FACT SHEET

Stormwater Discharges from Mining, Extraction or Paving Material Preparation Activities North Dakota General Permit No. NDR32-0000

Reissuance

Background

The present general permit issued for stormwater discharges from mining or extraction facilities expires June 30, 2009. The renewal will continue to provide coverage for stormwater discharges from mining and extraction facilities statewide. The permit also applies to concrete and asphalt batch plants. The metal mining industrial sector is not eligible for coverage under this permit. Presently, there are no facilities operating in the state in the metal ore mining and dressing industrial sector (SIC 1011 to 1099). Should a metal mining facility begin operation, stormwater discharges would need to be addressed through the individual permitting process.

Permit coverage for the batch plants and related heavy construction support facilities was included in this permit as a means to consolidate permitting for a number of operators. Batch plants are often co-located at sand and gravel sites covered by this permit. When they are not, the equipment and materials on the batch plant sites are similar to those found at mining operations. Currently, there are approximately 130 operations covered by this permit.

The existing permit was developed in response to the stormwater permit application requirements promulgated by the Environmental Protection Agency on November 16, 1990. General permits provide a streamline means to cover a large number of facilities that are subject to the regulations' broad definition of stormwater discharges associated with industrial activity. In addition, the general permit process places less of an administrative burden on the issuing authority than the individual permitting process. The general permits require baseline control practices aimed at minimizing the impact of stormwater discharges on waters of the state. Individual permits or industry specific permits may be developed to address specific water quality concerns or industry specific control practices.

Industrial Activities Covered

This permit will apply to discharges composed (either in whole or in part) of stormwater associated with industrial activity as defined in 40 CFR 122.26(b)(14) from any of the following:

1. Operations involved in mining or extracting activities, including processes to prepare materials for use, SIC Codes between 12 and 14;

2. Facilities operated to obtain or prepare materials for highway construction activities including concrete or asphalt batch plants, SIC Codes 1611, 2951 and some 3273;

Specific activities which could be covered are haul road runoff, certain material storage piles (excluding coal piles), vehicle maintenance areas, and construction activities normal to the operation of the facility.

There are other types of discharges which may not be appropriately regulated through this permit, and other limitations on what activities this permit can authorize. As such, the following discharges are not eligible for coverage under this permit:

1. Stormwater discharges from facilities or activities subject to a nationally established effluent limitations guideline or other performance standard under 40 CFR subchapter N.

2. Discharges or releases that are not stormwater except those non-stormwater discharges authorized under Part II.A.

3. Discharges to waters for which there is a total maximum daily load (TMDL) allocation for sediment and/or parameters associated with sediment transport are not covered unless a Stormwater Pollution Prevention (SWPP) plan is developed that is consistent with the assumptions and requirements of the approved TMDL. To be eligible for coverage under this general permit, the SWPP plan must incorporate the conditions applicable to the discharge necessary for consistency with the assumptions, allocations and requirements of the TMDL. If a specific numeric wasteload allocation has been established that would apply to the facility's discharge, the permittee must incorporate that allocation into the SWPP plan and implement necessary steps to meet that allocation.

4. The placement of fill into waters of the state requiring local, state, or federal authorizations (such as U.S. Army Corps of Engineers Section 404 permits).

5. This permit does not substitute for obligations under the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), or National Historic Preservation Act (NHPA). It is the permittee's responsibility to ensure the facility and resulting discharges comply with the respective requirements.

6. Stormwater discharges that the Department determines will cause or have the reasonable potential to cause or contribute to violations of water quality standards.

As provided in 40 CFR 122.26(c)(1)(iii), oil and gas extraction facilities are not required to apply for a permit unless they have had a stormwater discharge resulting in a reportable quantity release of oil or hazardous substance (release for which notification is required pursuant to 40 CFR 110.6, 40 CFR 117.21, or 40 CFR 302.6) after November 16, 1987. This permit provides coverage for facilities that had a reportable quantity discharge since November 16, 1987, and will provide coverage for any facility that experiences a reportable quantity discharge after the effective date of the permit.

Obtaining Coverage

Facilities covered under the present permit shall be retained, provided a satisfactory request was made under the renotification provisions of the permit. If deemed necessary, the Department may require the submittal of a new Notice of Intent. For operators of new facilities wishing to obtain coverage, an application must be submitted at least 7 days prior to starting any activity subject to regulation as a stormwater discharge associated with industrial activity. Permit coverage will become effective 7 days after submittal of a complete application unless otherwise notified by the Department (based on the earlier of postmarked date or department date-stamp).

The application (also referred to as Notice of Intent) shall contain, at a minimum, the following information:

1. Name and mailing address of the owner or operator
2. Contact name and phone number
3. Name of facility or site
4. A brief description of the nature of business or activity
5. Standard Industrial Classification (SIC) Code
6. Acreage of the facility dedicated to industrial activity

7. Location of the site(s), including the county, latitude and longitude or township, range, section, and 1/4 section
8. Name of receiving water(s) or the name of the receiving municipal storm sewer system and receiving water(s)
9. The signature of the applicant(s), signed in accordance with Signatory Requirements of this permit.

Applicants must include a copy of the Stormwater Pollution Prevention (SWPP) plan if the facility will occupy 50 acres or more (area dedicated to industrial activities); or the facility will have a discharge point located within 2000 ft of, and flow to, a water body listed as impaired due to sediment or parameters associated with sediment transport under section 303(d) of the Federal CWA (see 303(d) List on the Department's website).

An operator of multiple temporary or portable operations may submit a single application for such activities. The operator must provide a copy of the SWPP plan for any locations that meet the criteria described above prior to beginning operations on the site.

Operators of oil or gas extraction facilities (SIC codes 13) that experience a stormwater discharge resulting in or contacting a reportable quantity release of oil or hazardous substance (release for which notification is required pursuant to 40 CFR 110.6, 40 CFR 117.21, 40 CFR 302.6) must submit a Notice of Intent within 15 days of becoming aware of the release. Oil and gas facilities that have not discharged a reportable quantity of oil or hazardous substances are not required to apply for a stormwater permit, as provided in 40 CFR 122.26 (c)(1)(iii). Permit coverage for equipment storage and maintenance facilities of the field services sector (SIC codes 1381-1389) may be requested to manage potential impacts to surface waters.

Local agencies may operate a local stormwater management program or other sediment and erosion control program. The local authority may require that a copy of the application be provided to them for review and approval.

The Department will accept applications from facilities after the specified dates, or from existing facilities that were required to apply prior to the issuance of this permit. In such cases, the Department may take appropriate enforcement action. Individuals who willingly fail to provide this notification, and subsequently discharge pollutants to the waters of the state without an NDPDES permit, shall be in violation of federal and state rules and regulations.

Alternative Permit Coverage and Notice of Termination

The Department, by written notification only, may require any person authorized by this permit to apply for and obtain an individual NDPDES permit or seek coverage under an alternative NDPDES general permit. Any person covered by this general permit may request to be excluded from such coverage by either applying for an individual NDPDES permit, or filing a Notice of Intent to be covered under an alternative NDPDES general permit.

When an individual NDPDES permit is issued to a person otherwise subject to this permit or the person is approved for coverage under an alternative NDPDES general permit, the applicability of this permit to the individual permittee is automatically terminated upon the effective date of the individual permit or the date of approval for coverage under the alternative general permit.

Termination of Coverage

Conditions are provided for terminating coverage when discharges associated with industrial activities are no longer present at a facility. Information required for submitting a Notice of Termination (NOT) includes the identity of the facility, the reason why coverage is no longer needed, and a signature in accordance with the standard signatory requirements.

Permittees may submit a NOT after one or more of the following conditions have been met:

1. All stormwater discharges associated with industrial activity have been eliminated and final stabilization (see permit definitions) has been achieved on all portions of the site for which the permittee is responsible.

2. Inactive operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) because the performance bond issued to the facility has been released; or non-coal mining operation which has been released from applicable state or federal reclamation requirements after December 17, 1990. This follows the exemption provided in definition of stormwater discharges associated with industrial activity (40 CFR 122.26).

3. Oil and gas operations where the area affected by a reportable quantity spill has been reclaimed and the facility has operated satisfactorily under the Stormwater Pollution Prevention Plan for a period of 3 years. This corresponds to the group of oil and gas facilities that were originally required to obtain stormwater discharge permits as specified in the original regulation. In the regulation, only those facilities that had a reportable quantity release 3 years prior to the promulgation of the regulation were required to submit permit applications.

4. Another operator/permittee has assumed control over all areas of the site that have not achieved final stabilization in accordance with the Transfer provisions of the permit.

The definition for final stabilization follows that commonly used for the construction industry. The final stabilization criteria are appropriate since ongoing construction activity and earth moving operations are due to the nature of the industries covered by this permit. The criteria for “final stabilization” are as follows:

1. All soil disturbing activities at the site have been completed and a uniform perennial vegetative cover with a density of 70 percent of the native cover for unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles), has been achieved.

2. For areas with an average annual rainfall of less than 20 inches only, all soil disturbing activities at the site have been completed and temporary erosion control measures (e.g., degradable rolled erosion control product) are selected, designed, and installed along with an appropriate seed base to provide erosion control for at least three years and achieve 70 percent vegetative coverage within three years without active maintenance.

3. For soil disturbing activities on land used for agricultural purposes, final stabilization may be accomplished by returning the disturbed land to its pre-disturbance agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to ‘‘waters of the state,’’ and areas which are not being returned to their pre-disturbance agricultural use must meet the final stabilization criteria in (1) or (2) above.

Special Conditions

As this is a general permit for stormwater discharges, it must be identified that certain discharges are prohibited for coverage under this permit. Should process waste waters or other non-stormwater sources be combined with the stormwater discharge, the non-stormwater source must be in compliance with an appropriate NDPDES permit specifically for the non-stormwater discharge. The Department will on a case by case basis consider allowing certain non-stormwater discharges to be operated under the conditions of this permit. Non-stormwater discharges that may be considered for coverage under this permit would be limited to those identified or sufficiently similar to those identified, in similar EPA's general permits. Such discharges include, but not limited to, fire hydrant flushing, potable water line flushings, infrequent building washdowns if detergents or other compounds are not used, or uncontaminated foundation drains.

This permit will not relieve the permittee from the reporting requirements of 40 CFR 110, 40 CFR 117, and 40 CFR 302. 40 CFR 117 and 40 CFR 302 identify reportable quantities for the release of hazardous substances. There is a remote possibility that hazardous substances in excess of reporting quantities may enter stormwater discharges regulated by this permit. Since these hazardous substance discharges are not authorized by this permit, the reporting requirement exemption in 40 CFR 117.12 would not apply, and all specified reporting requirements would remain in effect. Of a more probable nature is the possibility of oil in excess of the mandated reporting quantity entering a stormwater discharge. As an oil spill release is not authorized by this permit, the discharger would not be relieved of the reporting obligations, which in this case are identified in 40 CFR 110. In addition, the requirements of Section 311 of the Clean Water Act and any applicable provisions of Section 301 and 402 of the Clean Water Act would also apply.

Stormwater Pollution Prevention Plan

All facilities covered by this general permit are required to prepare, implement, and maintain a Stormwater Pollution Prevention (SWPP) plan. The major objectives of the plan are to identify potential sources of pollution which may reasonably be expected to affect the quality of stormwater discharges and ensure that practices are implemented to minimize pollutants in stormwater discharges.

Some facilities covered by this permit may be subject to local or state sediment and erosion control programs or stormwater management related requirements as part of other regulatory programs. In particular, coal mining facilities are required to develop surface water management plans as part of the Surface Mining Control and Reclamation Act requirements administered by the North Dakota Public Service Commission. The plans are subject to review and approval by the Public Service Commission, the State Water Commission, and the State Health Department. In addition, spill prevention control and countermeasure (SPCC) plans have been developed for most oil and gas facilities in the state. In most cases, it will be acceptable to incorporate by reference the applicable portions or requirements of plans developed under other regulatory programs into the SWPP plan.

The SWPP plans developed under the current permit may be continued under the proposed permit. The facilities with existing plans are responsible for updating their SWPP plans accordingly.

The Stormwater Pollution Prevention plan requirements reflect a combination of controls measures and Best Management Practices outlined in the EPA Multi-Sector General Permit (MSGP-2000) published in the Federal Register on October 30, 2000; and the EPA Construction General Permit (CGP) effective on July 1, 2003, pertinent to the industrial activities covered by this permit. The required SWPP plan items in the draft permit shall be similar to those in the past versions of the permit. The SWPP plan to include at a minimum the following:

1. Site description

    a. Provide a description of the type of activity conducted at the facility.

    b. A site map indicating drainage patterns, the outline of the drainage area for each stormwater outfall, areas used for storage or disposal of materials, and any existing or planned structures to reduce stormwater contamination. Clearly identify property boundaries, natural drainage ways receiving discharges, section, township, and range or lines of latitude and longitude. The map or drawing must be of suitable scale and quality to show the required information.

    c. Identify the individual(s) responsible for implementing, maintaining and revising the SWPP plan.

2. Description of potential pollutant sources

    a. Identify materials that are processed, handled, stored, or disposed at your site that have the potential to be released with stormwater.

    b. An assessment of various sources at the site that could contribute pollutants to stormwater runoff. Each of the following shall be evaluated for the reasonable potential to contribute pollutants: loading/unloading operations, outdoor storage, disposal and processing activities, significant dust generating activities and disturbed area vulnerable to erosion. Factors to consider in assessing potential sources are: the nature and quantity of material, degree of exposure to stormwater, history of spills or leaks, and any measures in place to control stormwater.

    c. Identify sources of non-stormwater discharges that may be present and controls used to minimize the impact of the source. If the non-stormwater discharge is not authorized include measures to remove the illicit discharge.

3. Stormwater controls. The plan shall describe the existing or planned controls for each source or operation that may contribute pollutants in stormwater runoff. A combination of Best Management Practices (BMPs) and structural controls must be implemented as appropriate to reduce pollutant contributions in stormwater. Such practices include:

    a. Good housekeeping practices to maintain a clean and orderly facility. Litter, debris, chemicals and parts must be handled properly to minimize exposure to stormwater. This includes measures to reduce and remove sediment tracked offsite by vehicles and the generation of dust.

    b. Preventive maintenance practices must be provided for the inspection and maintenance necessary to ensure the proper operation of stormwater management devices (e.g., oil-water separators, catch basins, and silt fences) as well as equipment used or stored at a site.

    c. Spill prevention and response procedures must be developed where potential spills can occur. Where appropriate, specific handling procedures, storage requirements, spill containment and cleanup procedures shall be identified.

    d. Employee training informs personnel of their responsibility in implementing the practices and controls included in the plan such as spill response, good housekeeping, and sediment control practices. Operators of active fixed location facilities, and temporary or portable facilities should provide employee training at least annually or as new employees are hired.

e. Sediment and erosion controls must be implemented on areas of operations vulnerable to erosion. The plan shall describe the appropriate control measures and when they will be implemented during the process for each major phase of site activity (such as clearing, grading for new mine areas or building support features). The description and implementation of controls shall address the following minimum components:

Sediment basins, or an appropriate combination of equivalent sediment controls such as smaller sediment basins, and/or sediment traps, silt fences, fiber logs, vegetative buffer strips, berms, etc., are required for all down slope boundaries of the disturbance area and for those side slope boundaries as may be appropriate for site conditions.

Temporary erosion protection (such as cover crop planting or mulching) or permanent cover must be provided for the exposed soil areas where activities have been completed or temporarily ceased. These areas include graded slopes, pond embankments, ditches, berms and soil stockpiles.

All control measures must be properly selected, installed, and maintained in accordance with the manufacturer's specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the permittee must replace or modify the control for site situations. The permittee may deviate from the manufacturer's specifications and erosion and sediment control guidelines in Appendix 1 if they provide justification for the deviation and document the rationale for the deviation in the SWPP plan.

If sediment escapes the site, off-site accumulations of sediment must be removed in a manner and at a frequency sufficient to minimize off-site impacts. The plan must be modified to prevent further sediment deposition off-site.

f. Stormwater Management. The plan shall include a description of practices that will be installed during the construction phase of a new site or expansion to control pollutants in stormwater discharges occurring after construction operations have been completed or incorporated into the reclamation of a temporary site. Such practices may include: stormwater ponds; flow reduction by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems which combine several practices. The plan shall include an explanation of the technical basis used to select the practices to control pollution where flows exceed pre-development levels.

4. Maintenance. All erosion and sediment control measures and other protective measures identified in the plan must be maintained in effective operating condition. The plan must indicate as appropriate the maintenance or clean out interval for sediment controls. If site inspections, required in this permit, identify BMPs that are not operating effectively, maintenance shall be arranged and accomplished as soon as practicable.

5. Inspections. The plan must provide for site inspections to monitor the condition of stormwater discharge outlets and effectiveness of BMPs. The permittee shall ensure that personnel who are familiar with permit conditions and the proper installation and operation of control measures conduct an inspection of the site according to the following schedule:

a. Active fixed location facilities, shall conduct inspections within 48 hours or as soon as conditions allow following storm events of one (1) inch or more in 24 hours, with at least one inspection during a 6 month period when no such events occur. The storm event inspections are not required for facilities conducting an approved stormwater sampling program.

b. Operators of temporary or portable facilities (sand and gravel, batch plants) shall conduct inspections on a monthly basis while the operation is active and once every 6 months until final stabilization is achieved after ceasing operations.

c. Inactive operations shall be evaluated, at a minimum, once in three years by a qualified individual with experience in surface water pollution issues (i.e., environmental, erosion control, reclamation or engineering). The objectives of such evaluations are to: 1) assess the stability and performance of existing runoff controls, and 2) identify areas adversely impacted by runoff from the site.

The inspection shall include discharge outlets from: disturbed areas of the site that have not been finally stabilized, areas used for storage of materials, structural control measures, and vehicle maintenance areas. These areas shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. The erosion and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly and in serviceable condition. A record of inspections shall summarize the scope of the inspection, major observations relating to the SWPP plan, the date and the name of personnel making the inspection. If necessary, the SWPP plan shall be revised based on the observations and deficiencies noted during the inspection.

6. Plan review and revisions.

a. The plan shall be signed in accordance with the signatory requirements of the permit, and retained for the duration of activity at the permitted location.

b. The permittee shall make plans available upon request to the Department, EPA, or, in the case of discharges to a municipal separate storm sewer system, to the operator of the municipal system.

c. The permittee shall amend the SWPP plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the state. The plan shall also be amended if the plan is found to be ineffective in controlling pollutants present in stormwater.

d. Oil or gas extraction facilities which have a discharge of a reportable quantity of oil or hazardous substance after the effective date of this permit shall submit a SWPP plan and provide for compliance with the terms of the plan within 30 days of the operator becoming aware of the release.

Operators of portable or temporary facilities (such as many sand and gravel operations and concrete and asphalt batch plants) are not prohibited from developing a plan that consists of a single set of general BMPs and operating practices to be implemented at their facilities along with a site map and other site specific information.

Effluent Limitations

This permit will not take the place of any promulgated effluent limitation guidelines (such as coal pile runoff at coal mining and coal preparation facilities). Discharges covered by promulgated effluent limitation guideline must be covered by a different permit. The pollution prevention practices identified in the permit serve as an alternative to quantitative effluent limitations for stormwater discharges covered by the permit. The Department will conduct plan reviews and site inspections to ensure that proper BMPs and runoff controls are implemented to prevent stormwater discharges from adversely impacting waters of the state.

Monitoring Requirements

The Department did not require sampling in the current permit, based on the results obtained under the previous versions of this permit. Rather, the Department specified site inspections as the default method of monitoring. The minimum inspection frequencies are specified in the SWPP plan requirements. The one-inch or greater rainfall event trigger for additional inspections at some facilities approximately corresponds to a one-year, 12-hour storm event in North Dakota.

For portable or temporary operations such as most sand and gravel operations or batch plants the inspections within 48 hours of a one-inch rain event are not required. These facilities are typically in remote locations and personnel are not on-site at all times making such inspections impractical. As an alternative inspections must be made on a monthly basis while the operation is active and once every 6 months until final stabilization is achieved after ceasing operations.

There are cases where the Department may find it necessary to require sampling to evaluate the effectiveness of BMPs and other water quality concerns. As such, provisions for sampling of stormwater discharges are included in the permit. Conditions that may require sampling include but are not limited to the following:

1. Facilities where additional analytical data is needed to estimate the potential impact of stormwater discharges on water quality. Examples of where additional data may be needed include: water quality improvement projects such as a Section 319 Nonpoint Source, Total Maximum Daily Load (TMDL), or Lake Restoration Project.

2. Facilities where monitoring sample results indicate the discharges are generally of a poor quality or have significantly higher pollutant concentrations relative to the results of similar industrial categories.

3. Facilities where the SWPP plan is not properly implemented or determined to be inaccurate.

The permit contains default stormwater sampling procedures and conditions that would be appropriate for the types of facilities covered by the permit. The requirement would apply to any facilities that may be required to collect sample from stormwater discharges

Annual Reporting Requirements

An “Annual Inspection Summary” consisting of a summary of the inspections made during the course of the year must be provided on an annual basis. The summary shall consist of a listing of all incidents of sediment or significant material residue accumulation, or erosion due to stormwater discharges observed during the calendar year. The summary shall also include the inspection date, outfall identification or location of incident, description of incident, estimated quantity of material or size of area affected, brief explanation of potential cause and remedial actions taken.

A location record must be maintained by operators of portable or temporary facilities (such as sand and gravel operations, concrete or asphalt batch plants) that shows the location where they operated facilities. A copy of the location record must be submitted on an annual basis. The location record shall include following:

Permit number
Name and mailing address of the owner or operator
The site or plant name or number
Location of each site (street address, latitude and longitude, or legal land description of township, range, section, and 1/4 section)

Start date of each site
The estimated area of total disturbance in acres of each site
Name of water bodies within 2000 feet that may receive drainage from the site
Status of each site (active, reclaiming, inactive)
Date of final stabilization or when contoured to contain all stormwater discharges

A copy of the Location Record, Inspection Summary or Discharge Monitoring Report (if sampling) shall be submitted to the Department by January 31 of each year, covering the activities occurring during the preceding calendar year (January 1 through December 31).

The proposed expiration date for the permit is June 30, 2014.

Public Notification

The Department proposes to publish a 30-day notice of the proposed renewal of this general permit in the Bismarck Tribune, the official newspaper of the capital city and in the newspapers of several other larger cities located regionally throughout the state. The notice will also be mailed to the Department's public notice mailing list. Should there be adequate interest; a public hearing will be scheduled.

DJG
4/6/09

FACT SHEET

Stormwater Discharges from Mining, Extraction or Paving Material Preparation Activities
North Dakota General Permit No. NDR32-0000

Addendum

One change was made to the draft general permit scheduled to take effect July 1, 2009. The description for the inspection frequency at active facilities was revised to be more specific in response to industry comments and internal review. The inspection requirement (Part II.C.5.a) was revised to read:

> Active facilities shall be inspected at least once (1) during a six (6) month period. The 6 month periods shall consist of the first half of the year (January – June) and the second half of the year (July – December). Inspections should be conducted within 48 hours or as soon as conditions allow following storm events of one (1) inch or more in 24 hours with at least one inspection during a 6 month period when no such events occur.

RK
6/2/09