

Construction projects that were authorized to continue under the 2012 Permit terms and conditions, and will not be completed within the time allowed in the previous paragraphs, must continue construction under the terms and conditions of this Permit. For any such carryover project, the permittee must provide to the Director a signed certification of agreement to abide by the terms and conditions of this Permit at least 60 days before the end of the extension allowed in the previous paragraphs for operations under the terms and conditions of the 2012 Permit. Annual fees apply to all carryover projects, and an application fee will be required at the time any certification of agreement is submitted. Where any incomplete projects authorized under the 2012 Permit have disturbed lands that have not been permanently stabilized, status maps are required with the signed certification of agreement. The status map shall show all areas disturbed and not stabilized, and the Limits of Disturbance (LOD), which is the total area approved under the registration for land disturbance.

### **Compliance with other laws and statutes**

Compliance with the terms and conditions of this permit shall be deemed compliance for purposes of the State Water Pollution Control Act, W. Va. Code 22-11-1, et seq., and the rules promulgated thereunder, and sections 301, 302, 303, 306, 307, and 403 of the federal Water Pollution Control Act, including all state and federal water quality standards as set forth at W. Va. Code 22-11-6(2). This provision does not apply to any such standard imposed under section 307 of the federal Water Pollution Control Act for a toxic pollutant injurious to human health.

**Commented [A8]:** Confusing – just said it is deemed compliance with 307 in sentence above.

Nothing in this General Permit shall be construed as relieving the permittee from compliance with any applicable federal, state, or local statutes, ordinances, or regulations.

### **Continuation of this general permit**

If this general permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with 47 C.S.R. 10 and remain in force and effect. If you were authorized to discharge under this general permit prior to the expiration date, any discharges authorized under this permit will automatically remain covered by this general permit until the earliest of:

- Your authorization for coverage under a reissued general permit or a replacement of this general permit following your timely and appropriate submittal of a complete application requesting authorization to discharge under the new general permit and compliance with the requirements of the new permit; or
- Your submittal of notification of termination that the facility has ceased operations; or
- Issuance or denial of an individual permit for the facility's discharge; or
- A formal permit decision by DWWM not to reissue this general permit, at which time DWWM will identify a reasonable time period of covered dischargers to seek coverage under an alternative general permit or individual permit. Coverage under this permit will cease at the end of this time period.

**Commented [A9]:** For?

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**PART I. INTRODUCTION**

**I.A. TERMS OF PERMIT**

The permittee must comply with all terms and conditions of this General Permit. Permit noncompliance constitutes a violation of the *West Virginia Water Pollution Control Act*, W. Va. Code § 22-11-1, et seq. ("WPCA") and/or the *West Virginia Groundwater Protection Act*, W. Va. Code § 22-12-1, et seq. ("GWPA") and is grounds for enforcement action; permit modification; suspension or revocation; or denial of a permit renewal application. See, W. Va. Code §§ 22-11-12, 22-11-22, 22-11-24, and 22-12-10.

**I.B. COMPLIANCE REQUIREMENT**

Compliance with this General Permit, the approved Stormwater Pollution Prevention Plan and the Groundwater Protection Plan is required upon the beginning of the construction project.

**I.C. WATER QUALITY**

The permittee must protect water quality and the existing and designated uses of receiving waters by implementing BMPs. Properly designed, operated and maintained BMPs and Enhanced BMPs as set forth and contained in this General Permit are designed to protect applicable water quality standards by minimizing impacts to water quality and protecting existing and designated uses of the water and shall be considered protective of and in compliance with the applicable water quality standards. The Director reserves the authority to impose additional requirements and terms and conditions as necessary on a case-by-case basis upon a demonstration that such are necessary to protect applicable uses.

Compliance with the terms of this Permit, including the use of appropriate BMPs (regular or enhanced) at construction sites, satisfies the antidegradation requirements of 47 C.S.R. 2 and 60 C.S.R. 5.

Receiving waters shall be protected from degradation through the implementation of appropriate BMPs. Enhanced BMPs must be used for projects discharging directly to Special Waters.

Individual stream crossings must be completed in accordance with the 401 certification. Whatever crossing method is chosen by the permittee, the crossing should be completed as soon as practicable.

**I.D. REQUIRED REPORTING**

**I.D.1. Reporting Spill and Accidental Discharges**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to 47 C.S.R.

**Commented [A10]:** Special Waters has a different definition in this modification than the waters included in the definition of "Sensitive Waters" from the original version of the 2019 CGP. This is less protective of water quality and could be considered out of compliance with anti-backsliding regulations as well as anti-degradation requirements.

**Commented [A11]:** Why is this referencing a 401 certification? This is a state-issued permit, so a 401 certification should not be required. Confusing.

11-2. (Special Rules) of the West Virginia Legislative Rules promulgated pursuant to Chapter 22, Article 11.

#### I.D.2. Immediate Reporting

The permittee shall report any spill or release of pollutants to waters of the state which may endanger human health or the environment immediately after becoming aware of the circumstances by using the Department's designated spill alert telephone number ((800) 642-3074) or by calling the Director or his representative. A written submission shall be provided within five calendar days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and time, and if, the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

#### I.D.3. Reportable Quantities

This permit does not relieve the permittee of the reporting requirements of 40 C.F.R. Part 117 and 40 C.F.R. Part 302. The discharge of hazardous substances in the stormwater discharge(s) from a project is not authorized by this General Permit, and in no case, shall the discharge(s) contain a hazardous substance.

**Commented [A12]:** Is "hazardous substance" defined somewhere? I don't see it in the definitions.

#### I.E. DIRECTOR'S AUTHORITY TO REQUIRE OTHER PERMITS

In accordance with WV 47 C.S.R. 10 §13.6.b.2.A, the Director may require any person authorized by this permit to apply for and obtain either an individual NPDES permit or an alternative NPDES General Permit. Any interested person may petition the Director to take action under this paragraph. The Director may require any owner or operator authorized by this permit to apply for an individual NPDES permit only if the owner or operator has been notified in writing that such a permit application is required.

#### I.F. ALLOWABLE DISCHARGES

All discharges authorized by this permit shall be composed entirely of stormwater, except as follows:

Discharges from emergency firefighting activities, fire hydrant flushing; waters used to wash vehicles, provided there is no discharge of soaps, solvents, or detergents used for that purpose; waters used to control dust; potable water sources, including uncontaminated waterline flushing; landscape irrigation; lawn watering; routine external building washdown which does not use detergents; pavement washwater provided spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used, provided that such pavement wash waters may not be discharged directly into any surface water, storm drain inlet, or stormwater conveyance, unless the conveyance is connected to a sediment basin, sediment trap, or similarly effective control; uncontaminated air conditioning condensate; uncontaminated, non-turbid discharges of groundwater or springs; foundation or footing drains

where flows are not contaminated with process materials such as solvents that are combined with stormwater discharges associated with industrial activity; other construction dewatering activities that are treated by an appropriate control.

### I.G. PROHIBITED DISCHARGES

The following discharges are not authorized by this permit.

- Sediment laden stormwater that has not gone through an appropriate best management control;
- Directing pavement wash-waters directly into any surface water, storm drain inlet, or stormwater conveyance, unless the conveyance is connected to a sediment basin, sediment trap, or similarly effective control;
- Wastewater from washout of concrete unless managed by an appropriate control;
- Wastewater from washout and cleanout of stucco, paint, bituminous asphalt, form release oils, curing compounds and other construction materials;
- Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and soaps, solvents, or detergents used in vehicle and equipment washing, or external building washdown.
- Toxic or hazardous substances from a spill or other release.

This permit does not authorize the conveyance, diversion, channeling, directing or otherwise allowing the discharge of stormwater into a sinkhole without an Underground Injection Control Permit.

This permit does not authorize new sources or new discharges of constituents of concern to impaired waters unless consistent with the approved sediment TMDL and/or applicable state law (WV 47CSR10 and WV Code 22-11).

### PART II. PRE-CONSTRUCTION REQUIREMENTS

PRIOR TO CONSTRUCTION, the following are required:

- A complete application, prepared by a Qualified Person, for authorization to discharge stormwater from construction related land disturbance shall include:
  - Installation of a sign at the entrance to the project or posting of a notice in a public place in close proximity to the construction site as indication the application has been submitted;
  - Timely corrections or submission of additional information to provide clarity about the proposed construction project, as requested by the Director;
  - Cooperation with the public notice process, when appropriate, by making prompt payment to the local newspaper that will publish the Class I legal advertisement, effectively notifying the public that the application is pending;

**Commented [A13]:** A large number of impaired waters do not have a TMDL associated with them. Do the WV regs cited here address requirements for both impaired waters and waters where a TMDL has been established?

**Commented [A14R13]:** Also, how is the permittee supposed to know whether a discharge is consistent with a TMDL? That's the permit writer's job.

- Making timely changes to the application, as necessary, based on public input; and

After receiving Director's approval and before beginning construction activities:

- Install sediment and erosion controls;
- Qualified Person inspects the newly installed sediment and erosion controls.
  - Impounding structures not built as approved shall be inspected and documented as meeting the trapping capacities and efficiencies of the structures approved in the registration.

## II.A. APPLICATIONS

### II.A.1. Application Requirements

Submittal of the application shall be made using the online Electronic Submission System, unless otherwise approved by the Director. All documents must be signed in accordance with the signatory requirements described in Appendix A.7.

#### II.A.1.a. Application Fee

The application fee shall be paid in full prior to the Director reviewing the application. Fee amounts listed in and subject to changes in the NPDES Fee Schedule C.S.R. 47-26.

#### II.A.1.b. Public Notice Advertisement

Applications for projects less than 100 acres are not subject to public notice or public hearing requirements other than notification on the DEP website that the registration application has been received, and signage at the site of the construction project.

Applications for land disturbance of 100 or more acres are subject to Public Notice in a local newspaper therefore, the Notarized Statement for Billing form is required with the application.

#### II.A.1.c. Large Construction Projects

Projects disturbing 3 or more acres of land shall submit an application containing:

- Application Form, to include template for the sign
- Stormwater Pollution Prevention Plan;
- Groundwater Protection Plan;
- Pre-Construction Drainage Map
- During Construction Drainage Map showing the proposed location of all drainage structures and associated access routes;
- Annual Progress Map if permitted for longer than one year;
- Detailed Site Plan (Maps) showing Limits of Disturbance and Receiving Waters; and
- Design Details for:

**Commented [A15]:** The previous version of this permit required PN for other types of projects as well, such as projects discharging to Tier 3 waters and projects of 3 acres or more with grading phasing last more than one year. What is the rationale/justification for this change?

**Commented [A16]:** Why was the requirement to provide a post-construction drainage map removed?



- Sediment basins, road, cut and fill cross sections, and other engineered structural design calculations; and
- Other controls to include post-development stormwater management plans required by local governments
- Applications for Large Construction Projects shall be submitted 45 days before the anticipated date of construction is to begin.
  - Applications for Large Construction Projects requiring Public Notice per II.A.1.b. shall be submitted 100 days before the anticipated date of construction is to begin.

II.A.1.d. Construction Projects Disturbing 1 to <3 Acres ~~that are Not Single Family Homes~~

**Commented [A17]:** Added to contrast with e, below

Projects disturbing 1 to < 3 acres of land ~~that are not single-family homes (see Part II.A.1.e below)~~ shall submit an application in accordance with the following:

II.A.1.d.1. Projects of 1 to <3 Acres That Will Be Completed in 1 Year or ~~Less~~

**Commented [A18]:** 40 CFR 122.28(b)(2)(ii) requires the contents of the NOI (similar to registration application) be specified in the permit.

Projects disturbing more than one acre but less than three acres that (1) do not discharge to or upstream of Tier 3 waters, and (2) will be completed within twelve (12) months, shall submit only the Notice of Intent Form (NOI) at least 15 days prior to initiating earth disturbance. The DEP shall provide its written confirmation of coverage via email or otherwise, within 10 days of submission of an NOI. If no response from the DEP is received, construction can proceed 15 days after submitting the NOI, subject to the terms and conditions of the permit, provided that the permittee provides notice by email or otherwise to the DEP prior to commencing earth disturbance. *Permit coverage for any project authorized through an NOI automatically terminates at the end of twelve (12) months beginning from the date of issuance of the site authorization to the NOI registrant or, in the event that no response was received by the applicant, from the 15<sup>th</sup> day that the NOI was submitted. Any person authorized under an NOI that cannot complete all required work prior to the automatic termination must file an application for coverage as a minor activity 30 days prior to the termination date.* All permit terms and conditions must be complied with, provided however, that because the permit authorization terminates automatically, no Notice of Termination (NOT) is required.

~~Construction of these projects cannot commence without the development of both a Stormwater Pollution Prevention Plan and Groundwater Protection Plan, which must be available onsite.~~

**Commented [A19]:** No maps or site plans required?

II.A.1.d.2. Projects of 1 to <3 Acres That Will Be Not Be Completed in 1 Year or Less

A project that disturbs one to less than three acres but will not complete construction and post-construction activities within twelve (12) months must file an application ~~as set forth below.~~

~~Projects disturbing one acre but less than three acres of land but not qualifying to use the NOI other than single family homes as explained in Part II.A.1.e. below, shall submit an application~~ containing the following:

**Commented [A20]:** Not needed due to adding language to title of section

- Application form, to include template for the sign
- Stormwater Pollution Prevention Plan;
- Groundwater Protection Plan;
- Pre-Construction Drainage Map;
- Temporary Drainage Structure Map
- Site Plan (Map) showing Limits of Disturbance and Receiving Waters
- Typical Design Details.

**Commented [A21]:** Are there separate application forms vs NOI forms? This is confusing. Is this the same as the Site Registration Form? Would be helpful to use consistent terminology

**Commented [A22]:** The During Construction and Post Construction drainage maps requirements were removed, along with the annual progress map req't. What is the rationale for removing these requirements?

- Applications for Minor Construction Projects shall be submitted 30 days before the anticipated date of construction is to begin.

#### II.A.1.e. Construction of Single-Family Homes: 1 to < 3 Acres

Projects for construction of Single-Family Homes of 1 to <3 acres including offsite borrow and waste sites, by the homeowner or homeowner's contractor are subject to this permit and shall submit:

- Application Form; and
- Agreement to use DWWM Individual House Sample Sediment and Erosion Control Plan found in the West Virginia Erosion and Sediment Control BMP Manual (BMP Manual), or other BMPs that are equally protective of water quality.
- Applications for construction of Single-Family Homes of 1 to < 3 acres shall be submitted 30 days before the anticipated date construction is to begin.

**Commented [A23]:** No SWPPP or GPP required for these projects?

#### II.A.1.f. Offsite Waste and Borrow Areas

Offsite waste and borrow areas one acre or greater must be included in applications and approved before material may be removed from or accepted at the site. Such areas must be included in the application when associated with single-family homes, linear projects, or any other construction project. Offsite waste or borrow sites less than one acre in size that are not contiguous to the construction site must provide sediment and erosion controls and may be included with the application, however, there is no requirement to do so unless otherwise required by the Director.

If a waste/borrow area is not known during the initial application, the registration can still be issued. Once the location of a waste/borrow area is identified it is the responsibility of the applicant to modify their registration to include contiguous area(s) or non-contiguous areas of one acre or more. When the permittee does not have "legal ability to control" non-contiguous areas of one acre or more, the permittee may contact the DEP to inquire if the non-contiguous acre or more has been properly permitted and therefore, a site suitable for waste or borrow. The permittee may also make an inquiry of the party that does have the "legal ability to control" the non-contiguous site if it is properly permitted before accepting material from or sending material to the site.

When contaminated soils are identified, a soil handling plan shall be provided. Contaminated soil is not suitable material for borrow or fill unless approved by the Director.

#### II.A.2. Emergency Procedures

When conducting earth-disturbing activities in response to a public emergency (e.g., natural disaster, widespread disruption in essential public services), and the related work requires immediate authorization to avoid imminent endangerment to human health, public safety, or the environment, or to reestablish essential public services, authorization to discharge is conditioned that a complete and accurate application is submitted within 30 calendar days after commencing earth-disturbing activities establishing eligibility under this permit.

Documentation to substantiate the occurrence of the public emergency must be included in the application.

#### II.B. POSTING SIGN OR NOTICE

Within 72 hours of filing an application, the applicant shall display a sign for the duration of the construction project near the entrance of the project or, for linear projects, at a location near an active part of the project that is accessible by the public; containing the following information:

- The applicant's name and emergency telephone number;
- Project Reference ID;
- For info on this stormwater permit  
Call: 800-654-5227 or [DEP. Comments@wv.gov](mailto:DEP.Comments@wv.gov).
- Permit Number (See II.B.4.)

II.B.1. The sign shall be a minimum of two feet by two feet and be at least three feet above ground level; clearly visible and legible from a public roadway or right-of-way.

II.B.2. If it is not feasible to display a sign at or near the project, the applicant may post, within 72 hours of filing the application a notice containing the foregoing information at a local public building, including, but not limited to, a town hall or public library.

II.B.3. The application shall provide the location where the sign or notice is to be posted.

II.B.4. Within 7 business days of assignment of the permit registration number, the applicant shall affix such number to the sign or to the posted notice.

#### II.C. INCOMPLETE OR INCORRECT APPLICATIONS

As the application is evaluated by the Director, notice may be sent to the applicant during the review period that the plan does not meet one or more of the specific minimum requirements of this permit. After such notification, the applicant shall have 30 days to resubmit the application.

II.C.1. An applicant needing additional time to respond to requests for changes or additional information must request an extension prior to the end of the 30 days, or:

- The Director may terminate the application, after making a reasonable attempt at, and being unsuccessful in, contacting the applicant to provide notice of the pending termination. The Director may cause a pending termination message to be sent from his official mailbox which has an email address of [DEPNPDESEP@wv.gov](mailto:DEPNPDESEP@wv.gov) to the applicant's email address as listed on the registration application.
  - It is the responsibility of the applicant to keep the Director informed of accurate contact information, and in lieu of a successful notice from his official mailbox, the Director may attempt to contact the applicant by phone to provide notice of the pending termination.
- Upon successful contact with the applicant, the Director has the option of terminating or extending the due date for resubmission of the application.

#### II.D. PUBLIC NOTICING OF APPLICATIONS

The Applicant shall cooperate with the public notice of applications required by Part II.A.1.b:

- Making payment for a Class I Legal Advertisement concerning the application to the local newspaper with the largest readership in the vicinity of the proposed project.
- Obtaining from the newspaper, and submitting to the Director, an affidavit of the publication of the Class I Legal Advertisement.

#### II.E. AUTHORIZATION TO DISCHARGE

The applicant is prohibited from disturbing land prior to obtaining approval from the Director for activities covered by this permit. The Director shall send an approval or denial of the application via his official mailbox, [DEPNPDESEP@wv.gov](mailto:DEPNPDESEP@wv.gov) and,

- The Director has no further obligation to attempt to verify the applicant received the approval or denial, as
- It is the responsibility of the applicant to keep the Director informed of up-to-date and accurate contact information.

The Applicant shall maintain a copy of the approval from the Director onsite and make it available to DWWM Personnel or the public upon request.

#### II.F. INSTALLATION OF EROSION AND SEDIMENT CONTROLS

After receiving approval from the Director and before beginning construction activities, the permittee shall install erosion and sediment control BMPs in accordance with the approved registration. BMPs shall be in place and functional prior to land disturbance associated with the authorized construction activities. For registrations proposed to be completed in

**Commented [A24]:** What about the language above re: not hearing from the Director within 15 days counts as authorization?

multiple phases, the BMPs for each phase must be constructed and functional prior to land disturbance beginning in that phase associated with the authorized construction activities. Erosion and sediment control BMPs shall be implemented in accordance with standard procedures set forth in the BMP Manual, however, other BMPs may be used if equally protective of water quality.

### II.G. QUALIFIED PERSON TO INSPECT EROSION AND SEDIMENT CONTROLS

The permittee shall ensure that all newly installed erosion and sediment control BMPs are inspected by a Qualified Person. Any defective controls identified during the inspection must be repaired and/or installed correctly as soon as practicable following each inspection, and must be re-examined no later than the next regularly-scheduled inspection. If it is not practicable that repairs can be completed within 7 days of such an inspection, that fact shall be explained on the inspection report and such explanation shall include an anticipated completion date.

Construction activities may begin after the Qualified Person inspects and finds that all erosion and sediment control BMPs are installed properly in the areas where earth disturbing activities are planned to commence.

Sediment control BMPs shall be constructed in accordance with the approved registration (Part II. A.1.c. and II.A.1.d.). All basins and traps not constructed in accordance with the approved registration shall be inspected and documented by a Qualified Person as affording the same trapping capacity and efficiency as the approved structures. Thereafter, routine inspections of the structures by a Qualified Person shall be conducted in accordance with III.B. until structure removal. All documentation of inspections shall be kept on site during construction on a form, prescribed by the Director for the length of the construction project.

### II.H. STORMWATER POLLUTION PREVENTION PLAN (SWPPP) COMPONENTS

SWPPPs shall be prepared in accordance with good engineering practices and retained per II.H.5. The plan shall identify potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges associated with construction activity. The plan shall describe and ensure the implementation of practices that are to be used to reduce the pollutants in stormwater discharges associated with construction activity and to assure compliance with the terms and conditions of this permit. The SWPPP shall be prepared by a Qualified Person.

#### II.H.1. Nature of the Activity

The SWPPP shall contain a description of the nature of the construction activity, including a projected or planned timetable for major activities such as: cut and fill plans, proposed road construction or upgrades, grading plans, and a narrative of the pollution prevention techniques proposed to be implemented before, during and after construction. The narrative shall also include a description of planned major grading activities and stabilization measures.

##### II.H.1.a. Maps

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**Commented [A25]:** The previous permit said 24 hours. What is the rationale for this change? The term "as soon as practicable" is not specific. This change seems to make the permit less enforceable and does not meet EPA's intent of clear, specific and measurable language for permits.

**Commented [A26]:** Inconsistent with later language (and fed regs) requiring maintenance of records for three years.

Site maps shall contain a North arrow with a minimum of five-foot topographical contours. The maps shall include:

- Nearest receiving streams, springs, surface waters to the site;
- Existing roads including public roads from which access to the site will be constructed;
- Access roads;
- Drainage patterns during and after construction with the outlet markers depicting the stormwater discharge points;
- Slopes prior to construction and anticipated conditions after grading activities;
- Location of topsoil stockpiles;
- Waste areas of 1 acre or greater within or contiguous to the construction site;
- Borrow sites of 1 acre or greater within or contiguous to the construction site;
- Locations and identification of sediment control structures;
- Total acreage and location of impervious areas after construction is complete;
- Location of rain gauge provided by the applicant
  - o Or a statement the applicant will obtain the precipitation event information from a National Oceanic Atmospheric Administration (NOAA) weather station that is representative of the location and provide the Station ID Number.
- Post-development stormwater management structures required by local governments
- Final stormwater conveyances, including all ditches and pipe systems;
- Property boundaries and easements; and
- A legend, complete with any other information necessary to describe the project in detail.

**Commented [A27]:** The inclusion of a project's Limit of Disturbance (LOD) should be listed here. It is unclear why it was removed.

The project shall be illustrated in an ArcGIS Shapefile (.shp) or in an AutoCAD Drawing (.dwg) unless the Director allows use of some other means of illustrating the site or project.

II.H.1.b. The map shall be accompanied by a description of an estimate of the total area of the site, the part of the site that is expected to undergo excavation or grading, and an estimate of the total amount of excavation by cut and fill as well as a general description of where excavated material will be placed on the site.

Where a Minor project (less than 3 acres), or a project not designed by a professional engineer, contains cut and fill areas, the DEP reserves the right to request additional information on a case-by-case basis to assure that slip potential is sufficiently limited.

A description of measures to be taken to reduce the potential for subgrade saturation and ensure stability of fill areas shall be submitted.

II.H.1.c. Each road or access road shall be classified as either permanent or temporary and categorized as (1)Construction Activity - New or Improved; (2)Incidental Construction Activity; or (3)Maintenance Only. Construction requirements of this section apply to newly constructed roads (i.e., those constructed after the effective date of this Permit), and mere use and maintenance of a road without improvement by land disturbance is not subject to the Permit, as long as that use is consistent with its original purpose.

**Commented [A28]:** The original Part II.H.1.c was removed. According to 40 CFR 122.26(c)(1)(ii)(D), operators of stormwater discharges assoc with small construction activity shall provide a narrative description of proposed measures to control pollutants in discharges that will occur after construction operations have been completed.

- Temporary roads shall be reclaimed as soon as practical after they are no longer needed for operations.
- New or Improved roads shall be designed with the complete specifications along the entire road.
- Incidental Construction Activity is defined as actions necessary to address rills and gullies and other drainage issues, and shall be designed with the complete specifications on that specific segment.
- Maintenance Only is defined as

**Commented [A29]:** Please provide a more specific timeframe

**Commented [A30]:** Please provide a definition here or instance when this classification should be used.

The SWPPP shall contain plans and specifications for each access road requiring construction activities within the LOD area. The plans and specifications shall include a map, stationed baseline, appropriate profile gradients, flow patterns, surfacing materials, cuts, fill, embankments, drainage ditches, culverts/water bars, and erosion and sediment structures.

Each access road shall be designed with the following specifications:

- Stone access entrance and exit drives.
- Parking areas to reduce the tracking of sediment onto public or private roads.
- All unpaved roads on the site shall be graveled or have other durable surface or shall implement BMPs chosen to effectively control sediment and erosion. Unpaved roads shall be stabilized in accordance with II.H.1. d.1.
- The maximum slope for an access road shall be reasonably designed taking into consideration all site factors, including but not limited to, topography, soil type, other construction activity, etc. Slope in excess of 20% shall be described in the site plan drawings.
- The surface shall pitch toward the ditch line at a minimum slope of 2%. A road located in an area that doesn't have hillside runoff may be crowned with a minimum slope from the center line.
- A ditch shall be provided on the inside of any road having hillside runoff, with ditch relief culverts and/or water bars spaced according to grade and installed wherever necessary to insure proper drainage of runoff water beneath or through the access road.
- Ditch lines shall be capable of passing the peak discharge of a 10-year, 24-hour precipitation event.
- Ditch relief culverts shall be capable of passing the peak discharge of a 2-year, 24-hour precipitation event.
- Sediment control shall be provided at the inlet by sumps, rock checks, or equal structure and the slope at the outlet end shall be protected with an apron of rock riprap, a water energy dissipater, or other similar structure.
- Alternative design criteria for access road drainage may be used, but only when approved by the Director.

**Commented [A31]:** What is the rationale for change from 15 to 20%?

II.H.1.c.1. A road not to be retained as a permanent road shall be reclaimed as soon as practical after it is no longer needed for operations. The reclamation shall include:

**Commented [A32]:** Need a timeframe more specific than as soon as practical

- Removing and disposing of road surfacing materials that are incompatible with prior land use and revegetation requirements; and
- Reshaping cut and fill slopes as necessary to be compatible with the land use and complement the natural drainage pattern of the surrounding terrain.
- Prior to abandonment of access roads, efforts shall be made to prevent erosion by the use of culverts, water bars, or earth berms. Water bars or earth berms shall be installed according to the following formula for spacing:  $400/\% \text{ grade} + 75' = \text{water bar or earth berm spacing}$ .
- Upon abandonment, the roadbed shall be scarified or ripped and all areas associated with access roads shall be immediately seeded and mulched.

II.H.1.c.2. The application for registration shall identify existing All-Terrain Vehicle (ATV) trails to be retained by the landowner upon termination of the permit registration. ATV trails that are not shown with the original application may be identified through a minor modification to the registration. ATV trails shall be maintained by the applicant and stabilized upon conclusion of construction when not identified in the registration as a landowner accepted trail. Stabilization shall include the vehicle travel lanes for all trails not accepted by the landowner. During construction, the applicant shall maintain the trails and include trail areas during inspections to prevent sediment laden stormwater runoff from entering the waters of the state.

II.H.1.c.3. Use of an access road without improvement by land disturbance is not subject to the Permit, as long as that use is consistent with its original purpose.

#### II.H.1.d. Impact Reduction

Site maps shall also include the location and type of stabilization methods for all disturbed areas. Plans shall ensure that existing vegetation is preserved where attainable. Efforts shall also be made to limit disturbance on steep slopes, minimize soil compaction, and preserve topsoil where feasible. A description of interim and final stabilization practices, including site specific implementation schedules of the practices shall be provided and may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate

Commented [A33]: Incomplete sentence

II.H.1.d.1. The SWPPP shall contain stabilization practices to ensure that disturbed portions of the site are stabilized as rapidly as possible. Satisfactory stabilization means all disturbed areas shall be covered by permanent protection such as pavement, pervious pavement, compacted gravel, buildings, waterways (riprap, concrete, grass, or pipe), a healthy, vigorous stand of grass or native vegetation that uniformly covers more than 70% of the ground, stable outlet channels with velocity dissipation which directs site runoff to a natural watercourse, and any other structure or material approved by the Director.

II.H.1.d.2. Vegetative practices shall describe seedbed preparation requirements and the type and amount of soil amendments necessary to establish a healthy stand of vegetation. Soil maps shall be submitted.

For projects with unknown sources of potential borrow material or when excavation is necessary before adequate soil amendments may be determined, the Qualified Person shall,



as soon as materials are located or excavated, prepare the soil amendment plan. The plan shall become a part of the records retained in accordance with Part II.H.5.

II.H.2. The SWPPP shall be signed in accordance with Appendix A.7. and retained onsite throughout the course of the project.

### II.H.3. Potential Pollutants

The SWPPP shall include a complete list and description of potential pollutants at the project site such as products used in the operation and maintenance of vehicles and equipment as well as construction of buildings, parking lots, and other structures. The erosivity of soils must be considered when selecting erosion and sediment control BMPs.

#### II.H.3.a. Potential pollutants can be identified by including:

- A report showing the soil mapping units associated with the proposed area and a table with a description of each map unit, acres in the permit area, and percent of permit area;
- Identification of soils and a soil handling plan;
- A statement whether cement will be mixed onsite or delivered by truck;
- A description of the types of equipment to be used, serviced, repaired, or cleaned onsite;
- A description of the products to be used in construction of buildings and parking lots;
- A statement whether fertilizers, herbicides, and pesticides will be used on the site including a schedule of application; and
- A description of the post-development use of the site.
  - o Certain post-development discharges might require further approval for discharges from the Director, under an individual permit or other general permit.

II.H.3.b. Include a description of the controls and procedures for preventing potential pollutants from entering stormwater runoff, based on II.H.3.a.

II.H.3.b.1. Design, select, and identify erosion and sediment control BMPs. The BMPs should be selected from the BMP Manual. Alternative BMPs may be used if determined by the Director to be equally protective of water quality.

#### II.H.3.b.2. Use of Best Management Practices Required

II.H.3.b.2.a. To protect water quality, BMPs shall be required for direct discharges into any waters other than those categorized as Special Waters. BMPs consist of:

- Inspection of all erosion and sediment controls within disturbed areas at least once every 7 calendar days and within 24 hours after any precipitation event greater than 0.5 inches per 24-hour period, unless such inspections are not practicable within 24 hours, in which case the inspections should be done as soon as practicable, and the

**Commented [A34]:** What is the rationale for changing from .25" to .5". EPA's CGP uses .25"

**Commented [A35]:** Not consistent with EPA's intent of clear, specific, measurable language.

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reason for the delay explained in the inspection report and such explanation shall include an anticipated completion date.

- Repairs or maintenance to BMPs shall be performed as soon as practicable after the inspection following the 0.5-inch rain event, and repairs shall be re-inspected no later than the next inspection date.
- Temporary seeding and/or mulching within 7 days, or as soon thereafter as practicable, when areas will not be re-disturbed for more than 14 days.
- Permanent seeding and/or mulching within 7 days of reaching final grade.
- Seeding and/or mulching must be performed within 14 days, or as soon practicable, of ceasing construction activities. If this is not done within 14 days, the inspection reports shall explain the reason why seeding and/or mulching were not performed within the fourteen-day period.
- Final stabilization within 7 days after construction has been complete.

II.H.3.b.2.b. To protect water quality, Enhanced BMPs shall be required for direct discharges into all Special Waters. Enhanced BMPs consist of:

- Inspection of all erosion and sediment controls within disturbed areas at least once every 7 calendar days and within 24 hours after any precipitation event greater than 0.25 inches per 24-hour period, unless such inspections are not practicable within 24 hours, in which case the inspections should be done as soon as practicable, and the reason for the delay explained in the inspection report and such explanation shall include an anticipated completion date.
- Repairs or maintenance to BMPs shall be performed as soon as practicable after the inspection following the 0.25-inch rain event, and repairs shall be re-inspected no later than the next inspection date.
- Temporary seeding and/or mulching within 7 days when areas will not be re-disturbed for more than 14 days.
- Permanent seeding and/or mulching within 7 days of reaching final grade.
- Seeding and/or mulching must be performed within 14 days, or as soon practicable, of ceasing construction activities. If this is not done within 14 days, the inspection reports shall explain the reason why seeding and/or mulching were not performed within the fourteen-day period.

Additional filtration BMPs should be selected from the DWWM's BMP Manual; however filtration BMPs from other manuals may be approved, if equally protective of water quality.

Within six months of notification from the Director of a new sediment-related TMDL approval applicable to construction activities, permittees must incorporate and implement enhanced BMPs for discharges to the receiving waters subject to the TMDL.

II.H.3.b.3. Hay or straw bales shall not be used as primary or secondary filtering devices; Polymers, flocculants, or other treatment chemicals may be used only in accordance with good engineering practices and specifications for use by the chemical provider/supplier. The use of cationic treatment chemicals is prohibited;

II.H.3.b.4. Identify a specific location and procedure for rinsing mobile mixing drums or truck drums. The procedure must name an appropriate control for the wastewater created

**Commented [A36]:** Similar to previous statements, what is the rationale for changing from 24 hours?

**Commented [A37]:** What is the rationale for changing from 4 days to 7 days?

**Commented [A38]:** Within 7 days of what?

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**Commented [A39]:** See concerns raised throughout regarding this language.

**Commented [A40]:** Same comment

**Commented [A41]:** Same

**Commented [A42]:** Same comment.

**Commented [A43]:** Since this definition was changed, what are the requirements for discharges to Tier 2 waters or sediment impaired waters without a TMDL? How are discharges to those waters protecting water quality?

**Commented [A44]:** How are these Enhanced BMPs different from regular BMPs? How is this protective of water quality for special waters?

by such rinsing and fully explain how the permittee will prevent wastewater from entering stormwater runoff;

II.H.3.b.5. Describe procedures to prevent spillage, leakage, and improper disposal of fuel, oil, grease, solvent, soap, and cleaning plans. The procedures must explain how these products will be handled to prevent any pollutants from entering stormwater.

II.H.3.b.6. Describe how washout and cleanout of stucco, paint, form release oils, curing compounds, bituminous asphalt, and other construction materials will be managed to prevent pollutants from entering stormwater runoff;

II.H.3.b.7. Describe an employee training program for all on-site personnel directly involved with construction activities at all levels of responsibility that reiterates the components and goal of the SWPPP.

- Training should address topics such as spill and leak response and internal reporting, good housekeeping, and routine inspection and maintenance.
- Training shall be on a quarterly basis while construction activities are occurring.
- A list of attendees and topics covered at each training session shall be documented and maintained in the SWPPP.

II.H.3.b.8. A natural vegetative buffer shall be provided adjacent to receiving streams or other waters on or near the project site. Vegetative buffers shall be a minimum of 50 feet, however;

**Commented [A45]:** Missing “wide”, I think.

- A natural vegetated buffer may not be used as a stand-alone erosion and sediment control practice but must be used in conjunction with other BMPs.
- Vegetative buffer strips are not required if:
  - A natural vegetative buffer does not exist in pre-construction conditions, such as when the buffer has already been removed by existing developmental or agricultural activities; or
  - The receiving water is a man-made stormwater conveyance or storage structure, such as a ditch or storm water pond; or
  - Project activities occur within waters approved under a Clean Water Act (CWA) Section 404 permit and Section 401 water quality certification; or
  - The projects located where the vegetative buffer must be encroached to construct necessary infrastructure, such as a utility line or an access road. Justification for any encroachment may be subject to approval by the Director; or
  - Linear projects where right-of-way acquisition or area is limited.

**Commented [A46]:** I don't understand – waters don't get approved. Also, just because a project has coverage under a 404 permit doesn't mean it automatically doesn't need a vegetative buffer. Maybe add “unless required by the 404 permit” or something like that?

II.H.3.b.9. All diversions constructed to final grade, including clean water diversions shall be stabilized prior to becoming functional. Internal construction diversions must be stabilized upon reaching final grade.

- Divert flows around exposed soils and limit runoff from exposed areas with BMPs such as:

- Silt fences, earthen dikes and berms, land grading, diversions, drainage swales, check dams, subsurface drains, pipe slope drains, storm drain inlet protection, rock outlet protection, reinforced soil retention systems and geotextiles, gabions and riprap, and permanent and temporary sediment traps/basins.
- Fill slopes must be protected by measures used to divert runoff away from fill slopes to conveyance measures such as pipe slope drains or stable channels.
- BMPs should be selected from the BMP Manual, however, other BMPs may be approved if equally protective of water quality.
- If necessary, diversions will be used to direct runoff to the trapping structure.
  - Diversions to trapping structures must be stabilized as they are brought to final grade to prevent sediment laden water from leaving the site.
  - Diversions shall have the capacity to pass safely the peak discharge from a 10-year, 24- hour precipitation event.

II.H.3.b.10. For locations on a site that have a drainage area of five acres or less, a sediment trap which provides a storage volume equal to 3,600 cubic feet per acre of drainage area shall be installed. Half of the volume of the trap shall be in a permanent pool and half will be dry storage. A sediment trap must be able to pass through the spillway(s) a 10-year, 24-hour precipitation event, and still maintain at least one foot of freeboard.

II.H.3.b.11. For drainage areas of greater than five acres, a sediment basin providing 3,600 cubic feet per drainage acre shall be installed. Half of the volume of the basin shall be in a permanent pool and half shall be dry storage. Sediment basins must be able to dewater the dry storage volume in 48 to 72 hours. However, this requirement may be waived at the discretion of the Director when skimmer devices are used. Dewatering structures must withdraw from the surface, unless infeasible. A sediment basin must be able to pass through the spillway(s) a 25-year, 24-hour precipitation event, and still maintain at least one foot of freeboard.

II.H.3.b.12. For locations served by a common drainage where a sediment basin providing 3,600 cubic feet of storage is not attainable or dewatering structures that withdraw from the surface are not feasible, BMPs that are equally protective of water quality within the project area are required in lieu of the required sized sediment basin. Justification and a narrative description of the additional measures proposed must be provided for use of any practice(s) other than sediment basins or traps.

II.H.3.b.13. Protection must be provided for the inlet(s) and outlet(s) of a sediment trapping structure to protect against erosion by an appropriate material such as riprap or other similar media.

#### II.H.4. Preventative Maintenance

The SWPPP shall include a description of procedures to maintain in good and effective condition and promptly repair or restore all grade surfaces, walls, dams and structures, vegetation, erosion and sediment control measures and to identify and address conditions

**Commented [A47]:** The original 2019 CGP referenced Enhanced BMPs to be required, which by definition in this permit are MORE protective of water quality. What is the rationale for this change? It seems to be relaxing water quality protection.

that could cause breakdowns or failures resulting in discharges of sediment to surface waters including:

- Good housekeeping protocols to ensure a clean and orderly project. This includes minimizing the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to stormwater;
- All solid waste and construction/demolition material must be disposed of in accordance with the Code of West Virginia and Legislative Rule Title 33 Series 1, (Solid Waste Management Rule);
- At a frequency, sufficient to keep roads and streets clean, all public and private roads and streets adjacent to a construction site must be cleaned of debris, mud, and dirt tracked or originating from the project site;
- Provisions must be made to control fugitive dust on and originating from the construction site.;
- Spill prevention and response procedures - Areas where potential spills may occur, and their accompanying drainage points, shall be identified clearly in the SWPPP. Also, where appropriate, specify material handling procedures and storage requirements. Procedures for cleaning up spills shall be identified in the plan and made readily available to the appropriate personnel. The necessary equipment to implement a cleanup shall be available to personnel, including spill kits.

#### II.H.5. Record Keeping

The permittee shall retain all records required by this permit for a period of 3 years from the date permit coverage is terminated. This includes, but is not limited to:

- Personnel training records;
- Incident reports of spills, leaks and improper dumping;
- Field modifications;
- Inspection and maintenance records;
- Corrective action reports.

Record retention is not required by the permittee for specific records that have been submitted to the DEP.

All SWPPPs required under this permit are considered reports that shall be available for review to the public under Section 308(b) of the CWA and WV Code 29B-1-1. The permittee may claim any portion of a SWPPP as confidential to the extent permissible by 47 C.S.R. 10-12.7. (NPDES Program).

All GPPs are considered reports and shall be made available as required by WV Code 29B1-1.

Permittees are not required to retain copies of records that are submitted to the DEP after coverage is terminated.

**Commented [A48]:** In accordance with 40 CFR 122.41(j)(2), the permittee is responsible to retain all records for a period of 3 years

**Commented [A49]:** See comment above

### II.1. GROUNDWATER PROTECTION PLAN (GPP)

GPPs shall be prepared in accordance with the requirements of 47 C.S.R. 58-4.11. et seq. (Groundwater Protection Regulations). GPPs shall be submitted using a template provided by the DEP, and shall only include the information available at the time of application. It is understood that some aspects of the GPP, such as the type of tanks and equipment that contractors will be using at the construction project, may not be known at the time the GPP is submitted with the Notice of Intent or Application. In that event, the GPP should be submitted with the Notice of Intent or Application with as much information as possible when originally submitted, and updated thereafter as additional information comes available. A complete GPP must be submitted to the Director at least 10 days before commencing earth disturbing activities, with the DEP providing a response within 5 days of the submission, and a copy of the GPP shall be retained on the construction site and available for review by the Director upon request.

**Commented [A50]:** What does WVDEP consider to be a complete GPP?

**Commented [A51]:** A lot of changed language in this paragraph from reissued 2019 CGP. What is the rationale for these changes?

The GPP shall identify all operations that may reasonably be expected to contaminate groundwater resources with an indication of the potential for soil and groundwater contamination from those operations. In addition, the GPP shall provide a thorough and detailed description of procedures designed to protect groundwater from the identified potential contamination sources. Guidance in the completion of a GPP is available from the DWWM.

II.1.1. The GPP shall be a stand-alone document and shall be submitted with the registration as such, rather than as a component of the SWPPP,

#### II.1.2. GPP Elements

The GPP shall include the following elements:

II.1.2.a. A description of the operations, processes and materials present at the facility that may affect or contaminate groundwater.

II.1.2.b. Procedures and containment facilities to protect groundwater resources from the potential contaminants listed above. These processes and facilities shall be identified on a facility map.

II.1.2.c. A GPP containing a Karst Mitigation Plan shall be submitted with applications for registration under this NPDES General Permit for all areas with Karst topography.

Procedures for protecting groundwater when designing and adding new equipment and operations. Adequate design of these operations should be considered in the GPP when making changes in areas of karst, wetlands, faults, subsidence, areas determined by the Bureau for Public Health to be delineated wellhead protection areas, or other areas determined by the Director to be vulnerable based upon geologic or hydrogeologic information.

- The permittee must revise the GPP within 30 calendar days to address any newly delineated areas or other vulnerable areas upon notification by the Director or the Bureau for Public Health.

II.1.2.d. A summary of activities presently regulated for groundwater protection. These may include: registration of above ground and underground storage tanks, required groundwater monitoring or the construction and use of a landfill and list any other permits, required spill prevention and response plans, registrations, certifications or approvals from agencies that regulate groundwater protection measures at the facility. These may include but are not limited to:

- Stormwater
- Solid Waste Facility
- Resource Conservation and Recovery Act (Hazardous Waste Treatment, Storage and Disposal or Transporter)
- UST — Underground Storage Tank
- AST — Above Ground Storage Tank
- CERCLA — Superfund
- WV Voluntary Remediation — Brownsfields
- FIFRA — Federal Insecticide, Fungicide and Rodenticide Act
- Well Head Protection Program
- Underground Injection Control
- Toxic Substances Control Act
- Best Management Plans
- Management of used oil

II.1.2.e. All available groundwater quality data for the facility as well as well locations or other sampling points.

II.1.2.f. A statement documenting that waste materials will not be used for deicing, fill, or any other use, unless that use is allowed by regulation or permit.

II.1.2.g. A training component wherein the applicant states that employees with the potential to pollute groundwater will be trained in prevention procedures.

II.1.2.h. Documentation of quarterly inspections of the GPP elements by facility personnel are required. Documentation of this section must include a description of groundwater protection procedures and how control structures and devices are managed. Create and attach a copy of the facility's inspection form to the GPP.

II.1.2.i. Safety data sheets for all chemicals, or substances, used or stored on site.

II.1.3. The GPP shall be signed in accordance with Appendix A.7 and a copy retained onsite.

#### II.J. CONSISTENCY WITH OTHER PLANS

SWPPPs may reflect requirements for Spill Prevention Control and Countermeasure plans under section 311 of the CWA or any BMPs and GPPs pursuant to 47 C.S.R. 58 (Groundwater Protection Rule) or otherwise required by an NPDES permit. Incorporate any part of such plans into the SWPPP by reference.

### **PART III. REQUIREMENTS DURING CONSTRUCTION**

During construction, the permittee is required to:

- Follow all approved plans, follow good housekeeping protocol, respond to and report spills and leaks;
- Ensure a Qualified Person conducts inspections to verify that the approved BMPs effectively protect water quality;
- Implement additional controls as needed to protect water quality;
- Update the SWPPP/GPP with the revised or additional controls and retain the updated SWPPP/GPP on site;
- Submit modifications to the approved plans when necessary to reflect the additional controls outside of the existing LOD, or significant revisions to the SWPPP/GPP where the Director has requested a modification in writing, and
- Stabilize disturbed areas.

### III.A. COMPLY WITH APPROVED REGISTRATION

III.A.1. The permittee shall construct the project as described in the approved registration.

III.A.2. The permittee shall practice good housekeeping measures to maintain a clean and orderly project. This includes minimizing the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to stormwater.

III.A.2.a. The permittee shall implement spill and leak prevention practices in accordance with the approved plan and respond promptly when incidents occur. The necessary equipment to implement a cleanup shall be available on-site to personnel, including spill kits.

III.A.3. Except as noted below, stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 7 days after the construction activity in that portion of the site has permanently ceased or 7 days for sites required to use enhanced BMPs.

- Where the initiation of stabilization measures by the 7<sup>th</sup> day, as applicable after construction activity temporarily or permanently ceases is precluded by natural causes, such as a drought or flood, stabilization measures shall be initiated as soon as conditions allow.
- Where construction activity will resume on a portion of the site within 14 days from when activities ceased, (i.e., the total time period that construction activity is temporarily halted is less than 14 days) then stabilization measures do not have to be initiated on that portion of the site by the seventh day after construction activities have temporarily ceased.

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**Commented [A52]:** What is the rationale for changing these from 4 to 7 days?

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- Areas where the seed has failed to germinate adequately (uniform perennial vegetative cover with a density of 70%) within 30 days after seeding and/or mulching must be reseeded immediately, or as soon as weather conditions allow.

### III.B. INSPECTIONS BY QUALIFIED PERSON

The permittee shall ensure site inspections are conducted by a Qualified Person in accordance with this section. The purpose of the inspections is to ensure compliance with the approved plan, and when the approved plan is not effective at protecting water quality, the inspection is to document that plan improvements are needed.

III.B.1. The person(s) inspecting the site may be a staff person or a third party hired to conduct such inspections as long as they meet the definition of a Qualified Person.

III.B.2. The site must be inspected as listed below, unless the site discharges to Special Waters or the site qualifies for a reduction in the inspection frequency pursuant to III.B.2.b below:

- At least once every seven (7) calendar days and
- Within 24 hours of the occurrence of a precipitation event of 0.5 inches or greater, or the occurrence of runoff from snowmelt sufficient to cause a discharge.

III.B.2.a. An increase in inspection frequency is required for all sites or any portion thereof discharging to Special Waters.

**Commented [A53]:** This is the same frequency as every other water. There is no increase

Inspections must be conducted in accordance with the following inspection frequencies:

- Once every 7 calendar days, and
- Within 24 hours of the occurrence of a precipitation event of 0.25 inches or greater, or the occurrence of runoff from snowmelt sufficient to cause a discharge.

**Commented [A54]:** What is the rationale for changing this from 4 days to 7 days? The purpose of the 4 day requirement was to increase the frequency of inspections to protect sensitive waters. This requirement is the same as that above.

III.B.2.b. Reductions in inspection frequency may occur in accordance with the following: Stabilized areas:

The permittee may reduce the frequency of inspections to twice per month, no more than 14 calendar days apart, in any area of the site where final stabilization has been completed. If construction activity resumes in this portion of the site at a later date, the inspection frequency immediately increases to that required previous to the reduced frequency. The beginning and ending dates of this period must be recorded in the inspection report.

Exceptions:

For "linear projects", where disturbed portions have undergone final stabilization at the same time active construction continues elsewhere, the permittee may reduce the frequency of inspections to twice per month no more than 14 calendar days apart, in any area of the site where the final stabilization has been completed. Inspect once more within 24 hours of the occurrence of a precipitation event of 0.5 inches or greater or 0.25 inches or greater for discharges to Special Waters. If there are no issues or evidence of stabilization problems, further

**Commented [A55]:** What is the the rationale for changing this from .25" to .5"? The previous permit required all permittees to inspect after an event of .25" or greater.

inspections may be suspended. If "wash-out" of stabilization materials and/or sediment is observed, following re-stabilization, the reduced inspection frequency is suspended.

Frozen conditions:

If the permittee suspends construction activities due to frozen conditions, inspections on the site may be temporarily suspended until thawing conditions begin to occur if:

- Runoff is unlikely due to continuous frozen conditions that are likely to continue at the site for at least three (3) months based on historic seasonal averages. If unexpected weather conditions (such as above freezing temperatures or rain events) make discharges likely, the permittee must immediately resume the regular inspection frequency as applicable;
- Land disturbances have been suspended and all disturbed areas of the site have been stabilized.

If still conducting construction activities during frozen conditions, the permittee may reduce the inspection frequency to once per month if:

- Runoff is unlikely due to continuous frozen conditions that are likely to continue at the site for at least three (3) months based on historic seasonal averages. If unexpected weather conditions (such as above freezing temperatures or rain events) make discharges likely, the permittee must immediately resume the regular inspection frequency; and
- Except for areas undergoing construction activities, disturbed areas of the site have been stabilized, the beginning and ending dates of this period must be documented in the inspection report.

III.B.2.c. For any day of rainfall during normal business hours that measures 0.5 inches or greater, or 0.25 inches or greater for discharges to Special Waters, the total rainfall measure for that day must be recorded.

**Commented [A56]:** Same comment as above. Previously all permittees were subject to .25" requirement.

To determine if a precipitation event of 0.5 inches or greater, or 0.25 inches or greater for discharges to Special Waters, has occurred on the site, the permittee must either:

- Keep a properly maintained rain gauge on-site, or
- Obtain the precipitation event information from a NOAA weather station that is representative of the location.

#### III.B.2.d. Areas That Must Be Inspected

During the site inspection, the following *areas* of the site must be inspected:

- All areas that have been cleared, graded, or excavated and that have not yet completed stabilization;
- All stormwater controls (including pollution prevention controls) installed and procedures initiated must be listed in the inspection record;

- Material, waste, borrow, and equipment storage and maintenance areas that are covered by this permit;
- All areas where stormwater typically flows within the site, including drainageways designed to divert, convey, and/or filter stormwater;
- All points of discharge from the site;
- All receiving waters to look for sediment laden stormwater entering the waterbody; and
- All locations where stabilization measures have been implemented.

Areas that, at the time of the inspection, are considered unsafe to inspection personnel do not have to be inspected.

### III.B.2.e. Requirements for Self-inspections

During the site inspection, the Qualified Person shall:

- Check whether all stormwater controls (i.e., erosion and sediment controls and pollution prevention controls) are properly installed, appear to be operational, and are working as intended to minimize pollutant discharges;
  - This includes the requirement to inspect for sediment that has been tracked out from the site onto paved roads, sidewalks, or other paved areas.
- Check for the presence of conditions that could lead to spills, leaks, or other accumulations of pollutants on the site;
- Identify any locations where new or modified stormwater controls are necessary to protect waters of the state or meet other requirements of this NPDES General Permit;
- Check for signs of visible erosion and sedimentation (i.e., sediment deposits) that have occurred and are attributable to the discharge at points of discharge and, if applicable, the banks of any waters of the State flowing within or immediately adjacent to the site;
- Identify any incidents of noncompliance observed;
- If a discharge is occurring during the inspection:
  - Identify all discharge points at the site; and
  - Observe and document the visual quality of the discharge and take note of the characteristics of the stormwater discharge, including color; odor; floating, settled, or suspended solids; foam; oil sheen; and other indicators of stormwater pollutants.

### III.B.2.f. Self-inspection Report

An inspection report must be completed by the inspector within 24 hours of completing any site inspection. Each inspection report must include the following:

- The inspection date;
- Names and titles of personnel making the inspection;
- A summary of inspection findings, including the observations made during the inspections, and any necessary maintenance or corrective actions;
- A record of rainfall measuring 0.5 inches or greater, or 0.25 inches or greater for discharges to Special Waters, and the source of the measurement (the applicable rain gauge or weather station readings); and

**Commented [A57]:** Same comment as above

- If it was determined unsafe to inspect a portion of the site, describe the reason it was found it to be unsafe and specify the locations to which this condition applies.

Each inspection report must be signed by the Qualified Person.

Each inspection report must be maintained at the site or at an easily accessible location, so that it can be made available at the time of an on-site inspection or upon request by the Director.

All inspection reports must be maintained for at least three (3) years from the date that permit coverage is terminated.

- The Qualified Person must re-inspect within 48 hours to verify repairs or replacements to the defective BMPs or pollution controls noted in the previous inspection.

### III.B.2.g. Requirement to Correct Deficiencies

Based on the results of the inspection, the permittee must complete any necessary maintenance and corrective action as soon as practicable following each inspection, and must be re-examined no later than the next regularly-scheduled inspection. If it is not practicable that repairs can be completed within 7 days of such an inspection, that fact shall be explained on the inspection report and such explanation shall include an anticipated completion date.

The permittee shall have 24 hours after such notification to make changes relating to sediment and erosion controls to prevent loss of sediment from an active construction site, unless additional time is provided by the Director or an authorized representative in writing.

### III.C.1. IMPLEMENT ADDITIONAL BMPS TO PROTECT WATER QUALITY

When an inspection indicates the BMPs are ineffective at protecting waters of the state, the permittee shall immediately implement additional controls and,

- Update the SWPPP and GPP to reflect the new BMPs, and
- Either obtain approval of the additional BMPs during a site visit conducted by the Director, or
- Submit a modification application in accordance with this permit.
- Permittees who find that the approved BMPs are ineffective at protecting receiving waters and who are unable to identify or employ BMPs capable of preventing sediment laden runoff from leaving the project site shall immediately cease further land disturbance until such time that the unauthorized discharge ceases.

No sediment-laden water shall be allowed to leave the site without going through an appropriate BMP.

III.C.2. The permittee shall update the SWPPP, using forms provided by DWWM, whenever there is a change in design, construction, scope of operation, or maintenance of BMPs, which has the potential to adversely impact the surface waters of the State, or if the

**Commented [A58]:** Previously, reports were required to be signed in accordance with Signatory Req'ts in Appendix A. This was to be consistent with 40 CFR 122.22(b). This change is not consistent with federal regulations.

**Commented [A59]:** Used to say with/in 24 hrs. What is the rationale for this change? This vague language is not consistent with EPA's intent for clear, specific and measurable language in NPDES permits.

**Commented [A60]:** How would an inspection indicate that? Are inspectors trained to know what to look for?

SWPPP proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activities.

Should conditions warrant, the Director may request changes to the SWPPP during a field inspection. The Director may request, review and approve such updates or require the permittee to apply for a modification to the approved application when necessary to reflect the addition of controls outside of the existing LOD, or significant revisions to the SWPPP where the Director has requested a modification in writing.

**Commented [A61]:** Shouldn't the Director be required to review and approve changes to the SWPPP that they requested.

The permittee shall update the GPP whenever there is a change in design, construction, operation, or maintenance of BMPs which could reasonably be expected to have an impact on the potential contamination of groundwater. The Director may review and approve such updates or require a modification when necessary to reflect the addition of controls outside of the existing LOD, or significant revisions to the GPP where the Director has requested a modification in writing.

**Commented [A62]:** Same comment as above

### III.D. FEES

Permittees are required to pay annual permit fees within 30 days of receiving the invoice.

III.D.1. It is the responsibility of the permittee to keep the Director informed of accurate, up-to-date billing addresses and electronic addresses (email addresses) so that invoices may be delivered promptly and to the correct address.

III.D.2. Discharging stormwater from construction sites covered by this permit while failing to pay fees is considered operating without a permit.

III.D.3. Permittees must pay assessed fees until such time that the Director approves the Notice of Termination required by Part IV.

## PART IV. REQUIREMENTS AFTER CONSTRUCTION

After construction is complete, the permittee is required to:

- Verify all disturbed areas are stabilized and permanent stormwater conveyances and management structures are properly constructed by having a Qualified Person confirm the site is ready for the Director to conduct the final inspection.
- Confirm all records required by this permit that have not been submitted to the DEP are available for retention for 3 years after permit coverage is terminated and make available when requested by the Director,
- Verify all fees are paid in full,
- Prepare and submit the Notice of Termination (N.O.T.)
  - o The permittee has the option of including a Stabilization Certification with the N.O.T.
- Continue to maintain permit coverage until notification from the Director that coverage is terminated.

### IV.A. VERIFY ALL DISTURBED AREAS ARE STABILIZED

Sediment trapping structures shall be eliminated, and the area properly reclaimed and stabilized when the contributing drainage area is stabilized, and the structures are no longer needed, unless the structure is converted into a permanent stormwater control structure. This must be accomplished before the Notice of Termination is submitted.

- All trapped sediments shall be disposed on an upland area where there is no chance of entering nearby streams.
- Breaching the embankment to dewater the structure is not permitted. Dewatering and structure removal shall not cause a violation of water quality standards.
- Dewatering may not be done by pumping from a sump, trap, or basin directly into a stream. The dewatering description shall clearly show that only clarified water is to be discharged to waters of the state and shall include the method to be employed to ensure sediment is not pumped or otherwise discharged.

#### IV.B. RECORDS INSPECTIONS

In accordance with II.H.5. verify records required by this permit are assembled and ready for retention.

#### IV.C. PREPARE FOR TERMINATION

##### IV.C.1.

From the date final stabilization is achieved, the permittee has 30 days to ready the site for submittal of N.O.T and by the 30th day must submit the N.O.T. via electronic notice of termination to the Director.

IV.C.1.a. An inspection by a Qualified Person shall be conducted wherein all areas of the project and all off-site areas impacted by the project are inspected for compliance with this permit. The Qualified Person shall conduct a review of the available records to verify compliance with the retention requirements of this permit.

IV.C.1.b. The Qualified Person shall issue a report to the permittee outlining any deficiencies to be corrected. The permittee shall correct deficiencies as soon as practicable following the inspection and request a re-inspection by the Qualified Person. Once an inspection identifies no deficiencies, the site may be considered ready for the submittal of the N.O.T.

IV.C.1.c. The permittee shall review the fee payment history and pay any unpaid fees during this 30-day period.

#### IV.D. TERMINATION OF COVERAGE

**Commented [A63]:** Used to say with/in 24 hrs. What is the rationale for this change? This vague language is not consistent with EPA's intent for clear, specific and measurable language in NPDES permits.

After meeting the requirements of Part IV.C., all permittees other than those with General Permit coverage under an NOI shall apply for termination of permit coverage by submitting an N.O.T., which will serve as a request for final inspection. Upon receipt of the N.O.T., the Director shall inspect the site to determine the appropriateness of ending permit coverage.

IV.D.1. Final stabilization inspections for 1 to < 3 acres sites shall be conducted within 30 days of receipt of the N.O.T. and for sites 3 acres and larger the final stabilization inspection shall be conducted within 60 days.

IV.D.2. The permittee has the option of submitting a certification by a registered professional engineer or professional surveyor that the site meets stabilization requirements. Should the Director not inspect within the time frames established in this section, the Stabilization Certificate shall be accepted in lieu of the final inspection by the Director's staff.

IV.D.3. ATV trails accepted by the landowner and identified in the registration, do not require a healthy, vigorous stand of grass or native vegetation that uniformly covers more than 70 percent of the ground in the vehicle lanes of the trail to be considered for termination. No eroded areas of trails that are the source of sediment in stormwater runoff may be deemed stable or eligible for release. A registration modification must be approved by the Director prior to submittal of the Notice of Termination and prior to registration expiration for ATV trails not previously identified by the permittee to be turned over to the landowner.

IV.D.4. Permit coverage for construction activities encompassed by this permit expires upon verification of satisfactory stabilization of the site and payment of all outstanding fees. Satisfactory stabilization means ALL disturbed areas shall be covered by some permanent protection. Stabilize includes pavement, compacted gravel, permeable pavements/pavers, buildings, waterways (riprap, concrete, grass, or pipe), a healthy, vigorous stand of grass or native vegetation that uniformly covers more than 70 percent of the ground, stable outlet channels with velocity dissipation which directs site runoff to a natural watercourse, and any other approved structure or material.

The herein-described activity is to be constructed or installed and operated, used and maintained strictly in accordance with the terms and conditions of this General Permit with any plans, specifications, and information submitted with the individual application form, with any plan of maintenance and method of operation thereof submitted and with any applicable rules and regulations promulgated by the Environmental Quality Board and the Secretary of the Department of Environmental Protection.

Failure to comply with the terms and conditions of this General Permit, with any plans, specifications and information submitted, and with any plan of maintenance and method of operation thereof submitted shall constitute grounds for the revocation or suspension of this permit to any individual establishment or other person and for the invocation of all the enforcement procedures set forth in Chapter 22, Articles 11 and 12 of the Code of West Virginia.

This permit is issued in accordance with the provisions of Chapter 22, Article 11 of the Code of West Virginia.

BY:

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Katheryn Emery, Acting Director

## Appendix A

### I. STANDARD CONDITIONS

#### 1. Duty to Comply

- (a) The permittee must comply with all conditions of this permit. Permit noncompliance constitutes a violation of the CWA and State Act (Chapter 22, Article 11 or Article 12) and is grounds for enforcement action; for permit modification, revocation and reissuance, suspension or revocation; or denial of a permit renewal application.
- (b) The permittee shall comply with all applicable standards or prohibitions established under 40 C.F.R. 503 and Title 33 Series 2 within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

#### 2. When to Apply

State NPDES rules require permit applications to be filed at least 180 days prior to the commencement of the activity. The DWWM is attempting, through this general permit process, to streamline the permitting of this activity. Therefore, projects which may potentially obtain coverage under this general permit and which submit complete application forms, shall make submission in accordance with II.A. prior to the anticipated date of discharge.

#### 3. Duty to Reapply



If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit by submitting a General Permit registration as detailed in permit reissuance.

#### 4. Duty to Mitigate

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

#### 5. Permit Actions

This permit may be modified, revoked and reissued, suspended, or revoked for cause. The filing of a request by the permittee for permit modification, revocation and reissuance, or revocation, or a notification of planned changes or anticipated noncompliance, does not stay any permit conditions.

#### 6. Property Rights

This permit does not convey any property rights of any sort or any exclusive privilege.

#### 7. Signatory Requirements

All application, reports, or information submitted to the Director shall be signed and certified as required in 47 C.S.R. 10.4.6. (NPDES Program). If an authorization becomes inaccurate because a different individual or position has responsibility for the overall operation of the project, a new authorization must be submitted to the Director prior to, or together with any reports, information, or applications to be signed by an authorized representative.

#### 8. Transfers

This permit is not transferable to any person, except after written notice to and written approval by the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary. Notice must contain the new owner's name and address.

#### 9. Duty to Provide Information

The permittee shall furnish to the Director, within a reasonable specified time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, suspending, or revoking this permit, or to determine compliance with this permit. The permittees shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

#### 10. Other Information

The permittee shall furnish to the Director any additional, practicable, site-specific information that is determined necessary to protect water quality or has the potential to protect water quality. Where the permittee becomes aware that he/she has failed to submit any relevant facts in a facility registration application form or submitted incorrect information in a facility registration application form or in any report to the Director, he/she shall promptly submit omitted/corrected facts or information.

#### 11. Endangered and Threatened Species and State Historic Preservation Officer

If a site discharges to a stream where a federally endangered or threatened species or its critical habitats are present, the applicant must contact the U.S. Fish and Wildlife Service to ensure that requirements of the federal Endangered Species Act, 16 U.S.C. 1531 et. seq. is met

For those projects that may impact historic preservation sites, the permittee shall coordinate the project with the State Historic Preservation Officer.

#### 12. Inspection and Entry

The permittee shall allow the EPA, Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

- a) Enter upon the permittee's premises in which any storage, treatment or activity is located, or where records must be kept under the conditions of this permit;
- b) Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;
- c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by 47C.S.R. 10, any substances or parameters at any locations.

#### 13. Permit Modification

This permit may be modified, suspended, or revoked by the Director in whole or in part during its term in accordance with the provisions of Chapter 22, Article 11 of the Code of West Virginia.

Any permittee wishing to modify his registration for a Large Construction Activity shall submit such request at least 45 days prior to the commencement of the proposed action for modification.

Any permittee wishing to modify his registration for a Minor Construction Activity shall submit such request at least 30 days prior to the commencement of the proposed action for modification.

Any permittee wishing to modify his registration under a NOI shall submit such request at least 15 days prior to the commencement of the proposed action for modification.

#### 14. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the CWA.

#### 15. Outlet Markers

In accordance with Title 47, Series 11, Section 9 (Special Rules) of the West Virginia Legislative Rules, an outlet marker shall be posted on the stream bank for each outlet covered by this permit

#### 16. Water Withdrawal

If water for hydroseeding, dust control, or hydrostatic testing is to be derived from waters of the state, withdrawals shall only be made during times when stream flow is sufficient to support both aquatic life and the withdrawal. During periods of active withdrawal, the permittee and/or operator shall consult DWWM's Water Withdrawal Guidance Tool daily and document the recommendations. This documentation shall be maintained by the permittee and made available for inspection. Withdrawals shall only be taken when the tool indicates that it is safe by the statement "it should be safe to withdraw from any stream in the area". Use of the tool in itself does not guarantee protection of aquatic life and best professional judgment must still be used when making withdrawals, as the tool cannot account for all localized conditions and may not react to the withdrawal dependent on its proximity to the stream gage. The tool provides useful information on general stream flow adequacy to assist the permittee with withdrawal decisions.

The tool may be found at the following link:

<http://www.dep.wv.gov/WWE/wateruse/Pages/WaterWithdrawal.aspx>

#### 17. Liabilities

17.a. Any person who violates a permit condition is subject to a civil penalty not to exceed \$25,000 per day of such violation as provided in W. Va. Code § 22-11-22. Any person who willfully or negligently violates permit conditions is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one year, or both, as provided in W. Va. Code §22-11-24.

17.b. Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than six months per violation, or by both, in accordance with W. Va. Code § 22-11-24.

17.c. Nothing in 17.a. and 17.b. shall be construed to limit or prohibit any other authority the Director may have under the State Water Pollution Control Act, Chapter 22, Article 11 and State Groundwater Protection Act, Chapter 22, Article 12.

#### 18. Reopener Clause

If there is evidence indicating potential or realized impacts on water quality due to any stormwater discharge authorized by this General Permit, the owner or operator of such discharge may be required to obtain an individual permit or alternative General Permit in accordance with Section I.E. of this General Permit or the General Permit may be modified to include different limitations and/or requirements. The conditions, standards, and limitations of this General Permit shall be reviewed at the time of reissuance for possible revisions that may lead to more or less stringent conditions, standards, and limitations.

## Appendix B

### I. OPERATION AND MAINTENANCE

#### 1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all activities and BMPs which are installed or used by the permittee to achieve compliance with the terms and conditions of the permit.

#### 2. Need to Halt or Reduce Activity Not a Defense

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

#### 3. Bypass

##### 3.a. Definitions

3.a.1. "Bypass" means the intentional diversion of waste streams from any portion of a BMP; and

3.a.2. "Severe property damage" means substantial physical damage to property, damage to BMPs which causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

3.b. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Appendix B 3.c. and 3.d. of this permit.

##### 3.c. Notification of bypass

3.c.1. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least 10 days before the date of the bypass.

3.c.2. If the permittee does not know in advance of the need for bypass, notice shall be submitted as required in E.2. of Part I of this permit.

##### 3.d. Prohibition of bypass

3.d.1. Bypass is permitted only under the following conditions. The Director may take enforcement action against a permittee for bypass, unless;

3.d.1.A. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

3.d.1.B. There were no feasible alternatives to the bypass, such as the use of auxiliary BMPs, retention of untreated sediment, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance. This condition is not satisfied if the sediment and erosion control structures were not installed in the proper sequence; and

3.d.1.C. The permittee submitted notices as required under Appendix B 3.c. of this permit.

3.d.2. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in Appendix B 3.d.1. of this permit.

#### 4. Upset

4.a. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with the technology-based permit effluent limits or failure of a BMP that occurs because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

4.b. Effect of an upset. An upset constitutes an affirmative defense to an action brought for temporary noncompliance with the terms and conditions of the permit and the SWPPP if the requirements of Appendix B 4.c. are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

4.c. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

4.c.1. An upset occurred, and that the permittee can identify the cause(s) of the upset.

4.c.2. The permitted project was at the time being properly operated.

4.c.3. The permittee submitted notice of the upset in accordance with Part I.D.2.; and

4.c.4. The permittee complied with any remedial measures required under Appendix A 4 of this permit.

4.d. Burden of proof. In any enforcement proceedings, the permittee seeking to establish the occurrence of an upset has the burden of proof.

5. Removed Substances

Spills and releases must be cleaned up **expeditiously**, and contaminated media must be properly disposed in accordance with all applicable requirements of 33 C.S.R. 1.

Sediment removed from a trapping device or from a stream, lake or river after deposition by stormwater runoff from a construction related activity shall be removed in a manner consistent with local, state and federal guidelines and placed behind sediment trapping BMPs in a manner that prevents erosion.

**Commented [A64]:** What is the definition for expeditiously? This vague language is not consistent with EPA's intent for clear, specific and measurable language in NPDES permits.

## Appendix C

### I. Definitions:

1. "Access Road" means surface roadbed area within a right-of-way for purposes of travel by land vehicles and/or equipment used in Construction activities. A road consists of the area within the right-of-way, including the roadbed, shoulders, adjacent parking and side areas, approaches, adjacent ditches, and other adjacent or contiguous related structures. The term includes access roads constructed, reconstructed, or improved for use in all construction operations, provided however, this term does not include general areas of construction activities, or the active construction area for cut and fill activities, where vehicles travel but are not specifically designated for travel to and from the construction site.

2. "Best management practices" (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, other management practices and various structural practices such as but not limited to silt fence, sediment traps, seeding and/or mulching, and rip-rap used to prevent or reduce erosion and sediment runoff and the pollution of surface waters of the State. BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

3. "Clearing" means the stage of development in which vegetation is cleared from land. Clearing includes cutting and removing vegetation with chain saws, brush axes, brush hogs and other mechanical means where little or no soil is disturbed.

4. "Clean Water Act" (CWA) (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 97-117 and Public Law 95-576; 33 U.S.C. 1251 et seq.

5. "Common Plan of Development" is a contiguous construction project where multiple separate and distinct construction activities may be taking place at different times on different schedules but under one plan. The "plan" is broadly defined as any announcement or piece of documentation or physical demarcation indicating construction activities may occur on a specific plot; included in this definition are most subdivisions.

6. "Control" is a best management practice such as erosion control or sediment control that will reduce sedimentation on a construction project.

8. "Construction Activity" means land disturbance operations such as grubbing, grading, filling, and excavating during site development for residential, commercial or industrial purposes. This includes, but is not limited to, access roads, borrow and spoil areas.

**Commented [A65]:** As stated in the permit, this definition is not consistent with federal regulations.

9. "Detailed Site Plan" is a design plan drawing of sufficient scale to depict proposed construction activity, surface drainage patterns, erosion and sediment control best management practices, limits of disturbance boundary, north arrow, and containing surface contours on minimum 5-foot contours.



10. "Director" means the Director of the Division of Water and Waste Management, Department of Environmental Protection, or his or her designated representative.

11. "Disturbed Area" is the total area of land disturbing activity that will take place during all phases of a construction project, including, but not limited to, all waste and borrow sites, utility installation, road building, mass grading, and site development.

12. "Diversion" means a stabilized berm or stabilized excavated channel or combination berm and channel constructed across sloping land on a predetermined grade. This includes but is not limited to protecting work areas from upslope runoff and reducing the size of the drainage going to sediment trapping structures (clean water diversion), transporting runoff across a project to minimize erosion and diverting sediment-laden water to an appropriate sediment-trapping structure.

13. "Electronic Submission System (ESS)" refers to the online interactive application registration submittal, review and approval system authorized by the Director.

14. "Enhanced BMPs" means activity schedules or sediment and erosion controls that are more protective of the environment than those routinely employed to qualify for coverage under this permit and use of such practices apply when disturbed areas discharge to Special Waters.

**Commented [A66]:** Reissued 2019 CGP required Enhanced BMPs for discharges to sensitive waters, which included more types/classifications of waterbodies to be protected.

15. "Erosion" means the displacement of solids (soil, mud, rock, and other particles) by the agents of wind, water, and ice in response to gravity.

16. "Establishment" means an industrial establishment, mill, factory, tannery, paper and pulp mill, mine, colliery, breaker or mineral processing operation, quarry, refinery, well and each and every industry or plant or works in the operation or process of which industrial wastes, sewage or other wastes are produced.

17. "Estimate" means to be based on a technical evaluation of the sources contributing to the discharge.

18. "Evaluation Point" means the point where the majority of the surface storm water leaves a permitted site.

19. "Excavating" means to engage in digging, hollowing out, or removing, accomplished usually with heavy machinery.

20. "Final stabilization" means long-term stability of soil and rock against slides, slips, erosion and mudflows by covering disturbed areas with permanent protection such as pavement, compacted gravel, permeable pavements/pavers, buildings, stable waterways (riprap, concrete, grass or pipe), a healthy, vigorous stand of grass or natural vegetation that uniformly covers at least 70 percent of the ground, stable outlet channels with velocity dissipation that directs site runoff to a natural watercourse, and any other approved structure or material.

21. "Grading" means disturbing the surface of the land, including clearing, grubbing, excavations, creating embankments, land development, road upgrade, cut and/or fill operations, and the moving, depositing, stockpiling or storing of soil, rock, or earth materials.

**Commented [A67]:** What is the rationale for removing this term?

22. "Groundwater" means the water occurring in the zone of saturation beneath the seasonal high-water table or any perched water zones.

23. "Groundwater Protection Plan" (GPP) means groundwater protection practices developed and implemented in accordance with WV Legislative Rules, 47 C.S.R. 58 (Groundwater Protection Rule), submitted as part of the Application.

24. "Grubbing" means physically removing vegetative stumps and roots from the ground and disturbing the earth, usually by heavy machinery.

25. "Inlet Protection" means a sediment filter or an impounding area around or upstream of a storm sewer, drop inlet, or curb inlet which allows sediment to settle out prior to stormwater entering the inlet.

26. "Impaired Streams" means waters that do not meet applicable water quality standards and are listed on the Clean Water Act Section 303(d) list.

27. "Large Construction Activity" mean an activity which disturbs 3 or more acres of land.

28. "Landowner requested trails" refers to a trail the landowner deems desirable as a post-construction accessway to portions of the released site, hereinafter called ATV (All-Terrain Vehicle) Trails.

29. "Limits of Disturbance" is a polygon shown on a map or site drawing depicting the boundary of the construction site to be disturbed.

30. "Minor Construction Activity" means an activity which disturbs one to less than three acres of land that will not be completed in a year or less.

**Commented [A68]:** These activities by previous definition were not allowed where the discharge was going to sensitive waters. What is the rationale for changing that requirement? It doesn't even include the caveat for special waters.

31. "National Pollutant Discharge Elimination System" (NPDES) means the national program for issuing, denying, modifying, revoking and reissuing, suspending, revoking, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Section 307, 318, 402, and 405 of CWA, including any approved state program.

32. "Natural Vegetative Buffer" is an area of undisturbed vegetation that occurs spontaneously without regular maintenance or management and is adjacent to or surrounds streams or other waters.

33. "Notice Of Intent" (NOI) is the form to be submitted by the applicant to register a small construction project (one that disturbs one to less than three acres) under the Construction Stormwater General Permit when that project will be completed in less than one year. A project that disturbs one to

less than three acres but will have construction activities one year or longer must file a Site Registration Application Form.

**Commented [A69]:** Lots of different terms, not very clear: NOI, Site Registration Form, what do those >3 acres file?

34. "Notice of Termination" (NOT) is the form to be submitted by all permittees other than those operating under an NOI to terminate coverage under the Construction General Stormwater Permit, after final stabilization has been completed. See Final Stabilization.

35. "Point Source" is any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, and container from which pollutants are or may be discharged to surface waters of the state.

36. "Pollutant" means industrial waste, sewage or other wastes.

**Commented [A70]:** Not consistent with federal regulations; see 40 CFR 122.2.

37. "Pre-development" means the condition of the land, the amount and health of the ground cover and vegetation prior to development.

38. "Qualified Person" means a person who is knowledgeable in the principles and practices of sediment and erosion controls, pollution prevention, and possesses the education and abilities to assess conditions at the proposed site that could impact stormwater quality and to assess the effectiveness of proposed stormwater controls to meet the requirements of this permit.

39. "Satisfactory Stabilization": means a condition where exposed soils or disturbed areas are provided temporary vegetative and/or non-vegetative protective cover to prevent erosion and sediment loss. Satisfactory stabilization may include temporary seeding, geotextiles, mulches, and other techniques to reduce or eliminate erosion until either final stabilization can be achieved or until further construction activities take place to re-disturb this area.

40. "Sediment" means any particulate matter that can be transported by fluid flow and which eventually is deposited as a layer of solid particles on the bed or bottom of a body of water or other liquid.

41. "Sediment TMDL" means a Total Maximum Daily Load that has been developed for sediment and the effects of sedimentation. It does not include TMDLs that are developed for substances or conditions that may accompany sediment, including without limitation pH, iron or aluminum, unless sediment is also expressly made a part of the TMDL.

42. "Sedimentation" means the deposition by settling of a suspended material.

43. "Sediment trap" means a temporary ponding area formed by constructing an embankment or excavation and embankment that will trap the flow of sediment-laden runoff. Sediment traps have a properly stabilized outlet/weir or riser and pipe to detain sediment laden runoff from disturbed areas of five acres or less. Outlets must be designed to extend the detention time and allow the majority of the sediment to settle out.

44. "Sediment basin" means a temporary structure consisting of an earthen embankment, or embankment and excavated area, located in a suitable area to capture sediment-laden runoff

from a construction site. A sediment basin reduces the energy of the water through extended detention (48 to 72 hours) to settle out the majority of the suspended solids and sediment and prevent sedimentation in waterways, culverts, streams and rivers. Sediment basins have both wet and dry storage space to enhance the trapping efficiency and are appropriate in drainage areas of five acres and greater.

45. "Sinkhole" means a depression in the land surface formed by solution or collapse that directs surface runoff into subsurface or to an underground drainage flow.

46. "Special Waters" means (i) Tier 3 waters, as those waters are defined and set forth in 47 C.S.R., Series 2; (ii) trout waters specifically identified in 47 C.S.R., Series 2 (excluding warm water streams, warm water fisheries stocked with trout or those without sufficient age classes of trout to demonstrate a population of trout through natural reproduction); and (iii) streams for which a sediment TMDL (but not those streams for which a TMDL for iron, aluminum or other parameters are developed, unless sediment is also addressed) has been completed.

**Commented [A71]:** Definition for Sensitive Waters was removed. What is the rationale for that change?

47. "Stormwater" means stormwater runoff, snowmelt runoff, and surface runoff and drainage.

48. "Stormwater Pollution Prevention Plan" (SWPPP) means a site-specific, written document that, among other things: (1) identifies potential sources of stormwater pollution at the construction site; (2) describes stormwater controls to reduce or eliminate pollutants in stormwater discharges from the construction site; and (3) identifies procedures the operator will implement to comply with the terms and conditions of this general permit.

49. "Tier 3 Waters" means waters as otherwise identified in 47 C.S.R. 2-4.1. c. (Requirements Governing Water Quality Standards).

**Commented [A72]:** Definitions for Tier 1 and Tier 2 waters were removed. What is the rationale for that change?

50. "Total Maximum Daily Load (or TMDL)" is a term in the Clean Water Act that establishes the maximum amount of a pollutant allowed in a waterbody and serves as the starting point or planning tool for restoring water quality.

51. Trout Streams - Waters which sustain year-round trout populations. Excluded are those warm water streams, warm water fisheries stocked with trout or those without sufficient age classes of trout to demonstrate a population of trout through natural reproduction.

52. "Water Quality Standards" are the foundation of the water quality-based control program mandated by the Clean Water Act.

53. "1-year, 24-hour precipitation event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in one year.

54. "2-year, 24-hour precipitation event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in two years.

55. "10-year, 24-hour precipitation event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 10 years.

56. "25-year, 24-hour precipitation" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years.

# **Exhibit B**



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west virginia department of environmental protection

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Division of Water and Waste Management  
601 57<sup>th</sup> Street, SE  
Charleston, WV 25304  
Phone: 304-926-0495 / Fax: 304-926-0496

Austin Caperton, Cabinet Secretary  
dep.wv.gov

January 7, 2020

Ms. Catherine Libertz, Director  
Water Division  
EPA, Region III  
1650 Arch Street  
Philadelphia, Pa, 19103-2029

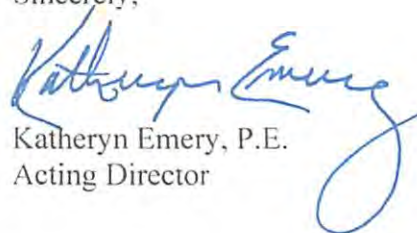
RE: Specific Objection to the Proposed Modification of the 2019 General Permit for Stormwater Discharges Associated with Construction Activities (WV0115924)

Dear Ms. Libertz:

In response to EPA's specific objection of the proposed permit, the WV DEP is requesting that the proposed permit be returned to the State and no longer considered for review by EPA. The WV DEP is drafting a new Construction General Permit to address EPA's concerns and will submit it for your review upon completion. Until the new permit is finalized, all permittees will have the choice to either apply for an individual permit or apply for registration under the EPA approved February 2019 permit.

Should you have any questions, please do not hesitate to contact me at (304) 926-0499, extension 1596, or at [Katheryn.D.Emery@wv.gov](mailto:Katheryn.D.Emery@wv.gov).

Sincerely,



Katheryn Emery, P.E.  
Acting Director

cc: Ms. Michelle Price-Fay, Chief, Clean Water Branch, EPA Region III

000399

# **Exhibit C**



**West Virginia Environmental Quality Board  
Charleston, West Virginia**

**West Virginia Manufacturers Association, Jefferson  
Asphalt Products, and Contractors Association  
Of West Virginia,**

**Appellants,**

**v.**

**Appeal Nos. 19-03-EQB  
19-04-EQB**

**Director, Division of Water and Waste Management,  
West Virginia Department of Environmental  
Protection,**

**Appellee.**

**ORDER GRANTING MOTION FOR STAY**

Now come Appellants West Virginia Manufacturers Association, Jefferson Asphalt Products and the Contractors Association of West Virginia (“Appellants”), and jointly represent as follows to the Board:

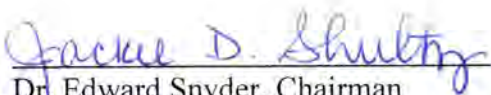
1. Appellants will suffer undue hardship in the event WV/NPDES Permit No. WV0115924, the West Virginia Department of Environmental Protection’s (“WVDEP”) general permit for “Stormwater Associated with Construction Activities” (the “Permit”), is not stayed while the parties complete their settlement negotiations;
2. Absent a stay, certain Permit deadlines, terms and conditions will be in effect and negatively impact Appellants prior a hearing (in the event a settlement is not reached), taking away Appellants’ opportunity to have their appeals heard by the Board prior to being adversely impacted;
3. The requested stay will be a short-term stay;

4. The parties have been and continue to work diligently toward a final settlement of the appeals; and


5. The Appellee does not oppose or endorse the Motion for Stay.

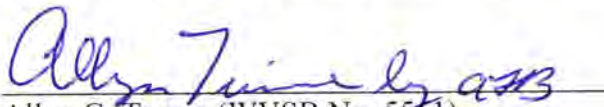
The Board, having considered the Motion for Stay as well as representations of the parties during the Board's April 25, 2019 pre-hearing conference for the WVONGA appeal, and finding that the Appellants' Motion for Stay is reasonable and well-founded, hereby GRANTS the Motion for Stay, and hereby ORDERS (1) that the stay apply from the Permit's effective date until sixty days after the date of this Order; and (2) that the terms and conditions of the 2012 construction stormwater general permit will apply during the stay of the Permit.

Dated this 29<sup>th</sup> day of April, 2019.

  
for Jack D. Shultz  
Dr. Edward Snyder, Chairman  
West Virginia Environmental Quality Board

Prepared by:

  
David L. Yaussy (WVSB No. 4156)  
Spilman Thomas & Battle, PLLC  
300 Kanawha Boulevard, E.  
Charleston, West Virginia 25301  
P (304) 340-3829  
**Counsel for West Virginia Manufacturers Association**

  
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P (304) 353-8000  
allyn.turner@steptoe-johnson.com  
**Counsel for Jefferson Asphalt Products and  
Contractors Association of West Virginia**

ENVIRONMENTAL QUALITY BOARD

WEST VIRGINIA MANUFACTURERS ASSOCIATION,

Appeal No. 19-03-EQB

and

JEFFERSON ASPHALT PRODUCTS, INC. AND  
CONTRACTORS ASSOCIATION OF WV,

Appeal No. 19-04-EQB

Appellants,

v.

DIRECTOR, DIVISION OF WATER AND WASTE  
MANAGEMENT, WEST VIRGINIA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION,

Appellee.

CERTIFICATE OF SERVICE

I hereby certify that I, Jackie D. Shultz, Clerk for the Environmental Quality Board, have this day, the 29th day of April, 2019, served a true copy of the foregoing **Order Granting Motion For Stay** via certified United States mail, postage pre-paid, or via personal service, to the following:

*via certified US Mail:*

David L. Yaussy, Esquire  
Spilman Thomas & Battle PLLC  
300 Kanawha Boulevard, East  
Charleston, WV 25301

91 7199 9991 7038 4218 7013

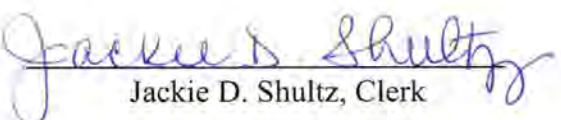
Allyn G. Turner, Esquire  
Richard L. Lewis, II, Esquire  
Steptoe & Johnson PLLC  
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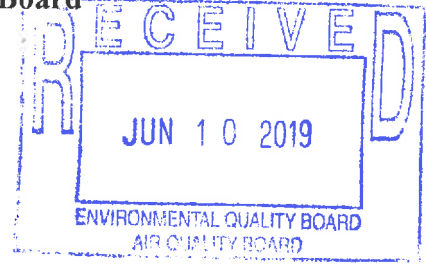
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# **Exhibit D**

**West Virginia Environmental Quality Board  
Charleston, West Virginia**



**West Virginia Manufacturers Association, Jefferson  
Asphalt Products, and Contractors Association of  
West Virginia**

**Appellants,**

**v.**

**Appeal Nos. 19-03-EQB  
19-04-EQB**

**Director, Division of Water and Waste Management,  
West Virginia Department of Environmental  
Protection,**

**Appellee.**

**Order**

On February 8, 2019, Appellant West Virginia Manufacturers Association (“WVMA”) filed a Notice of Appeal challenging certain conditions of WV/NPDES Permit No. WV0115924 (“the Permit”), issued on January 10, 2019, and effective February 9, 2019. Appellant Jefferson Asphalt Products (“Jefferson”) filed an appeal of the Permit on February 9, 2019, which appeal was joined by the Contractors Association of West Virginia (“CAWV”) on April 2, 2019. Appellants and Appellee have conferred and have reached agreement on certain issues raised in Appellant's Notice of Appeal, as set forth below:

**Background.**

1. Permit WV/NPDES No. WV0115924, as reissued, included a significant number of substantive revisions from the prior versions of the construction storm water general permit.
2. Given the scope of the revisions to the Permit, and therefore to the construction storm water program in West Virginia, Appellants have collectively raised numerous general and specific objections in their appeals.

3. Several of the Permit's provisions that are the subject of these appeals involve deadlines for taking certain actions, including applying for coverage under the new Permit. Thus, time is of the essence in seeking a resolution of these appeals.

4. The parties have negotiated in good faith in an effort to reach a full and complete resolution of these appeals.

5. The parties have set forth below proposed language proposed as a compromise of multiple objections by Appellants. In addition to the language set forth below, Appellee agrees to make any additional revisions in order to give effect to and consistency regarding the agreed revisions included herein. The parties agree that the Permit will not include any revisions that would have the effect of changing the agreements set forth herein (either as explained or as specifically set forth as agreed revised language) or failing to carry out the agreements as set forth herein.

**Extension of Prior Permit Coverage (WVMA Appeal Issues 1 and 2; Jefferson and CAWV Appeal Issue 1)**

With regard to persons and entities who were previously authorized to discharge stormwater in accordance with the terms and conditions of the prior version of WV Permit No. WV0115924, issued in 2012 ("the 2012 permit"), the Parties hereby agree to allow permittees under the 2012 permit to continue discharges of stormwater pursuant to the terms of the 2012 permit for up to 18 months. Modifications of such permit registrations (i.e., those registrations originally approved prior to February 9, 2019) will be reviewed in accordance with, and subject to, the terms and conditions of the terms of the 2012 permit. That authorization will relate back to the effective date of this Permit. The parties further agree to describe their agreement in language substantially similar to and with the same substantive meaning as the following in any subsequently-modified Permit:

Persons authorized to discharge storm water associated with the 2012 Permit WV0115924, Stormwater Associated with Construction Activities (“the 2012 Permit”), shall be authorized to complete and/or modify (e.g., SWPPP, GPP, Limits of Disturbance) such activities under the terms and conditions of the 2012 Permit, a copy of which is incorporated into this Permit as Appendix D. This authorization, granted in order to allow for an efficient transition of existing projects to this Permit, allows persons with projects authorized under the 2012 Permit before February 9, 2019 to modify or complete remaining authorized construction activities, and grants such persons authorization to complete all required work under the 2012 Permit terms and conditions, including final site stabilization and obtaining termination of the 2012 Permit terms and conditions.

All such work under the 2012 Permit terms and conditions is expected to be completed on or before February 9, 2020. In the event a permittee cannot practicably complete previously authorized construction activities and associated site stabilization activities, and termination of permit coverage cannot be accomplished, by February 9, 2020, the permittee may request a single additional extension of up to 6 months to complete all work and obtain termination of the 2012 Permit terms and conditions. In the event such an extension is desired, a written request for an extension must be received by the Director no later than 45 days prior to February 9, 2020.

Construction projects that were authorized to continue under the 2012 Permit terms and conditions, and will not be completed within the time allowed in the previous paragraphs, must continue construction under the terms and conditions of this Permit. For any such carryover project, the permittee must provide to the Director a signed certification of agreement to abide by the terms and conditions of this Permit at least 60 days before the end of the extension allowed in the previous paragraphs for operations under the terms and conditions of the 2012 Permit. Annual fees apply to all carryover projects, and an application fee will be required at the time any certification of agreement is submitted. Where any incomplete projects authorized under the 2012 Permit have disturbed lands that have not been permanently stabilized, status maps are required with the signed certification of agreement. The status map shall show all areas disturbed and not stabilized, and the Limits of Disturbance (LOD), which is the total area approved under the registration for land disturbance.

## Application of Water Quality Standards (WVMA Appeal Issue 3; Jefferson and CAWV Appeal Issue 2)

The Parties have agreed to remove those conditions in the Permit that require compliance with water quality standards, as violative of W. Va. Code §§ 22-11-6(a)(2) and 22-11-8(a), and to replace such conditions in any subsequently-issued Permit with conditions that mandate compliance with Best Management Practices (“BMPs”) in order to protect water quality standards. Such changes would include, but not be limited to, revising Sections I.A. and I.C. of the Permit to read as follows:

### I.A. TERMS OF PERMIT

The permittee must comply with all terms and conditions of this General Permit. Permit noncompliance constitutes a violation of the *West Virginia Water Pollution Control Act*, W. Va. Code § 22-11-1, et seq. (“WPCA”) and/or the *West Virginia Groundwater Protection Act*, W. Va. Code § 22-12-1, et seq. (“GWPA”) and is grounds for enforcement action; permit modification; suspension or revocation; or denial of a permit renewal application. See, W. Va. Code §§ 22-11-12, 22-11-22, 22-11-24, and 22-12-10.

### I.C. WATER QUALITY

The permittee must protect water quality and the existing and designated uses of receiving waters by implementing BMPs. The use of BMPs and Enhanced BMPs as set forth and contained in this General Permit are designed to protect applicable water quality standards by minimizing impacts to water quality and protecting existing and designated uses of the water and shall be considered protective of and in compliance with the applicable water quality standards. The Director reserves the authority to impose additional requirements and terms and conditions as necessary on a case-by-case basis upon a demonstration that such are necessary to protect applicable uses.

Compliance with the terms of this Permit, including the use of appropriate BMPs (regular or enhanced) at construction sites results in short term, *de minimis* effects on receiving waters, which satisfies the antidegradation requirements of 47 CSR 2 and 60 CSR 5.



The parties further agree to add the following language to the introductory portion of the Permit under the heading “Compliance with other laws and statutes”:

Compliance with the terms and conditions of this permit shall be deemed compliance for purposes of the State Water Pollution Control Act, W. Va. Code 22-11-1, et seq., and the rules promulgated thereunder, and sections 301, 302, 303, 306, 307, and 403 of the federal Water Pollution Control Act, including all state and federal water quality standards as set forth at W. Va. Code 22-11-6(2). This provision does not apply to any such standard imposed under section 307 of the federal Water Pollution Control Act for a toxic pollutant injurious to human health. Nothing in this General Permit shall be construed as relieving the permittee from compliance with other applicable federal, state or local statutes, ordinances or regulations.

Further, the parties have agreed to include the following language, or language substantially similar, in Section I.C or I.C.1. of the permit:

Receiving waters shall be protected from degradation through the implementation of appropriate BMPs. Enhanced BMPs must be used for projects discharging directly to Special Waters.

**Allowable Discharges (WVMA Appeal Issues 4 and 15; Jefferson and CAWV Appeal Issue 7)**

The Parties have agreed to remove the text in Section I.F, and replace it with language similar to Section G.2 of the 2012 permit that specifically provides coverage for certain non-stormwater discharges:

All discharges authorized by this permit shall be composed entirely of stormwater, except as follows:

discharges from emergency firefighting activities, fire hydrant flushing; waters used to wash vehicles, provided there is no discharge of soaps, solvents, or detergents used for that purpose; waters used to control dust; potable water sources, including uncontaminated waterline flushing; landscape irrigation; lawn watering; routine external building washdown which does not use detergents; pavement washwater provided spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used, provided that such pavement wash waters may not be discharged directly into any surface water, storm drain inlet, or stormwater conveyance, unless the conveyance is connected to a sediment basin, sediment trap, or similarly effective control; uncontaminated air conditioning condensate; uncontaminated,

non-turbid discharges of groundwater or springs; foundation or footing drains where flows are not contaminated with process materials such as solvents that are combined with stormwater discharges associated with industrial activity; and other construction dewatering activities that are treated by an appropriate control.

This permit does not authorize the conveyance, diversion, channeling, directing or otherwise allowing the discharge of stormwater into a sinkhole without an Underground Injection Control Permit.

**Notices of Intent and Applications for Permit Coverage (WVMA Appeal Issues 5 and 6; Jefferson and CAWV Appeal Issue 5)**

The Parties have agreed that the Permit will be revised to allow a Notice of Intent (“NOI”), with a SWPPP and GPP, for projects that will be completed within one year and are greater than 1 acre but less than 3 acres, unless the project would directly discharge into or upstream of a Tier 3 water. The NOI must be submitted 15 days before beginning earth disturbance, with the DEP providing its written confirmation of coverage via email, or otherwise in writing, within 10 days of submission. If no response from the DEP is received, construction can proceed 15 days after submitting the NOI, provided that the permittee provides notice by email or otherwise to the DEP prior to commencing earth disturbance. The NOI is not subject to public notice other than notification on the DEP website and signage at the site of the construction project. Each NOI shall be effective for a period of one year from the date that earth disturbance commences, and may be closed out without a Notice of Termination once the site is stabilized with at least 70% vegetative coverage. If earth disturbance and stabilization under a NOI cannot be practicably completed within one year, the permittee must file a complete Minor Construction Project permit registration application 30 days before the completion of the one year period from date of first earth disturbance. The parties further agree to describe their agreement in language substantially similar to and with the same substantive meaning as the following in any subsequently-modified Permit:

## II.A.1.d. Minor Construction Projects

II.A.1.d.i. Projects disturbing more than one acre but less than three acres that (1) do not discharge to or upstream of Tier 3 waters, and (2) will be completed within twelve (12) months, shall submit only the Notice of Intent Form (NOI) at least 15 days prior to initiating earth disturbance. The DEP shall provide its written confirmation of coverage via email or otherwise, within 10 days of submission of an NOI. If no response from the DEP is received, construction can proceed 15 days after submitting the NOI, provided that the permittee provides notice by email or otherwise to the DEP prior to commencing earth disturbance. ***Permit coverage for any project authorized through an NOI automatically terminates at the end of twelve (12) months from the date of issuance of the site authorization to the NOI registrant. Any person authorized under an NOI that cannot complete all required work prior to the automatic termination must file an application for coverage as a minor activity 30 days prior to the termination date.*** All permit terms and conditions must be complied with, provided however, that because the permit authorization terminates automatically, no Notice of Termination (NOT) is required.

II.A.1.d.ii. A project that disturbs one to less than three acres but will not complete construction and post-construction activities within twelve (12) months must file an application as set forth below.

Projects disturbing 1 to < 3 acres of land but not qualifying to use the NOI other than single-family homes as explained in Part II.A. 1 .e. below, shall submit an application containing the following:

- Application form, to include template for the sign
- Stormwater Pollution Prevention Plan
- Groundwater Protection Plan
- Pre-Construction Drainage Map
- Temporary Drainage Structure Maps
- Site Plan (Map) showing Limits of Disturbance and Receiving Waters
- Typical Design Details

Applications for Minor Construction Projects shall be submitted 30 days before the anticipated date construction is to begin. The Parties have further agreed that, for Minor Construction Projects that do not qualify for an NOI, permit registration applications must be filed 30 days before commencing earth-disturbing activities. For Large Construction Projects, permit registration applications must be submitted 45 days in advance of earth-disturbing activities. Permit registration applications for projects less than 100 acres are not subject to

public notice or hearing requirements other than notification on the DEP website that the registration application has been received, and signage at the site of the construction project. Consistent with these revisions, Appendix A, Section 13 will be revised, and the parties agree to describe their agreement in language substantially similar to and with the same substantive meaning as the following in any subsequently-modified Permit:

### 13. Permit and Registration Modification

This permit may be modified, suspended, or revoked by the Director in whole or in part during its term in accordance with the provisions of Chapter 22, Article 11 of the Code of West Virginia.

Any permittee wishing to modify his registration for a Large Construction Activity shall submit such request at least 45 days prior to the commencement of the proposed action for modification.

Any permittee wishing to modify his registration for a Minor Construction Activity shall submit such request at least 30 days prior to the commencement of the proposed action for modification.

Any permittee wishing to modify his registration under a NOI shall submit such request at least 15 days prior to the commencement of the proposed action for modification.

The parties agree that no post-construction drainage maps need to be submitted with an application or NOI. The parties agree that a permittee filing a NOI may proceed with earth-disturbing activities 15 days after filing the NOI unless notified that the NOI is incomplete.

The Parties further agree that other implementing changes to the Permit to incorporate the foregoing changes to Permit registration applications and creation of a NOI process may be necessary in any modification of this Permit.

**Groundwater Protection Plans (WVMA Appeal Issue 7; Jefferson and CAWV Appeal Issue 6)**

The Parties have agreed to modify Section II.I.1, and other relevant portions of the Permit, to allow for Groundwater Protection Plans (“GPPs”) to be submitted with an application in an incomplete form, and then for updates to the GPP to be submitted as the plan is changed, with a complete GPP due at least ten days before beginning earth disturbance activities, with the DEP providing a response within 5 days of submission. If no response is received from the Director, the Operator may begin earth disturbance as planned. A copy of the GPP shall be maintained at the site of the construction activity and shall be available for review by the Director upon request. These terms will be incorporated into any modified Permit with language substantially similar to and with the same substantive meaning as the following:

GPPs shall be prepared in accordance with the requirements of 47 C.S.R. 58-4.I.1. *et seq.* (Groundwater Protection Regulations). GPPs shall be submitted using a template provided by the DEP, and shall only include the information available at the time of application. It is understood that some aspects of the GPP, such as the type of tanks and equipment that contractors will be using at the construction project, may not be known at the time the GPP is submitted with the Notice of Intent or Application. In that event, the GPP should be submitted with the Notice of Intent or Application with as much information as possible when originally submitted, and updated thereafter as additional information comes available. A complete GPP must be submitted to the Director at least 10 days before commencing earth disturbing activities, with the DEP providing a response within 5 days of the submission, and a copy of the GPP shall be retained on the construction site and available for review by the Director upon request.

**Graphical Representation of Stormwater Project Features (WVMA Appeal Issue 8; Jefferson and CAWV Appeal Issue 13).**

The Permit requires use of ArcGIS Shapefiles or AutoCAD drawings, which are more resource-intensive than may be needed in some circumstances, such as providing updates on minor changes to a site plan. Appellee is concerned that allowing other types of illustration may not provide sufficient clarity or information. Accordingly, the Parties agree that the Permit shall

be amended, at Section II.H.1.a and in other relevant locations to state the following, or something substantially similar: “The project shall be illustrated in an ArcGIS Shapefile (.shp) or AutoCAD Drawing (.dwg), unless the Director allows use of some other means of illustrating the site or project.

**Post-construction BMPs (WVMA Appeal Issue 9)**

Section II.H.1.c, requires post-construction Best Management Practices (“BMPs”) for Large Construction Projects with post-construction discharges that are 10% higher than pre-construction runoff flows. Appellants have objected to those requirements, as they are impractical, are not necessary to protect water quality, and are not consistent with the West Virginia Supreme Court of Appeal's reasonable use test for evaluating downgradient water flow.

The parties have agreed that Section II.H.1.c can be deleted from the Permit, and that any modification of the Permit will not require post-construction stormwater management.

**Project Features Design Requirements (WVMA Appeal Issue 11; Jefferson and CAWV Appeal Issues 10, 13)**

The Parties have agreed to revise Section II.H.1.d to (i) clarify that road construction criteria applies only to newly constructed access roads, and not to access roads that existed on the effective date of the Permit, and (ii) revise the language “maximum pitch grade shall not exceed 15%” to “the maximum slope for an access road shall be reasonably designed taking into consideration all site factors, including but not limited to, topography, soil type, other construction activity, etc. Slopes in excess of 20% shall be described in the site plan drawings.”

The Parties have agreed to clarify that use and maintenance of access roads, by themselves, do not require Permit coverage, and that land clearing (cutting and removal of shrubs and trees) are not subject to Permit coverage. Consequently, the definition of “access road” in Appendix C is amended to exclude the words “used” and “maintained” and the definition of

“grading” is amended by excluding the words “land clearing and.” The Parties further agree that “mere use of an access road without improvement by land disturbance is not subject to the Permit, as long as that use is consistent with its original purpose.”

**Inspections and Repairs of BMPs (WVMA Appeal Issues 12 and 13; Jefferson and CAWV Appeal Issue 4)**

The Parties have agreed that inspections of BMPs must be carried out every 7 days and within 24 hours following storm events of .5 inch or greater over a 24 hour period. If it is not practicable to complete the inspection within 24 hours, that fact shall be explained on the inspection report. All repairs of BMPs must be performed as soon as practicable following each inspection, and must be re-examined no later than the next regularly-scheduled inspection. If it is not practicable that repairs can be completed within 7 days of such an inspection, that fact shall be explained on the inspection report and such explanation shall include an anticipated completion date. Further, the Permit will authorize the DEP to allow permittees to inspect at greater intervals (e.g., 14 days).

For projects subject to enhanced BMPs, inspections of BMPs must be carried out every 7 days, and within 24 hours following storm events of .25 inch or greater over a 24 hour period. If it is not practicable to complete the inspection within 24 hours, such an inspection shall be explained on the inspection report and such explanation shall include an anticipated completion date. All repairs of BMPs must be performed as soon as practicable following each inspection, and must be re-examined no later than the next regularly-scheduled inspection. If it is not practicable that repairs can be completed within 7 days of such an inspection, that fact shall be explained on the inspection report and such explanation shall include an anticipated completion date.

The Parties have further agreed to clarify throughout the Permit that “Enhanced BMPs” apply only to “Special Waters”, which will be defined as “(i) Tier 3 waters, as those waters are defined and set forth in 47 CSR, Series 2; (ii) trout waters specifically identified in 47 CSR, Series 2 (excluding warm water streams, warm water fisheries stocked with trout or those without sufficient age classes of trout to demonstrate a population of trout through natural reproduction); and (iii) streams for which a sediment TMDL (but not those streams for which a TMDL for iron, aluminum or other parameters are developed, unless sediment is also addressed) has been completed.” Regular or standard BMPs, including the related inspection and BMP repair deadlines, will be implemented for all other waterbodies.

These terms will be incorporated into any modified Permit with language substantially similar to and with the same substantive meaning as the following:

I.C.1. This permit does not authorize new sources or new discharges of constituents of concern to impaired waters unless consistent with the approved sediment TMDL and applicable state law (WV 47CSR10 and WV Code 22-11).

To protect water quality, Enhanced BMPs shall be required for direct discharges into all Special Waters. Enhanced BMPs consist of

- Inspection of all erosion and sediment controls within disturbed areas at least once every 7 calendar days and within 24 hours after any precipitation event greater than 0.25 inches per 24 hours period, unless such inspections are not practicable within 24 hours, in which case the inspections should be done as soon as practicable, and the reason for the delay explained in the inspection report and such explanation shall include an anticipated completion date.
- Repairs or maintenance to BMPs shall be performed as soon as practicable after the inspection following the .25 inch rain event, and repairs shall be re-inspected no later than the next inspection date.
- Temporary seeding and/or mulching within 7 days when areas will not be re-disturbed for more than 14 days;
- Permanent seeding and mulching within 7 days of reaching final grade;
- Seeding and/or mulching must be performed within 7 days, or as soon as practicable, of ceasing construction activities. If this is not done within 7 days, the



inspection reports shall explain the reason why seeding and/or mulching were not performed within the seven-day period;

- Additional filtration BMPs.

Additional filtration BMPs should be selected from the DWWM's BMP Manual, however, filtration BMPs from other manuals may be approved if equally protective of water quality.

### **Use of Enhanced BMPs for Tier 2 Streams (Jefferson and CAWV Appeal Issue 3)**

The Parties have agreed to clarify throughout the Permit that “enhanced BMPs” are required only for projects that directly discharge to Special Waters as described in more detail above.

### **Seeding and Mulching Requirements (WVMA Appeal Issue 14)**

The Parties have agreed that for all BMPs, seeding **and/or** mulching will be required within 14 days for temporary work stoppages, and that seeding and/or mulching must be performed within 14 days, or as soon thereafter as practicable, of ceasing construction activities. If this is not performed within 14 days, the inspection reports shall note the reason why seeding and/or mulching was not performed.

### **Inspection Report Signatories (WVMA Appeal Issue 16)**

The parties have agreed that “Qualified Persons”, a term that is defined in Appendix C of the Permit, can sign inspection reports and all other reports that are not submitted to the Director, and the Permit can be modified accordingly.

### **Removed Substances (WVMA Appeal Issue 17)**

The parties agree that the first paragraph in Appendix B, Section I.5 can be eliminated and replaced with the following statement: “Spills and releases must be cleaned up expeditiously, and contaminated media must be properly disposed in accordance with all applicable requirements of 33 CSR 1.”

### **Immediate Reporting**

The parties agree that Section I.D.2. will be clarified, in the first sentence, by replacing the phrase “The permittee shall report any noncompliance” with the phrase “The permittee shall report any spill or release of pollutants to waters of the state”, and to otherwise update this section to be consistent with spill reporting to the WVDEP hotline.

### **Record Retention**

Appellants expressed concern that the Permit’s new record keeping requirement is unnecessary for construction stormwater permittees because projects authorized under the Permit are not authorized to undertake an ongoing, long-term discharge, but instead authorize only discrete construction projects. The parties have agreed to limit the record keeping requirement insofar that records required to be submitted to the DEP will be retained by the DEP, with the permittee only being required to retain those records pertaining to the project not required for submission to the DEP, and will revise Sections II.H.5. and Part IV – Requirements After Construction to effectuate this agreed change.

### **Technical revisions related to mapping, engineering information, and roads**

The parties have agreed to make revisions to address Appellants’ concerns regarding the scope or intent of certain provisions related to applications, SWPPPs or other information required to be prepared, retained or submitted to the WVDEP.

The parties have agreed to revise Section II.H. of the Permit addressing SWPPPs. Specifically, the parties have agreed to revise Section II.H.1. to clarify the scope of the narrative portion of the SWPPP. This will be incorporated into any modified Permit with language substantially similar to and with the same substantive meaning as the following:

The SWPPP shall contain a description of the nature of the construction activity, including a projected or planned timetable for major activities such as: cut and fill

plans, proposed road construction or upgrades, grading plans, and a narrative of the pollution prevention techniques proposed to be implemented before, during and after construction. The narrative shall also include a description of planned major grading activities and stabilization measures.

The parties have also agreed that maps submitted with a SWPPP, GPP or application must have a North arrow to allow for proper review, but need not be oriented to the North. Section II.H.1.a. of the Permit will be revised to reflect this clarification. This will be incorporated into any modified Permit with language substantially similar to and with the same substantive meaning as the following: “Site maps shall contain a North arrow, with a minimum of five-foot topographical contours.”

The parties have agreed to address the scope of mapping required in Section II.H.1.b. by limiting information required to be submitted for minor construction projects or where prepared by a professional engineer, and reserving the right of the agency to require additional information where a professional engineer did not prepare and sign off on the information. This will be incorporated into any modified Permit with language substantially similar to and with the same substantive meaning as the following:

II.H.1.b. The map shall be accompanied by a description of an estimate of the total area of the site, the part of the site that is expected to undergo excavation or grading, and the estimated total amount of excavation by cut and fill as well as a general description of where excavated material will be placed on the site.

Where a Minor project (less than 3 acres), or a project not designed by a professional engineer, contains cut and fill areas, the agency reserves the right to request additional information on a case-by-case basis to assure that slip potential is sufficiently limited.

The parties agree that the requirement for the submittal of cross-sections depicting cut and fill areas of one acre or more is unnecessary given the other required information that will be submitted to the agency, including the information required as set forth in Section II.H.1.a.1.

The parties have agreed to revise the road specifications information set forth in Section II.H.1.d. of the Permit, beginning with the third paragraph of that section, to reduce the overly prescriptive requirements therein. This will be incorporated into any modified Permit with language substantially similar to and with the same substantive meaning as the following:

II.H.1.d. Each road or access road shall be classified as either permanent or temporary and categorized as Construction Activity — New or Improved; Incidental Construction Activity; or Maintenance Only. Construction requirements of this section apply to newly constructed roads (i.e., those constructed after the effective date of this Permit), and mere use of a road without improvement by land disturbance is not subject to the Permit, as long as that use is consistent with its original purpose.

\* \* \*

Each newly constructed access road shall be designed with the following specifications:

- Stone access entrance and exit drives.
- Parking areas to reduce the tracking of sediment onto public or private roads.
- All unpaved roads on the site shall be graveled or have other durable surface or shall implement BMPs chosen to effectively control sediment and erosion. Unpaved roads shall be stabilized in accordance with II.H.1.d.1.
- The maximum slope for an access road shall be reasonably designed taking into consideration all site factors, including but not limited to, topography, soil type, other construction activity, etc. Slopes in excess of 20% shall be described in the site plan drawings.
- The surface shall pitch toward the ditch line at a minimum slope of 2%. A road located in an area that doesn't have hillside runoff may be crowned with a slope from the center line.
- A ditch shall be provided on the inside of any road having hillside runoff, with ditch relief culverts and/or water bars spaced according to grade and installed wherever necessary to insure proper drainage of runoff water beneath or through the access road.
- Ditch lines shall be capable of passing the peak discharge of a 10-year, 24-hour precipitation event.
- Ditch relief culverts shall be capable of passing the peak discharge of a 2-year, 24-hour precipitation event.
- Sediment control shall be provided at the inlet by sumps, rock checks, or equal structure and the slope at the outlet end shall be protected with an apron of rock riprap, a water energy dissipater, or other similar structure.

- Alternative design criteria for access road drainage may be used, but only when approved by the Director.

### **Updates to SWPPP / GPP**

The parties agree that SWPPPs and GPPs should be updated as appropriate based on site conditions, and further agree that updates are approvable by a field inspector and do not warrant modification of the registration. The registration modification language in Section III and Appendix A, No. 13 of the Permit (and in other parts of the Permit as necessary to effectuate this change) will be revised to reflect this agreement. This will be incorporated into any modified Permit with language substantially similar to and with the same substantive meaning as the following:

### **PART III. REQUIREMENTS DURING CONSTRUCTION**

During construction, the permittee is required to:

\* \* \*

- Update the SWPPP/GPP with the revised or additional controls and retain the updated SWPPP/GP on site;
- Submit modifications to the approved plans when necessary to reflect the addition of controls outside of the existing LOD, or significant revisions to the SWPPP/GPP where the Director has requested a modification in writing, and

\* \* \*

III.C.2. The permittee shall update the SWPPP, using forms provided by DWWM, whenever there is a change in design, construction, scope of operation, or maintenance of BMPs, which has the potential to adversely impact the surface waters of the State, or if the SWPPP proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activities. Should conditions warrant, the Director may request changes to the SWPPP during a field inspection. The Director may request, review and approve such updates or require the permittee to apply for a modification to the approved application when necessary to reflect the addition of controls outside of the existing LOD, or significant revisions to the SWPPP where the Director has requested a modification in writing.

The permittee shall update the GPP whenever there is a change in design, construction, operation, or maintenance of BMPs which could reasonably be expected to have an impact on the potential contamination of groundwater. The Director may review and approve such updates or require a modification when necessary to reflect the addition of controls outside of the existing LOD, or significant revisions to the GPP where the Director has requested a modification in writing.

**Definitions:**

The parties have agreed to revise definitions in Appendix C of the Permit, including but not limited to the definitions for the terms ‘Application,’ ‘detailed site plan,’ ‘enhanced BMPs,’ ‘minor construction activity,’ and ‘notice of intent (NOI),’ to reflect the agreed revisions as set forth herein. Further, the parties agree to revise the definition of “access roads” in Appendix C. to make clear that active working areas where vehicles may travel are not access roads, and to limit the scope of what areas within a road right-of-way are considered to be part of an access road. This will be incorporated into any modified Permit with language substantially similar to and with the same substantive meaning as the following:

Definitions:

1. “Access Road” means surface road bed area within a right-of-way for purposes of travel by land vehicles and/or equipment used in Construction activities. A road consists of the area within the right-of-way that includes the roadbed, shoulders, adjacent parking and side areas, approaches, adjacent ditches, and other adjacent or contiguous related structures. The term includes access roads constructed, reconstructed, or improved for use in all construction operations, provided, however, this term does not include general areas of construction activities, or the active construction area for cut and fill activities, where vehicles travel but are not areas specifically designated for travel to and from the construction site.

The definition of “sensitive waters” shall be replaced with the definition for “special waters” to promote consistency with the WVDEP’s oil and gas storm water permit; definitions for “clearing” and “construction activity” have revisions for clarity; and a definition for “sediment TMDL” has been added, as follows:

43. "Special Waters" means (i) Tier 3 waters, as those waters are defined and set forth in 47 CSR, Series 2; (ii) trout waters specifically identified in 47 CSR, Series 2 (excluding warm water streams, warm water fisheries stocked with trout or those without sufficient age classes of trout to demonstrate a population of trout through natural reproduction); and (iii) streams for which a sediment TMDL (but not those streams for which a TMDL for iron, aluminum or other parameters are developed, unless sediment is also addressed) has been completed.

"Clearing" means the stage of development in which vegetation is cleared from land. Clearing includes cutting and removing vegetation with chain saws, brush axes, brush hogs and other mechanical means where little or no soil is disturbed.

"Construction Activity" means land disturbance operations such as grubbing, grading, filling, and excavating during site development for residential, commercial or industrial purposes. This includes, but is not limited to, access roads, borrow and spoil areas.

"Sediment TMDL" means a Total Maximum Daily Load that has been developed for sediment and the effects of sedimentation. It does not include TMDLs that are developed for substances or conditions that may accompany sediment, including without limitation pH, iron or aluminum, unless sediment is also expressly made a part of the TMDL.

### **Installation of Erosion and Sediment Controls**

The parties agree that Section II.F. of the Permit will be revised to clarify that erosion and sediment controls are to be installed in accordance with a permittee's NOI or approved application prior to land disturbance associated with the project's construction activities. This will be incorporated into any modified Permit with language substantially similar to and with the same substantive meaning as the following:

#### **11.F. INSTALLATION OF EROSION AND SEDIMENT CONTROLS**

After receiving approval from the Director and before beginning construction activities, the permittee shall install erosion and sediment control BMPs in accordance with the approved registration. BMPs shall be in place and functional prior to land disturbance associated with the authorized construction activities. For registrations proposed to be completed in multiple phases, the BMPs for each phase must be constructed and functional prior to land disturbance beginning in that phase associated with the authorized construction activities. Erosion and sediment control BMPs shall be implemented in

accordance with standard procedures set forth in the BMP Manual, however, other BMPs may be used if equally protective of water quality.

**Permit Re-Issuance; Processing Prior to Re-Issuance:**

The Parties agree that Appellee will modify the Permit to implement the Parties' agreement and re-issue it. Appellee, in making such modifications, shall give effect to each agreed modification of the permit by adopting the language specified herein, or language substantially similar to and with the same substantive meaning as the language specified herein, and additionally by making any other revisions needed for consistency throughout the Permit or otherwise to fully incorporate and effectuate each agreed modification. The Parties recognize that the Permit, as modified pursuant to this Order, will be subject to public notice and comment consistent with 47 CSR 10-12.

For purposes of giving effect to the Agreement of the parties as set forth in this Order, the terms and conditions of the 2012 version of WVDEP's "Stormwater Associated With Construction Activities" general permit shall be incorporated herein by reference (a copy of which is attached hereto as Appendix A). The Appendix A terms and conditions shall apply to all projects currently approved, or approved in the future, until the Permit is re-issued, and to all applications for registration that are pending, or will be submitted to the DEP, until re-issuance of the Permit.

For those Permit registration applicants who were approved for coverage under the Permit after February 9, 2019, and which may have been subjected to conditions not consistent with the Appendix A terms and conditions, such permittees can elect to continue with the Permit terms under which they registered, or may elect to operate under Appendix A, until the Permit is modified and reissued as required by this Order. If the permittee elects to be covered under the



terms of Appendix A, that permittee would be required to provide the DEP with an updated SWPPP consistent with Appendix A within 30 days of entry of this Order.

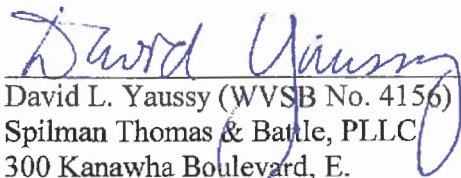
Upon modification and reissuance of the Permit, any permittee whose registration application was approved after February 9, 2019, must submit a revised SWPPP and GPP to reflect the terms and conditions of the reissued Permit (if the SWPPP and GPP do not already reflect the requirements of the re-issued Permit), and is entitled to revise other parts of its project application or design to reflect the terms and conditions of the reissued Permit. Any permittee whose application was approved before February 9, 2019, may seek coverage under the terms and conditions of the re-issued Permit after submitting a revised SWPPP and GPP, and such permittee may revise other parts of its registration application or site design to reflect the terms and conditions of the re-issued Permit. Permittees whose registrations were approved prior to February 9, 2019, must be operating in accordance with the provisions of the re-issued Permit (with appropriate changes to its SWPPP and GPP) by no later than the end of the extension period(s) described in the first section of this order. Applications for coverage under the re-issued Permit will be due within the time periods specified in the re-issued Permit for modifications of registrations.

The Board, having considered the agreement of the parties, and finding that the changes to the Permit are reasonable, hereby Orders that the parties' agreement be adopted as the ruling of the Board, and the Permit amended accordingly, effective as of February 9, 2019. The revised conditions will be enforceable conditions from February 9, 2019, until such time as the Permit is modified and issued after public comment.

Dated this 31 day of May, 2019.

*for Jackie D. Schultz June 10, 2019*  
Dr. Edward Snyder, Chairman  
West Virginia Environmental Quality Board

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## **APPENDIX A**



STATE OF WEST VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF WATER AND WASTE MANAGEMENT  
601 57<sup>th</sup> STREET SE  
CHARLESTON, WV 25304-2345  
GENERAL

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**  
**WATER POLLUTION CONTROL PERMIT**

Permit No. WV0115924

Issue Date: December 5, 2012

Effective Date: January 4, 2013

Expiration Date: January 3, 2018

Subject: Stormwater Associated  
With Construction Activities

To Whom It May Concern:

This is to certify that any establishment with discharges composed entirely of stormwater associated with construction activities disturbing one acre or greater of land area (construction activities are land disturbing operations such as clearing, grubbing, grading, filling and excavation operations during site development for residential, commercial or industrial purposes) and agreeing to be regulated under the terms of this General Permit, except for;

1. Operations that result in the disturbance of less than one acre of total land area, which are not part of a larger common plan of development or sale.
2. Stormwater discharges associated with land disturbing activities that may reasonably be expected to be causing or contributing to a violation of a water quality standard as determined by the Director.
3. Land disturbing activities already governed by other Department of Environmental Protection NPDES permits. This includes Division of Mining and Reclamation permits for coal mining and non-metallic quarries.
4. Landfills, except in the preparation of a new landfill and/or clay borrow areas.
5. Other activities exempt from NPDES permitting requirements as set forth in 40CFR 122.3(e) and 47CSR 10-3.2.b.4 (NPDES Program).
6. Land disturbing activities related to oil and gas activities as required by the Energy Policy Act of 2005. These activities include but are not limited to

construction of drilling sites, waste management pits, and access roads, as well as construction of the transportation and treatment infrastructure such as pipelines, natural gas treatment plants, natural gas pipeline compressor stations, and crude oil pumping stations. Construction activities that result in a discharge of a reportable quantity release or that contribute pollutants (other than non-contaminated sediments) to a violation of a water quality standard are still subject to permit coverage.

is hereby granted coverage under this General WV/NPDES Water Pollution Control Permit to allow stormwater discharges into the surface waters of the State. This General Permit is subject to the following terms and conditions:

The information submitted on and with the site registration application form will hereby be made terms and conditions of the General Permit with like effect as if all such information were set forth herein, and other pertinent conditions set forth in Sections A, B, C, D, E, F, G, H, I and J.

Construction of single family residences by the homeowner or homeowner's contractor requiring land disturbances less than three acres in size are provided coverage under the General WV/NPDES Water Pollution Control Permit and do not require application for registration. This includes offsite borrow and waste sites. However, all other terms and conditions of the General WV/NPDES Water Pollution Control Permit still apply except for the Notice of Termination requirement. The WVDEP's Individual House Sample Sediment and Erosion Control must be used during the construction of the single family home.

Sites approved from January 1, 2011, thru November 5, 2012, are hereby granted coverage under General WV/NPDES Water Pollution Control Permit WV0115924. Sites approved prior to January 1, 2011, shall have until June 30, 2013, to have final stabilization completed. Final stabilization means disturbed areas shall be covered by the appropriate permanent protection. Final stabilization includes; pavement, buildings, stable waterways (riprap, concrete, grass or pipe), a healthy, vigorous stand of perennial grass that uniformly covers at least 70 percent of the ground, stable outlet channels with velocity dissipation which directs site runoff to a natural watercourse, and any other approved structure or material. Sites that are not stabilized by June 30, 2013, an application to receive permit coverage must be submitted to the Division of Water and Waste Management on or before, July 1, 2013.

#### **Continuation of this general permit**

If this general permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with 47 CSR 10 and remain in force and effect. If you were authorized to discharge under this general permit prior to the expiration date, any discharges authorized under this permit will automatically remain covered by this general permit until the earliest of:

- Your authorization for coverage under a reissued general permit or a replacement of this general permit following your timely and appropriate submittal of a complete application requesting authorization to discharge

under the new general permit and compliance with the requirements of the new permit; or

- Your submittal of notification of termination that the facility has ceased operations; or
- Issuance or denial of an individual permit for the facility's discharge; or
- A formal permit decision by DWWM not to reissue this general permit, at which time DWWM will identify a reasonable time period of covered dischargers to seek coverage under an alternative general permit or individual permit. Coverage under this permit will cease at the end of this time period.

#### SECTION A. TERMS OF PERMIT

Discharges from sites covered under this General Permit shall not cause or contribute to a violation of 47CSR2 (Requirements Governing Water Quality Standards) and 46CSR12, (Requirements Governing Groundwater Standards) of the West Virginia Legislative Rules pursuant to Chapter 22, Article 11 and Article 12. Discharges that are not in compliance with these standards are not authorized.

#### SECTION B. SCHEDULE OF COMPLIANCE

Compliance with this General Permit, the approved Stormwater Pollution Prevention Plan and the Groundwater Protection Plan is required upon the beginning of the construction project.

#### SECTION C. MANAGEMENT CONDITIONS

##### C.1. Duty to Comply

C.1.a. The permittee must comply with all conditions of this permit. Permit noncompliance constitutes a violation of the federal Clean Water Act (CWA) and State Act (Chapter 22, Article 11 or Article 12) and is grounds for enforcement action; for permit modification, revocation and reissuance, suspension or revocation; or denial of a permit renewal application.

C.1.b. The permittee shall comply with all effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

C.2. Duty to Reapply

If the permittee seeks to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit or General Permit registration as detailed in permit reissuance.

C.3. Duty to Mitigate

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

C.4. Permit Actions

This permit may be modified, revoked and reissued, suspended, or revoked for cause. The filing of a request by the permittee for permit modification, revocation and reissuance, or revocation, or a notification of a planned change or anticipated noncompliance, does not stay any permit condition.

C.5. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privilege.

C.6. Signatory Requirements

All applications, reports, or information submitted to the Director shall be signed and certified as required in 47CSR10-4.6. (NPDES Program). If an authorization becomes inaccurate because a different individual or position has responsibility for the overall operation of the project, a new authorization must be submitted to the Director prior to, or together with any reports, information, or applications to be signed by an authorized representative.

C.7. Transferability

This permit is not transferable to any person, except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary.

C.8. Duty to Provide Information

The permittee shall furnish to the Director, within a reasonable specified time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, suspending, or revoking this permit, or to

determine compliance with this permit. This information may include water quality information as specified by the Director. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

C.9. Other Information

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall immediately submit such facts or information.

C.10. Inspections and Entry

The permittee shall allow the Director or an authorized representative upon the presentation of credentials and such other documents as may be required by law

- C.10.a. To enter upon the permittee's premises at all responsible times in which an effluent source or activity is located, or where records must be kept under the conditions of this permit;
- C.10.b. To have access to and copy at reasonable times any records that must be kept under the conditions of this permit;
- C.10.c. To inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit;
- C.10.d. To sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the State Act, any substances or parameters at any location.

C.11. Permit Modification

This permit may be modified, suspended, or revoked in whole or in part during its term in accordance with the provisions of Chapter 22, Article 11 of the Code of West Virginia. Any permittee wishing to modify his coverage under this permit shall submit such request at least 45 days prior to the commencement of the proposed action for modification if no public notice period is required. A modification that requires a public notice period must be submitted at least 90 days prior to construction to allow for the public notice procedure.

C.12. Water Quality

Subject to 47 WV CSR 10.3.4.a, the effluent or effluents covered by this permit are to be of such quality so as not to cause a violation of applicable water quality standards.



C.13. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the CWA.

C.14. Liabilities

C.14.a. Civil

Any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318 or 405 of the CWA is subject to a civil penalty not to exceed \$37,500 per day of such violation (40 CFR Part 19).

C.14.b. Criminal

Any person who negligently violates, among other sections, Section 301, 302, 306, 307, or 308 of the CWA, or any permit condition or limitation implementing any of such section in a permit is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one year, or both. If a conviction of a person is for a violation committed after a first conviction of such person, punishment shall be a fine of not more than \$50,000 per day, or by imprisonment of not more than 2 years, or both.

Any person who knowingly violates, among other section, Section 301, 302, 306, 307, or 308 of the CWA, or any permit condition or limitation implementing any such sections in a permit, is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment of not more than 3 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person, punishment shall be a fine of not more than \$100,000, or by imprisonment for not more than 6 years, or both.

C.14.c. Nothing in C.14.a. and C.14.b. shall be construed to limit or prohibit any other authority the Director may have under the State Water Pollution Control Act, Chapter 22, Article 11 and State Groundwater Protection Act, Chapter 22, Article 12.

C.15 Outlet Markers

An outlet marker shall be posted during the term of General Permit coverage in accordance with Title 47, Series 11, Section 9 (Special Rules) of the West Virginia Legislative Rules.

SECTION D. OPERATION AND MAINTENANCE

D.1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures.

D.2. Need to Halt or Reduce Activity Not a Defense

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

D.3. Bypass

D.3.a. Definitions

D.3.a.1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility; and

D.3.a.2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

D.3.b. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of D.3.c. and D.3.d. of this permit.

D.3.c. Notification of bypass

D.3.c.1. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.

D.3.c.2. If the permittee does not know in advance of the need for bypass, notice shall be submitted as requires in F.2.a. of this permit.

D.3.d. Prohibition of bypass

D.3.d.1. Bypass is permitted only under the following conditions, and the Director may take enforcement action against a permittee for bypass, unless;

D.3.d.1.A. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

D.3.d.1.B. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance. This condition is not satisfied if the sediment and erosion control structures were not installed in the proper sequence; and

D.3.d.1.C. The permittee submitted notices as required under D.3.c. of this permit.

D.3.d.2. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in D.3.d.1. of this permit.

D.4. Upset

D.4.a. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with the technology based permit effluent limits because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

D.4.b. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based effluent limitation if the requirements of D.4.c. are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

D.4.c. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

D.4.c.1. An upset occurred and that the permittee can identify the cause(s) of the upset.

D.4.c.2. The permitted project was at the time being properly operated.

D.4.c.3. The permittee submitted notice of the upset as required in F.2.a. of this permit; and

D.4.c.4. The permittee complied with any remedial measures required under C.3. of this permit.

D.4.d. Burden of proof. In any enforcement proceedings the permittee seeking to establish the occurrence of an upset has the burden of proof.

D.5. Removed Substances

Where removed substances are not otherwise covered by the terms and conditions of this permit or other existing permits by the Director, any solids, sludge, filter backwash or other pollutants (removed in the course of treatment or control of wastewater) and which are intended for disposal within the State, shall be disposed of only in a manner and at a site subject to the approval by the Director. If such substances are intended for disposal outside the State or for reuse, i.e., as a material used for making another product, which in turn has another use, the permittee shall notify the Director in writing of the proposed disposal or use of such substances, the identity of the prospective disposer or users, and the intended place of disposal or use, as appropriate.

SECTION E. MONITORING AND REPORTING AND DEFINITIONS

Monitoring of discharges is not required for construction activities unless directed by the Director.

E.1. Definitions

“Best management practices” (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, other management practices and various structural practices such as but not limited to silt fence, sediment traps, seeding and mulching, and rip-rap used to prevent or reduce erosion and sediment runoff and the pollution of surface waters of the State. BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

“Clearing” means the stage of development in which vegetation is cleared from land. Clearing does not include cutting and removing vegetation with chain saws, brush axes, brush hogs and other mechanical means where there is less than one acre or no soil disturbance.

“Clean Water Act” (CWA) (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 97-117 and Public Law 95-576; 33 U.S.C. 1251 et seq.

“Common plan of development” is a contiguous construction project where multiple separate and distinct construction activities may be taking place at different times on different schedules but under one plan. The “plan” is broadly defined as any announcement or piece of documentation or physical demarcation indicating construction activities may occur on a specific plot; included in this definition are most subdivisions.

“Control” is a best management practice such as erosion control or sediment control that will reduce sedimentation on a construction project.

“Construction Activity” means land disturbance operations such as clearing, grubbing, grading, filling, and excavating during site development for residential, commercial or industrial purposes. This includes, but is not limited to, access roads, borrow and spoil areas.

“Director” means the Director of the Division of Water and Waste Management, Department of Environmental Protection, or her designated representative.

“Disturbed area” is the total area of land disturbing activity that will take place during all phases of a construction project, including, but not limited to, all waste and borrow sites, utility installation, road building, mass grading, and site development.

“Diversion” means a berm or excavated channel or combination berm and channel constructed across sloping land on a predetermined grade. This includes but is not limited to protecting work areas from upslope runoff and reducing the size of the drainage going to sediment trapping structures (clean water diversion), transporting runoff across a project to minimize erosion and diverting sediment-laden water to an appropriate sediment-trapping structure.

“Erosion” means the displacement of solids (soil, mud, rock, and other particles) by the agents of wind, water, and ice in response to gravity.

“Establishment” means an industrial establishment, mill, factory, tannery, paper and pulp mill, mine, colliery, breaker or mineral processing operation, quarry, refinery, well and each and every industry or plant or works in the operation or process of which industrial wastes, sewage or other wastes are produced.

“Estimate” means to be based on a technical evaluation of the sources contributing to the discharge.

“Excavating” means to engage in digging, hollowing out, or removing, accomplished usually with heavy machinery.

“Final stabilization” means disturbed areas shall be covered by permanent protection. Final stabilization includes pavement, buildings, stable waterways (riprap, concrete, grass or pipe), a healthy, vigorous stand of perennial grass that uniformly covers at least 70 percent of the ground, stable outlet channels with velocity dissipation that directs site runoff to a natural watercourse, and any other approved structure or material.

“Grading” means changing surface contours by removing soil and stone from one place and building it up in another.

“Groundwater” means the water occurring in the zone of saturation beneath the seasonal high water table or any perched water zones.

“Groundwater Protection Plan” (GPP) means groundwater protection practices developed and implemented in accordance with WV Legislative Rules, 47CSR58 (Groundwater Protection Rule).

“Grubbing” means physically removing vegetative stumps and roots from the ground and disturbing the earth, usually by heavy machinery.

“Minor construction activity” means an activity which disturbs one acre or more, but less than three acres.

“National Pollutant Discharge Elimination System” (NPDES) means the national program for issuing, denying, modifying, revoking and reissuing, suspending, revoking, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Section 307, 318, 402, and 405 of CWA, including any approved state program.

“Natural vegetative buffer” is an area of undisturbed vegetation that occurs spontaneously without regular maintenance or management and is adjacent to or surrounds streams or other waters.

“Notice of Intent” (NOI) is the form to be submitted by the applicant to register a small construction project (one that disturbs one to less than three acres) under the Construction Stormwater General Permit. A project that disturbs one to less than three acres but will have construction activities one year or longer must file a Site Registration Application Form.

“Notice of Termination” (NOT) is the form to be submitted by the permittee to terminate coverage under the Construction General Stormwater Permit, after final stabilization has been completed. See Final Stabilization.

“Point source” is any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, and container from which pollutants are or may be discharged to surface waters of the state.

“Pollutant” means industrial waste, sewage or other wastes.

“Post-development” means the anticipated final conditions of the project, including rooftops, parking lots, streets, drainage systems, vegetation, and any other structure planned. For subdivisions and speculative developments, it will be assumed that all lots are developed.

“Pre-development” means the condition of the land, the amount and health of the ground cover and vegetation prior to development.

“Secretary” means the Secretary of the Department of Environmental Protection, or his/her designated representative.

“Sediment” means any particulate matter that can be transported by fluid flow and which eventually is deposited as a layer of solid particles on the bed or bottom of a body of water or other liquid.

“Sedimentation” means the deposition by settling of a suspended material.

“Sediment trap” means a temporary ponding area formed by constructing an embankment or excavation and embankment that will trap the flow of sediment-laden runoff. Sediment traps have a properly stabilized outlet/weir or riser and pipe to detain sediment-laden runoff from disturbed areas of five acres or less. Outlets must be designed to extend the detention time and allow the majority of the sediment to settle out.

“Sediment basin” means a temporary structure consisting of an earthen embankment, or embankment and excavated area, located in a suitable area to capture sediment-laden runoff from a construction site. A sediment basin reduces the energy of the water through extended detention (48 to 72 hours) to settle out the majority of the suspended solids and sediment and prevent sedimentation in waterways, culverts, streams and rivers. Sediment basins have both wet and dry storage space to enhance the trapping efficiency and are appropriate in drainage areas of five acres and greater.

“Sinkhole” means a depression in the land surface formed by solution or collapse that directs surface runoff into subsurface or to an underground drainage flow.

“Site Registration Application forms” means the forms designed by the Director for the purpose of registering for coverage under a General Permit. Under the General Permit there will be two separate forms, one for one to less than three acres (Notice of Intent) and the Site Registration Application form for projects that disturb three acres and greater. A project that disturbs one to less than three acres but will have construction activities one year or longer must file a Site Registration Application form.

“Stormwater” means stormwater runoff, snowmelt runoff, and surface runoff and drainage.

“Stormwater Pollution Prevention Plan” (SWPPP) means the erosion and sediment control plan and the post development plan submitted as part of the Site Registration Application form.

“Tier 3 Waters” means waters as otherwise identified in 47CSR2-4.1.c. (Requirements Governing Water Quality Standards).

“Trout Streams” means any waters which meet the definition of 47CSR2-2.19. (Requirements Governing Water Quality Standards).

“1-year, 24-hour precipitation event” means the maximum 24-hour precipitation event with a probable recurrence interval of once in one year.

“25-year, 24-hour precipitation” means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years.

#### SECTION F. OTHER REPORTING

F.1. Reporting Spill and Accidental Discharges

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to 47CSR11-2. (Special Rules) of the West Virginia Legislative Rules promulgated pursuant to Chapter 22, Article 11.

F.2. Immediate Reporting

- F.2.a. The permittee shall report any noncompliance which may endanger health or the environment immediately after becoming aware of the circumstances by using the Department's designated spill alert telephone number ((800) 642-3074). A written submission shall be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and time, and if, the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

SECTION G. EFFLUENT LIMITATIONS AND OTHER REQUIREMENTS

G.1. Requiring an Individual Permit or an Alternative General Permit.

- G.1.a. The Director may require any person authorized by this permit to apply for and obtain either an individual NPDES permit or an alternative NPDES General Permit. Any interested person may petition the Director to take action under this paragraph. The Director may require any owner or operator authorized by this permit to apply for an individual NPDES permit only if the owner or operator has been notified in writing that such a permit application is required.

G.2. Prohibition of Non-Stormwater Discharges

All discharges authorized by this permit shall be composed entirely of stormwater. Discharges of material other than stormwater are not authorized by this permit except as follows.

The following non-stormwater discharges are authorized by this permit: discharges from emergency firefighting activities, fire hydrant flushing; waters used to wash vehicles, provided there is no discharge of soaps, solvents, or detergents used for that purpose; waters used to control dust; potable water sources, including uncontaminated waterline flushing; landscape irrigation; lawn watering; routine external building washdown which does not use detergents; pavement washwater provided spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used. You are prohibited from directing pavement wash waters directly into any surface water,



storm drain inlet, or stormwater conveyance, unless the conveyance is connected to a sediment basin, sediment trap, or similarly effective control; uncontaminated air conditioning condensate; uncontaminated, non-turbid discharges of groundwater or springs; foundation or footing drains where flows are not contaminated with process materials such as solvents that are combined with stormwater discharges associated with industrial activity; other construction dewatering activities that are treated by an appropriate control.

This permit does not authorize the conveyance, diversion, channeling, directing or otherwise allowing the discharge of stormwater into a sinkhole without an Underground Injection Control Permit.

G.3. Releases in Excess of Reportable Quantities

This permit does not relieve the permittee of the reporting requirements of 40CFR117 and 40CFR302. The discharge of hazardous substances in the stormwater discharge(s) from a project is not authorized by this General Permit, and in no case shall the discharge(s) contain a hazardous substance.

G.4. Stormwater Pollution Prevention Plans and Groundwater Protection Plans (SWPPP/GPP)

A Stormwater Pollution Plan and a Groundwater Protection Plan shall be developed for each project covered by this permit. These two plans may be combined into one plan if all of the requirements for both plans are met. Alternatively, they may be developed and maintained as separate stand-alone documents.

Stormwater Pollution Prevention Plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges associated with construction activity. In addition, the plan shall describe and ensure the implementation of practices that are to be used to reduce the pollutants in stormwater discharges associated with construction activity and to assure compliance with the terms and conditions of this permit.

Groundwater Protection Plans (GPP) shall be prepared in accordance with the requirements of 47CSR58-4.11. et seq (Groundwater Protection Regulations). The GPP shall identify all operations that may reasonably be expected to contaminate the groundwater resources with an indication of the potential for soil and groundwater contamination from those operations. In addition the GPP shall provide a thorough and detailed description of procedures designed to protect groundwater from the identified potential contamination sources. The GPP is not required to be submitted to the Division of Water and Waste Management for review. Guidance in the completion of a GPP is available from the Division of Water and Waste Management.

- G.4.a. The SWPPP and the GPP shall be signed in accordance with Section C.6. and retained onsite.
- G.4.b. The application and SWPPP shall be submitted to the Division of Water and Waste Management at least 60 days before construction is to begin, except as noted in G.4.b.3. and G.4.b.4. Prospective permittees should submit applications for review prior to accepting construction bids on the project. As the plans are evaluated by the Director or authorized representative, the Director or authorized representative may notify the permittee during the 60 day review period that the plan does not meet one or more of the minimum requirements of this section. After such notification from the Director or authorized representative, the permittee shall make changes to the plan in accordance with the time frames established below, and shall submit to the Director a written certification that the requested changes have been made.
- G.4.b.1. Except as provided in G.4.b.2., the permittee shall have 30 days after such notification to make the changes necessary.
- G.4.b.2. The permittee shall have 24 hours after such notification to make changes relating to sediment and erosion controls to prevent loss of sediment from an active construction site, unless additional time is provided by the Director or an authorized representative.
- G.4.b.3. Projects disturbing less than three acres and that do not discharge to or upstream of Tier 3 waters shall submit only the Notice of Intent Form (NOI) 15 days prior to initiating construction. A project that disturbs one to less than three acres but will have construction activities one year or longer must file a Site Registration Application form.
- G.4.b.4. Projects disturbing less than three acres that will discharge upstream of Tier 3 waters shall submit the NOI and the SWPPP for review 60 days prior to initiating construction.
- G.4.b.5. Projects that are expected to discharge to Tier 3 waters or that are expected to disturb 100 or more acres, or that the grading phase of construction is expected to last for more than one year, shall submit the application and SWPPP at least 100 days prior to construction to allow for the public notice procedure.
- G.4.b.6. Projects discharging to waters with approved total maximum daily loads (TMDL) that have acreage limits for Stormwater Construction General Permit Registrations will have registrations issued for one (1) year. If TMDL acreage limits for the receiving water have been met at the time of application, effluent limits shall be set and discharge monitoring required. Registration issuance will not be limited to one (1) year when discharge monitoring is required. Projects with registrations issued for one year that are not completed at the time of registration expiration and do not meet stabilization requirements in Section J, shall reapply for General Permit coverage.
- G.4.b.7. If you are conducting earth-disturbing activities in response to a public emergency *e.g., natural disaster, widespread disruption in essential public services*), and the

related work requires immediate authorization to avoid imminent endangerment to human health, public safety, or the environment, or to reestablish essential public services, you are authorized to discharge on the condition that a complete and accurate NOI or application and SWPPP is submitted within 30 calendar days after commencing earth-disturbing activities establishing that you are eligible under this permit. You are also required to provide documentation in your SWPPP to substantiate the occurrence of the public emergency.

G.4.b.8. Within 24 hours of filing an NOI (one to less than three acres) or a Site Registration Application (three acres or more) with DWWM, all projects shall display a sign for the duration of the construction project near the entrance of the project or, for linear projects, at a location near an active part of the project that is accessible by the public, which contains the following information using the template found in the instructions: 1) the registrant's name or the name of a contact person along with a telephone number; 2) A brief description of the project; 3) a statement indicating that the NOI or SWPPP, as applicable, has been filed with the DWWM; 4) the address and telephone number of the agency where the NOI or SWPPP is maintained; and 5) That any person may obtain a copy of the NOI or SWPPP by contacting the DWWM at (800) 654-5227. The sign shall be a minimum of two feet by two feet and at least three feet above ground level, clearly visible and legible from a public roadway or right-of-way. If it is not feasible to display a sign at or near the project, the registrant, with prior approval from the DWWM, may post a notice containing the foregoing information at a local public building, including, but not limited to, a town hall or public library.

G.4.c. The permittee shall modify, using forms provided by DWWM, the SWPPP whenever there is a change in design, construction, scope of operation, or maintenance, which has the potential to adversely impact the surface waters of the State, or if the SWPPP proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activities. Should conditions warrant, the Director, or the Director's representative, may request changes to the SWPPP during a field inspection. The Director may review changes or modifications to the SWPPP in the same manner as above.

The permittee shall amend the GPP whenever there is a change in design, construction, operation, or maintenance which could reasonably be expected to have an impact on the potential contamination of groundwater.

G.4.d. In addition to the requirements of G.4.e, the SWPPP shall also include, at a minimum, the following items:

G.4.d.1. General management controls

G.4.d.1.A. Preventive maintenance – A preventive maintenance program shall involve inspection and maintenance of sediment and erosion control best management practices to identify and address conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

G.4.d.1.B. Good housekeeping – Good housekeeping requires the maintenance of a clean and orderly project. This includes minimizing the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater.

G.4.d.1.C. Spill prevention and response procedures – Areas where potential spills may occur, and their accompanying drainage points, shall be identified clearly in the SWPPP/GPP. Where appropriate, specify material handling procedures and storage requirements in the SWPPP/GPP. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a cleanup shall be available to personnel, including spill kits.

G.4.d.2. Consistency with other plans

Stormwater Pollution Prevention Plans may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under section 311 of the CWA or any Best Management Practices (BMP) and Groundwater Protection Plans (GPP) pursuant to 47CSR58 (Groundwater Protection Rule) or otherwise required by an NPDES permit and may incorporate any part of such plans into the Stormwater Pollution Prevention Plan by reference.

G.4.e. Requirements for construction activities – Operations that discharge stormwater associated with construction activity disturbing one or more acres are not only subject to the requirements of Section G.4.d. of this permit, but are also subject to the following requirements. The SWPPP shall include, as a minimum, the following items.

G.4.e.1. Site description – Each plan shall, at a minimum, provide a description of the following:

G.4.e.1.A. A description of the nature of the construction activity, including a proposed timetable for major activities;

G.4.e.1.B. Estimates of the following: total area of the site, the part of the site that is expected to undergo excavation or grading, and the total amount of excavation by cut and fill;

G.4.e.1.C. For each discharge design point, the pre-construction peak discharge from a one year, 24-hour storm in cubic feet per second and the post-development peak discharge from a one year, 24-hour storm in cubic feet per second shall be calculated. The design procedures shall follow professionally accepted engineering and hydrologic methodologies. This requirement may be waived by the WVDEP for projects that are expected to have no increase in peak discharges.

G.4.e.1.D. Site maps indicating, with a minimum of five-foot contours, drainage patterns and slopes prior to construction and anticipated conditions after grading activities, topsoil

stockpiles, waste areas, borrow sites, locations of sediment control structures identified in the narrative, the location of impervious areas after construction is complete, final stormwater conveyance including all ditches and pipe systems, property boundaries and easements, nearest receiving stream, springs, surface water, access roads, a legend and any other information necessary to describe the project in detail.

G.4.e.1.E. A description and detail of the proposed construction entrance(s). Each site shall have stone access entrance and exit drives and parking areas to reduce the tracking of sediment onto public or private roads. Except for haul roads, all unpaved roads on the site carrying more than 25 vehicles per day shall be graveled.

G.4.e.2. Controls – Each construction operation covered by this permit shall develop a description of controls appropriate for the project and implement such controls. The description of these controls shall address the following minimum components, including a schedule for implementing such controls.

G.4.e.2.A. Erosion and sediment controls

G.4.e.2.A.i. Vegetative practices – A description of interim and permanent stabilization practices, including site specific implementation schedules of the practices shall be provided. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized as rapidly as possible. Efforts should also be made to limit disturbance on steep slopes, minimize soil compaction, and preserve topsoil where feasible. Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures. Also include in the plan seedbed preparation requirements and the type and amount of soil amendments necessary to establish a healthy stand of vegetation. A record of the dates when major grading activities will occur, and when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures will be initiated shall be included in the plan. Except as noted below, stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than seven days after the construction activity in that portion of the site has permanently ceased.

G.4.e.2.A.i.a. Where the initiation of stabilization measures by the seventh day after construction activity temporarily or permanently ceases is precluded by natural causes, stabilization measures shall be initiated as soon as conditions allow.

G.4.e.2.A.i.b. Where construction activity will resume on a portion of the site within 14 days from when activities ceased, (e.g., the total time period that construction activity is temporarily halted is less than 14 days) then stabilization measures do not have to be initiated on that portion of the site by the seventh day after construction activities have temporarily ceased.

G.4.e.2.A.i.c. Areas where the seed has failed to germinate adequately (uniform perennial vegetative cover with a density of 70%) within 30 days after seeding and mulching must be reseeded immediately, or as soon as weather conditions allow.

G.4.e.2.A.i.d. Clean water diversions must be stabilized prior to becoming functional.

G.4.e.2.A.i.e. A natural vegetative buffer shall be provided adjacent to receiving streams or other waters on or the project site. Vegetative buffers should be a minimum of 50 feet, however, a minimum of 100 feet is required if intended as a stand-alone erosion and sediment control practice. Vegetative buffers strips are not required if:

A natural vegetative buffer does not exist in pre-construction conditions, such as when the buffer has already been removed by existing development or agricultural activities; or

The receiving water is a man-made stormwater conveyance or storage structure, such as a ditch or storm water pond; or

In project locations where activities within waters have been approved under a CWA Section 404 permit and Section 401 water quality certification; or

In project locations where the vegetative buffer must be encroached to construct necessary infrastructure, such as a utility line or an access road. Justification for any encroachment must be provided by the applicant; or

Linear projects where right-of-way acquisition or area is limited.

G.4.e.2.A.ii. Structural practices – A description of the structural practices to be used to divert flows around exposed soils, storm flows or otherwise limit runoff from exposed areas and eliminate sediment-laden runoff from the site. Such practices may include but are not limited to silt fences, earth dikes and berms, land grading, diversions, drainage swales, check dams subsurface drains, pipe slope drains, storm drain inlet protection, rock outlet protection, reinforced soil retention systems and geotextiles, gabions and riprap, and permanent and temporary sediment traps/basins.

G.4.e.2.A.ii.a. For locations on a site that have a drainage area of five acres or less, a sediment trap which provides a storage volume equal to 3,600 cubic feet per acre of drainage area shall be installed. Half of the volume of the trap shall be in a permanent pool and half will be dry storage.

G.4.e.2.A.ii.b. For drainage areas of greater than five acres, a sediment basin providing 3,600 cubic feet per drainage acre shall be installed. Half of the volume of the basin shall be in a permanent pool and half shall be dry storage. Sediment basins must be able to dewater the dry storage volume in 48 to 72 hours, however this requirement may be

waived at the discretion of the WVDEP when skimmer devices are used. Dewatering structures must withdraw from the surface, unless infeasible. A sediment basin must be able to pass through the spillway(s) a 25-year, 24-hour storm event, and still maintain at least one foot of freeboard.

- G.4.e.2.A.ii.c. The inlet(s) and outlet(s) for a sediment trapping structure must be protected against erosion by appropriate material such as riprap or other similar media.
- G.4.e.2.A.ii.d. If necessary, diversions will be used to direct runoff to the trapping structure. Diversions to trapping structures may need to be stabilized prior to becoming functional.
- G.4.e.2.A.ii.e. For locations served by a common drainage where a sediment basin providing 3,600 cubic feet of storage is not attainable or dewatering structures that withdraw from the surface are not feasible, additional sediment and erosion controls within the project area are required in lieu of the required sized sediment basin. Justification and a narrative description of the additional measures proposed must be provided for use of any practice(s) other than sediment basins or traps.
- G.4.e.2.A.ii.f. Fill slopes must be protected by measures used to divert runoff away from fill slopes to conveyance measures such as pipe slope drains or stable channels.
- G.4.e.2.A.ii.g. Sediment trapping structures shall be eliminated and the area properly reclaimed and stabilized when the contributing drainage area is stabilized and the structures are no longer needed, unless the structure is converted into a permanent stormwater control structure. This must be accomplished before the Notice of Termination is submitted.
- G.4.e.2.A.ii.h. All trapped sediments shall be disposed on an upland area where there is no chance of entering nearby streams.
- G.4.e.2.A.ii.i. Breaching the embankment to dewater the structure is not permitted. Dewatering and structure removal shall not cause a violation of water quality standards. Provide a description of the procedures that shall be used in removing these structures and the time frame.
- G.4.e.2.A.ii.j. No sediment-laden water shall be allowed to leave the site without going through an appropriate best management practice.
- G.4.e.2.A.ii.k. Hay or straw bales are not acceptable BMPs.
- G.4.e.2.A.ii.j. Use of Treatment Chemicals - Polymers, flocculants, or other treatment chemicals may be used only in accordance with good engineering practices and specifications for use by the chemical provider/supplier. Documentation of proposed practices and specifications for the use of treatment chemicals shall be provided in the SWPPP. The use of cationic treatment chemicals is prohibited.

G.4.e.2.A.iii. Presumptive conditions for discharges to Tier 3 waters

Construction activities discharging to Tier 3 waters shall go through the Tier 3.0 antidegradation review process.

G.4.e.2.B. Stormwater control plan

A description of measures that shall be installed during construction to control pollutants in stormwater discharges when the project is completed shall be included in the SWPPP. The completed project shall convey stormwater runoff in a manner that shall protect both the site and the receiving stream from post-construction erosion. All surface waters and other runoff conveyance structures shall be permanently stabilized as appropriate for expected flows. In developing structural practices for stormwater control, the permittee shall consider the use of, but not limited to: infiltration of runoff onsite; flow attenuation by use of open vegetated swales and natural depressions; stormwater retention structures and stormwater detention structures. A combination of practices may be utilized. The permittee should consider low impact development (LID) in the design of the site and the best management practices. This will allow the site to retain its natural hydrology and infiltrate stormwater within the boundary of the site. The use of impervious surfaces for stabilization should be avoided. Velocity dissipation devices shall be placed at the outlet of all detention or retention structures and along the length of any outlet channel as necessary to provide a non-erosive velocity flow from the structure to a water course.

Projects located in areas that have local government requirements and/or criteria for post development stormwater management are subject to meeting those requirements and/or criteria. Compliance with this General Permit does not assure compliance with local codes regulations, or ordinances.

The permittee shall submit all calculations, watershed mapping, design drawings, and any other information necessary to explain the technical basis for the stormwater management plan. Design procedures shall follow professionally accepted engineering and hydrologic methodologies. Permanent stormwater control structures that will impound water (detention/retention basins or similar structures) shall be designed and certified by a registered professional engineer.

G.4.e.2.C Other controls

G.4.e.2.C.i. Waste disposal --All solid waste and construction/demolition material must be disposed of in accordance with the Code of West Virginia and Legislative Rule Title 33 Series 1, (Solid Waste Management Rule).

G.4.e.2.C.ii. Provisions must be made to control fugitive dust.

G.4.e.2.C.iii. Groundwater Protection Plan (GPP) -- The applicant shall prepare a GPP that shall satisfy the 47CSR58-4.11. et seq. Groundwater must be protected in accordance



with the Code of West Virginia and Legislative Rule Title 47 Series 58 (Groundwater Protection Rule).

G.4.e.2.C.iv. Employee training – Employee training programs shall inform on-site personnel who are directly involved with construction activities at all levels of responsibility of the components and goals of the SWPPP. Training should address topics such as spill response, good housekeeping and routine inspection. Training shall be on a quarterly basis while construction activities subject to this General Permit are occurring and records of the training shall be maintained on site for review by the Director or the Director's representative.

G.4.e.2.C.v. Visual inspection – Company personnel shall be identified to inspect as set forth under G.4.e.2.D. A tracking procedure shall be used to ensure that adequate corrective actions have been taken in response to deficiencies identified during an inspection. Records of inspections shall be maintained onsite for review by the Director or the Director's representative.

G.4.e.2.C.vi. Recordkeeping and internal reporting procedures – Incidents such as spills, leaks and improper dumping, along with other information describing the quality and quantity of stormwater discharges should be included in the records. Inspection and maintenance records must be kept onsite for review by the Director or the Director's representative.

#### G.4.e.2.D Maintenance

The SWPP shall include a description of procedures to maintain in good and effective condition and promptly repair or restore all grade surfaces, walls, dams and structures, vegetation, erosion and sediment control measures and other protective devices identified in the site plan. Procedures in a plan shall provide that all erosion and sediment controls on the site are inspected at least once every seven calendar days and within 24 hours after any storm event of greater than 0.5 inches of rain per 24-hour period. Inspections are not required in areas that, at the time of inspection, are considered unsafe for inspection personnel.

G.4.e.2.D.i. All public and private roads adjacent to a construction entrance must be inspected and cleaned of debris originating from the construction site.

G.4.f. All Stormwater Pollution Prevention Plans and Groundwater Protection Plans required under this permit are considered reports that shall be available for review to the public under Section 308(b) of the CWA. The owner or operator of a project with stormwater discharges covered by this permit shall make plans available to members of the public upon request. However, the permittee may claim any portion of a Stormwater Pollution Plan or Groundwater Protection Plan as confidential in to the extent permissible by 47 CSR10-12.7. (NPDES Program).

G.4.g. Compliance with other laws and statutes

Nothing in this General Permit shall be construed as excusing the permittee from compliance with any applicable federal, state, or local statutes, ordinances, or regulations.

G.5. Discharges to Impaired Waters

This permit does not authorize new sources or new discharges of constituents of concern to impaired waters unless consistent with the approved total maximum daily load (TMDL) and applicable state law. Impaired waters are those that do not meet applicable water quality standards and are listed on the Clean Water Act Section 303(d) list. Sites that discharge into a receiving water that has been listed on the Clean Water Act 303(d) list of impaired waters, and with discharges that contain the pollutant(s) for which the water body is impaired, must document in the SWPPP how the BMPs will control the discharge of the pollutant(s) of concern. Pollutants of concern are those constituents for which the water body is listed as impaired.

Discharges of pollutants of concern to impaired waterbodies for which there is an approved TMDL are not eligible for coverage under this permit unless they are consistent with the approved TMDL as determined by the WVDEP. TMDL's that have established acreage limits for Stormwater Construction General Permit Registrations require no special conditions provided the acreage cap has not been met for the receiving stream other than the registration only being issued for one (1) year. If the acreage cap has been reached, additional area may be permitted if effluent limitations and monitoring is required consistent with limits established by the TMDL. Within six months of a new TMDL approval, permittees must incorporate any limitations, conditions or requirements applicable to their discharges necessary for compliance with the TMDL, including any monitoring or reporting required by DWWM rules, into their SWPPP in order to be eligible for coverage under this General Permit. The Director may elect to set effluent limitations and require discharge monitoring and public notice for any project within TMDL acreage limited areas.

G.6. Endangered and Threatened Species and State Historic Preservation Officer

If a site discharges to a stream where a federally endangered or threatened species or its habitats are present, the applicant must contact the U.S. Fish and Wildlife Service to ensure that requirements of the federal Endangered Species Act, 16 U.S.C. 1531 et. seq. are met.

For those projects that may impact historic preservation sites, the permittee shall coordinate the project with the State Historic Preservation Officer.

H. Reopener Clause

If there is evidence indicating potential or realized impacts on water quality due to any stormwater discharge authorized by this General Permit, the owner or operator of such discharge may be required to obtain an individual permit or alternative General Permit in accordance with Section G.1. of this General Permit or the General Permit may be modified to include different limitations and/or requirements.

I. The conditions, standards, and limitations of this General Permit shall be reviewed at the time of reissuance for possible revisions that may lead to more or less stringent conditions, standards, and limitations.

J. Permit coverage for construction activities encompassed by this permit expires upon satisfactory stabilization of the site. Satisfactory stabilization means ALL disturbed areas shall be covered by some permanent protection. Stabilize includes pavement, buildings, waterways (riprap, concrete, grass, or pipe), a healthy, vigorous stand of grass or native vegetation that uniformly covers more than 70 percent of the ground, stable outlet channels with velocity dissipation which directs site runoff to a natural watercourse, and any other approved structure or material. The permittee shall request a final inspection by sending in the Notice of Termination. Sites not stabilized shall continue to have coverage under this permit and shall be assessed an annual permit fee as promulgated by the West Virginia Legislature. Sites shall be assessed a prorated annual fee based upon the completion date and proper stabilization. The Notice of Termination must be submitted within 30 days after final stabilization is achieved.

\*\*\*\*\*

The herein-described activity is to be constructed or installed and operated, used and maintained strictly in accordance with the terms and conditions of this General Permit with any plans, specifications, and information submitted with the individual site registration application form, with any plan of maintenance and method of operation thereof submitted and with any applicable rules and regulations promulgated by the Environmental Quality Board and the Secretary of the Department of Environmental Protection.

Failure to comply with the terms and conditions of this General Permit, with any plans, specifications and information submitted, and with any plan of maintenance and method of operation thereof submitted shall constitute grounds for the revocation or suspension of this permit to any individual establishment or other person and for the invocation of all the enforcement procedures set forth in Chapter 22, Articles 11 and 12 of the Code of West Virginia.

This permit is issued in accordance with the provisions of Chapter 22, Article 11 of the Code of West Virginia.



BY: \_\_\_\_\_  
Director

ENVIRONMENTAL QUALITY BOARD

**West Virginia Manufacturers Association, Jefferson  
Asphalt Products, and Contractors Association of  
West Virginia,**

**Appellants,**

**v.**

**Appeal Nos. 19-03-EQB  
19-04-EQB**

**Director, Division of Water and Waste Management,  
West Virginia Department of Environmental  
Protection,**

**Appellee.**

**CERTIFICATE OF SERVICE**

I hereby certify that I, Jackie D. Shultz, Clerk for the Environmental Quality Board, have this day, the 11th day of June, 2019, served a true copy of the foregoing **Order** via certified United States mail, postage pre-paid, or via personal service, to the following:

*via certified US Mail:*

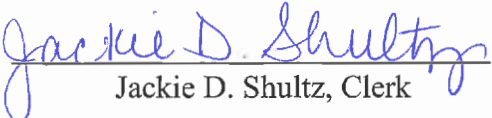
David L. Yaussy, Esquire  
Spilman Thomas & Battle PLLC  
300 Kanawha Boulevard, East  
Charleston, WV 25301

Allyn G. Turner, Esquire  
Richard L. Lewis, II, Esquire  
Steptoe & Johnson PLLC  
P.O. Box 1588  
Charleston, WV 25326-1588

*via personal service:*

Jonathan Frame, Esquire  
Chance Chapman, Esquire  
Office of Legal Services  
WV Department of Environmental Protection  
601 57<sup>th</sup> Street, S.E.  
Charleston, WV 25304

Katheryn Emery, P.E., Acting Director  
Division of Water and Waste Management  
WV Department of Environmental Protection  
601 57<sup>th</sup> Street, S.E.  
Charleston, WV 25304

  
Jackie D. Shultz, Clerk

# **Exhibit E**

## Hunt, Brittany A

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**From:** Bandy, Jeremy W  
**Sent:** Wednesday, May 27, 2020 12:06 PM  
**To:** Wright, Brad M  
**Subject:** Fwd: General Construction Stormwater Permit Update

Sent from my iPhone

Begin forwarded message:

**From:** "Emery, Katheryn D" <[Katheryn.D.Emery@wv.gov](mailto:Katheryn.D.Emery@wv.gov)>  
**Date:** May 27, 2020 at 11:47:33 AM EDT  
**To:** "Bandy, Jeremy W" <[Jeremy.W.Bandy@wv.gov](mailto:Jeremy.W.Bandy@wv.gov)>  
**Subject:** FW: General Construction Stormwater Permit Update

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**From:** Emery, Katheryn D  
**Sent:** Friday, February 28, 2020 4:05 PM  
**To:** Michael Clowser <[mclowser@cawv.org](mailto:mclowser@cawv.org)>  
**Subject:** General Construction Stormwater Permit Update

The WVDEP recognizes that certain permittees previously covered under the 2012 Construction Stormwater NPDES general permit are currently without permit coverage due to concerns regarding the issuance of the 2019 version of the permit. Upon EPA's specific objection to the issuance of the modified version of the 2019 permit, the agency withdrew it, and initiated the authorization of permit coverage for those applicants who filed applications under the February 2019 version of the permit. The agency intends to issue a 2020 version of the general permit.

To provide certainty to those entities currently without permit coverage until that permit is issued, the WVDEP will issue Unilateral Orders over the next several weeks that will:

- Require permit application within 30 days,
- Allow these entities to continue construction activities for a short period of time under the terms and conditions of the Order; and,
- Remain in effect no longer than 6 months from the date of issuance.

The issuance of these Orders and the 2020 version of the permit will help the agency and the regulated community move forward with clarity.

000534

# **Exhibit F**



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west virginia department of environmental protection

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Environmental Enforcement  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
Telephone: (304) 926-0470 Fax: (304) 926-0452

Austin Caperton, Cabinet Secretary  
dep.wv.gov

March 2, 2020

City of Charles Town  
ATTN: Jane E. Arnett  
661 South George St, Ste 101  
Charles Town, WV 25414

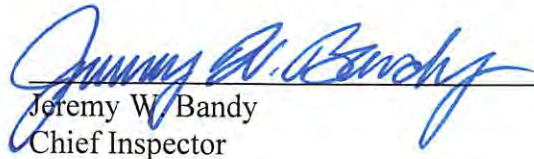
**CERTIFIED RETURN RECEIPT REQUESTED**

9489 0090 0027 6201 5695 71

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Jane E. Arnett:

Enclosed is Order No. 9080 dated March 2, 2020. This Order is issued to City of Charles Town by the director of the Division of Water and Waste Management under the authority of West Virginia State Code 22-11-15. This Order contains notification of the right of appeal under the provisions of West Virginia State Code 22-11-21.

  
Jeremy W. Bandy  
Chief Inspector

cc: Katheryn Emery, P.E., Acting Director, DWWM (via e-mail)  
Scott G. Mandirola, Deputy Secretary for External Affairs, WVDEP (via e-mail)  
Harold D. Ward, Deputy Secretary for Operations, WVDEP (via e-mail)  
Yogesh Patel, Asst. Director, DWWM/Permits (via e-mail)  
Brad Wright, Assistant Chief Inspector, EE/WW (via e-mail)  
David C. Simmons, Assistant Chief Inspector, EE (via e-mail)  
Laura McGee, Environmental Resources Program Manager, EE (via e-mail)  
Tammy Potter, Environmental Resources Specialist, EE (via e-mail)  
John Hendley, Environmental Inspector Supervisor, EE/WW (via e-mail)  
Shyrel Moellendick, MSSS, EE (via e-mail)  
Lisa Trakis, US EPA, Region III (via e-mail)





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west virginia department of environmental protection

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Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
Phone: (304) 926-0470  
Fax: (304) 926-0452

Austin Caperton, Cabinet Secretary  
dep.wv.gov

**ORDER  
ISSUED UNDER THE  
WATER POLLUTION CONTROL ACT  
WEST VIRGINIA CODE CHAPTER 22, ARTICLE 11**

TO: City of Charles Town  
ATTN: Jane E. Arnett  
661 South George St, Ste 101  
Charles Town, WV 25414

DATE: March 2, 2020

ORDER NO.: 9080

**INTRODUCTION**

The following findings are made, and Order issued to City of Charles Town pursuant to the authority vested in the Director of the Division of Water and Waste Management under West Virginia State Code 22-11-1 et seq.

**FINDINGS OF FACT**

In support of this Order, the Director hereby finds the following:

1. On December 5, 2012, the 2012 Construction Stormwater General Permit, WV/NPDES Water Pollution Control Permit No. WV0115924, was issued. On January 4, 2013, the WV/NPDES Permit became effective.
2. As a result of engaging in land disturbance operations associated with construction activities, the City of Ranson was registered under the 2012 Construction Stormwater General Permit. WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR109958, was issued to the City of Ranson for the discharge of stormwater from this site.
3. On January 1, 2019, West Virginia Department of Environmental Protection (WVDEP) provided notice that the 2012 Construction Stormwater General Permit was extended until March 31, 2019.

4. On January 10, 2019, the 2019 Construction Stormwater General Permit was issued, with an effective date of February 9, 2019.
5. On February 8, 2019, the February 2019 Construction Stormwater General Permit was appealed before the Environmental Quality Board (EQB) in Appeal Nos. 19-03-EQB and 19-04-EQB.
6. On April 20, 2019, the aforementioned WV/NPDES permit was transferred from the City of Ranson to the City of Charles Town.
7. On May 31, 2019, the EQB entered an order approving a settlement agreement resolving the appeals received in response to the February 2019 Construction Stormwater General Permit. The settlement agreement required WVDEP to revise the February 2019 Construction Stormwater General Permit, resulting in a modified draft permit. In accordance with federal statute and regulations, the modified draft permit was submitted to the United States Environmental Protection Agency (USEPA) for review and comment. On October 31, 2019, USEPA's review of the proposed modification resulted in the issuance of a specific objection letter. On January 1, 2020, WVDEP requested that the proposed draft modification be withdrawn from consideration, leaving the February 2019 Construction Stormwater General Permit in effect.
8. On February 4, 2020, City of Charles Town submitted an application for coverage for the aforementioned site under the 2019 Construction Stormwater General Permit.

### **ORDER FOR COMPLIANCE**

And now, this day of March 2, 2020, City of Charles Town is hereby ORDERED by the Director as follows:

1. City of Charles Town shall immediately take measures to initiate compliance with all pertinent State laws and rules and the Clean Water Act. This Order does not modify any permit or relieve City of Charles Town from obligations to comply any applicable requirements.
2. Upon the effective date of this Order, City of Charles Town shall comply with the measures in this Order and take all steps necessary to control stormwater at the aforementioned site. Compliance with this Order and the measures identified below shall continue until coverage under the February 2019 Construction Stormwater General Permit is obtained.
  - a. City of Charles Town shall ensure that discharges from the site will not create conditions not allowable in waters of the State, as described in WV Legislative Rule 47CSR2 Section 3.2.
  - b. City of Charles Town shall comply with the Stormwater Pollution Prevention Plan (SWPPP) previously approved by WVDEP, until the new SWPPP is approved by WVDEP and becomes effective in association with the February 2019 Construction Stormwater General Permit.

- c. City of Charles Town shall modify the approved SWPPP whenever there is a change in design, construction, scope of operation, or maintenance which has the potential to adversely affect surface waters of the State, or if the SWPPP proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activities.
- d. City of Charles Town shall develop a description of erosion and sediment controls appropriate for the project and implement such controls.
- e. City of Charles Town shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances).
- f. City of Charles Town shall inspect all erosion and sediment controls on the site at least once every seven (7) calendar days and with twenty-four (24) hours after any storm event of greater than 0.5 inches of rain per twenty-four (24) hour period. Written records of all inspections shall be maintained onsite and shall be made available to WVDEP personnel upon request.
- g. City of Charles Town shall report any noncompliance which may endanger health or the environment immediately after becoming aware of the circumstances by using the designated spill alert telephone number, 800-642-3074.
- h. City of Charles Town shall ensure that sediment-laden water does not leave the site without going through an appropriate best management practice.
- i. City of Charles Town shall ensure that proper interim and permanent vegetative stabilization practices are being conducted. Specifically:
  - i. Stabilization practices may include temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures.
  - ii. Stabilization measures shall be initiated no more than seven (7) days after the construction activity in a portion of the site has permanently ceased.
  - iii. Stabilization measures shall be initiated on any portion of the site by the seventh day after construction activities temporarily cease, unless construction activities will resume within fourteen (14) days after activities first ceased.
  - iv. Areas where seed has failed to germinate adequately (uniform perennial vegetative cover with a density of 70%) within thirty (30) days after seeding and mulching must be reseeded immediately or as soon as weather conditions allow.
  - v. Clean water diversions shall be stabilized prior to use.

### **OTHER PROVISIONS**

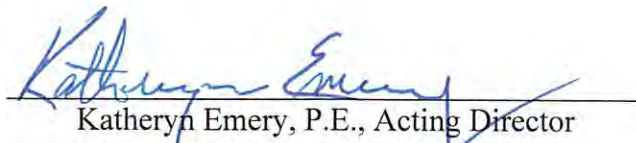
1. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving City of Charles Town of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject City of Charles Town to additional enforcement action in accordance with the applicable law.

2. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
3. This Order is binding on City of Charles Town, its successors and assigns.
4. This Order shall terminate upon the following events, whichever should occur first:
  - a. Coverage under the effective Construction Stormwater General Permit is obtained for the aforementioned site.
  - b. Six (6) months after the effective date of this Order.

### **RIGHT OF APPEAL**

Notice is hereby given of your right to appeal any terms and conditions of this Order by which you are aggrieved to the Environmental Quality Board by filing a NOTICE of APPEAL on the form prescribed by such Board, in accordance with the provisions of West Virginia State Code 22-11-21 within thirty (30) days after receipt of this Order.

This Order shall become effective upon receipt.

  
Kathryn Emery, P.E., Acting Director  
Division of Water and Waste Management

# **Exhibit G**

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
WV/NPDES CONSTRUCTION STORMWATER PERMIT**

<b>FACILITY NAME:</b>	Northport Avenue Extension			<b>REG. #</b>	<b>EXPIRE DATE:</b>
<b>PERMITTEE</b>	RANSON, CITY OF			WVR110191	9/2/2020
<b>ADDRESS/PHONE:</b>	Attn: ANDREW P. BLAKE, CITY MGR 312 SO MILDRED ST RANSON, WV 25438 3047251010				
<b>LOCATION:</b>	39 22 12.95 N77 52 32.83 W			<b>Entry Date/Time:</b>	2/6/2020 @ 1103
<b>COUNTY:</b>	Jefferson			<b>Exit Date/Time:</b>	2/6/2020 @ 1224
<b>Site Representative /Phone</b>				<b>PHOTOS</b> <input checked="" type="checkbox"/>	
<b>CO-PERMITTEE:</b>				<b>ADDRESS:</b>	
<b>SITE OPERATOR:</b>				<b>ADDRESS:</b>	
<b>PERMITTED ACREAGE</b>	24.4	<b>WEATHER:</b>	Rain	<b>LAST INSPECTION:</b>	N/A
<b>RECEIVING STREAM(S)</b>	Rockymarsh				<b>NOV:</b> <b>W20-19-012-TDH</b>
<b>Regular Mail</b> <input type="checkbox"/> <b>Certified Mail</b> <input checked="" type="checkbox"/>		<b>Tracking #</b> 70192970000166130895			
<b>OVERALL FACILITY RATING:</b>	<b>Unsatisfactory</b>		<b>COMPLIANCE OUTCOME</b>	<b>Not Immediately Corrected</b>	

**PERMIT / SITE EVALUATION**

<b>S-Satisfactory</b>	<b>U-Unsatisfactory</b>	<b>N/A-Not Applicable</b>	<b>N/O-Not Observed</b>	<b>N/D Not Determined</b>	<b>M-Marginal</b>	<b>Y-Yes</b>	<b>N-No</b>
1. PERIMETER CONTROLS	<b>U</b>	9. HOUSEKEEPING/SOLID WASTE	<b>S</b>	17. CONCRETE WASHOUT			<b>N/A</b>
2. DIVERSIONS/DITCH CHECKS	<b>U</b>	10. RECORDS, REPORTS & PLANS ON SITE	<b>U</b>	18. PUBLIC NOTICE SIGN			<b>S</b>
3. SEDIMENT TRAPS/BASINS	<b>U</b>	11. STABLE CONSTRUCTION ENTRANCE	<b>U</b>	19. SEDIMENT LADEN WATER LEAVING SITE			<b>U</b>
4. OUTLET MARKERS	<b>U</b>	12. MUD ON ROADWAY/DUST	<b>S</b>	20. CONDITIONS NOT ALLOWABLE			<b>S</b>
5. WASTE/BORROW SITES	<b>U</b>	13. APPROPRIATE BMP'S IMPLEMENTED	<b>U</b>	21. SWPPP/ GPP/PERMIT COMPLIANCE			<b>U</b>
6. OPERATIONS & MAINTENANCE	<b>U</b>	14. FILL SLOPE PROTECTION	<b>U</b>	22. ORDER COMPLIANCE			
7. WATER BARS	<b>N/O</b>	15. DEVICES INSTALLED IN TIMELY MANNER	<b>U</b>	23. OTHER:			
8. STABILIZATION PRACTICES	<b>U</b>	16 DROP INLET PROTECTION	<b>S</b>	24. OTHER:			

**COMMENTS DEFICIENCIES AND RECOMMENDATIONS**

**Comments:**

While conducting a site visit on Ran 5 Project I noticed sediment laden water coming off this site and on to that site.

**Deficiencies:**

- (1 and 13) Perimeter controls are not properly installed, there are many areas that the toe of the silt fence was not toed in correctly and many panels of silt fence were not conjoined correctly as indicated in the plan details on sheet 19.
- (1, 15, 19, and 21) SWPPP needs to be modified to include perimeter controls below sediment basin where sediment laden water is leaving the site without going through an appropriate device. The Emergency Overflow and Collection Ditch #1 and Rip Rap Apron #2 are not installed as indicated in the SWPPP.
- (2, 13 and 15) Diversion ditches are not installed according to SWPPP. Plan sheets indicated that rock check dams along with erosion controls matting (ECM) will be used in the diversion ditch. Neither rock check dams nor ECM was installed.

4. (3, 4, and 15) Sediment basin is not being operated correctly and is allowing sediment laden water to leave the site without going through an appropriate erosion control device. Sediment basin should be set up to 50% wet/dry capacity. At time of inspection it is set up for stormwater retention with the orifices at bottom grade of basin. This is not allowing any settling time for sediment.
5. (6) Where soil is being pushed up against silt fence, there is no holding capacity to allow proper filtration before controls are overtopped. Rock aprons are showing wear around a few drop inlets. Some sections of silt fence are down, and need maintained throughout site.
6. (13, and 14) Improperly tracked in constructed slopes are aiding to the development of erosion rills forming on the fill slopes that are found through the project site.
7. (10) E&S site inspections and SWPPP and GPP could not be located on site at time of inspection.
8. (11) There are multiple construction entrances along the LOD where there are no rock construction entrances. The perimeter controls are just laid in place over the construction entrances.



INSPECTOR: Travis D. Hays

Telephone: (304) 389-7642

Modified: 10-15-2017 JHH

STATE OF WEST VIRGINIA  
Department of Environmental Protection  
Environmental Enforcement  
NOTICE OF VIOLATION

Violation No W20-19-012-TDH

To the Operator or Agent of:

Facility Name: Northport Avenue Extension Permit No. WVR110191

Permittee or Individual: RANSON, CITY OF

Located at or near: 39 22 12.95 N, 77 52 32.83 W in Jefferson County

Representative: ANDREW P. BLAKE, CITY MGR Date: 2/6/2020 Time: 1103

Address / phone number: 312 SO MILDRED ST, RANSON, WV 25438 / 3047251010

Whereas, an inspection of the above named operation by the undersigned, duly authorized agent of the Secretary, at which the following described condition or practice exists, in violation of Chapter 22, Article 11, Section(s) 1 et. Seq. of the Code of West Virginia and/or Section(s) \_\_\_ of the Rules and Regulations and/or Section(s) B, C, D, and G of the Permit referenced above promulgated thereunder in that you: **Have violated the following terms and conditions of WV/NPDES General Water Pollution Control Permit No. WV0115924, Registration No. WVR110191:**

1. **Section B- City of Ranson failed to comply with the General Permit and approved Storm Water Pollution Prevention Plan (SWPPP). Several erosion control devices are not in place as detailed by the SWPPP. The Emergency Overflow, Collection Ditch #1 and Rip Rap Apron #2 are not installed as indicated in the SWPPP. Diversion ditches are not installed according to SWPPP. Plan sheets indicated that rock check dams along with ECM will be used in the diversion ditch. Neither rock check dams nor ECM was installed.**
2. **Section C.15.- City of Ranson failed to post an outlet marker at all permitted outlets from the construction site. No outlet signage was posted at the outfall of the sediment basin.**
3. **Section D.1.- City of Ranson failed to operate and maintain all erosion control devices. Where soil is being pushed up against silt fence, there is no holding complicity to allow proper filtration before controls are overtopped. Rock aprons are showing wear around a few drop inlets. Some sections of silt fence are down, and need maintained throughout site.**
4. **Section G.4.a: City of Ranson failed to retain a copy of the SWPPP and GPP on site. SWPPP and GPP could not be located on site at time of inspection. These documents are to be housed on site until completion of the project.**
5. **Section G.4.c: City of Ranson failed to modify your SWPPP when there was a change in design, construction, scope of operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the State, or the SWPPP proves to be ineffective in achieving the general objectives of controlling pollutants in storm water discharges. SWPPP needs to be modified to include perimeter controls below sediment basin where sediment laden water is leaving the site without going through an appropriate device.**
6. **Section G.4.e.2.- City of Ranson failed to properly implement controls. Perimeter controls are not properly installed, there are many areas where the toe of the silt fence was not toed in correctly and many panels of silt fence was not conjoined correctly as indicated in the plan details on sheet 19.**



7. Section G.4.e.2.A.i.- City of Ranson failed to provide interim stabilization on areas where construction activities have temporarily ceased for more than 14 days. Soil stockpile and other constructed slopes are not temporary stabilize that have set idle for more than 14 days.
8. Section G.4.e.2.A.ii.b.: City of Ranson failed to properly operate sediment basin. Sediment basin is not being operated correctly and is allowing sediment laden water to leave the site without going through an appropriate erosion control device. Sediment basin should be set up to 50% percent wet/dry compacity. At time of inspection it is set up for stormwater retention with the orifices at bottom grade of basin. This is not allowing any settling time for sediment.
9. Section G.4.e.2.A.ii.c.: City of Ranson failed to provide inlet protection for sediment control structure. No inlet protection was provided in Sediment Basin.
10. Section G.4.e.2.A.ii.f.- City of Ranson failed to protect fill slopes. Improperly tracked in constructed slopes are aiding to the development of erosion rills that are forming on fill slopes throughout the project site.
11. Section G.4.e.2.A.ii.j: City of Ranson failed to prevent sediment-laden water from leaving the site without going through an appropriate device. Sediment laden water can leave the site at multiple location via by-passes in perimeter controls where silt fence was not toed in correctly, conjoined correctly or laid over construction entrances that were not rocked along the LOD of the permitted site. Below the sediment basin, sediment laden water is able to leave the LOD and create sediment deposit on the Ran 5 Project where no perimeter controls were installed along the LOD.
12. Section G.4.e.2.C.v.- City of Ranson failed to maintain records that document inspections of erosion control devices and maintenance activities. E&S inspection could not be located on site at time of inspection. These documents are to be housed on site until completion of project.
13. Section G.4.e.1.E.: City of Ranson failed to provide an adequate stone access entrance/exit to reduce the tracking of sediment onto the public or private roads. There are multiple construction entrances along the LOD where there are no rock construction entrances. The perimeter controls are just laid in place over the construction entrances.

The following corrective measures were discussed with you at the time of this inspection: N/A

**Take measures to correct the aforementioned violations.**

1. Provide proper inlet protection.
2. Document and maintain onsite all inspections of erosion control devices and maintenance activities.
3. Operate and maintain all erosion control devices to achieve compliance with the permit.
4. Install necessary erosion control devices and modify the SWPPP to prevent sediment- laden water from leaving the site.
5. Display an outlet marker on the stream bank in accordance with Title 47, Series 11, Section 9 of the WV Legislative Rules (Special Rules).
6. Install necessary erosion control devices as indicated on the approved SWPPP.
7. Properly operate sediment basin.
8. Install necessary erosion control devices to prevent the release of sediment-laden water from the site.
9. Seed and mulch all areas where construction activities have ceased for more than 14 days.
10. Provide adequate stone at the entrance/exit of the access road.
11. Obtain and maintain a copy of the SWPPP and GPP on site

Within **20** days provide a written response to the inspector named below, at the address indicated, detailing the actions taken to abate this violation.

Received by:

**Sent Certified Mail--**  
70192970000166130895

---

Signature

Title



Travis D. Hays

---

Duly Authorized Agent / Inspector

**(304) 389-  
7642**

---

Telephone

**Travis.D.Hays@wv.gov**

---

E-mail

**Send Response to the Inspector at the address indicated below:**

WV Department of Environmental Protection

Environmental Enforcement / WW

2031 Pleasant Valley Rd., Suite #1, Fairmont, WV 26554



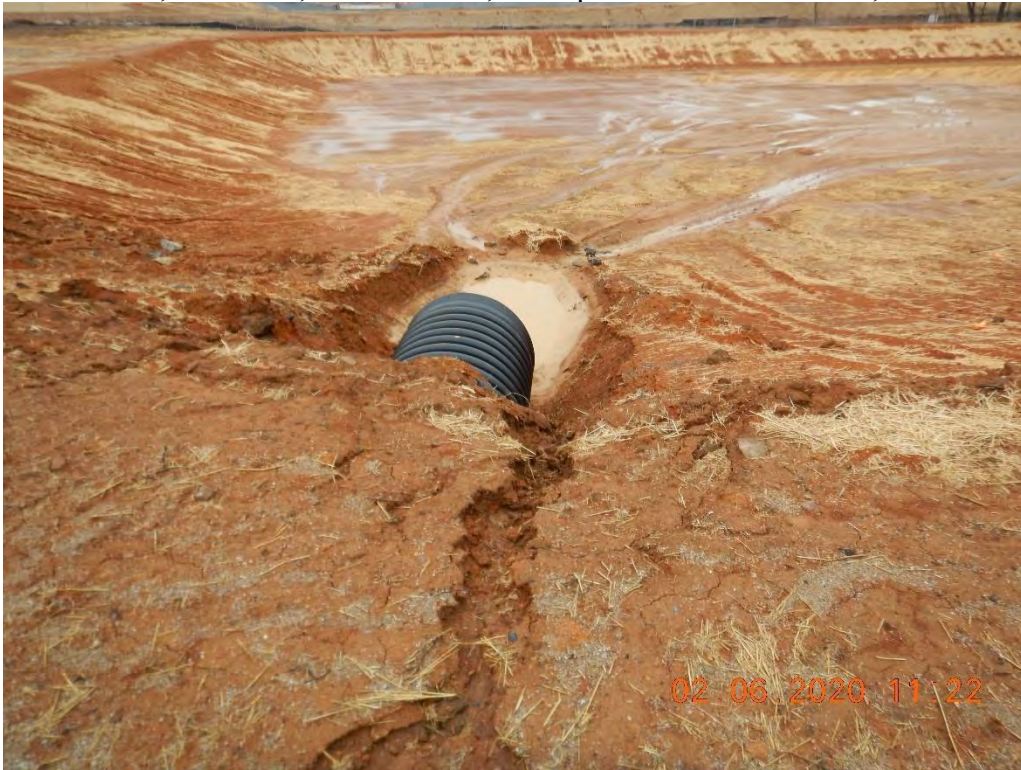
Perimeter controls are not properly installed, there are many areas where the toe of the silt fence was not toed in correctly and many panels of silt fence was not conjoined correctly as indicated in the plan details on sheet 19.



Where soil is being pushed up against silt fence, there is no holding capacity to allow proper filtration before being overtopped.



Maintenance on Drop Inlet protection where rock apron has been eroded away.



Unprotected Inlet into sediment basin.



Unprotected inlets into sediment basin from erosion rills.



Sediment basin is not being operated correctly and is allowing sediment laden water to leave the site without going through an appropriate erosion control device. Sediment basin should be set up to 50% percent wet/dry compacity. At time of inspection it is set up for stormwater retention with the orifices at bottom grade of basin.



Sediment laden water leaving Sediment Basin through orifice in riser.



Sediment deposit outside the LOD below Sediment Basin. No perimeter controls installed at this location.





Sediment deposit outside the LOD below Sediment Basin. No perimeter controls installed at this location.



No perimeter controls installed along LOD along collection ditch #1.



Outfall of sediment basin with not signage posited. Rip rap apron is stained with sediment from improperly operated basin.



Sediment laden water coming out of sediment basin outfall.



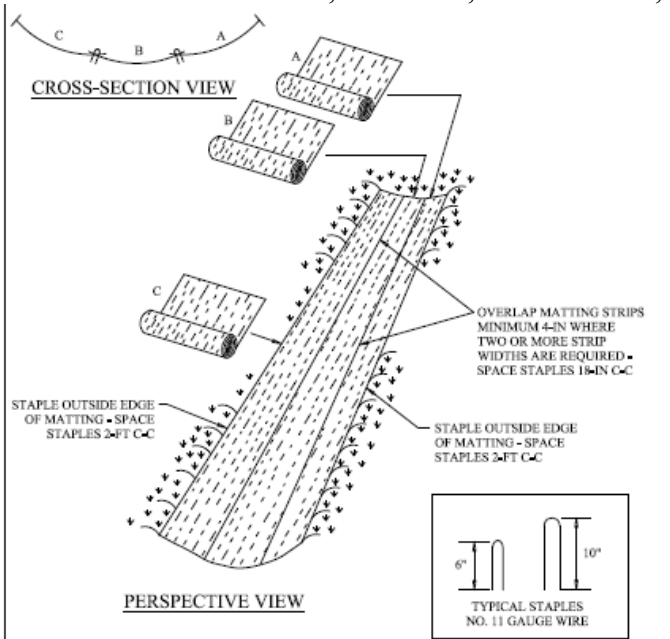
Diversion channel #1 from sediment basin outlet not installed.



Diversion channel #1 and rip rap apron #2 not installed at time of inspection.



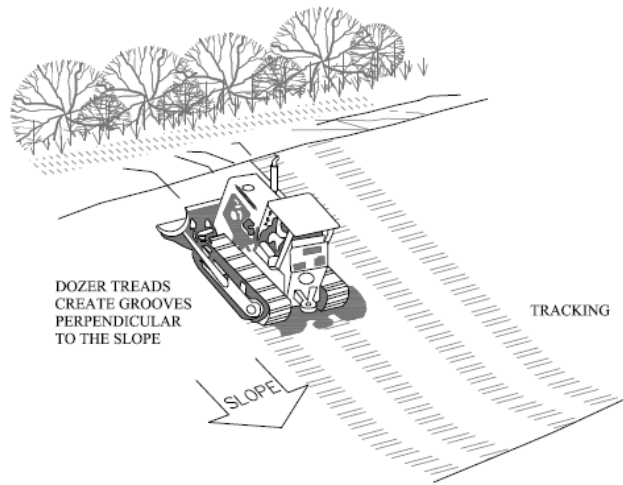
Soil stockpiles are not temporary stabilized with erosion rills.



**EROSION CONTROL MATTING DETAIL**  
NOT TO SCALE

**CONSTRUCTION NOTES:**

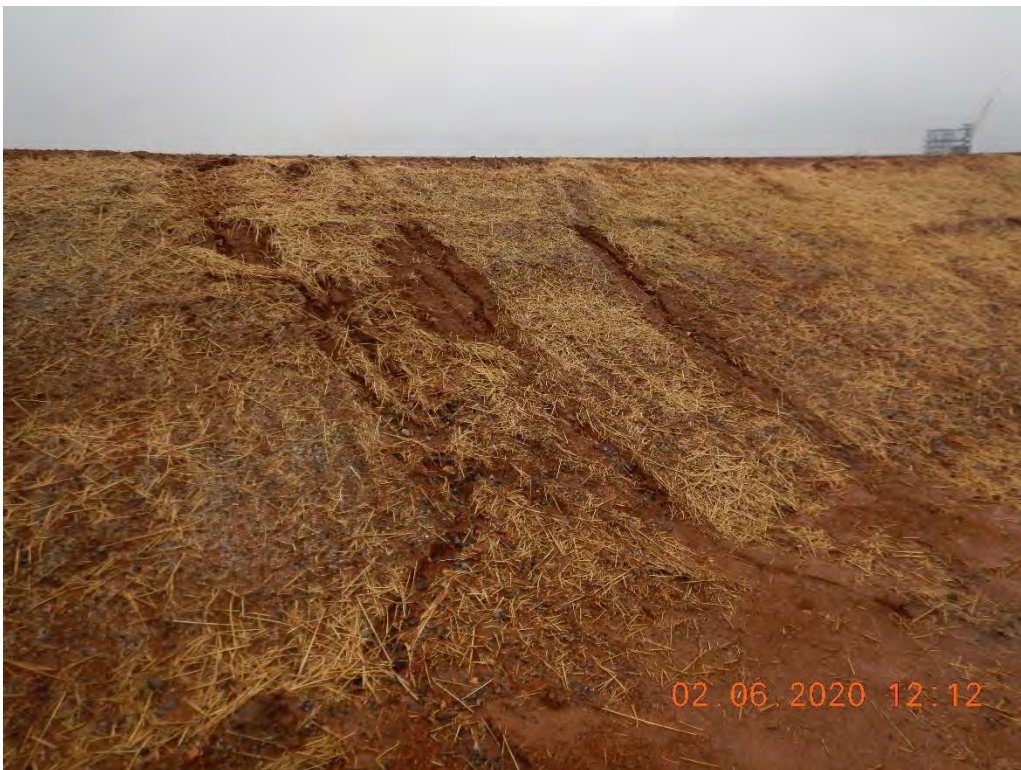
1. EROSION CONTROL PRODUCTS FOR MATTING SHALL BE NORTH AMERICAN GREEN SC150BN OR APPROVED EQUAL. SEED AND MULCH DITCH LINE PRIOR TO PLACEMENT OF EROSION CONTROL FABRIC.
2. KEY-IN THE MATTING BY PLACING THE TOP ENDS OF THE MATTING IN A NARROW TRENCH, 6-IN DEPTH. BACKFILL THE TRENCH AND TAMP FIRMLY TO CONFORM TO THE CHANNEL CROSS-SECTION. SECURE WITH A ROW OF STAPLES ABOUT 4-IN DOWN SLOPE FROM THE TRENCH. SPACE THE STAPLES 6-IN CENTER TO CENTER (C-C).
3. STAPLE THE 4-IN OVERLAP IN THE CHANNEL CENTER USING A STAPLE SPACING OF 18-IN C-C.
4. BEFORE STAPLING THE OUTER EDGES OF THE MATTING, MAKE SURE THE MATTING IS SMOOTH AND IN FIRM CONTACT WITH THE SOIL.
5. STAPLES SHALL BE SPACED 24-IN C-C WITH 4 ROWS FOR EACH STRIP - 2 OUTER ROWS and 2 ALTERNATING ROWS DOWN THE CENTER.
6. WHERE ONE ROLL OF MATTING ENDS AND ANOTHER BEGINS, THE END OF THE TOP STRIP SHALL OVERLAP THE UPPER END OF THE LOWER STRIP BY 4-IN MINIMUM, USING SHIPLAP FASHION. REINFORCE THE OVERLAP WITH A DOUBLE ROW OF STAPLES SPACED 6-IN C-C IN A STAGGERED PATTERN ON EITHER SIDE.
7. THE DISCHARGE END OF THE MATTING LINER SHALL BE SIMILARLY SECURED WITH 2 DOUBLE ROWS OF STAPLES SPACED 6-IN C-C IN A STAGGERED PATTERN ON EITHER SIDE.
8. IF FLOW WILL ENTER FROM THE EDGE OF THE MATTING THEN THE AREA EFFECTED BY THE FLOW MUST BE KEYED-IN.



**TRACKING A CONSTRUCTED SLOPE**  
NOT TO SCALE



Diversion channel not installed per plan sheet details with ECM and rock check dams.



Improperly tracked in constructed slopes are aiding in the development of erosion rills to form on fill slopes that are found throughout the project site.



Multiple construction entrances along LOD of project that are not rocked.



By-pass under silt fence that allows sediment laden water to leave the site.



No fill slope protection on constructed slopes with erosion rills.



Diversion along Northport Ave. does not have rock check dams as indicated on plan sheet 9.



STATE OF WEST VIRGINIA  
Department of Environmental Protection  
Environmental Enforcement  
NOTICE OF VIOLATION

Violation No W20-19-012-TDH

To the Operator or Agent of:

Facility Name: Northport Avenue Extension Permit No. WVR110191

Permittee or Individual: RANSON, CITY OF

Located at or near: 39 22 12.95 N, 77 52 32.83 W in Jefferson County

Representative: ANDREW P. BLAKE, CITY MGR Date: 2/6/2020 Time: 1103

Address / phone number: 312 SO MILDRED ST, RANSON, WV 25438 / 3047251010

Whereas, an inspection of the above named operation by the undersigned, duly authorized agent of the Secretary, at which the following described condition or practice exists, in violation of Chapter 22, Article 11, Section(s) 1 et. Seq. of the Code of West Virginia and/or Section(s)     of the Rules and Regulations and/or Section(s) B, C, D, and G of the Permit referenced above promulgated thereunder in that you: **Have violated the following terms and conditions of WV/NPDES General Water Pollution Control Permit No. WV0115924, Registration No. WVR110191:**

1. **Section B- City of Ranson failed to comply with the General Permit and approved Storm Water Pollution Prevention Plan (SWPPP). Several erosion control devices are not in place as detailed by the SWPPP. The Emergency Overflow, Collection Ditch #1 and Rip Rap Apron #2 are not installed as indicated in the SWPPP. Diversion ditches are not installed according to SWPPP. Plan sheets indicated that rock check dams along with ECM will be used in the diversion ditch. Neither rock check dams nor ECM was installed.**
2. **Section C.15.- City of Ranson failed to post an outlet marker at all permitted outlets from the construction site. No outlet signage was posted at the outfall of the sediment basin.**
3. **Section D.1.- City of Ranson failed to operate and maintain all erosion control devices. Where soil is being pushed up against silt fence, there is no holding complicity to allow proper filtration before controls are overtopped. Rock aprons are showing wear around a few drop inlets. Some sections of silt fence are down, and need maintained throughout site.**
4. **Section G.4.a: City of Ranson failed to retain a copy of the SWPPP and GPP on site. SWPPP and GPP could not be located on site at time of inspection. These documents are to be housed on site until completion of the project.**
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6. **Section G.4.e.2.- City of Ranson failed to properly implement controls. Perimeter controls are not properly installed, there are many areas where the toe of the silt fence was not toed in correctly and many panels of silt fence was not conjoined correctly as indicated in the plan details on sheet 19.**

7. Section G.4.e.2.A.i.- City of Ranson failed to provide interim stabilization on areas where construction activities have temporarily ceased for more than 14 days. Soil stockpile and other constructed slopes are not temporary stabilize that have set idle for more than 14 days.
8. Section G.4.e.2.A.ii.b.: City of Ranson failed to properly operate sediment basin. Sediment basin is not being operated correctly and is allowing sediment laden water to leave the site without going through an appropriate erosion control device. Sediment basin should be set up to 50% percent wet/dry compacity. At time of inspection it is set up for stormwater retention with the orifices at bottom grade of basin. This is not allowing any settling time for sediment.
9. Section G.4.e.2.A.ii.c.: City of Ranson failed to provide inlet protection for sediment control structure. No inlet protection was provided in Sediment Basin.
10. Section G.4.e.2.A.ii.f.- City of Ranson failed to protect fill slopes. Improperly tracked in constructed slopes are aiding to the development of erosion rills that are forming on fill slopes throughout the project site.
11. Section G.4.e.2.A.ii.j: City of Ranson failed to prevent sediment-laden water from leaving the site without going through an appropriate device. Sediment laden water can leave the site at multiple location via by-passes in perimeter controls where silt fence was not toed in correctly, conjoined correctly or laid over construction entrances that were not rocked along the LOD of the permitted site. Below the sediment basin, sediment laden water is able to leave the LOD and create sediment deposit on the Ran 5 Project where no perimeter controls were installed along the LOD.
12. Section G.4.e.2.C.v.- City of Ranson failed to maintain records that document inspections of erosion control devices and maintenance activities. E&S inspection could not be located on site at time of inspection. These documents are to be housed on site until completion of project.
13. Section G.4.e.1.E.: City of Ranson failed to provide an adequate stone access entrance/exit to reduce the tracking of sediment onto the public or private roads. There are multiple construction entrances along the LOD where there are no rock construction entrances. The perimeter controls are just laid in place over the construction entrances.

The following corrective measures were discussed with you at the time of this inspection: N/A

Take measures to correct the aforementioned violations.

1. Provide proper inlet protection.
2. Document and maintain onsite all inspections of erosion control devices and maintenance activities.
3. Operate and maintain all erosion control devices to achieve compliance with the permit.
4. Install necessary erosion control devices and modify the SWPPP to prevent sediment- laden water from leaving the site.
5. Display an outlet marker on the stream bank in accordance with Title 47, Series 11, Section 9 of the WV Legislative Rules (Special Rules).
6. Install necessary erosion control devices as indicated on the approved SWPPP.
7. Properly operate sediment basin.
8. Install necessary erosion control devices to prevent the release of sediment-laden water from the site.
9. Seed and mulch all areas where construction activities have ceased for more than 14 days.
10. Provide adequate stone at the entrance/exit of the access road.
11. Obtain and maintain a copy of the SWPPP and GPP on site

Within **20** days provide a written response to the inspector named below, at the address indicated, detailing the actions taken to abate this violation.

Received by:

**Sent Certified Mail--**  
70192970000166130895

---

Signature



Title

Travis D. Hays

---

Duly Authorized Agent / Inspector

**(304) 389-  
7642**

---

Telephone

**Travis.D.Hays@wv.gov**

---

E-mail

**Send Response to the Inspector at the address indicated below:**

WV Department of Environmental Protection

Environmental Enforcement / WW

2031 Pleasant Valley Rd., Suite #1, Fairmont, WV 26554

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

CITY OF RANSON  
Attn: ANDREW P. BLAKE  
312 SO MILDRED ST  
RANSON, WV 25438



9590 9402 5733 0003 6481 11

2. Article Number *Transfer from previous label*

7019 2970 0001 6613 0895

PS Form 3811, July 2015 PSN 7530-02-000-9053

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A. Signature

X

*Paul C. Huest*

B. Received by (Printed Name)

*Paul C. Huest*

C. Date of Delivery

*3/2/16*

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

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- Return Receipt for Merchandise
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(over \$500)

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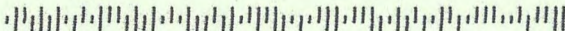
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WV DEP  
Environmental Enforcement  
1159 Nick Rahall Greenway  
Fayetteville, WV 25840



**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
WV/NPDES CONSTRUCTION STORMWATER PERMIT**

<b>FACILITY NAME:</b>	Northport Avenue Extension			<b>REG. #</b>	<b>EXPIRE DATE:</b>
<b>PERMITTEE</b>	RANSON, CITY OF			WVR110191	9/11/2020
<b>ADDRESS/PHONE:</b>	Attn: ANDREW P. BLAKE, CITY MGR 312 SO MILDRED ST RANSON, WV 25438 3047251010				
<b>LOCATION:</b>	39 22 12.95 N, 77 52 32.83 W			<b>Entry Date/Time:</b>	3/11/2020 @ 1136
<b>COUNTY:</b>	Jefferson			<b>Exit Date/Time:</b>	3/11/2020 @ 1243
<b>Site Representative /Phone</b>				<b>PHOTOS</b> <input checked="" type="checkbox"/>	
<b>CO-PERMITTEE:</b>				<b>ADDRESS:</b>	
<b>SITE OPERATOR:</b>				<b>ADDRESS:</b>	
<b>PERMITTED ACREAGE</b>	24.4	<b>WEATHER:</b>	Overcast	<b>LAST INSPECTION:</b>	2/06/2020
<b>RECEIVING STREAM(S)</b>	Rockymarsh				<b>NOV: 0</b>
<b>Regular Mail</b> <input checked="" type="checkbox"/>	<b>Certified Mail</b> <input type="checkbox"/>	<b>Tracking #</b>			
<b>OVERALL FACILITY RATING:</b>	Marginal		<b>COMPLIANCE OUTCOME</b>	Immediately Corrected	

**PERMIT / SITE EVALUATION**

**S-Satisfactory U-Unsatisfactory N/A-Not Applicable N/O-Not Observed N/D Not Determined M-Marginal Y-Yes N-No**

1. PERIMETER CONTROLS	S	9. HOUSEKEEPING/SOLID WASTE	S	17. CONCRETE WASHOUT	N/A
2. DIVERSIONS/DITCH CHECKS	S	10. RECORDS, REPORTS & PLANS ON SITE	S	18. PUBLIC NOTICE SIGN	S
3. SEDIMENT TRAPS/BASINS	S	11. STABLE CONSTRUCTION ENTRANCE	S	19. SEDIMENT LADEN WATER LEAVING SITE	S
4. OUTLET MARKERS	M	12. MUD ON ROADWAY/DUST	S	20. CONDITIONS NOT ALLOWABLE	S
5. WASTE/BORROW SITES	S	13. APPROPRIATE BMP'S IMPLEMENTED	M	21. SWPPP/ GPP/PERMIT COMPLIANCE	S
6. OPERATIONS & MAINTENANCE	S	14. FILL SLOPE PROTECTION	S	22. ORDER COMPLIANCE	
7. WATER BARS	N/A	15. DEVICES INSTALLED IN TIMELY MANNER	M	23. OTHER:	
8. STABILIZATION PRACTICES	S	16 DROP INLET PROTECTION	M	24. OTHER:	

COMMENTS DEFICIENCIES AND RECOMMENDATIONS

**WARNINGS: Immediately take all measures necessary to comply with all terms and conditions of the WV/NPDES general permit.**

- (13, 15, and 16) Section II.F. – City of Ranson failed to properly implement controls in accordance with standard procedures and as described in the approved SWPPP. Did not reinstall drop inlet protection as described by the SWPPP.
- (4) Appendix A 15.- City of Ranson, failed to post an outlet marker at all permitted outlets from the construction site. Outlet marker was not place at outfall of basin 1 yet. They are being made and will be posted within the next 24 hrs.



INSPECTOR: Travis D. Hays

Telephone: (304) 389-7642



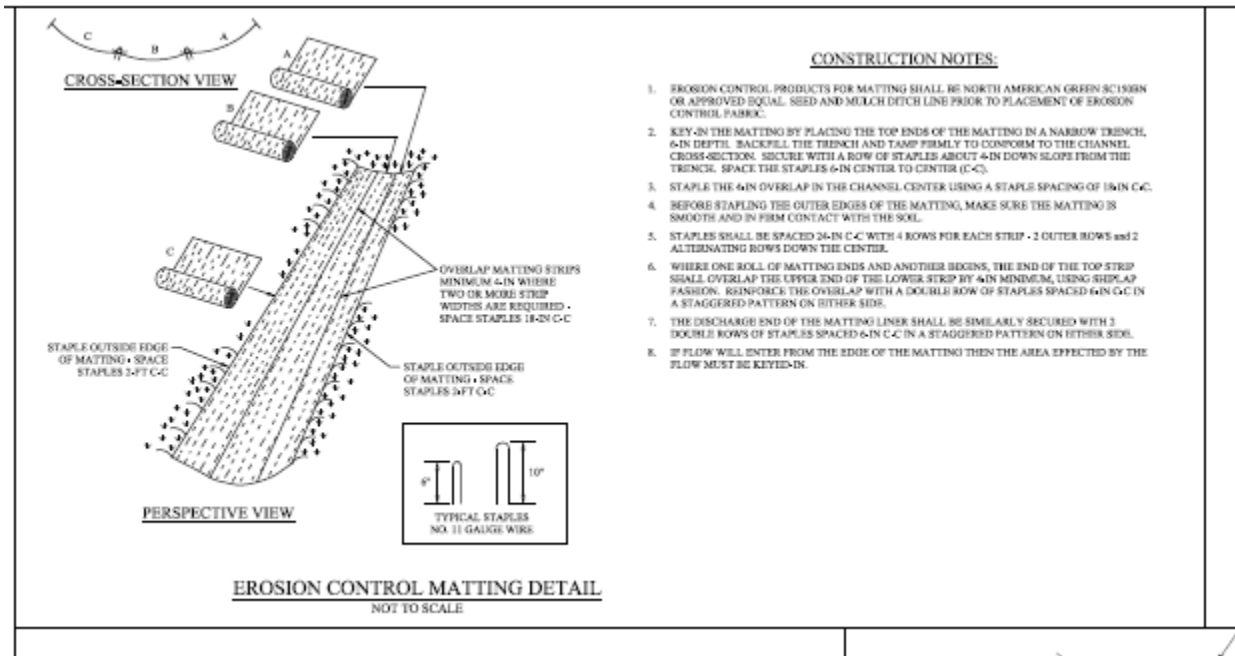
Drop inlet with out protection on side after maintenance was performed. Was immediately corrected upon notification.



Outlet marker was not place at outfall of basin 1 yet. They are being made and will be posted within the next 24 hrs.



Questioned Curlex being use as tuff reinforcement matting in concerted flow area of basin 1. Refer to Sheet 19 for erosion controls matting detail.



Detail from sheet 19.



**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
WV/NPDES CONSTRUCTION STORMWATER PERMIT**

<b>FACILITY NAME:</b>	Northport Avenue Extension			<b>REG. #</b>	<b>EXPIRE DATE:</b>
<b>PERMITTEE</b>	RANSON, CITY OF			WVR110191	9/11/2020
<b>ADDRESS/PHONE:</b>	Attn: ANDREW P. BLAKE, CITY MGR 312 SO MILDRED ST RANSON, WV 25438 3047251010				
<b>LOCATION:</b>	39 22 12.95 N77 52 32.83 W			<b>Entry Date/Time:</b>	5/14/2020 @ 1100
<b>COUNTY:</b>	Jefferson			<b>Exit Date/Time:</b>	5/14/2020 @ 1130
<b>Site Representative /Phone</b>				<b>PHOTOS</b> <input checked="" type="checkbox"/>	
<b>CO-PERMITTEE:</b>				<b>ADDRESS:</b>	
<b>SITE OPERATOR:</b>				<b>ADDRESS:</b>	
<b>PERMITTED ACREAGE</b>	24.4	<b>WEATHER:</b>	Sunny	<b>LAST INSPECTION:</b>	3/11/2020
<b>RECEIVING STREAM(S)</b>	Rocky Marsh				<b>NOV:</b> <b>W20-19-037-TDH</b>
<b>Regular Mail</b> <input type="checkbox"/> <b>Certified Mail</b> <input checked="" type="checkbox"/>		<b>Tracking #</b> 70200090000175443202			
<b>OVERALL FACILITY RATING:</b>	Unsatisfactory		<b>COMPLIANCE OUTCOME</b>	Not Immediately Corrected	

**PERMIT / SITE EVALUATION**

<b>S-Satisfactory</b>	<b>U-Unsatisfactory</b>	<b>N/A-Not Applicable</b>	<b>N/O-Not Observed</b>	<b>N/D Not Determined</b>	<b>M-Marginal</b>	<b>Y-Yes</b>	<b>N-No</b>
1. PERIMETER CONTROLS	<b>S</b>	9. HOUSEKEEPING/SOLID WASTE	<b>S</b>	17. CONCRETE WASHOUT			<b>N/O</b>
2. DIVERSIONS/DITCH CHECKS	<b>U</b>	10. RECORDS, REPORTS & PLANS ON SITE	<b>N/O</b>	18. PUBLIC NOTICE SIGN			<b>S</b>
3. SEDIMENT TRAPS/BASINS	<b>S</b>	11. STABLE CONSTRUCTION ENTRANCE	<b>S</b>	19. SEDIMENT LADEN WATER LEAVING SITE			<b>S</b>
4. OUTLET MARKERS	<b>U</b>	12. MUD ON ROADWAY/DUST	<b>S</b>	20. CONDITIONS NOT ALLOWABLE			<b>S</b>
5. WASTE/BORROW SITES	<b>U</b>	13. APPROPRIATE BMP'S IMPLEMENTED	<b>S</b>	21. SWPPP/ GPP/PERMIT COMPLIANCE			<b>S</b>
6. OPERATIONS & MAINTENANCE	<b>S</b>	14. FILL SLOPE PROTECTION	<b>S</b>	22. ORDER COMPLIANCE			
7. WATER BARS	<b>S</b>	15. DEVICES INSTALLED IN TIMELY MANNER	<b>S</b>	23. OTHER:			
8. STABILIZATION PRACTICES	<b>U</b>	16 DROP INLET PROTECTION	<b>S</b>	24. OTHER:			

**COMMENTS DEFICIENCIES AND RECOMMENDATIONS**

**Comments:**

Walked site with Keith Allison (WVDEP).

**Deficiencies:**

- (2) Erosion control matting (ECM) is not pinned in with accordance to plan details or manufactures recommendations. Check specification on ECM that was used to make sure it meets North American Green SC150BN as called for in plan details.
- (4) Outlet marker was not posted on outlet of basin.
- (2, 5 and 8) The area around the Basin (plan sheet 11A) and soil stockpiles (plan sheet 11) has not germinated. This area appears to be inactive for more then 14 days and has not germinated within 30 days of seeding. This area needs to be reseeded in accordance with this permit.



INSPECTOR: Travis D. Hays

Telephone: (304) 389-7642

**STATE OF WEST VIRGINIA**  
**Department of Environmental Protection**  
**Environmental Enforcement**  
**NOTICE OF VIOLATION**

Violation No W20-19-037-TDH

To the Operator or Agent of:

Facility Name: Northport Avenue Extenison Permit No. WVR110191

Permittee or Individual: RANSON, CITY OF

Located at or near: 39 22 12.95 N, 77 52 32.83 W in Jefferson County

Representative: ANDREW P. BLAKE, CITY MGR Date: 5/14/2020 Time: 1100

Address / phone number: 312 SO MILDRED ST, RANSON, WV 25438 / 3047251010

Whereas, an inspection of the above named operation by the undersigned, duly authorized agent of the Secretary, at which the following described condition or practice exists, in violation of Chapter 22, Article 11, Section(s) 1 et. Seq. of the Code of West Virginia and/or Section(s)     of the Rules and Regulations and/or Section(s) Section II, III, and Appendix A of the Permit referenced above promulgated thereunder in that you:

**Have violated the following terms and conditions of WV/NPDES General Water Pollution Control Permit No. WV0115924, Registration No. WVR110191:**

1. **Section II.F. - RANSON, CITY OF has failed to properly implement controls in accordance with standard procedures and as described in the approved SWPPP. Erosion control matting (ECM) is not pinned in with accordance to plan details or manufactures recommendations.**
2. **Section III.A.3.- RANSON, CITY OF failed to provide interim stabilization on areas where the seed has failed to germinate adequately (uniform perennial vegetative cover with density of 70%) within 30 days after seeding and mulching must be reseeded immediately, or as soon as weather conditions allow.**
3. **Appendix A.15-RANSON, CITY OF has failed to post an outlet marker at all permitted outlets from the construction site. Outlet marker was not posted on outlet of basin.**

The following corrective measures were discussed with you at the time of this inspection:

**Take measures to correct the aforementioned violations.**

Within 20 days provide a written response to the inspector named below, at the address indicated, detailing the actions taken to abate this violation.

Received by:

**Sent Certified Mail--70200090000175443202**

Signature

Title



Travis D. Hays

Duly Authorized Agent / Inspector

(304) 389-7642

Telephone

Travis.D.Hays@wv.gov

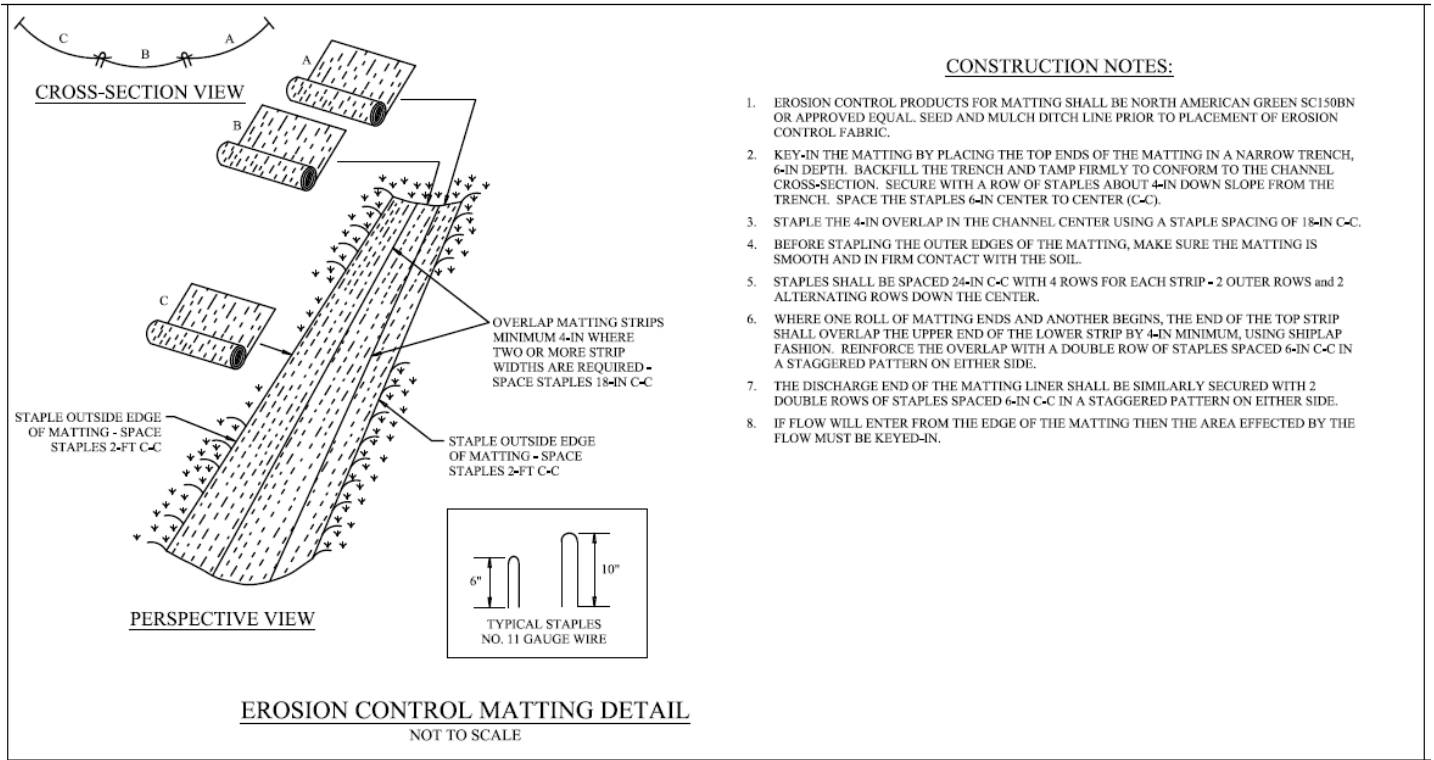
E-mail

**Send Response to the Inspector at the address indicated below:**

WV Department of Environmental Protection

Environmental Enforcement / WW

2031 Pleasant Valley Rd., Suite #1, Fairmont, WV 26554



Erosion control matting (ECM) is not pinned in with accordance to plan details or manufactures recommendations. Check specification on ECM that was used to make sure it meets North American Green SC150BN as called for in plan details  
 No outlet marker posted on outlet.



Basin area has not germinated within 30 days after seeding.



Stockpile area has not germinated within 30 days after seeding.

## SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

CITY OF RANSON  
 Attn: ANDREW P. BLAKE  
 312 SO MILDRED ST  
 RANSON, WV 25438



9590 9402 5111 9092 7982 13

2. Article Number (Transfer from service label)

7020 0090 0001 7544 3202

## COMPLETE THIS SECTION ON DELIVERY

A. Signature

 *Paul C. Blake*
 Agent Addressee

B. Received by (Printed Name)

*Paul C. Blake*

C. Date of Delivery

*5-26-88*D. Is delivery address different from item 1?  YesIf YES, enter delivery address below:  No

## 3. Service Type

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| <input type="checkbox"/> Adult Signature Restricted Delivery           | <input type="checkbox"/> Registered Mail™                           |
| <input type="checkbox"/> Certified Mail®                               | <input type="checkbox"/> Registered Mail Restricted Delivery        |
| <input type="checkbox"/> Certified Mail Restricted Delivery            | <input type="checkbox"/> Return Receipt for Merchandise             |
| <input type="checkbox"/> Collect on Delivery                           | <input type="checkbox"/> Signature Confirmation™                    |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery       | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Insured Mail                                  |   |
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Environmental Enforcement  
1159 Nick Rahall Greenway  
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FAYETTEVILLE



**STATE OF WEST VIRGINIA**  
**Department of Environmental Protection**  
**Environmental Enforcement**  
**NOTICE OF VIOLATION**

Violation No **W20-19-037-TDH**

To the Operator or Agent of:

Facility Name: **Northport Avenue Extenison** Permit No. **WVR110191**

Permittee or Individual: **RANSON, CITY OF**

Located at or near: **39 22 12.95 N, 77 52 32.83 W** in **Jefferson** County

Representative: **ANDREW P. BLAKE, CITY MGR** Date: **5/14/2020** Time: **1100**

Address / phone number: **312 SO MILDRED ST, RANSON, WV 25438 / 3047251010**

Whereas, an inspection of the above named operation by the undersigned, duly authorized agent of the Secretary, at which the following described condition or practice exists, in violation of Chapter **22**, Article **11**, Section(s) **1 et. Seq.** of the Code of West Virginia and/or Section(s)  of the Rules and Regulations and/or Section(s) **Section II, III, and Appendix A** of the Permit referenced above promulgated thereunder in that you:

**Have violated the following terms and conditions of WV/NPDES General Water Pollution Control Permit No. WV0115924, Registration No. WVR110191:**

- 1. Section II.F. - RANSON, CITY OF has failed to properly implement controls in accordance with standard procedures and as described in the approved SWPPP. Erosion control matting (ECM) is not pinned in with accordance to plan details or manufactures recommendations.**
- 2. Section III.A.3.- RANSON, CITY OF failed to provide interim stabilization on areas where the seed has failed to germinate adequately (uniform perennial vegetative cover with density of 70%) within 30 days after seeding and mulching must be reseeded immediately, or as soon as weather conditions allow.**
- 3. Appendix A.15-RANSON, CITY OF has failed to post an outlet marker at all permitted outlets from the construction site. Outlet marker was not posted on outlet of basin.**

The following corrective measures were discussed with you at the time of this inspection:

**Take measures to correct the aforementioned violations.**

Within **20** days provide a written response to the inspector named below, at the address indicated, detailing the actions taken to abate this violation.

Received by:

**Sent Certified Mail--70200090000175443202**

Signature

Title



Travis D. Hays

Duly Authorized Agent / Inspector

(304) 389-7642

Telephone

Travis.D.Hays@wv.gov

E-mail

**Send Response to the Inspector at the address indicated below:**

WV Department of Environmental Protection

Environmental Enforcement / WW

2031 Pleasant Valley Rd., Suite #1, Fairmont, WV 26554

## SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

CITY OF RANSON  
 Attn: ANDREW P. BLAKE  
 312 SO MILDRED ST  
 RANSON, WV 25438



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2. Article Number (Transfer from service label)

7020 0090 0001 7544 3202

## COMPLETE THIS SECTION ON DELIVERY

A. Signature

 *Paul C. Blake*
 Agent Addressee

B. Received by (Printed Name)

*Paul C. Blake*

C. Date of Delivery

*5-26-88*D. Is delivery address different from item 1?  YesIf YES, enter delivery address below:  No

## 3. Service Type

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|--|---|
| <input type="checkbox"/> Adult Signature                               | <input type="checkbox"/> Priority Mail Express®                     |
| <input type="checkbox"/> Adult Signature Restricted Delivery           | <input type="checkbox"/> Registered Mail™                           |
| <input type="checkbox"/> Certified Mail®                               | <input type="checkbox"/> Registered Mail Restricted Delivery        |
| <input type="checkbox"/> Certified Mail Restricted Delivery            | <input type="checkbox"/> Return Receipt for Merchandise             |
| <input type="checkbox"/> Collect on Delivery                           | <input type="checkbox"/> Signature Confirmation™                    |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery       | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Insured Mail                                  |   |
| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) |   |

Domestic Return Receipt



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10



9590 9402 5111 9092 7982 13

USPS TRACKING #

• Sender: Please print your name, address, and ZIP+4® in this box.

WV DEP  
Environmental Enforcement  
1159 Nick Rahall Greenway  
Fayetteville, WV 25840

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Office of Mining & Reclamation

United States  
Postal Service

JUN 01 2020

FAYETTEVILLE





STATE OF WEST VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF WATER AND WASTE MANAGEMENT  
601 57<sup>th</sup> STREET SE  
CHARLESTON, WV 25304-2345  
GENERAL

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**  
**WATER POLLUTION CONTROL PERMIT**

Permit No. WV0115924

Issue Date: December 5, 2012  
Effective Date: January 4, 2013  
Expiration Date: January 3, 2018

Subject: Stormwater Associated  
With Construction Activities

To Whom It May Concern:

This is to certify that any establishment with discharges composed entirely of stormwater associated with construction activities disturbing one acre or greater of land area (construction activities are land disturbing operations such as clearing, grubbing, grading, filling and excavation operations during site development for residential, commercial or industrial purposes) and agreeing to be regulated under the terms of this General Permit, except for;

1. Operations that result in the disturbance of less than one acre of total land area, which are not part of a larger common plan of development or sale.
2. Stormwater discharges associated with land disturbing activities that may reasonably be expected to be causing or contributing to a violation of a water quality standard as determined by the Director.
3. Land disturbing activities already governed by other Department of Environmental Protection NPDES permits. This includes Division of Mining and Reclamation permits for coal mining and non-metallic quarries.
4. Landfills, except in the preparation of a new landfill and/or clay borrow areas.
5. Other activities exempt from NPDES permitting requirements as set forth in 40CFR 122.3(e) and 47CSR 10-3.2.b.4 (NPDES Program).
6. Land disturbing activities related to oil and gas activities as required by the Energy Policy Act of 2005. These activities include but are not limited to

construction of drilling sites, waste management pits, and access roads, as well as construction of the transportation and treatment infrastructure such as pipelines, natural gas treatment plants, natural gas pipeline compressor stations, and crude oil pumping stations. Construction activities that result in a discharge of a reportable quantity release or that contribute pollutants (other than non-contaminated sediments) to a violation of a water quality standard are still subject to permit coverage.

is hereby granted coverage under this General WV/NPDES Water Pollution Control Permit to allow stormwater discharges into the surface waters of the State. This General Permit is subject to the following terms and conditions:

The information submitted on and with the site registration application form will hereby be made terms and conditions of the General Permit with like effect as if all such information were set forth herein, and other pertinent conditions set forth in Sections A, B, C, D, E, F, G, H, I and J.

Construction of single family residences by the homeowner or homeowner's contractor requiring land disturbances less than three acres in size are provided coverage under the General WV/NPDES Water Pollution Control Permit and do not require application for registration. This includes offsite borrow and waste sites. However, all other terms and conditions of the General WV/NPDES Water Pollution Control Permit still apply except for the Notice of Termination requirement. The WVDEP's Individual House Sample Sediment and Erosion Control must be used during the construction of the single family home.

Sites approved from January 1, 2011, thru November 5, 2012, are hereby granted coverage under General WV/NPDES Water Pollution Control Permit WV0115924. Sites approved prior to January 1, 2011, shall have until June 30, 2013, to have final stabilization completed. Final stabilization means disturbed areas shall be covered by the appropriate permanent protection. Final stabilization includes; pavement, buildings, stable waterways (riprap, concrete, grass or pipe), a healthy, vigorous stand of perennial grass that uniformly covers at least 70 percent of the ground, stable outlet channels with velocity dissipation which directs site runoff to a natural watercourse, and any other approved structure or material. Sites that are not stabilized by June 30, 2013, an application to receive permit coverage must be submitted to the Division of Water and Waste Management on or before, July 1, 2013.

#### **Continuation of this general permit**

If this general permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with 47 CSR 10 and remain in force and effect. If you were authorized to discharge under this general permit prior to the expiration date, any discharges authorized under this permit will automatically remain covered by this general permit until the earliest of:

- Your authorization for coverage under a reissued general permit or a replacement of this general permit following your timely and appropriate submittal of a complete application requesting authorization to discharge

under the new general permit and compliance with the requirements of the new permit; or

- Your submittal of notification of termination that the facility has ceased operations; or
- Issuance or denial of an individual permit for the facility's discharge; or
- A formal permit decision by DWWM not to reissue this general permit, at which time DWWM will identify a reasonable time period of covered dischargers to seek coverage under an alternative general permit or individual permit. Coverage under this permit will cease at the end of this time period.

#### SECTION A. TERMS OF PERMIT

Discharges from sites covered under this General Permit shall not cause or contribute to a violation of 47CSR2 (Requirements Governing Water Quality Standards) and 46CSR12, (Requirements Governing Groundwater Standards) of the West Virginia Legislative Rules pursuant to Chapter 22, Article 11 and Article 12. Discharges that are not in compliance with these standards are not authorized.

#### SECTION B. SCHEDULE OF COMPLIANCE

Compliance with this General Permit, the approved Stormwater Pollution Prevention Plan and the Groundwater Protection Plan is required upon the beginning of the construction project.

#### SECTION C. MANAGEMENT CONDITIONS

##### C.1. Duty to Comply

C.1.a. The permittee must comply with all conditions of this permit. Permit noncompliance constitutes a violation of the federal Clean Water Act (CWA) and State Act (Chapter 22, Article 11 or Article 12) and is grounds for enforcement action; for permit modification, revocation and reissuance, suspension or revocation; or denial of a permit renewal application.

C.1.b. The permittee shall comply with all effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

C.2. Duty to Reapply

If the permittee seeks to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit or General Permit registration as detailed in permit reissuance.

C.3. Duty to Mitigate

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

C.4. Permit Actions

This permit may be modified, revoked and reissued, suspended, or revoked for cause. The filing of a request by the permittee for permit modification, revocation and reissuance, or revocation, or a notification of a planned change or anticipated noncompliance, does not stay any permit condition.

C.5. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privilege.

C.6. Signatory Requirements

All applications, reports, or information submitted to the Director shall be signed and certified as required in 47CSR10-4.6. (NPDES Program). If an authorization becomes inaccurate because a different individual or position has responsibility for the overall operation of the project, a new authorization must be submitted to the Director prior to, or together with any reports, information, or applications to be signed by an authorized representative.

C.7. Transferability

This permit is not transferable to any person, except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary.

C.8. Duty to Provide Information

The permittee shall furnish to the Director, within a reasonable specified time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, suspending, or revoking this permit, or to

determine compliance with this permit. This information may include water quality information as specified by the Director. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

C.9. Other Information

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall immediately submit such facts or information.

C.10. Inspections and Entry

The permittee shall allow the Director or an authorized representative upon the presentation of credentials and such other documents as may be required by law

- C.10.a. To enter upon the permittee's premises at all responsible times in which an effluent source or activity is located, or where records must be kept under the conditions of this permit;
- C.10.b. To have access to and copy at reasonable times any records that must be kept under the conditions of this permit;
- C.10.c. To inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit;
- C.10.d. To sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the State Act, any substances or parameters at any location.

C.11. Permit Modification

This permit may be modified, suspended, or revoked in whole or in part during its term in accordance with the provisions of Chapter 22, Article 11 of the Code of West Virginia. Any permittee wishing to modify his coverage under this permit shall submit such request at least 45 days prior to the commencement of the proposed action for modification if no public notice period is required. A modification that requires a public notice period must be submitted at least 90 days prior to construction to allow for the public notice procedure.

C.12. Water Quality

Subject to 47 WV CSR 10.3.4.a, the effluent or effluents covered by this permit are to be of such quality so as not to cause a violation of applicable water quality standards.

C.13. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the CWA.

C.14. Liabilities

C.14.a. Civil

Any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318 or 405 of the CWA is subject to a civil penalty not to exceed \$37,500 per day of such violation (40 CFR Part 19).

C.14.b. Criminal

Any person who negligently violates, among other sections, Section 301, 302, 306, 307, or 308 of the CWA, or any permit condition or limitation implementing any of such section in a permit is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one year, or both. If a conviction of a person is for a violation committed after a first conviction of such person, punishment shall be a fine of not more than \$50,000 per day, or by imprisonment of not more than 2 years, or both.

Any person who knowingly violates, among other section, Section 301, 302, 306, 307, or 308 of the CWA, or any permit condition or limitation implementing any such sections in a permit, is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment of not more than 3 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person, punishment shall be a fine of not more than \$100,000, or by imprisonment for not more than 6 years, or both.

C.14.c. Nothing in C.14.a. and C.14.b. shall be construed to limit or prohibit any other authority the Director may have under the State Water Pollution Control Act, Chapter 22, Article 11 and State Groundwater Protection Act, Chapter 22, Article 12.

C.15 Outlet Markers

An outlet marker shall be posted during the term of General Permit coverage in accordance with Title 47, Series 11, Section 9 (Special Rules) of the West Virginia Legislative Rules.

SECTION D. OPERATION AND MAINTENANCE

D.1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures.

D.2. Need to Halt or Reduce Activity Not a Defense

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

D.3. Bypass

D.3.a. Definitions

D.3.a.1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility; and

D.3.a.2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

D.3.b. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of D.3.c. and D.3.d. of this permit.

D.3.c. Notification of bypass

D.3.c.1. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.

D.3.c.2. If the permittee does not know in advance of the need for bypass, notice shall be submitted as requires in F.2.a. of this permit.

D.3.d. Prohibition of bypass

D.3.d.1. Bypass is permitted only under the following conditions, and the Director may take enforcement action against a permittee for bypass, unless;



D.3.d.1.A. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

D.3.d.1.B. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance. This condition is not satisfied if the sediment and erosion control structures were not installed in the proper sequence; and

D.3.d.1.C. The permittee submitted notices as required under D.3.c. of this permit.

D.3.d.2. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in D.3.d.1. of this permit.

#### D.4. Upset

D.4.a. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with the technology based permit effluent limits because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

D.4.b. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based effluent limitation if the requirements of D.4.c. are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

D.4.c. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

D.4.c.1. An upset occurred and that the permittee can identify the cause(s) of the upset.

D.4.c.2. The permitted project was at the time being properly operated.

D.4.c.3. The permittee submitted notice of the upset as required in F.2.a. of this permit; and

D.4.c.4. The permittee complied with any remedial measures required under C.3. of this permit.

D.4.d. Burden of proof. In any enforcement proceedings the permittee seeking to establish the occurrence of an upset has the burden of proof.

D.5. Removed Substances

Where removed substances are not otherwise covered by the terms and conditions of this permit or other existing permits by the Director, any solids, sludge, filter backwash or other pollutants (removed in the course of treatment or control of wastewater) and which are intended for disposal within the State, shall be disposed of only in a manner and at a site subject to the approval by the Director. If such substances are intended for disposal outside the State or for reuse, i.e., as a material used for making another product, which in turn has another use, the permittee shall notify the Director in writing of the proposed disposal or use of such substances, the identity of the prospective disposer or users, and the intended place of disposal or use, as appropriate.

SECTION E. MONITORING AND REPORTING AND DEFINITIONS

Monitoring of discharges is not required for construction activities unless directed by the Director.

E.1. Definitions

“Best management practices” (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, other management practices and various structural practices such as but not limited to silt fence, sediment traps, seeding and mulching, and rip-rap used to prevent or reduce erosion and sediment runoff and the pollution of surface waters of the State. BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

“Clearing” means the stage of development in which vegetation is cleared from land. Clearing does not include cutting and removing vegetation with chain saws, brush axes, brush hogs and other mechanical means where there is less than one acre or no soil disturbance.

“Clean Water Act” (CWA) (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 97-117 and Public Law 95-576; 33 U.S.C. 1251 et seq.

“Common plan of development” is a contiguous construction project where multiple separate and distinct construction activities may be taking place at different times on different schedules but under one plan. The “plan” is broadly defined as any announcement or piece of documentation or physical demarcation indicating construction activities may occur on a specific plot; included in this definition are most subdivisions.

“Control” is a best management practice such as erosion control or sediment control that will reduce sedimentation on a construction project.

“Construction Activity” means land disturbance operations such as clearing, grubbing, grading, filling, and excavating during site development for residential, commercial or industrial purposes. This includes, but is not limited to, access roads, borrow and spoil areas.

“Director” means the Director of the Division of Water and Waste Management, Department of Environmental Protection, or her designated representative.

“Disturbed area” is the total area of land disturbing activity that will take place during all phases of a construction project, including, but not limited to, all waste and borrow sites, utility installation, road building, mass grading, and site development.

“Diversion” means a berm or excavated channel or combination berm and channel constructed across sloping land on a predetermined grade. This includes but is not limited to protecting work areas from upslope runoff and reducing the size of the drainage going to sediment trapping structures (clean water diversion), transporting runoff across a project to minimize erosion and diverting sediment-laden water to an appropriate sediment-trapping structure.

“Erosion” means the displacement of solids (soil, mud, rock, and other particles) by the agents of wind, water, and ice in response to gravity.

“Establishment” means an industrial establishment, mill, factory, tannery, paper and pulp mill, mine, colliery, breaker or mineral processing operation, quarry, refinery, well and each and every industry or plant or works in the operation or process of which industrial wastes, sewage or other wastes are produced.

“Estimate” means to be based on a technical evaluation of the sources contributing to the discharge.

“Excavating” means to engage in digging, hollowing out, or removing, accomplished usually with heavy machinery.

“Final stabilization” means disturbed areas shall be covered by permanent protection. Final stabilization includes pavement, buildings, stable waterways (riprap, concrete, grass or pipe), a healthy, vigorous stand of perennial grass that uniformly covers at least 70 percent of the ground, stable outlet channels with velocity dissipation that directs site runoff to a natural watercourse, and any other approved structure or material.

“Grading” means changing surface contours by removing soil and stone from one place and building it up in another.

“Groundwater” means the water occurring in the zone of saturation beneath the seasonal high water table or any perched water zones.

“Groundwater Protection Plan” (GPP) means groundwater protection practices developed and implemented in accordance with WV Legislative Rules, 47CSR58 (Groundwater Protection Rule).

“Grubbing” means physically removing vegetative stumps and roots from the ground and disturbing the earth, usually by heavy machinery.

“Minor construction activity” means an activity which disturbs one acre or more, but less than three acres.

“National Pollutant Discharge Elimination System” (NPDES) means the national program for issuing, denying, modifying, revoking and reissuing, suspending, revoking, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Section 307, 318, 402, and 405 of CWA, including any approved state program.

“Natural vegetative buffer” is an area of undisturbed vegetation that occurs spontaneously without regular maintenance or management and is adjacent to or surrounds streams or other waters.

“Notice of Intent” (NOI) is the form to be submitted by the applicant to register a small construction project (one that disturbs one to less than three acres) under the Construction Stormwater General Permit. A project that disturbs one to less than three acres but will have construction activities one year or longer must file a Site Registration Application Form.

“Notice of Termination” (NOT) is the form to be submitted by the permittee to terminate coverage under the Construction General Stormwater Permit, after final stabilization has been completed. See Final Stabilization.

“Point source” is any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, and container from which pollutants are or may be discharged to surface waters of the state.

“Pollutant” means industrial waste, sewage or other wastes.

“Post-development” means the anticipated final conditions of the project, including rooftops, parking lots, streets, drainage systems, vegetation, and any other structure planned. For subdivisions and speculative developments, it will be assumed that all lots are developed.

“Pre-development” means the condition of the land, the amount and health of the ground cover and vegetation prior to development.

“Secretary” means the Secretary of the Department of Environmental Protection, or his/her designated representative.

“Sediment” means any particulate matter that can be transported by fluid flow and which eventually is deposited as a layer of solid particles on the bed or bottom of a body of water or other liquid.

“Sedimentation” means the deposition by settling of a suspended material.

“Sediment trap” means a temporary ponding area formed by constructing an embankment or excavation and embankment that will trap the flow of sediment-laden runoff. Sediment traps have a properly stabilized outlet/weir or riser and pipe to detain sediment-laden runoff from disturbed areas of five acres or less. Outlets must be designed to extend the detention time and allow the majority of the sediment to settle out.

“Sediment basin” means a temporary structure consisting of an earthen embankment, or embankment and excavated area, located in a suitable area to capture sediment-laden runoff from a construction site. A sediment basin reduces the energy of the water through extended detention (48 to 72 hours) to settle out the majority of the suspended solids and sediment and prevent sedimentation in waterways, culverts, streams and rivers. Sediment basins have both wet and dry storage space to enhance the trapping efficiency and are appropriate in drainage areas of five acres and greater.

“Sinkhole” means a depression in the land surface formed by solution or collapse that directs surface runoff into subsurface or to an underground drainage flow.

“Site Registration Application forms” means the forms designed by the Director for the purpose of registering for coverage under a General Permit. Under the General Permit there will be two separate forms, one for one to less than three acres (Notice of Intent) and the Site Registration Application form for projects that disturb three acres and greater. A project that disturbs one to less than three acres but will have construction activities one year or longer must file a Site Registration Application form.

“Stormwater” means stormwater runoff, snowmelt runoff, and surface runoff and drainage.

“Stormwater Pollution Prevention Plan” (SWPPP) means the erosion and sediment control plan and the post development plan submitted as part of the Site Registration Application form.

“Tier 3 Waters” means waters as otherwise identified in 47CSR2-4.1.c. (Requirements Governing Water Quality Standards).

“Trout Streams” means any waters which meet the definition of 47CSR2-2.19. (Requirements Governing Water Quality Standards).

“1-year, 24-hour precipitation event” means the maximum 24-hour precipitation event with a probable recurrence interval of once in one year.

“25-year, 24-hour precipitation” means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years.

## SECTION F. OTHER REPORTING

F.1. Reporting Spill and Accidental Discharges

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to 47CSR11-2. (Special Rules) of the West Virginia Legislative Rules promulgated pursuant to Chapter 22, Article 11.

F.2. Immediate Reporting

- F.2.a. The permittee shall report any noncompliance which may endanger health or the environment immediately after becoming aware of the circumstances by using the Department's designated spill alert telephone number ((800) 642-3074). A written submission shall be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and time, and if, the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

SECTION G. EFFLUENT LIMITATIONS AND OTHER REQUIREMENTS

G.1. Requiring an Individual Permit or an Alternative General Permit.

- G.1.a. The Director may require any person authorized by this permit to apply for and obtain either an individual NPDES permit or an alternative NPDES General Permit. Any interested person may petition the Director to take action under this paragraph. The Director may require any owner or operator authorized by this permit to apply for an individual NPDES permit only if the owner or operator has been notified in writing that such a permit application is required.

G.2. Prohibition of Non-Stormwater Discharges

All discharges authorized by this permit shall be composed entirely of stormwater. Discharges of material other than stormwater are not authorized by this permit except as follows.

The following non-stormwater discharges are authorized by this permit: discharges from emergency firefighting activities, fire hydrant flushing; waters used to wash vehicles, provided there is no discharge of soaps, solvents, or detergents used for that purpose; waters used to control dust; potable water sources, including uncontaminated waterline flushing; landscape irrigation; lawn watering; routine external building washdown which does not use detergents; pavement washwater provided spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used. You are prohibited from directing pavement wash waters directly into any surface water,

storm drain inlet, or stormwater conveyance, unless the conveyance is connected to a sediment basin, sediment trap, or similarly effective control: uncontaminated air conditioning condensate; uncontaminated, non-turbid discharges of groundwater or springs; foundation or footing drains where flows are not contaminated with process materials such as solvents that are combined with stormwater discharges associated with industrial activity; other construction dewatering activities that are treated by an appropriate control.

This permit does not authorize the conveyance, diversion, channeling, directing or otherwise allowing the discharge of stormwater into a sinkhole without an Underground Injection Control Permit.

G.3. Releases in Excess of Reportable Quantities

This permit does not relieve the permittee of the reporting requirements of 40CFR117 and 40CFR302. The discharge of hazardous substances in the stormwater discharge(s) from a project is not authorized by this General Permit, and in no case shall the discharge(s) contain a hazardous substance.

G.4. Stormwater Pollution Prevention Plans and Groundwater Protection Plans (SWPPP/GPP)

A Stormwater Pollution Plan and a Groundwater Protection Plan shall be developed for each project covered by this permit. These two plans may be combined into one plan if all of the requirements for both plans are met. Alternatively, they may be developed and maintained as separate stand-alone documents.

Stormwater Pollution Prevention Plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges associated with construction activity. In addition, the plan shall describe and ensure the implementation of practices that are to be used to reduce the pollutants in stormwater discharges associated with construction activity and to assure compliance with the terms and conditions of this permit.

Groundwater Protection Plans (GPP) shall be prepared in accordance with the requirements of 47CSR58-4.11. et seq (Groundwater Protection Regulations). The GPP shall identify all operations that may reasonably be expected to contaminate the groundwater resources with an indication of the potential for soil and groundwater contamination from those operations. In addition the GPP shall provide a thorough and detailed description of procedures designed to protect groundwater from the identified potential contamination sources. The GPP is not required to be submitted to the Division of Water and Waste Management for review. Guidance in the completion of a GPP is available from the Division of Water and Waste Management.

- G.4.a. The SWPPP and the GPP shall be signed in accordance with Section C.6. and retained onsite.
- G.4.b. The application and SWPPP shall be submitted to the Division of Water and Waste Management at least 60 days before construction is to begin, except as noted in G.4.b.3. and G.4.b.4. Prospective permittees should submit applications for review prior to accepting construction bids on the project. As the plans are evaluated by the Director or authorized representative, the Director or authorized representative may notify the permittee during the 60 day review period that the plan does not meet one or more of the minimum requirements of this section. After such notification from the Director or authorized representative, the permittee shall make changes to the plan in accordance with the time frames established below, and shall submit to the Director a written certification that the requested changes have been made.
- G.4.b.1. Except as provided in G.4.b.2., the permittee shall have 30 days after such notification to make the changes necessary.
- G.4.b.2. The permittee shall have 24 hours after such notification to make changes relating to sediment and erosion controls to prevent loss of sediment from an active construction site, unless additional time is provided by the Director or an authorized representative.
- G.4.b.3. Projects disturbing less than three acres and that do not discharge to or upstream of Tier 3 waters shall submit only the Notice of Intent Form (NOI) 15 days prior to initiating construction. A project that disturbs one to less than three acres but will have construction activities one year or longer must file a Site Registration Application form.
- G.4.b.4. Projects disturbing less than three acres that will discharge upstream of Tier 3 waters shall submit the NOI and the SWPPP for review 60 days prior to initiating construction.
- G.4.b.5. Projects that are expected to discharge to Tier 3 waters or that are expected to disturb 100 or more acres, or that the grading phase of construction is expected to last for more than one year, shall submit the application and SWPPP at least 100 days prior to construction to allow for the public notice procedure.
- G.4.b.6. Projects discharging to waters with approved total maximum daily loads (TMDL) that have acreage limits for Stormwater Construction General Permit Registrations will have registrations issued for one (1) year. If TMDL acreage limits for the receiving water have been met at the time of application, effluent limits shall be set and discharge monitoring required. Registration issuance will not be limited to one (1) year when discharge monitoring is required. Projects with registrations issued for one year that are not completed at the time of registration expiration and do not meet stabilization requirements in Section J, shall reapply for General Permit coverage.
- G.4.b.7. If you are conducting earth-disturbing activities in response to a public emergency *e.g., natural disaster, widespread disruption in essential public services*), and the



related work requires immediate authorization to avoid imminent endangerment to human health, public safety, or the environment, or to reestablish essential public services, you are authorized to discharge on the condition that a complete and accurate NOI or application and SWPPP is submitted within 30 calendar days after commencing earth-disturbing activities establishing that you are eligible under this permit. You are also required to provide documentation in your SWPPP to substantiate the occurrence of the public emergency.

G.4.b.8. Within 24 hours of filing an NOI (one to less than three acres) or a Site Registration Application (three acres or more) with DWWM, all projects shall display a sign for the duration of the construction project near the entrance of the project or, for linear projects, at a location near an active part of the project that is accessible by the public, which contains the following information using the template found in the instructions: 1) the registrant's name or the name of a contact person along with a telephone number; 2) A brief description of the project; 3) a statement indicating that the NOI or SWPPP, as applicable, has been filed with the DWWM; 4) the address and telephone number of the agency where the NOI or SWPPP is maintained; and 5) That any person may obtain a copy of the NOI or SWPPP by contacting the DWWM at (800) 654-5227. The sign shall be a minimum of two feet by two feet and at least three feet above ground level, clearly visible and legible from a public roadway or right-of-way. If it is not feasible to display a sign at or near the project, the registrant, with prior approval from the DWWM, may post a notice containing the foregoing information at a local public building, including, but not limited to, a town hall or public library.

G.4.c. The permittee shall modify, using forms provided by DWWM, the SWPPP whenever there is a change in design, construction, scope of operation, or maintenance, which has the potential to adversely impact the surface waters of the State, or if the SWPPP proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activities. Should conditions warrant, the Director, or the Director's representative, may request changes to the SWPPP during a field inspection. The Director may review changes or modifications to the SWPPP in the same manner as above.

The permittee shall amend the GPP whenever there is a change in design, construction, operation, or maintenance which could reasonably be expected to have an impact on the potential contamination of groundwater.

G.4.d. In addition to the requirements of G.4.e, the SWPPP shall also include, at a minimum, the following items:

G.4.d.1. General management controls

G.4.d.1.A. Preventive maintenance – A preventive maintenance program shall involve inspection and maintenance of sediment and erosion control best management practices to identify and address conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

G.4.d.1.B. Good housekeeping – Good housekeeping requires the maintenance of a clean and orderly project. This includes minimizing the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater.

G.4.d.1.C. Spill prevention and response procedures – Areas where potential spills may occur, and their accompanying drainage points, shall be identified clearly in the SWPPP/GPP. Where appropriate, specify material handling procedures and storage requirements in the SWPPP/GPP. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a cleanup shall be available to personnel, including spill kits.

G.4.d.2. Consistency with other plans

Stormwater Pollution Prevention Plans may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under section 311 of the CWA or any Best Management Practices (BMP) and Groundwater Protection Plans (GPP) pursuant to 47CSR58 (Groundwater Protection Rule) or otherwise required by an NPDES permit and may incorporate any part of such plans into the Stormwater Pollution Prevention Plan by reference.

G.4.e. Requirements for construction activities – Operations that discharge stormwater associated with construction activity disturbing one or more acres are not only subject to the requirements of Section G.4.d. of this permit, but are also subject to the following requirements. The SWPPP shall include, as a minimum, the following items.

G.4.e.1. Site description – Each plan shall, at a minimum, provide a description of the following:

G.4.e.1.A. A description of the nature of the construction activity, including a proposed timetable for major activities;

G.4.e.1.B. Estimates of the following: total area of the site, the part of the site that is expected to undergo excavation or grading, and the total amount of excavation by cut and fill;

G.4.e.1.C. For each discharge design point, the pre-construction peak discharge from a one year, 24-hour storm in cubic feet per second and the post-development peak discharge from a one year, 24-hour storm in cubic feet per second shall be calculated. The design procedures shall follow professionally accepted engineering and hydrologic methodologies. This requirement may be waived by the WVDEP for projects that are expected to have no increase in peak discharges.

G.4.e.1.D. Site maps indicating, with a minimum of five-foot contours, drainage patterns and slopes prior to construction and anticipated conditions after grading activities, topsoil

stockpiles, waste areas, borrow sites, locations of sediment control structures identified in the narrative, the location of impervious areas after construction is complete, final stormwater conveyance including all ditches and pipe systems, property boundaries and easements, nearest receiving stream, springs, surface water, access roads, a legend and any other information necessary to describe the project in detail.

G.4.e.1.E. A description and detail of the proposed construction entrance(s). Each site shall have stone access entrance and exit drives and parking areas to reduce the tracking of sediment onto public or private roads. Except for haul roads, all unpaved roads on the site carrying more than 25 vehicles per day shall be graveled.

G.4.e.2. Controls – Each construction operation covered by this permit shall develop a description of controls appropriate for the project and implement such controls. The description of these controls shall address the following minimum components, including a schedule for implementing such controls.

G.4.e.2.A. Erosion and sediment controls

G.4.e.2.A.i. Vegetative practices – A description of interim and permanent stabilization practices, including site specific implementation schedules of the practices shall be provided. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized as rapidly as possible. Efforts should also be made to limit disturbance on steep slopes, minimize soil compaction, and preserve topsoil where feasible. Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures. Also include in the plan seedbed preparation requirements and the type and amount of soil amendments necessary to establish a healthy stand of vegetation. A record of the dates when major grading activities will occur, and when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures will be initiated shall be included in the plan. Except as noted below, stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than seven days after the construction activity in that portion of the site has permanently ceased.

G.4.e.2.A.i.a. Where the initiation of stabilization measures by the seventh day after construction activity temporarily or permanently ceases is precluded by natural causes, stabilization measures shall be initiated as soon as conditions allow.

G.4.e.2.A.i.b. Where construction activity will resume on a portion of the site within 14 days from when activities ceased, (e.g., the total time period that construction activity is temporarily halted is less than 14 days) then stabilization measures do not have to be initiated on that portion of the site by the seventh day after construction activities have temporarily ceased.

G.4.e.2.A.i.c. Areas where the seed has failed to germinate adequately (uniform perennial vegetative cover with a density of 70%) within 30 days after seeding and mulching must be reseeded immediately, or as soon as weather conditions allow.

G.4.e.2.A.i.d. Clean water diversions must be stabilized prior to becoming functional.

G.4.e.2.A.i.e. A natural vegetative buffer shall be provided adjacent to receiving streams or other waters on or the project site. Vegetative buffers should be a minimum of 50 feet, however, a minimum of 100 feet is required if intended as a stand-alone erosion and sediment control practice. Vegetative buffers strips are not required if:

A natural vegetative buffer does not exist in pre-construction conditions, such as when the buffer has already been removed by existing development or agricultural activities; or

The receiving water is a man-made stormwater conveyance or storage structure, such as a ditch or storm water pond; or

In project locations where activities within waters have been approved under a CWA Section 404 permit and Section 401 water quality certification; or

In project locations where the vegetative buffer must be encroached to construct necessary infrastructure, such as a utility line or an access road. Justification for any encroachment must be provided by the applicant; or

Linear projects where right-of-way acquisition or area is limited.

G.4.e.2.A.ii. Structural practices – A description of the structural practices to be used to divert flows around exposed soils, storm flows or otherwise limit runoff from exposed areas and eliminate sediment-laden runoff from the site. Such practices may include but are not limited to silt fences, earth dikes and berms, land grading, diversions, drainage swales, check dams subsurface drains, pipe slope drains, storm drain inlet protection, rock outlet protection, reinforced soil retention systems and geotextiles, gabions and riprap, and permanent and temporary sediment traps/basins.

G.4.e.2.A.ii.a. For locations on a site that have a drainage area of five acres or less, a sediment trap which provides a storage volume equal to 3,600 cubic feet per acre of drainage area shall be installed. Half of the volume of the trap shall be in a permanent pool and half will be dry storage.

G.4.e.2.A.ii.b. For drainage areas of greater than five acres, a sediment basin providing 3,600 cubic feet per drainage acre shall be installed. Half of the volume of the basin shall be in a permanent pool and half shall be dry storage. Sediment basins must be able to dewater the dry storage volume in 48 to 72 hours, however this requirement may be

waived at the discretion of the WVDEP when skimmer devices are used. Dewatering structures must withdraw from the surface, unless infeasible. A sediment basin must be able to pass through the spillway(s) a 25-year, 24-hour storm event, and still maintain at least one foot of freeboard.

G.4.e.2.A.ii.c. The inlet(s) and outlet(s) for a sediment trapping structure must be protected against erosion by appropriate material such as riprap or other similar media.

G.4.e.2.A.ii.d. If necessary, diversions will be used to direct runoff to the trapping structure. Diversions to trapping structures may need to be stabilized prior to becoming functional.

G.4.e.2.A.ii.e. For locations served by a common drainage where a sediment basin providing 3,600 cubic feet of storage is not attainable or dewatering structures that withdraw from the surface are not feasible, additional sediment and erosion controls within the project area are required in lieu of the required sized sediment basin. Justification and a narrative description of the additional measures proposed must be provided for use of any practice(s) other than sediment basins or traps.

G.4.e.2.A.ii.f. Fill slopes must be protected by measures used to divert runoff away from fill slopes to conveyance measures such as pipe slope drains or stable channels.

G.4.e.2.A.ii.g. Sediment trapping structures shall be eliminated and the area properly reclaimed and stabilized when the contributing drainage area is stabilized and the structures are no longer needed, unless the structure is converted into a permanent stormwater control structure. This must be accomplished before the Notice of Termination is submitted.

G.4.e.2.A.ii.h. All trapped sediments shall be disposed on an upland area where there is no chance of entering nearby streams.

G.4.e.2.A.ii.i. Breaching the embankment to dewater the structure is not permitted. Dewatering and structure removal shall not cause a violation of water quality standards. Provide a description of the procedures that shall be used in removing these structures and the time frame.

G.4.e.2.A.ii.j. No sediment-laden water shall be allowed to leave the site without going through an appropriate best management practice.

G.4.e.2.A.ii.k. Hay or straw bales are not acceptable BMPs.

G.4.e.2.A.ii.l. Use of Treatment Chemicals - Polymers, flocculants, or other treatment chemicals may be used only in accordance with good engineering practices and specifications for use by the chemical provider/supplier. Documentation of proposed practices and specifications for the use of treatment chemicals shall be provided in the SWPPP. The use of cationic treatment chemicals is prohibited.

G.4.e.2.A.iii. Presumptive conditions for discharges to Tier 3 waters

Construction activities discharging to Tier 3 waters shall go through the Tier 3.0 antidegradation review process.

G.4.e.2.B. Stormwater control plan

A description of measures that shall be installed during construction to control pollutants in stormwater discharges when the project is completed shall be included in the SWPPP. The completed project shall convey stormwater runoff in a manner that shall protect both the site and the receiving stream from post-construction erosion. All surface waters and other runoff conveyance structures shall be permanently stabilized as appropriate for expected flows. In developing structural practices for stormwater control, the permittee shall consider the use of, but not limited to: infiltration of runoff onsite; flow attenuation by use of open vegetated swales and natural depressions; stormwater retention structures and stormwater detention structures. A combination of practices may be utilized. The permittee should consider low impact development (LID) in the design of the site and the best management practices. This will allow the site to retain its natural hydrology and infiltrate stormwater within the boundary of the site. The use of impervious surfaces for stabilization should be avoided. Velocity dissipation devices shall be placed at the outlet of all detention or retention structures and along the length of any outlet channel as necessary to provide a non-erosive velocity flow from the structure to a water course.

Projects located in areas that have local government requirements and/or criteria for post development stormwater management are subject to meeting those requirements and/or criteria. Compliance with this General Permit does not assure compliance with local codes regulations, or ordinances.

The permittee shall submit all calculations, watershed mapping, design drawings, and any other information necessary to explain the technical basis for the stormwater management plan. Design procedures shall follow professionally accepted engineering and hydrologic methodologies. Permanent stormwater control structures that will impound water (detention/retention basins or similar structures) shall be designed and certified by a registered professional engineer.

G.4.e.2.C Other controls

G.4.e.2.C.i. Waste disposal – All solid waste and construction/demolition material must be disposed of in accordance with the Code of West Virginia and Legislative Rule Title 33 Series 1, (Solid Waste Management Rule).

G.4.e.2.C.ii. Provisions must be made to control fugitive dust.

G.4.e.2.C.iii. Groundwater Protection Plan (GPP) – The applicant shall prepare a GPP that shall satisfy the 47CSR58-4.11. et seq. Groundwater must be protected in accordance

with the Code of West Virginia and Legislative Rule Title 47 Series 58 (Groundwater Protection Rule).

G.4.e.2.C.iv. Employee training – Employee training programs shall inform on-site personnel who are directly involved with construction activities at all levels of responsibility of the components and goals of the SWPPP. Training should address topics such as spill response, good housekeeping and routine inspection. Training shall be on a quarterly basis while construction activities subject to this General Permit are occurring and records of the training shall be maintained on site for review by the Director or the Director's representative.

G.4.e.2.C.v. Visual inspection – Company personnel shall be identified to inspect as set forth under G.4.e.2.D. A tracking procedure shall be used to ensure that adequate corrective actions have been taken in response to deficiencies identified during an inspection. Records of inspections shall be maintained onsite for review by the Director or the Director's representative.

G.4.e.2.C.vi. Recordkeeping and internal reporting procedures – Incidents such as spills, leaks and improper dumping, along with other information describing the quality and quantity of stormwater discharges should be included in the records. Inspection and maintenance records must be kept onsite for review by the Director or the Director's representative.

#### G.4.e.2.D Maintenance

The SWPP shall include a description of procedures to maintain in good and effective condition and promptly repair or restore all grade surfaces, walls, dams and structures, vegetation, erosion and sediment control measures and other protective devices identified in the site plan. Procedures in a plan shall provide that all erosion and sediment controls on the site are inspected at least once every seven calendar days and within 24 hours after any storm event of greater than 0.5 inches of rain per 24-hour period. Inspections are not required in areas that, at the time of inspection, are considered unsafe for inspection personnel.

G.4.e.2.D.i. All public and private roads adjacent to a construction entrance must be inspected and cleaned of debris originating from the construction site.

G.4.f. All Stormwater Pollution Prevention Plans and Groundwater Protection Plans required under this permit are considered reports that shall be available for review to the public under Section 308(b) of the CWA. The owner or operator of a project with stormwater discharges covered by this permit shall make plans available to members of the public upon request. However, the permittee may claim any portion of a Stormwater Pollution Plan or Groundwater Protection Plan as confidential in to the extent permissible by 47 CSR10-12.7. (NPDES Program).

G.4.g. Compliance with other laws and statutes

Nothing in this General Permit shall be construed as excusing the permittee from compliance with any applicable federal, state, or local statutes, ordinances, or regulations.

G.5. Discharges to Impaired Waters

This permit does not authorize new sources or new discharges of constituents of concern to impaired waters unless consistent with the approved total maximum daily load (TMDL) and applicable state law. Impaired waters are those that do not meet applicable water quality standards and are listed on the Clean Water Act Section 303(d) list. Sites that discharge into a receiving water that has been listed on the Clean Water Act 303(d) list of impaired waters, and with discharges that contain the pollutant(s) for which the water body is impaired, must document in the SWPPP how the BMPs will control the discharge of the pollutant(s) of concern. Pollutants of concern are those constituents for which the water body is listed as impaired.

Discharges of pollutants of concern to impaired waterbodies for which there is an approved TMDL are not eligible for coverage under this permit unless they are consistent with the approved TMDL as determined by the WVDEP. TMDL's that have established acreage limits for Stormwater Construction General Permit Registrations require no special conditions provided the acreage cap has not been met for the receiving stream other than the registration only being issued for one (1) year. If the acreage cap has been reached, additional area may be permitted if effluent limitations and monitoring is required consistent with limits established by the TMDL. Within six months of a new TMDL approval, permittees must incorporate any limitations, conditions or requirements applicable to their discharges necessary for compliance with the TMDL, including any monitoring or reporting required by DWWM rules, into their SWPPP in order to be eligible for coverage under this General Permit. The Director may elect to set effluent limitations and require discharge monitoring and public notice for any project within TMDL acreage limited areas.

G.6. Endangered and Threatened Species and State Historic Preservation Officer

If a site discharges to a stream where a federally endangered or threatened species or its habitats are present, the applicant must contact the U.S. Fish and Wildlife Service to ensure that requirements of the federal Endangered Species Act, 16 U.S.C. 1531 et. seq. are met.

For those projects that may impact historic preservation sites, the permittee shall coordinate the project with the State Historic Preservation Officer.



H. Reopener Clause

If there is evidence indicating potential or realized impacts on water quality due to any stormwater discharge authorized by this General Permit, the owner or operator of such discharge may be required to obtain an individual permit or alternative General Permit in accordance with Section G.1. of this General Permit or the General Permit may be modified to include different limitations and/or requirements.

I. The conditions, standards, and limitations of this General Permit shall be reviewed at the time of reissuance for possible revisions that may lead to more or less stringent conditions, standards, and limitations.

J. Permit coverage for construction activities encompassed by this permit expires upon satisfactory stabilization of the site. Satisfactory stabilization means **ALL** disturbed areas shall be covered by some permanent protection. Stabilize includes pavement, buildings, waterways (riprap, concrete, grass, or pipe), a healthy, vigorous stand of grass or native vegetation that uniformly covers more than 70 percent of the ground, stable outlet channels with velocity dissipation which directs site runoff to a natural watercourse, and any other approved structure or material. The permittee shall request a final inspection by sending in the Notice of Termination. Sites not stabilized shall continue to have coverage under this permit and shall be assessed an annual permit fee as promulgated by the West Virginia Legislature. Sites shall be assessed a prorated annual fee based upon the completion date and proper stabilization. The Notice of Termination must be submitted within 30 days after final stabilization is achieved.

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The herein-described activity is to be constructed or installed and operated, used and maintained strictly in accordance with the terms and conditions of this General Permit with any plans, specifications, and information submitted with the individual site registration application form, with any plan of maintenance and method of operation thereof submitted and with any applicable rules and regulations promulgated by the Environmental Quality Board and the Secretary of the Department of Environmental Protection.

Failure to comply with the terms and conditions of this General Permit, with any plans, specifications and information submitted, and with any plan of maintenance and method of operation thereof submitted shall constitute grounds for the revocation or suspension of this permit to any individual establishment or other person and for the invocation of all the enforcement procedures set forth in Chapter 22, Articles 11 and 12 of the Code of West Virginia.

This permit is issued in accordance with the provisions of Chapter 22, Article 11 of the Code of West Virginia.



BY: \_\_\_\_\_  
Director



**STATE OF WEST VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF WATER AND WASTE MANAGEMENT  
601 57th STREET SE  
CHARLESTON, WV 25304-2345**

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
WATER POLLUTION CONTROL PERMIT**

**Permit No.** WV0115924

**Issue Date:** January 10, 2019

**Effective Date:** February 9, 2019

**Expiration Date:** February 9, 2024

**Subject:** Stormwater Associated with  
Construction Activities

**To Whom It May Concern:**

This is to certify that any establishment with discharges composed entirely of stormwater associated with construction activities disturbing one acre or greater of land area which may be regulated under the terms and conditions of this general permit, has satisfied the registration requirements, and which has not been required by the Director of the Division of Water and Waste Management to apply for an individual permit, is hereby eligible to allow stormwater discharges into the surface waters of the State under this General WV/NPDES Water Pollution Control Permit. Authorization to discharge under this permit must be provided by the Director.

Construction activities are land disturbing operations such as clearing, grubbing, grading, filling and excavation operations during site development for residential, commercial or industrial purposes. The following are not eligible for coverage under this NPDES General Permit:

1. Operations that result in the disturbance of less than one acre of total land area, which are not part of a larger common plan of development or sale.
2. Stormwater discharges associated with land disturbing activities that may reasonably be expected to be causing or contributing to a violation of a water quality standard as determined by the Director.

3. Land disturbance activities already governed by other Department of Environmental Protection NPDES permits. This includes Division of Mining and Reclamation permits for coal mining and non-metallic quarries.
4. Landfills, except in the preparation of a new landfill and/or clay borrow areas.
5. Other activities exempt from NPDES permitting requirements as set forth in 40 C.F.R. 122.3 and 47 C.S.R. 10-3.2.b.4 (NPDES Program).
6. Land disturbing activities related to oil and gas activities as required by the Energy Policy Act of 2005. These activities include but are not limited to construction of drilling sites, waste management pits, and access roads, as well as construction of the transportation and treatment infrastructure such as pipelines, natural gas treatment plants, natural gas pipeline compressor stations, and crude oil pumping stations.
7. Construction activities that result in a discharge of a reportable quantity release or that contribute pollutants (other than non-contaminated sediments) to a violation of a water quality standard are still subject to permit coverage.

This General WV/NPDES Water Pollution Control Permit is to allow stormwater discharges into the surface waters of the State while protecting water quality and is subject to the following terms and conditions:

The information submitted on and with the application form will hereby be made terms and conditions of the General Permit with like effect as if all such information were set forth herein, and other pertinent conditions set forth in Parts I, II, III, and IV and appendices A, B, and C.

Site Registration Applications approved from February 9, 2018 through February 9, 2019 must file the Notice of Termination for completed projects where all disturbed lands have been permanently stabilized, or, a signed certification of agreement to abide by the terms and conditions of this reissued General Permit within 90 days of the effective date. Additional application fees do not apply to the certification; however, annual fees still apply. Where any incomplete projects have disturbed lands that have not been permanently stabilized, status maps are required with the certification. The map may be in PDF format and is not required to conform to the specifications of II.H.1.a. The status map shall show disturbed areas and the Limits of Disturbance (LOD), which is the area approved under the registration for land disturbance. Projects that have not disturbed any lands are not required to provide the status map. Additionally, the certification will contain an updated timeline for major activities as required by Part II.H.1.

Existing registrations under the Notice of Intent approved from February 9, 2018 through February 9, 2019 shall submit the Notice of Termination if all disturbed lands are permanently stabilized. If construction is not complete and all disturbed lands are not permanently stabilized, such projects may retain permit coverage through the expiration date of this General Permit by submittal of the certification described above within 90 days of the effective date of this reissued General Permit.

Projects discharging to Waters of the State with an approved sediment-related Total Maximum Daily Load (TMDL) with registrations that were approved for one year only with approval dates from February 9, 2018 through February 9, 2019 that have not completed construction and stabilized disturbed areas at the effective date of this permit are required to submit the above described certification. Such projects shall agree to implement Enhanced best management practices (BMP's). Submittal of the certification will remove the 1-year time constraint and the registration will be valid until the expiration of this reissued General Permit unless site stabilization and termination of the registration occur first. Projects required to submit Discharge Monitoring Reports under the 2012 permit with approval dates from February 9, 2018 through February 9, 2019 must submit the above described certification agreeing to implement Enhanced BMPs within 90 days of the effective date of this General Permit, which has eliminated monitoring.

All projects approved under the 2012 permit's Site Registration Application or Notice of Intent with an approval date prior to February 9, 2018 must submit the Notice of Termination if all disturbed areas are permanently stabilized. All other projects that have not been stabilized shall submit an application for continuing coverage within 90 days of the effective date of this General Permit.

#### **Compliance with other laws and statutes**

Nothing in this General Permit shall be construed as relieving the permittee from compliance with any applicable federal, state, or local statutes, ordinances, or regulations.

#### **Continuation of this general permit**

If this general permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with 47 C.S.R. 10 and remain in force and effect. If you were authorized to discharge under this general permit prior to the expiration date, any discharges authorized under this permit will automatically remain covered by this general permit until the earliest of:

- Your authorization for coverage under a reissued general permit or a replacement of this general permit following your timely and appropriate submittal of a complete application requesting authorization to discharge under the new general permit and compliance with the requirements of the new permit; or
- Your submittal of notification of termination that the facility has ceased operations;  
or
- Issuance or denial of an individual permit for the facility's discharge; or
- A formal permit decision by DWWM not to reissue this general permit, at which time DWWM will identify a reasonable time period of covered dischargers to seek coverage under an alternative general permit or individual permit. Coverage under this permit will cease at the end of this time period.

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## **PART I. INTRODUCTION**

### **I.A. TERMS OF PERMIT**

Discharges from sites covered under this General Permit shall not cause or contribute to a violation of 47 C.S.R. 2 (Requirements Governing Water Quality Standards) or 47 C.S.R. 12, (Requirements Governing Groundwater Standards) of the West Virginia Legislative Rules pursuant to Chapter 22, Article 11 and Article 12. Discharges that are not in compliance with these standards are not authorized.

### **I.B. COMPLIANCE REQUIREMENT**

Compliance with this General Permit, the approved Stormwater Pollution Prevention Plan and the Groundwater Protection Plan is required upon the beginning of the construction project.

### **I.C. WATER QUALITY**

Subject to 47 WV C.S.R. 10.3.4.a and 47 C.S.R. 2.4, the discharges covered by this permit are to be of such quality so as not to cause a violation of applicable water quality standards. The permittee must protect the water quality and the existing uses and designations of receiving waters by implementing BMPs. Enhanced BMPs must be used for projects discharging to any waters other than Tier 1 or where standard BMPs are found to be inadequate to protect water quality based on inspections by a Qualified Person, or representatives of the Director of DWWM or the Environmental Protection Agency.

Receiving waters for the exclusive purpose required by the paragraph above and in accordance with 47 C.S.R. 2.4 shall be protected from degradation as explained below:

**Tier 1 Protection-** Maintains and protects existing uses of a water body and the water quality conditions necessary to support such uses. A waterbody that is listed as impaired on the state's 303(d) list is considered a Tier 1 water as it pertains to the specific pollutant listed.

**Tier 2 Protection-** Maintains and protects "high quality" waters - water bodies where the level of water quality exceeds levels necessary to support recreation and wildlife and the propagation and maintenance of fish and other aquatic life. Tier 2 is the default assignment for a waterbody not listed as impaired on the state's 303(d) list.

**Tier 3 Protection-** Maintains and protects water quality in outstanding national resource waters.

**Protection of Trout Streams -** Waters which sustain year-round trout populations. Excluded are those waters which receive annual stockings of trout, but which do not support year-round trout populations. Waters which meet the definition of 47 C. S.R. 2-2.19 (Requirements Governing Water Quality Standards).

**Impaired Streams** — Sediment-related impaired waters are those that do not meet applicable water quality standards and are listed on the state's 303(d) list.

**Sediment-Related Pollutant of Concern Total Maximum Daily Loads (TMDL)** - A TMDL establishes the maximum amount of a pollutant allowed in a waterbody and serves as the starting point or planning tool for restoring water quality.

I.C.1. This permit does not authorize new sources or new discharges of constituents of concern to impaired waters unless consistent with the approved sediment-related TMDL and applicable state law (WV 47CSR10 and WV Code 22-11).

Enhanced BMPs shall be used on projects discharging to all waters of the state except for those classified as Tier 1 streams (other than 303(d) listed). For discharges to sediment-related TMDL waters, the permittee shall use enhanced BMPs as defined in Appendix C of this General Permit.

The Director reserves the right to require Enhanced BMPs for any stormwater discharges associated with land disturbing activities authorized by this permit, upon a finding that water quality impacts have been observed and that standard BMPs cannot adequately protect water quality. However, this finding is not required for discharges already subject to Enhanced BMPs.

#### I.D. REQUIRED REPORTING

##### I.D.1. Reporting Spill and Accidental Discharges

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to 47 C.S.R. 11-2. (Special Rules) of the West Virginia Legislative Rules promulgated pursuant to Chapter 22, Article 11.

##### I.D.2. Immediate Reporting

The permittee shall report any noncompliance which may endanger human health or the environment immediately after becoming aware of the circumstances by using the Department's designated spill alert telephone number ((800) 642-3074) or by calling the Director or his representative. A written submission shall be provided within five calendar days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and time, and if, the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

I.D.3. Reportable Quantities

This permit does not relieve the permittee of the reporting requirements of 40 C.F.R. Part 117 and 40 C.F.R. Part 302. The discharge of hazardous substances in the stormwater discharge(s) from a project is not authorized by this General Permit, and in no case, shall the discharge(s) contain a hazardous substance.

I.E. DIRECTOR'S AUTHORITY TO REQUIRE OTHER PERMITS

In accordance with WV 47CSR10 §13.6.b.2.A, the Director may require any person authorized by this permit to apply for and obtain either an individual NPDES permit or an alternative NPDES General Permit. Any interested person may petition the Director to take action under this paragraph. The Director may require any owner or operator authorized by this permit to apply for an individual NPDES permit only if the owner or operator has been notified in writing that such a permit application is required.

I.F. ALLOWABLE DISCHARGES

All discharges authorized by this permit shall be composed entirely of stormwater.

I.G. PROHIBITED DISCHARGES

The following discharges are not authorized by this permit.

- Sediment laden stormwater that has not gone through an appropriate best management control;
- Directing pavement wash-waters directly into any surface water, storm drain inlet, or stormwater conveyance, unless the conveyance is connected to a sediment basin, sediment trap, or similarly effective control;
- Wastewater from washout of concrete unless managed by an appropriate control;
- Wastewater from washout and cleanout of stucco, paint, bituminous asphalt, form release oils, curing compounds and other construction materials;
- Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and soaps, solvents, or detergents used in vehicle and equipment washing, or external building washdown.
- Toxic or hazardous substances from a spill or other release.

This permit does not authorize the conveyance, diversion, channeling, directing or otherwise allowing the discharge of stormwater into a sinkhole without an Underground Injection Control Permit.



## PART II. PRE-CONSTRUCTION REQUIREMENTS

PRIOR TO CONSTRUCTION, the following are required:

- A complete application, prepared by a Qualified Person, for authorization to discharge stormwater from construction related land disturbance shall include:
  - Installation of a sign at the entrance to the project or posting of a notice in a public place in close proximity to the construction site as indication the application has been submitted;
  - Timely corrections or submission of additional information to provide clarity about the proposed construction project, as requested by the Director;
  - Cooperation with the public notice process, when appropriate, by making prompt payment to the local newspaper that will publish the Class I legal advertisement, effectively notifying the public that the application is pending;
  - Making timely changes to the application, as necessary, based on public input; and

After receiving Director's approval and before beginning construction activities:

- Install sediment and erosion controls;
- Qualified Person inspects the newly installed sediment and erosion controls.
  - Impounding structures not built as approved shall be inspected and documented as meeting the trapping capacities and efficiencies of the structures approved in the registration.

### II.A. APPLICATIONS

#### II.A.1. Application Requirements

Submittal of the application shall be made using the online Electronic Submission System, unless otherwise approved by the Director. All documents must be signed in accordance with the signatory requirements described in Appendix A.7.

##### II.A.1.a. Application Fee

The application fee shall be paid in full prior to the Director reviewing the application. Fee amounts listed in and subject to changes in the NPDES Fee Schedule C.S.R. 47-26.

##### II.A.1.b. Public Notice Advertisement

The following applications are subject to Public Notice in a local newspaper therefore, the Notarized Statement for Billing form is required with the application:

- Land disturbance of 100 or more acres;
- Projects of 3 acres or more with a grading phase lasting one year or longer which will not meet final stabilization, as defined in Appendix C of this General Permit, by the end of the year; and
- Projects discharging to Tier 3 streams.

The Director reserves the right to require advertisement for any other application type.

#### II.A.1.c. Large Construction Projects

Projects disturbing 3 or more acres of land shall submit an application containing:

- Application Form, to include template for the sign
- Stormwater Pollution Prevention Plan;
- Groundwater Protection Plan;
- Pre-Construction Drainage Map
- During Construction Drainage Map showing the proposed location of all drainage structures and associated access routes;
- Post Construction Drainage Map;
- Annual Progress Map if permitted for longer than one year;
- Detailed Site Plan (Maps) showing Limits of Disturbance and Receiving Waters; and
- Design Details for:
  - Sediment basins, road, cut and fill cross sections, and other engineered structural design calculations; and
  - Other controls to include post-development stormwater management plans required by local governments
- Applications for Large Construction Projects shall be submitted 60 days before the anticipated date construction is to begin.
  - Applications for Large Construction Projects requiring Public Notice per II.A.1.b. shall be submitted 100 days before the anticipated date construction is to begin.

#### II.A.1.d. Minor Construction Projects

Projects disturbing 1 to < 3 acres of land, other than single-family homes as explained in Part II.A.1.e. below, shall submit an application containing the following:

- Application form, to include template for the sign
- Stormwater Pollution Prevention Plan;
- Groundwater Protection Plan;
- Pre-Construction Drainage Map;
- During Construction Drainage Map showing the proposed location of all drainage structures and associated access routes;
- Post Construction Drainage Map;
- Annual Progress Map if permitted for longer than one year;

- Detailed Site Plan (Map) showing Limits of Disturbance and Receiving Waters
- Typical Design Details.
- Applications for Minor Construction Projects shall be submitted 30 days before the anticipated date construction is to begin.
  - Applications for Projects requiring Public Notice per II.A.1.b shall be submitted 100 days before the anticipated date construction is to begin.

#### II.A.1.e. Construction of Single-Family Homes: 1 to < 3 Acres

Projects for construction of Single-Family Homes of 1 to <3 acres including offsite borrow and waste sites, by the homeowner or homeowner's contractor are subject to this permit and shall submit:

- Application Form; and
- Agreement to use DWWM Individual House Sample Sediment and Erosion Control Plan found in the West Virginia Erosion and Sediment Control BMP Manual (BMP Manual), or other BMPs that are equally protective of water quality.
- Applications for construction of Single-Family Homes of 1 to < 3 acres shall be submitted 30 days before the anticipated date construction is to begin.

#### II.A.1.f. Offsite Waste and Borrow Areas

Offsite waste and borrow areas one acre or greater must be included in applications and approved before material may be removed from or accepted at the site. Such areas must be included in the application when associated with single-family homes, linear projects, or any other construction project. Offsite waste or borrow sites less than one acre in size that are not contiguous to the construction site must provide sediment and erosion controls and may be included with the application, however, there is no requirement to do so unless otherwise required by the Director.

If a waste/borrow area is not known during the initial application, the registration can still be issued. Once the location of a waste/borrow area is identified it is the responsibility of the applicant to modify their registration to include contiguous area(s) or non-contiguous areas of one acre or more. When the permittee does not have "legally ability to control" non-contiguous areas of one acre or more, the permittee may contact the DEP to inquire if the non-contiguous acre or more has been properly permitted and therefore, a site suitable for waste or borrow. The permittee may also make an inquiry of the party that does have the "legal ability to control" the non-contiguous site if it is properly permitted before accepting material from or sending material to the site.

When contaminated soils are identified, a soil handling plan shall be provided. Contaminated soil is not suitable material for borrow or fill unless approved by the Director.

### II.A.2. Emergency Procedures

When conducting earth-disturbing activities in response to a public emergency e.g., natural disaster, widespread disruption in essential public services), and the related work requires immediate authorization to avoid imminent endangerment to human health, public safety, or the environment, or to reestablish essential public services, authorization to discharge is conditioned that a complete and accurate application is submitted within 30 calendar days after commencing earth-disturbing activities establishing eligibility under this permit.

Documentation to substantiate the occurrence of the public emergency must be included in the application.

### II.B. POSTING SIGN OR NOTICE

Within 72 hours of filing an application, the applicant shall display a sign for the duration of the construction project near the entrance of the project or, for linear projects, at a location near an active part of the project that is accessible by the public; containing the following information:

- The applicant's name and emergency telephone number;
- Project Reference ID;
- For info on this stormwater permit  
Call: 800-654-5227 or [DEP. Comments@wv.gov](mailto:DEP.Comments@wv.gov).
- Permit Number (See II.B.4.)

II.B.1. The sign shall be a minimum of two feet by two feet and be at least three feet above ground level; clearly visible and legible from a public roadway or right-of-way.

II.B.2. If it is not feasible to display a sign at or near the project, the applicant may post, within 72 hours of filing the application a notice containing the foregoing information at a local public building, including, but not limited to, a town hall or public library.

II.B.3. The application shall provide the location where the sign or notice is to be posted.

II.B.4. Within 7 business days of assignment of the permit registration number, the applicant shall affix such number to the sign or to the posted notice.

### II.C. INCOMPLETE OR INCORRECT APPLICATIONS

As the application is evaluated by the Director, notice may be sent to the applicant during the review period that the plan does not meet one or more of the specific minimum requirements of this permit. After such notification, the applicant shall have 30 days to resubmit the application.

II.C.1. An applicant needing additional time to respond to requests for changes or additional information must request an extension prior to the end of the 30 days, or:

- The Director may terminate the application, after making a reasonable attempt at, and being unsuccessful in, contacting the applicant to provide notice of the pending termination
  - The Director may cause a pending termination message to be sent from his official mailbox which has an email address of [DEPNPDESEP@wv.gov](mailto:DEPNPDESEP@wv.gov) to the applicant's email address as listed on the registration application.
  - It is the responsibility of the applicant to keep the Director informed of accurate contact information, and in lieu of a successful notice from his official mailbox, the Director may attempt to contact the applicant by phone to provide notice of the pending termination.
- Upon successful contact with the applicant, the Director has the option of terminating or extending the due date for resubmission of the application.

#### II.D. PUBLIC NOTICING OF APPLICATIONS

The Applicant shall cooperate with the public notice of applications required by Part II.A.1.b:

- Making payment for a Class I Legal Advertisement concerning the application to the local newspaper with the largest readership in the vicinity of the proposed project.
- Obtaining from the newspaper, and submitting to the Director, an affidavit of the publication of the Class I Legal Advertisement.

#### II.E. AUTHORIZATION TO DISCHARGE

The applicant is prohibited from disturbing land prior to obtaining approval from the Director for activities covered by this permit. The Director shall send an approval or denial of the application via his official mailbox, [DEPNPDESEP@wv.gov](mailto:DEPNPDESEP@wv.gov) and,

- The Director has no further obligation to attempt to verify the applicant received the approval or denial, as
- It is the responsibility of the applicant to keep the Director informed of up-to-date and accurate contact information.

The Applicant shall maintain a copy of the approval from the Director onsite and make it available to DWWM Personnel or the public upon request.

#### II.F. INSTALLATION OF EROSION AND SEDIMENT CONTROLS

After receiving approval from the Director and before beginning construction activities, the permittee shall install erosion and sediment control BMPs in accordance with the approved registration. BMPs shall be in place and functional prior to land disturbance. For registrations proposed to be completed in multiple phases, the BMPs for each phase must be constructed and functional prior to land disturbance beginning in that phase. Erosion

and sediment control BMPs shall be implemented in accordance with standard procedures set forth in the BMP Manual, however, other BMPs may be used if equally protective of water quality.

#### II.G. QUALIFIED PERSON TO INSPECT EROSION AND SEDIMENT CONTROLS

The permittee shall ensure that all newly installed erosion and sediment control BMPs are inspected by a Qualified Person. Any defective controls identified during the inspection must be repaired and/or installed correctly within 24 hours and corrections verified upon re-inspection by the Qualified Person.

Construction activities may begin after the Qualified Person inspects and finds that all erosion and sediment control BMPs are installed properly in the areas where earth disturbing activities are planned to commence.

Sediment control BMPs shall be constructed in accordance with the approved registration (Part II A.1.c. and A.1.d.). All basins and traps not constructed in accordance with the approved registration shall be inspected and documented by a Qualified Person as affording the same trapping capacity and efficiency as the approved structures. Thereafter, routine inspections of the structures by a Qualified Person shall be conducted in accordance with III.B. until structure removal. All documentation of inspections shall be kept on site during construction on a form, prescribed by the Director for the length of the construction project.

#### II.H. STORMWATER POLLUTION PREVENTION PLAN (SWPPP) COMPONENTS

SWPPPs shall be prepared in accordance with good engineering practices and retained per II.H.5. The plan shall identify potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges associated with construction activity. The plan shall describe and ensure the implementation of practices that are to be used to reduce the pollutants in stormwater discharges associated with construction activity and to assure compliance with the terms and conditions of this permit. The SWPPP shall be prepared by a Qualified Person.

##### II.H.1. Nature of the Activity

The SWPPP shall contain a description of the nature of the construction activity, including a proposed timetable for major activities such as: cut and fill plans, proposed road construction or upgrades, grading plans, and a narrative of the pollution prevention techniques proposed to be implemented before, during and after construction. A schedule for major grading activities and stabilization measures to be initiated shall be included in the description

##### II.H.1.a. Maps

Site maps shall contain a North arrow with sites oriented to the North, with a minimum of five-foot topographical contours. The maps shall include:

- Nearest receiving streams, springs, surface waters to the site;
- Limits of all areas to be disturbed (LOD);
- Existing roads including public roads from which access to the site will be constructed;
- Access roads;
- Drainage patterns during and after construction with the outlet markers depicting the stormwater discharge points;
- Slopes prior to construction and anticipated conditions after grading activities;
- Location of topsoil stockpiles;
- Waste areas of 1 acre or greater within or contiguous to the construction site;
- Borrow sites of 1 acre or greater within or contiguous to the construction site;
- Locations and identification of sediment control structures;
- Total acreage and location of impervious areas after construction is complete;
- Location of rain gauge provided by the applicant  
or a statement the applicant will obtain the precipitation event information from a National Oceanic Atmospheric Administration (NOAA) weather station that is representative of the location and provide the Station ID Number;
- Post-development stormwater management structures required by local governments;
- Final stormwater conveyances, including all ditches and pipe systems;
- Property boundaries and easements; and
- A legend, complete with any other information necessary to describe the project in detail.

The project shall be illustrated in an ArcGIS Shapefile (.shp) or in an AutoCAD Drawing (.dwg).

II.H.1.b. The map shall be accompanied by a description of an estimate of the total area of the site, the part of the site that is expected to undergo excavation or grading, and the total amount of excavation by cut and fill as well as an explanation of where excavated material will be moved from, and to, on the site.

Cross sections that accurately depict the surface configuration at any project area proposing a fill with a contributing drainage area of one acre or more shall be included with the mapping information. A description of measures to be taken to reduce the potential for subgrade saturation and ensure stability of fill areas shall be submitted. The cross-section shall be developed from sufficient slope measurements to adequately represent the existing land configuration of the proposed project area. Fill slope lines, original ground line, proposed keyway cut or rock toe key, drainage provisions and/or alternates shall also be identified.

II.H.1.c. For each Large Construction Project an evaluation point shall be selected. The pre-construction peak discharge from a 1-year, 24-hour storm in cubic feet per second and the post-development peak discharge from a 1-year, 24-hour storm in cubic feet per second shall be calculated at the evaluation point.

If post-construction peak discharge is 10% (or more) greater than the pre-construction peak discharges of 5 cubic foot per second or more for the 1-year, 24-hour storm, at the evaluation point, post-construction stormwater management BMPs must be implemented to

reduce potential erosion at the discharge point location. Calculations and justification must be submitted if post-construction stormwater management features are deemed unnecessary. The evaluation point will be the location for discharge, therefore, controls must be put in place to prevent erosion from stormwater released from the construction site.

The design procedures shall follow professionally accepted engineering and hydrologic methodologies.

II.H.1.d. Each road or access road shall be classified as either permanent or temporary and categorized as Construction Activity — New or Improved; Incidental Construction Activity; or Maintenance Only.

- Temporary roads shall be reclaimed as soon as practical after they are no longer needed for operations.
- New or Improved roads shall be designed with the complete specifications along the entire road.
- Incidental Construction Activity necessary to address tills and gullies and other drainage issues, shall be designed with the complete specifications on that specific segment.
- Maintenance only means to be graveled only.

The SWPPP shall contain plans and specifications for each road or access road requiring construction activities within the LOD area. The plans and specifications shall include a map, stationed baseline, appropriate profile and cross sections, gradients, flow patterns, surfacing materials, cuts, fill, embankments, drainage ditches, culverts/water bars, and erosion and sediment structures.

Each road or access road shall be designed with the following specifications:

- Stone access entrance and exit drives.
- Parking areas to reduce the tracking of sediment onto public or private roads.
- All unpaved roads on the site shall be graveled or have other durable surface unless the application contains a statement that the affected landowner disagrees with this requirement. The applicant shall provide the land use, such as agriculture and shall describe the BMPs chosen to effectively control sediment and erosion. Unpaved roads shall be stabilized in accordance with II.H.1 .d.1 . the road bed shall be seeded and mulched.
- The maximum pitch grade shall not exceed 15%.
- The surface shall pitch toward the ditch line at a minimum slope of 2% to 4%. A road located in an area that doesn't have hillside runoff may be crowned with a minimum slope of 2% to 4% from the center line.
- A ditch shall be provided on the inside of any road having hillside runoff, with ditch relief culverts and/or water bars spaced according to grade and installed wherever necessary to insure proper drainage of runoff water beneath or through the access road.



- Ditch lines shall be capable of passing the peak discharge of a 10-year, 24-hour precipitation event.
- Ditch relief culverts shall be capable of passing the peak discharge of a 2-year, 24-hour precipitation event and placed at a spacing using the formula:  $4001\% \text{ grade} + 75' = \text{culvert spacing}$ .
- Sediment control shall be provided at the inlet by sumps, rock checks, or equal structure and the slope at the outlet end shall be protected with an apron of rock riprap, a water energy dissipater, or other similar structure.
- Alternative design criteria for access road drainage may be used, but only when approved by the Director.

II.H.1.d.1. A road not to be retained as a permanent road shall be reclaimed as soon as practical after it is no longer needed for operations. The reclamation shall include:

- Removing and disposing of road surfacing materials that are incompatible with prior land use and revegetation requirements; and
- Reshaping cut and fill slopes as necessary to be compatible with the land use and complement the natural drainage pattern of the surrounding terrain.
- Prior to abandonment of access roads, efforts shall be made to prevent erosion by the use of culverts, water bars, or earth berms. Water bars or earth berms shall be installed according to the following formula for spacing:  $400/\% \text{ grade} + 75' = \text{water bar or earth berm spacing}$ .
- Upon abandonment, the road bed shall be scarified or ripped and all areas associated with access roads shall be immediately seeded and mulched.

II.H.1.d.2. The application for registration shall identify existing All-Terrain Vehicle (ATV) trails to be retained by the landowner upon termination of the permit registration. ATV trails that are not shown with the original application may be identified through a minor modification to the registration. ATV trails shall be maintained by the applicant and stabilized upon conclusion of construction when not identified in the registration as a landowner accepted trail. Stabilization shall include the vehicle travel lanes for all trails not accepted by the landowner. During construction, the applicant shall maintain the trails and include trail areas during inspections to prevent sediment laden stormwater runoff from entering the waters of the state.

#### II.H.1.e. Impact Reduction

Site maps shall also include the location and type of stabilization methods for all disturbed areas. Plans shall ensure that existing vegetation is preserved where attainable. Efforts shall also be made to limit disturbance on steep slopes, minimize soil compaction, and preserve topsoil where feasible. A description of interim and final stabilization practices, including site specific implementation schedules of the practices shall be provided and may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures.

II.H.1.e.1. The SWPPP shall contain stabilization practices to ensure that disturbed portions of the site are stabilized as rapidly as possible. Satisfactory stabilization means all disturbed areas shall be covered by permanent protection such as pavement, pervious pavement, compacted gravel, buildings, waterways (riprap, concrete, grass, or pipe), a healthy, vigorous stand of grass or native vegetation that uniformly covers more than 70% of the ground, stable outlet channels with velocity dissipation which directs site runoff to a natural watercourse, and any other structure or material approved by the Director.

II.H.1.e.2. Vegetative practices shall describe seedbed preparation requirements and the type and amount of soil amendments necessary to establish a healthy stand of vegetation. Soil maps shall be submitted.

For projects with unknown sources of potential borrow material or when excavation is necessary before adequate soil amendments may be determined, the Qualified Person shall, as soon as materials are located or excavated, prepare the soil amendment plan. The plan shall become a part of the records retained in accordance with Part II.H.5.

II.H.2. The SWPPP shall be signed in accordance with Appendix A.7. and retained onsite throughout the course of the project.

### II.H.3. Potential Pollutants

The SWPPP shall include a complete list and description of potential pollutants at the project site such as products used in the operation and maintenance of vehicles and equipment as well as construction of buildings, parking lots, and other structures. The erosivity of soils must be considered when selecting erosion and sediment control BMPs.

#### II.H.3.a. Potential pollutants can be identified by including:

- A report showing the soil mapping units associated with the proposed area and a table with a description of each map unit, acres in the permit area, and percent of permit area;
- Identification of soils and a soil handling plan;
- A statement whether cement will be mixed onsite or delivered by truck;
- A description of the types of equipment to be used, serviced, repaired, or cleaned onsite;
- A description of the products to be used in construction of buildings and parking lots;
- A statement whether fertilizers, herbicides, and pesticides will be used on the site including a schedule of application; and
- A description of the post-development use of the site.
  - Certain post-development discharges might require further approval for discharges from the Director, under an individual permit or other general permit.

II.H.3.b. Include a description of the controls and procedures for preventing potential pollutants from entering stormwater runoff, based on II.H.3.a.

II.H.3.b.1. Design, select, and identify erosion and sediment control BMPs. The BMPs should be selected from the BMP Manual. Alternative BMPs may be used if determined by the Director to be equally protective of water quality.

II.H.3.b.2. Projects discharging to any waters other than Tier 1 require the use of enhanced BMPs, such as:

- Inspection of all erosion and sediment control BMPs within disturbed areas at least once every four calendar days and within 24 hours after any precipitation event greater than 0.25 inches per 24 hours period.
- Repairs or maintenance to BMPs shall be performed within 24 hours, however, permittees must implement alternate BMPs prior to storm events while awaiting repair of the primary enhanced BMP.
- Temporary seeding and mulching within 4 days when areas will not be re-disturbed for more than 14 days.
- Permanent seeding and mulching within 4 days of reaching final grade.
- Final stabilization within 4 days after construction has been complete.

If the time frame associated with enhanced BMP's are unobtainable due to weather conditions, a narrative justification shall be made and maintained onsite for review by the Director.

Additional filtration BMPs should be selected from the BMP Manual, however filtration BMPs from other manuals may be approved, if equally protective of water quality.

Within six months of notification from the Director of a new sediment-related TMDL approval applicable to construction activities, permittees must incorporate any implement enhanced BMPs for discharges to the receiving waters subject to the TMDL.

II.H.3.b.3. Hay or straw bales shall not be used as primary or secondary filtering devices; Polymers, flocculants, or other treatment chemicals may be used only in accordance with good engineering practices and specifications for use by the chemical provider/supplier. The use of cationic treatment chemicals is prohibited;

II.H.3.b.4. Identify a specific location and procedure for rinsing mobile mixing drums or truck drums. The procedure must name an appropriate control for the wastewater created by such rinsing and fully explain how the permittee will prevent wastewater from entering stormwater runoff;

II.H.3.b.5. Describe procedures to prevent spillage, leakage, and improper disposal of fuel, oil, grease, solvent, soap, and cleaning plans. The procedures must explain how these products will be handled to prevent any pollutants from entering stormwater.

II.H.3.b.6. Describe how washout and cleanout of stucco, paint, form release oils, curing compounds, bituminous asphalt, and other construction materials will be managed to prevent pollutants from entering stormwater runoff;

II.H.3.b.7. Describe an employee training program for all on-site personnel directly involved with construction activities at all levels of responsibility that reiterates the components and goal of the SWPPP.

- Training should address topics such as spill and leak response and internal reporting, good housekeeping, and routine inspection and maintenance.
- Training shall be on a quarterly basis while construction activities are occurring.
- A list of attendees and topics covered at each training session shall be documented and maintained in the SWPPP.

II.H.3.b.8. A natural vegetative buffer shall be provided adjacent to receiving streams or other waters on or near the project site. Vegetative buffers shall be a minimum of 50 feet, however;

- A natural vegetated buffer may not be used as a stand-alone erosion and sediment control practice but must be used in conjunction with other BMPs.
- Vegetative buffer strips are not required if:
  - A natural vegetative buffer does not exist in pre-construction conditions, such as when the buffer has already been removed by existing developmental or agricultural activities; or
  - The receiving water is a man-made stormwater conveyance or storage structure, such as a ditch or storm water pond; or
  - Project activities occur within waters approved under a Clean Water Act (CWA) Section 404 permit and Section 401 water quality certification; or
  - The projects located where the vegetative buffer must be encroached to construct necessary infrastructure, such as a utility line or an access road. Justification for any encroachment may be subject to approval by the Director; or
  - Linear projects where right-of-way acquisition or area is limited.

II.H.3.b.9. All diversions constructed to final grade, including clean water diversions shall be stabilized prior to becoming functional. Internal construction diversions must be stabilized upon reaching final grade.

- Divert flows around exposed soils and limit runoff from exposed areas with BMPs such as:
  - Silt fences, earthen dikes and berms, land grading, diversions, drainage swales, check dams, subsurface drains, pipe slope drains, storm drain inlet protection, rock outlet protection, reinforced soil retention systems and geotextiles, gabions and riprap, and permanent and temporary sediment traps/basins.

- Fill slopes must be protected by measures used to divert runoff away from fill slopes to conveyance measures such as pipe slope drains or stable channels.
- BMPs should be selected from the BMP Manual, however, other BMPs may be approved if equally protective of water quality.
- If necessary, diversions will be used to direct runoff to the trapping structure.
  - Diversions to trapping structures must be stabilized as they are brought to final grade to prevent sediment laden water from leaving the site.
  - Diversions shall have the capacity to pass safely the peak discharge from a 10-year, 24- hour precipitation event.

II.H.3.b.10. For locations on a site that have a drainage area of five acres or less, a sediment trap which provides a storage volume equal to 3,600 cubic feet per acre of drainage area shall be installed. Half of the volume of the trap shall be in a permanent pool and half will be dry storage. A sediment trap must be able to pass through the spillway(s) a 10-year, 24-hour precipitation event, and still maintain at least one foot of freeboard.

II.H.3.b.11. For drainage areas of greater than five acres, a sediment basin providing 3,600 cubic feet per drainage acre shall be installed. Half of the volume of the basin shall be in a permanent pool and half shall be dry storage. Sediment basins must be able to dewater the dry storage volume in 48 to 72 hours. However, this requirement may be waived at the discretion of the Director when skimmer devices are used. Dewatering structures must withdraw from the surface, unless infeasible. A sediment basin must be able to pass through the spillway(s) a 25-year, 24-hour precipitation event, and still maintain at least one foot of freeboard.

II.H.3.b.12. For locations served by a common drainage where a sediment basin providing 3,600 cubic feet of storage is not attainable or dewatering structures that withdraw from the surface are not feasible, enhanced BMPs within the project area are required in lieu of the required sized sediment basin. Justification and a narrative description of the additional measures proposed must be provided for use of any practice(s) other than sediment basins or traps.

II.H.3.b.13. Protection must be provided for the inlet(s) and outlet(s) of a sediment trapping structure to protect against erosion by an appropriate material such as riprap or other similar media.

#### II.H.4. Preventative Maintenance

The SWPPP shall include a description of procedures to maintain in good and effective condition and promptly repair or restore all grade surfaces, walls, dams and structures, vegetation, erosion and sediment control measures and to identify and address conditions that could cause breakdowns or failures resulting in discharges of sediment to surface waters including:

- Good housekeeping protocols to ensure a clean and orderly project. This includes minimizing the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to stormwater;
- All solid waste and construction/demolition material must be disposed of in accordance with the Code of West Virginia and Legislative Rule Title 33 Series 1, (Solid Waste Management Rule);
- At a frequency, sufficient to keep roads and streets clean, all public and private roads and streets adjacent to a construction site must be cleaned of debris, mud, and dirt tracked or originating from the project site;
- Provisions must be made to control fugitive dust on and originating from the construction site.;
- Spill prevention and response procedures - Areas where potential spills may occur, and their accompanying drainage points, shall be identified clearly in the SWPPP. Also, where appropriate, specify material handling procedures and storage requirements. Procedures for cleaning up spills shall be identified in the plan and made readily available to the appropriate personnel. The necessary equipment to implement a cleanup shall be available to personnel, including spill kits.

#### II.H.5. Record Keeping

The permittee shall retain all records required by this permit for a period of 3 years from the date permit coverage is terminated. This includes, but is not limited to:

- Personnel training records;
- Incident reports of spills, leaks and improper dumping;
- Field modifications;
- Inspection and maintenance records;
- Corrective action reports.

All SWPPPs required under this permit are considered reports that shall be available for review to the public under Section 308(b) of the CWA and WV Code 29B-1-1. The permittee may claim any portion of a SWPPP as confidential to the extent permissible by 47 C.S.R. 10-12.7. (NPDES Program).

All GPPs are considered reports and shall be made available as required by WV Code 29B1-1.

#### II.I. GROUNDWATER PROTECTION PLAN (GPP)

GPPs shall be prepared in accordance with the requirements of 47 C.S.R. 58-4.11. et seq. (Groundwater Protection Regulations). GPPs shall be submitted as required by 47 C.S.R. §4.12.e.1.

The GPP shall identify all operations that may reasonably be expected to contaminate groundwater resources with an indication of the potential for soil and groundwater

contamination from those operations. In addition, the GPP shall provide a thorough and detailed description of procedures designed to protect groundwater from the identified potential contamination sources. Guidance in the completion of a GPP is available from the DWWM.

II.I.1. The GPP shall be a stand-alone document and shall be submitted with the registration as such, rather than as a component of the SWPPP,

II.I.2. GPP Elements

The GPP shall include the following elements:

II.I.2.a. A description of the operations, processes and materials present at the facility that may affect or contaminate groundwater.

II.I.2.b. Procedures and containment facilities to protect groundwater resources from the potential contaminants listed above. These processes and facilities shall be identified on a facility map.

II.I.2.c. A GPP containing a Karst Mitigation Plan shall be submitted with applications for registration under this NPDES General Permit for all areas with Karst topography.

Procedures for protecting groundwater when designing and adding new equipment and operations. Adequate design of these operations should be considered in the GPP when making changes in areas of karst, wetlands, faults, subsidence, areas determined by the Bureau for Public Health to be delineated wellhead protection areas, or other areas determined by the Director to be vulnerable based upon geologic or hydrogeologic information.

- The permittee must revise the GPP within 30 calendar days to address any newly delineated areas or other vulnerable areas upon notification by the Director or the Bureau for Public Health.

II.I.2.d. A summary of activities presently regulated for groundwater protection. These may include: registration of above ground and underground storage tanks, required groundwater monitoring or the construction and use of a landfill and list any other permits, required spill prevention and response plans, registrations, certifications or approvals from agencies that regulate groundwater protection measures at the facility. These may include but are not limited to:

- Stormwater
- Solid Waste Facility
- Resource Conservation and Recovery Act (Hazardous Waste Treatment, Storage and Disposal or Transporter)
- UST — Underground Storage Tank
- AST — Above Ground Storage Tank
- CERCLA — Superfund
- WV Voluntary Remediation — Brownsfields
- FIFRA — Federal Insecticide, Fungicide and Rodenticide Act

- Well Head Protection Program
- Underground Injection Control
- Toxic Substances Control Act
- Best Management Plans
- Management of used oil

II.I.2.e. All available groundwater quality data for the facility as well as well locations or other sampling points.

II.I.2.f. A statement documenting that waste materials will not be used for deicing, fill, or any other use, unless that use is allowed by regulation or permit.

II.I.2.g. A training component wherein the applicant states that employees with the potential to pollute groundwater will be trained in prevention procedures.

II.I.2.h. Documentation of quarterly inspections of the GPP elements by facility personnel are required. Documentation of this section must include a description of groundwater protection procedures and how control structures and devices are managed. Create and attach a copy of the facility's inspection form to the GPP.

II.I.2.i. Safety data sheets for all chemicals, or substances, used or stored on site.

II.I.3. The GPP shall be signed in accordance with Appendix A.7 and a copy retained onsite.

#### II.J. CONSISTENCY WITH OTHER PLANS

SWPPPs may reflect requirements for Spill Prevention Control and Countermeasure plans under section 311 of the CWA or any BMPs and GPPs pursuant to 47 C.S.R. 58 (Groundwater Protection Rule) or otherwise required by an NPDES permit. Incorporate any part of such plans into the SWPPP by reference.

### PART III. REQUIREMENTS DURING CONSTRUCTION

During construction, the permittee is required to:

- Follow all approved plans, follow good housekeeping protocol, respond to and report spills and leaks;
- Ensure a Qualified Person conducts inspections to verify that the approved BMPs effectively protect water quality;
- Implement additional controls as needed to protect water quality;
- Update the SWPPP/GPP with the additional controls;
- Submit modifications to the approved plans to reflect the additional controls, and
- Stabilize disturbed areas.

#### III.A. COMPLY WITH APPROVED REGISTRATION

III.A.1. The permittee shall construct the project as described in the approved registration.



III.A.2. The permittee shall practice good housekeeping measures to maintain a clean and orderly project. This includes minimizing the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to stormwater.

III.A.2.a. The permittee shall implement spill and leak prevention practices in accordance with the approved plan and respond promptly when incidents occur. The necessary equipment to implement a cleanup shall be available on-site to personnel, including spill kits.

III.A.3. Except as noted below, stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 7 days after the construction activity in that portion of the site has permanently ceased or 4 days for sites required to use enhanced BMP's.

- Where the initiation of stabilization measures by the 4<sup>th</sup> day, as applicable after construction activity temporarily or permanently ceases is precluded by natural causes, such as a drought or flood, stabilization measures shall be initiated as soon as conditions allow.
- Where construction activity will resume on a portion of the site within 14 days from when activities ceased, (i.e., the total time period that construction activity is temporarily halted is less than 14 days) then stabilization measures do not have to be initiated on that portion of the site by the seventh day after construction activities have temporarily ceased.
- Areas where the seed has failed to germinate adequately (uniform perennial vegetative cover with a density of 70%) within 30 days after seeding and mulching must be reseeded immediately, or as soon as weather conditions allow.

### III.B. INSPECTIONS BY QUALIFIED PERSON

The permittee shall ensure site inspections are conducted by a Qualified Person in accordance with this section. The purpose of the inspections is to ensure compliance with the approved plan, and when the approved plan is not effective at protecting water quality, the inspection is to document that plan improvements are needed.

III.B.1. The person(s) inspecting the site may be a staff person or a third party hired to conduct such inspections as long as they meet the definition of a Qualified Person.

III.B.2. The site must be inspected as listed below, unless the site discharges to sensitive waters or the site qualifies for a reduction in the inspection frequency pursuant to III.B.2.b below:

- At least once every seven (7) calendar days and

- Within 24 hours of the occurrence of a precipitation event of 0.25 inches or greater, or the occurrence of runoff from snowmelt sufficient to cause a discharge.

III.B.2.a. An increase in inspection frequency is required for sites discharging to all waters except Tier 1.

For any portion of the site that discharges to a water that is classified as Tier 2 or Tier 3, or listed on the 303(d) list, inspections must be conducted in accordance with the following inspection frequencies:

- Once every four (4) calendar days, and
- Within 24 hours of the occurrence of a precipitation event of 0.25 inches or greater, or the occurrence of runoff from snowmelt sufficient to cause a discharge.

III.B.2.b. Reductions in inspection frequency may occur in accordance with the following:

Stabilized areas:

The permittee may reduce the frequency of inspections to twice per month, no more than 14 calendar days apart, in any area of the site where final stabilization has been completed. If construction activity resumes in this portion of the site at a later date, the inspection frequency immediately increases to that required previous to the reduced frequency. The beginning and ending dates of this period must be recorded in the inspection report.

Exceptions:

For "linear projects", where disturbed portions have undergone final stabilization at the same time active construction continues elsewhere, the permittee may reduce the frequency of inspections to twice per month no more than 14 calendar days apart, in any area of the site where the final stabilization has been completed. Inspect once more within 24 hours of the occurrence of a precipitation event of 0.25 inches or greater. If there are no issues or evidence of stabilization problems, further inspections may be suspended. If "wash-out" of stabilization materials and/or sediment is observed, following re-stabilization, the reduced inspection frequency is suspended.

Frozen conditions:

If the permittee suspends construction activities due to frozen conditions, inspections on the site may be temporarily suspended until thawing conditions begin to occur if:

- Runoff is unlikely due to continuous frozen conditions that are likely to continue at the site for at least three (3) months based on historic seasonal averages. If unexpected weather conditions (such as above freezing temperatures or rain events) make discharges likely, the permittee must immediately resume the regular inspection frequency as applicable;

- Land disturbances have been suspended and all disturbed areas of the site have been stabilized.

If still conducting construction activities during frozen conditions, the permittee may reduce the inspection frequency to once per month if:

- Runoff is unlikely due to continuous frozen conditions that are likely to continue at the site for at least three (3) months based on historic seasonal averages. If unexpected weather conditions (such as above freezing temperatures or rain events) make discharges likely, the permittee must immediately resume the regular inspection frequency; and
- Except for areas undergoing construction activities, disturbed areas of the site have been stabilized, the beginning and ending dates of this period must be documented in the inspection report.

III.B.2.c. For any day of rainfall during normal business hours that measures 0.25 inches or greater, the total rainfall measure for that day must be recorded.

To determine if a precipitation event of 0.25 inches or greater has occurred on the site, the permittee must either:

- Keep a properly maintained rain gauge on-site, or
- Obtain the precipitation event information from a NOAA weather station that is representative of the location.

#### III.B.2.d. Areas That Must Be Inspected

During the site inspection, the following *areas* of the site must be inspected:

- All areas that have been cleared, graded, or excavated and that have not yet completed stabilization;
- All stormwater controls (including pollution prevention controls) installed and procedures initiated must be listed in the inspection record;
- Material, waste, borrow, and equipment storage and maintenance areas that are covered by this permit;
- All areas where stormwater typically flows within the site, including drainageways designed to divert, convey, and/or filter stormwater;
- All points of discharge from the site;
- All receiving waters to look for sediment laden stormwater entering the waterbody; and
- All locations where stabilization measures have been implemented.

Areas that, at the time of the inspection, are considered unsafe to inspection personnel do not have to be inspected.

### III.B.2.e. Requirements for Self-inspections

During the site inspection, the Qualified Person shall:

- Check whether all stormwater controls (i.e., erosion and sediment controls and pollution prevention controls) are properly installed, appear to be operational, and are working as intended to minimize pollutant discharges;
  - This includes the requirement to inspect for sediment that has been tracked out from the site onto paved roads, sidewalks, or other paved areas.
- Check for the presence of conditions that could lead to spills, leaks, or other accumulations of pollutants on the site;
- Identify any locations where new or modified stormwater controls are necessary to protect waters of the state or meet other requirements of this NPDES General Permit;
- Check for signs of visible erosion and sedimentation (i.e., sediment deposits) that have occurred and are attributable to the discharge at points of discharge and, if applicable, the banks of any waters of the State flowing within or immediately adjacent to the site;
- Identify any incidents of noncompliance observed;
- If a discharge is occurring during the inspection:
  - Identify all discharge points at the site; and
  - Observe and document the visual quality of the discharge and take note of the characteristics of the stormwater discharge, including color; odor; floating, settled, or suspended solids; foam; oil sheen; and other indicators of stormwater pollutants.

### III.B.2.f. Self-inspection Report

An inspection report must be completed by the inspector within 24 hours of completing any site inspection. Each inspection report must include the following:

- The inspection date;
- Names and titles of personnel making the inspection;
- A summary of inspection findings, including the observations made during the inspections, and any necessary maintenance or corrective actions;
- A record of rainfall measuring 0.25 inches or greater and the source of the measurement (the applicable rain gauge or weather station readings); and
- If it was determined unsafe to inspect a portion of the site, describe the reason it was found it to be unsafe and specify the locations to which this condition applies.

Each inspection report must be signed in accordance with Appendix A.7 of this permit.

Each inspection report must be maintained at the site or at an easily accessible location, so that it can be made available at the time of an on-site inspection or upon request by the Director.

All inspection reports must be maintained for at least three (3) years from the date that permit coverage is terminated.

- The Qualified Person must re-inspect within 48 hours to verify repairs or replacements to the defective BMPs or pollution controls noted in the previous inspection.

#### III.B.2.g. Requirement to Correct Deficiencies

Based on the results of the inspection, the permittee must complete any necessary maintenance and corrective action within 24 hours.

The permittee shall have 24 hours after such notification to make changes relating to sediment and erosion controls to prevent loss of sediment from an active construction site, unless additional time is provided by the Director or an authorized representative in writing.

#### III.C. IMPLEMENT ADDITIONAL BMPS TO PROTECT WATER QUALITY

III.C.1. When an inspection indicates the BMPs are ineffective at protecting waters of the state, the permittee shall immediately implement additional controls and,

- Update the SWPPP and GPP to reflect the new BMPs, and
- Either obtain approval of the additional BMPs during a site visit conducted by the Director, or
- Submit a modification application in accordance with this permit.
- Permittees who find that the approved BMPs are ineffective at protecting receiving waters and who are unable to identify or employ BMPs capable of preventing sediment laden runoff from leaving the project site shall immediately cease further land disturbance until such time that the unauthorized discharge ceases.

No sediment-laden water shall be allowed to leave the site without going through an appropriate BMP.

III.C.2. The permittee shall modify the SWPPP, using forms provided by DWWM, whenever there is a change in design, construction, scope of operation, or maintenance of BMPs, which has the potential to adversely impact the surface waters of the State, or if the SWPPP proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activities. Should conditions warrant, the Director may request changes to the SWPPP during a field inspection. The Director may request, review and approve or require the permittee to apply for a modification to the approved application.

The permittee shall amend the GPP whenever there is a change in design, construction, operation, or maintenance of BMPs which could reasonably be expected to have an impact on the potential contamination of groundwater.

### III.D. FEES

Permittees are required to pay annual permit fees within 30 days of receiving the invoice.

III.D.1. It is the responsibility of the permittee to keep the Director informed of accurate, up-to-date billing addresses and electronic addresses (email addresses) so that invoices may be delivered promptly and to the correct address.

III.D.2. Discharging stormwater from construction sites covered by this permit while failing to pay fees is considered operating without a permit.

III.D.3. Permittees must pay assessed fees until such time that the Director approves the Notice of Termination required by Part IV.

### PART IV. REQUIREMENTS AFTER CONSTRUCTION

After construction is complete, the permittee is required to:

- Verify all disturbed areas are stabilized and permanent stormwater conveyances and management structures are properly constructed by having a Qualified Person confirm the site is ready for the Director to conduct the final inspection.
- Confirm all records required by this permit are available for retention for 3 years after permit coverage is terminated and make available when requested by the Director,
- Verify all fees are paid in full,
- Prepare and submit the Notice of Termination (N.O.T.)
  - o The permittee has the option of including a Stabilization Certification with the N.O.T.
- Continue to maintain permit coverage until notification from the Director that coverage is terminated.

### IV.A. VERIFY ALL DISTURBED AREAS ARE STABILIZED

Sediment trapping structures shall be eliminated, and the area properly reclaimed and stabilized when the contributing drainage area is stabilized, and the structures are no longer needed, unless the structure is converted into a permanent stormwater control structure. This must be accomplished before the Notice of Termination is submitted.

- All trapped sediments shall be disposed on an upland area where there is no chance of entering nearby streams.
- Breaching the embankment to dewater the structure is not permitted. Dewatering and structure removal shall not cause a violation of water quality standards.
- Dewatering may not be done by pumping from a sump, trap, or basin directly into a stream. The dewatering description shall clearly show that only clarified water is

to be discharged to waters of the state and shall include the method to be employed to ensure sediment is not pumped or otherwise discharged.

#### IV.B. RECORDS INSPECTIONS

In accordance with II.H.5. verify records required by this permit are assembled and ready for retention.

#### IV.C. PREPARE FOR TERMINATION

##### IV.C.1.

From the date final stabilization is achieved, the permittee has 30 days to ready the site for submittal of N.O.T and by the 30th day must submit the N.O.T. via electronic notice of termination to the Director.

IV.C.1.a. An inspection by a Qualified Person shall be conducted wherein all areas of the project and all off-site areas impacted by the project are inspected for compliance with this permit. The Qualified Person shall conduct a review of the available records to verify compliance with the retention requirements of this permit.

IV.C.1.b. The Qualified Person shall issue a report to the permittee outlining any deficiencies to be corrected. The permittee shall correct deficiencies within 24 hours and request a re-inspection by the Qualified Person. Once an inspection identifies no deficiencies, the site may be considered ready for the submittal of the N.O.T.

IV.C.1.c. The permittee shall review the fee payment history and pay any unpaid fees during this 30-day period.

#### IV.D. TERMINATION OF COVERAGE

After meeting the requirements of Part IV.C., the permittee shall apply for termination of permit coverage by submitting an N.O.T., which will serve as a request for final inspection. Upon receipt of the N.O.T., the Director shall inspect the site to determine the appropriateness of ending permit coverage.

IV.D.1. Final stabilization inspections for 1 to < 3 acres sites shall be conducted within 30 days of receipt of the N.O.T. and for sites 3 acres and larger the final stabilization inspection shall be conducted within 60 days.

IV.D.2. The permittee has the option of submitting a certification by a registered professional engineer or professional surveyor that the site meets stabilization requirements. Should the Director not inspect within the time frames established in this section, the Stabilization Certificate shall be accepted in lieu of the final inspection by the Director's staff.

IV.D.3. ATV trails accepted by the landowner and identified in the registration, do not require a healthy, vigorous stand of grass or native vegetation that uniformly covers more than 70 percent of the ground in the vehicle lanes of the trail to be considered for termination. No eroded areas of trails that are the source of sediment in stormwater runoff may be deemed stable or eligible for release. A registration modification must be approved by the Director prior to submittal of the Notice of Termination and prior to registration expiration for ATV trails not previously identified by the permittee to be turned over to the landowner.

IV.D.4. Permit coverage for construction activities encompassed by this permit expires upon verification of satisfactory stabilization of the site and payment of all outstanding fees. Satisfactory stabilization means ALL disturbed areas shall be covered by some permanent protection. Stabilize includes pavement, compacted gravel, permeable pavements/pavers, buildings, waterways (riprap, concrete, grass, or pipe), a healthy, vigorous stand of grass or native vegetation that uniformly covers more than 70 percent of the ground, stable outlet channels with velocity dissipation which directs site runoff to a natural watercourse, and any other approved structure or material.



The herein-described activity is to be constructed or installed and operated, used and maintained strictly in accordance with the terms and conditions of this General Permit with any plans, specifications, and information submitted with the individual application form, with any plan of maintenance and method of operation thereof submitted and with any applicable rules and regulations promulgated by the Environmental Quality Board and the Secretary of the Department of Environmental Protection.

Failure to comply with the terms and conditions of this General Permit, with any plans, specifications and information submitted, and with any plan of maintenance and method of operation thereof submitted shall constitute grounds for the revocation or suspension of this permit to any individual establishment or other person and for the invocation of all the enforcement procedures set forth in Chapter 22, Articles 11 and 12 of the Code of West Virginia.

This permit is issued in accordance with the provisions of Chapter 22, Article 11 of the Code of West Virginia.

BY:  \_\_\_\_\_  
Director

Appendix A

I. STANDARD CONDITIONS

1. Duty to Comply

- (a) The permittee must comply with all conditions of this permit. Permit noncompliance constitutes a violation of the CWA and State Act (Chapter 22, Article 11 or Article 12) and is grounds for enforcement action; for permit modification, revocation and reissuance, suspension or revocation; or denial of a permit renewal application.
- (b) The permittee shall comply with all applicable standards or prohibitions established under 40 C.F.R. 503 and Title 33 Series 2 within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

2. When to Apply

State NPDES rules require permit applications to be filed at least 180 days prior to the commencement of the activity. The DWWM is attempting, through this general permit process, to streamline the permitting of this activity. Therefore, projects which may potentially obtain coverage under this general permit and which submit complete application forms, shall make submission in accordance with ILA, prior to the anticipated date of discharge.

3. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit by submitting a General Permit registration as detailed in permit reissuance.

4. Duty to Mitigate

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

5. Permit Actions

This permit may be modified, revoked and reissued, suspended, or revoked for cause. The filing of a request by the permittee for permit modification, revocation and reissuance, or revocation, or a notification of planned changes or anticipated noncompliance, does not stay any permit conditions.

#### 6. Property Rights

This permit does not convey any property rights of any sort or any exclusive privilege.

#### 7. Signatory Requirements

All application, reports, or information submitted to the Director shall be signed and certified as required in 47 C.S.R. 10.4.6. (NPDES Program). If an authorization becomes inaccurate because a different individual or position has responsibility for the overall operation of the project, a new authorization must be submitted to the Director prior to, or together with any reports, information, or applications to be signed by an authorized representative.

#### 8. Transfers

This permit is not transferable to any person, except after written notice to and written approval by the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary. Notice must contain the new owner's name and address.

#### 9. Duty to Provide Information

The permittee shall furnish to the Director, within a reasonable specified time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, suspending, or revoking this permit, or to determine compliance with this permit. The permittees shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

#### 10. Other Information

The permittee shall furnish to the Director any additional, practicable, site-specific information that is determined necessary to protect water quality or has the potential to protect water quality. Where the permittee becomes aware that he/she has failed to submit any relevant facts in a facility registration application form or submitted incorrect information in a facility registration application form or in any report to the Director, he/she shall promptly submit omitted/corrected facts or information.

#### 11. Endangered and Threatened Species and State Historic Preservation Officer

If a site discharges to a stream where a federally endangered or threatened species or its critical habitats are present, the applicant must contact the U.S. Fish and Wildlife Service to ensure that requirements of the federal Endangered Species Act, 16 U.S.C. 1531 et. seq. is met

For those projects that may impact historic preservation sites, the permittee shall coordinate the project with the State Historic Preservation Officer.

#### 12. Inspection and Entry

The permittee shall allow the EPA, Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

- a) Enter upon the permittee's premises in which any storage, treatment or activity is located, or where records must be kept under the conditions of this permit;
- b) Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;
- c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by 47CSR10, any substances or parameters at any locations.

#### 13. Permit Modification

This permit may be modified, suspended, or revoked in whole or in part during its term in accordance with the provisions of Chapter 22, Article 11 of the Code of West Virginia.

Any permittee wishing to modify his coverage for a Large Construction Activity shall submit such request at least 60 days prior to the commencement of the proposed action for modification if no public notice period is required. A modification that requires a public notice period must be submitted at least 100 days prior to construction to allow for the public notice procedure.

Any permittee wishing to modify his coverage for a Minor Construction Activity shall submit such request at least 30 days prior to the commencement of the proposed action for modification if no public notice period is required. A modification that requires a public notice period must be submitted at least 60 days prior to construction to allow for the public notice procedure.

#### 14. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the CWA.

### 15. Outlet Markers

In accordance with Title 47, Series 11, Section 9 (Special Rules) of the West Virginia Legislative Rules, an outlet marker shall be posted on the stream bank for each outlet covered by this permit

### 16. Water Withdrawal

If water for hydroseeding, dust control, or hydrostatic testing is to be derived from waters of the state, withdrawals shall only be made during times when stream flow is sufficient to support both aquatic life and the withdrawal. During periods of active withdrawal, the permittee and/or operator shall consult DWWM's Water Withdrawal Guidance Tool daily and document the recommendations. This documentation shall be maintained by the permittee and made available for inspection. Withdrawals shall only be taken when the tool indicates that it is safe by the statement "it should be safe to withdraw from any stream in the area". Use of the tool in itself does not guarantee protection of aquatic life and best professional judgment must still be used when making withdrawals, as the tool cannot account for all localized conditions and may not react to the withdrawal dependent on its proximity to the stream gage. The tool provides useful information on general stream flow adequacy to assist the permittee with withdrawal decisions. The tool may be found at the following link:

<http://www.dep.wv.gov/WWE/wateruse/Pages/WaterWithdrawal.aspx>.

### 17. Liabilities

17.a. Any person who violates a permit condition is subject to a civil penalty not to exceed \$25,000 per day of such violation as provided in W. Va. Code § 22-11-22. Any person who willfully or negligently violates permit conditions is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one year, or both, as provided in W. Va. Code §22-11-24.

17.b. Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than six months per violation, or by both, in accordance with W. Va. Code § 22-11-24.

17.c. Nothing in 17.a. and 17.b. shall be construed to limit or prohibit any other authority the Director may have under the State Water Pollution Control Act, Chapter 22, Article 11 and State Groundwater Protection Act, Chapter 22, Article 12.

### 18. Reopener Clause

If there is evidence indicating potential or realized impacts on water quality due to any stormwater discharge authorized by this General Permit, the owner or operator of such discharge may be required to obtain an individual permit or alternative General Permit in

accordance with Section I.E. of this General Permit or the General Permit may be modified to include different limitations and/or requirements.

The conditions, standards, and limitations of this General Permit shall be reviewed at the time of reissuance for possible revisions that may lead to more or less stringent conditions, standards, and limitations.

## Appendix B

### I. OPERATION AND MAINTENANCE

#### 1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all activities and BMPs which are installed or used by the permittee to achieve compliance with the terms and conditions of the permit.

#### 2. Need to Halt or Reduce Activity Not a Defense

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

#### 3. Bypass

##### 3.a. Definitions

3.a.1. "Bypass" means the intentional diversion of waste streams from any portion of a BMP; and

3.a.2. "Severe property damage" means substantial physical damage to property, damage to BMPs which causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

3.b. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Appendix B 3.c. and 3.d. of this permit.

##### 3.c. Notification of bypass

3.c.1. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least 10 days before the date of the bypass.

3.c.2. If the permittee does not know in advance of the need for bypass, notice shall be submitted as required in E.2. of Part I of this permit.

##### 3.d. Prohibition of bypass

3.d.1. Bypass is permitted only under the following conditions. The Director may take enforcement action against a permittee for bypass, unless;

3.d.1.A. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

3.d.1.B. There were no feasible alternatives to the bypass, such as the use of auxiliary BMPs, retention of untreated sediment, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance. This condition is not satisfied if the sediment and erosion control structures were not installed in the proper sequence; and

3.d.1.C. The permittee submitted notices as required under Appendix B 3.c. of this permit.

3.d.2. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in Appendix B 3.d.1. of this permit.

#### 4. Upset

4.a. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with the technology-based permit effluent limits or failure of a BMP that occurs because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

4.b. Effect of an upset. An upset constitutes an affirmative defense to an action brought for temporary noncompliance with the terms and conditions of the permit and the SWPPP if the requirements of Appendix B 4.c. are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

4.c. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

4.c.1. An upset occurred, and that the permittee can identify the cause(s) of the upset.

4.c.2. The permitted project was at the time being properly operated.

4.c.3. The permittee submitted notice of the upset in accordance with Part I.D.2.; and



4.c.4. The permittee complied with any remedial measures required under Appendix A 4 of this permit.

4.d. Burden of proof. In any enforcement proceedings, the permittee seeking to establish the occurrence of an upset has the burden of proof.

#### 5. Removed Substances

From time to time incidents occur on construction sites that cause materials to be removed. Soils or stormwater affected by fuel spills or other substances may require special handling and disposal. Such shall be disposed of only in a manner and at a site subject to the approval by the Director.

Sediment removed from a trapping device or from a stream, lake or river after deposition by stormwater runoff from a construction related activity shall be removed in a manner consistent with local, state and federal guidelines and placed behind sediment trapping BMPs in a manner that prevents erosion.

## Appendix C

### I. Definitions:

1. "Access Road" means surface right-of-way for purposes of travel by land vehicles and/or equipment used in Construction activities. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, ditches, and other related structures. The term includes access roads constructed, used, reconstructed, improved, or maintained for use in all construction operations.
2. "Application" is the form to be submitted to register a construction project that discharges to sensitive waters.
3. "Best management practices" (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, other management practices and various structural practices such as but not limited to silt fence, sediment traps, seeding and mulching, and rip-rap used to prevent or reduce erosion and sediment runoff and the pollution of surface waters of the State. BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
4. "Clearing" means the stage of development in which vegetation is cleared from land. Clearing includes cutting and removing vegetation with chain saws, brush axes, brush hogs and other mechanical means where no soil is disturbed.
5. "Clean Water Act" (CWA) (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 97-117 and Public Law 95-576; 33 U.S.C. 1251 et seq.
6. "Common Plan of Development" is a contiguous construction project where multiple separate and distinct construction activities may be taking place at different times on different schedules but under one plan. The "plan" is broadly defined as any announcement or piece of documentation or physical demarcation indicating construction activities may occur on a specific plot; included in this definition are most subdivisions.
7. "Control" is a best management practice such as erosion control or sediment control that will reduce sedimentation on a construction project.
8. "Construction Activity" means land disturbance operations such as clearing, and grubbing, grading, filling, and excavating during site development for residential, commercial or industrial purposes. This includes, but is not limited to, access roads, borrow and spoil areas.

9. "Detailed Site Plan" is a design plan drawing of sufficient scale to depict proposed construction activity, surface drainage patterns, erosion and sediment control best management practices, limits of disturbance boundary, north arrow with drawing oriented north, and containing surface contours on minimum 5-foot contours.

10. "Director" means the Director of the Division of Water and Waste Management, Department of Environmental Protection, or his or her designated representative.

11. "Disturbed Area" is the total area of land disturbing activity that will take place during all phases of a construction project, including, but not limited to, all waste and borrow sites, utility installation, road building, mass grading, and site development.

12. "Diversion" means a stabilized berm or stabilized excavated channel or combination berm and channel constructed across sloping land on a predetermined grade. This includes but is not limited to protecting work areas from upslope runoff and reducing the size of the drainage going to sediment trapping structures (clean water diversion), transporting runoff across a project to minimize erosion and diverting sediment-laden water to an appropriate sediment-trapping structure.

13. "Electronic Submission System (ESS)" refers to the online interactive application registration submittal, review and approval system authorized by the Director.

14. "Enhanced BMPs" means activity schedules or sediment and erosion controls that are more protective of the environment than those routinely employed to qualify for coverage under this permit. Use of such practices apply when disturbed areas discharge to Tier 2 and Tier 3 Waters, or to state waters for which a sediment related TMDL has been approved.

15. "Erosion" means the displacement of solids (soil, mud, rock, and other particles) by the agents of wind, water, and ice in response to gravity.

16. "Establishment" means an industrial establishment, mill, factory, tannery, paper and pulp mill, mine, colliery, breaker or mineral processing operation, quarry, refinery, well and each and every industry or plant or works in the operation or process of which industrial wastes, sewage or other wastes are produced.

17. "Estimate" means to be based on a technical evaluation of the sources contributing to the discharge.

18. "Evaluation Point" means the point where the majority of the surface storm water leaves a permitted site.

19. "Excavating" means to engage in digging, hollowing out, or removing, accomplished usually with heavy machinery.

20. "Final stabilization" means long-term stability of soil and rock against slides, slips, erosion and mudflows by covering disturbed areas with permanent protection such as pavement, compacted gravel, permeable pavements/pavers, buildings, stable waterways (riprap, concrete, grass or pipe), a healthy, vigorous stand of grass or natural vegetation that uniformly covers at least 70 percent of the ground, stable outlet channels with velocity dissipation that directs site runoff to a natural watercourse, and any other approved structure or material.

21. "Grading" means disturbing the surface of the land, including land clearing and grubbing, excavations, creating embankments, land development, road upgrade, cut and/or fill operations, and the moving, depositing, stockpiling or storing of soil, rock, or earth materials.

22. "Groundwater" means the water occurring in the zone of saturation beneath the seasonal high-water table or any perched water zones.

23. "Groundwater Protection Plan" (GPP) means groundwater protection practices developed and implemented in accordance with WV Legislative Rules, 47 C.S.R. 58 (Groundwater Protection Rule), submitted as part of the Application.

24. "Grubbing" means physically removing vegetative stumps and roots from the ground and disturbing the earth, usually by heavy machinery.

25. "Inlet Protection" means a sediment filter or an impounding area around or upstream of a storm sewer, drop inlet, or curb inlet which allows sediment to settle out prior to stormwater entering the inlet.

26. "Impaired Streams" means waters that do not meet applicable water quality standards and are listed on the Clean Water Act Section 303(d) list.

27. "Large Construction Activity" mean an activity which disturbs 3 or more acres of land.

28. "Landowner requested trails" refers to a trail the landowner deems desirable as a post-construction accessway to portions of the released site, hereinafter called ATV (All-Terrain Vehicle) Trails.

29. "Limits of Disturbance" is a polygon shown on a map or site drawing depicting the boundary of the construction site to be disturbed.

30. "Minor Construction Activity" means an activity which disturbs one to less than three acres of land and does not discharge to sensitive waters.

31. "National Pollutant Discharge Elimination System" (NPDES) means the national program for issuing, denying, modifying, revoking and reissuing, suspending, revoking,

monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Section 307, 318, 402, and 405 of CWA, including any approved state program.

32. "Natural Vegetative Buffer" is an area of undisturbed vegetation that occurs spontaneously without regular maintenance or management and is adjacent to or surrounds streams or other waters.

33. "Notice of Termination" (NOT) is the form to be submitted by the permittee to terminate coverage under the Construction General Stormwater Permit, after final stabilization has been completed. See Final Stabilization.

34. "Point Source" is any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, and container from which pollutants are or may be discharged to surface waters of the state.

35. "Pollutant" means industrial waste, sewage or other wastes.

36. "Pre-development" means the condition of the land, the amount and health of the ground cover and vegetation prior to development.

37. "Qualified Person" means a person who is knowledgeable in the principles and practices of sediment and erosion controls, pollution prevention, and possesses the education and abilities to assess conditions at the proposed site that could impact stormwater quality and to assess the effectiveness of proposed stormwater controls to meet the requirements of this permit.

38. "Satisfactory Stabilization": means a condition where exposed soils or disturbed areas are provided temporary vegetative and/or non-vegetative protective cover to prevent erosion and sediment loss. Satisfactory stabilization may include temporary seeding, geotextiles, mulches, and other techniques to reduce or eliminate erosion until either final stabilization can be achieved or until further construction activities take place to re-disturb this area.

39. "Sediment" means any particulate matter that can be transported by fluid flow and which eventually is deposited as a layer of solid particles on the bed or bottom of a body of water or other liquid.

40. "Sedimentation" means the deposition by settling of a suspended material.

41. "Sediment trap" means a temporary ponding area formed by constructing an embankment or excavation and embankment that will trap the flow of sediment-laden runoff. Sediment traps have a properly stabilized outlet/weir or riser and pipe to detain sediment laden runoff from disturbed areas of five acres or less. Outlets must be designed to extend the detention time and allow the majority of the sediment to settle out.

42. "Sediment basin" means a temporary structure consisting of an earthen embankment, or embankment and excavated area, located in a suitable area to capture sediment-laden runoff from a construction site. A sediment basin reduces the energy of the water through extended detention (48 to 72 hours) to settle out the majority of the suspended solids and sediment and prevent sedimentation in waterways, culverts, streams and rivers. Sediment basins have both wet and dry storage space to enhance the trapping efficiency and are appropriate in drainage areas of five acres and greater.

43. "Sensitive waters" means Tier 2 and Tier 3 Streams, trout streams, or water bodies with an established sediment related TMDL.

44. "Sinkhole" means a depression in the land surface formed by solution or collapse that directs surface runoff into subsurface or to an underground drainage flow.

45. "Stormwater" means stormwater runoff, snowmelt runoff, and surface runoff and drainage.

46. "Stormwater Pollution Prevention Plan" (SWPPP) means a site-specific, written document that, among other things: (1) identifies potential sources of stormwater pollution at the construction site; (2) describes stormwater controls to reduce or eliminate pollutants in stormwater discharges from the construction site; and (3) identifies procedures the operator will implement to comply with the terms and conditions of this general permit.

47. "Tier 1 Waters" means waters that maintains and protects existing uses of a water body and the water quality conditions necessary to support such uses. A waterbody that is listed as impaired on the states 303(d) list is considered a Tier 1 water as it pertains to the specific pollutant listed.

48. "Tier 2 Waters" means waters that maintains and protects "high quality" waters - water bodies where the level of water quality exceeds levels necessary to support recreation and wildlife and the propagation and maintenance of fish and other aquatic life. Tier 2 is the default assignment for a waterbody not listed as impaired on the states 303(d) list.

49. "Tier 3 Waters" means waters as otherwise identified in 47 C.S.R. 2-4.1.c. (Requirements Governing Water Quality Standards).

50. "Total Maximum Daily Load (or TMDL)" is a term in the Clean Water Act that establishes the maximum amount of a pollutant allowed in a waterbody and serves as the starting point or planning tool for restoring water quality.

51. Trout Streams - Waters which sustain year-round trout populations. Excluded are those waters which receive annual stockings of trout, but which do not support year-round trout

populations. Waters which meet the definition of 47 C.S.R. 2-2.19 (Requirements Governing Water Quality Standards).

52. "Water Quality Standards" are the foundation of the water quality-based control program mandated by the Clean Water Act.

53. "1-year, 24-hour precipitation event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in one year.

54. "2-year, 24-hour precipitation event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in two years.

55. "10-year, 24-hour precipitation event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 10 years.

56. "25-year, 24-hour precipitation" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years.