

## STATEMENT OF BASIS

**PERMIT TYPE:** General Surface Water Discharge Permit for **Construction Activities** in South Dakota

**PERMIT NUMBER:** SDR100000

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This document is intended to explain the basis for the requirements contained in the South Dakota General Permit for Storm Water Discharges Associated with Construction Activity (“General Permit”). This document provides guidance to aid in complying with the storm water regulations. This guidance is not a substitute for reading the General Permit and understanding its requirements as they apply to your project or site.

### BACKGROUND

#### *Introduction*

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

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

In 1972, Congress passed the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act. The stated goal of the act was to *restore and maintain the chemical, physical, and biological integrity of the Nation’s waters*. To achieve this goal, the Clean Water Act states *the discharge of any pollutant by any person shall be unlawful* except in compliance with other provisions of the statute.

In 1987, Congress amended the Clean Water Act to require implementation, in two phases, of a comprehensive national program for addressing storm water discharges. The first phase of the program, commonly referred to as “Phase I,” was promulgated on November 16, 1990. Under Phase I, the Environmental Protection Agency (EPA) established the permitting requirements for

discharges of “storm water associated with construction activity,” which EPA included in its definition of “storm water discharges associated with industrial activity.” This designated construction activities that disturb five or more acres of land as point source discharges that must receive a permit for any discharge of pollutants into waters of the United States.

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

The intent of the storm water regulations is to improve and protect water quality by minimizing contaminants in storm water. Storm water runoff consists of rainwater and melted snow that runs off the land and directly, or indirectly by way of storm sewers, enters waters of the state, such as lakes, rivers, streams, wetlands, and ponds. The term “construction activity” includes point source discharges from areas undergoing operations such as clearing, grading, and excavation. Construction activities can include road building, construction of residential houses, office buildings, industrial sites, or demolition. The term construction activity does not include agricultural, silviculture, or maintenance activities.

The discharge of pollutants into waters of the state from construction activities disturbing one or more acres is considered a point source and shall obtain a Surface Water Discharge permit from the South Dakota Department of Environment and Natural Resources (DENR).

#### ***Permit Description***

The current General Permit was issued under South Dakota’s Surface Water Discharge regulations on July 1, 2002, and expired on June 30, 2007. The General Permit was administratively extended, pending the reissuance of the permit.

DENR is proposing to renew the General Permit. The General Permit contains requirements that are based on technology considerations, Best Management Practices, South Dakota’s Surface Water Quality Standards, and other conditions applicable to the types of storm water generated by construction activities.

As stated above, Phases I and II of EPA’s storm water regulations designated storm water runoff from construction activities disturbing one or more acres of land as “point sources.” All point sources discharging pollutants into waters of the state shall have a Surface Water Discharge permit. Due to the nature of the scheduling of these construction activities, obtaining an individual Surface Water Discharge permit would significantly impact the timing of a project.

The general permit regulations within the Administrative Rules of South Dakota (ARSD) §74:52:02:46 provide for the issuance of general permits for storm water point sources. Therefore, DENR has issued a general permit for these activities to:

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

3. Promote consistent permitting with respect to these activities.

### ***Coverage Under The General Permit***

This permit authorizes the following discharges<sup>1</sup> of storm water from new or ongoing construction activities located in South Dakota:

- Storm water discharges associated with construction activities disturbing one or more acres;
- Storm water discharges from sites disturbing less than one acre that are part of a larger common plan of development or sale that, combined, disturbs one acre or more;

Note: In many cases, a common plan of development or sale consists of many small construction projects that, collectively, add up to one or more acres of total disturbed land. With such projects, the larger development acreage is subdivided and sold to individual owners. The original permittee shall ensure the lot is properly stabilized in accordance with Section 3.9 of the proposed General Permit prior to transfer of ownership. The original permittee is responsible for compliance with permit requirements until such time as coverage is transferred to the new owner. The original permittee is responsible for supplying the new owners with a copy of the General Permit, and notifying the new owners of the General Permit requirements and the importance of achieving final stabilization on the site.

Attachment D of the proposed General Permit includes a form for transferring permit coverage for all or a portion of a project or development to a new owner. Upon transfer of coverage, an individual lot owner becomes a co-permittee and is responsible for permit compliance on their lot until final stabilization is reached.

- Storm water discharges from sites disturbing less than one acre, but designated by the Secretary of DENR as needing coverage under the proposed General Permit.
- Any discharge authorized by a different surface water discharge permit that is commingled with discharges authorized by the proposed General Permit. Most storm water discharges are diffuse. Therefore, it can be difficult to keep a storm water discharge separate from other discharges. These commingled discharges are authorized, provided all discharges are properly addressed through the necessary surface water discharge permits.
- Non-storm water discharges from fire fighting activities, uncontaminated ground water from dewatering activities, and waters used as a best management practice to control dust or wash vehicles at the construction site can also be covered under the

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<sup>1</sup> For the purpose of the General Permit, the term “discharge” is defined as an addition of any pollutant or combination of pollutants to surface waters of the state from any point source. As noted above, construction sites disturbing one or more acres are point sources. Therefore, any water flowing off the construction constitutes a discharge and must be covered by a Surface Water Discharge permit.

proposed General Permit. These discharges must be addressed in the storm water pollution prevention plan and must include best management practices to minimize the pollutants present in the discharge.

### ***New Construction Projects***

To obtain coverage under the proposed General Permit, the owner of the construction site shall submit a Notice of Intent (NOI) and a Certification of Applicant form to DENR at least 15 days prior to the start of construction.

Note: This is a change from the current General Permit. The current General Permit allowed either an owner **or** an operator of a site to submit the NOI. DENR is clarifying in the proposed General Permit that only the owner of the site may submit the NOI. A copy of the NOI form is included in Attachment A of the General Permit.

If a contractor other than the owner will be responsible for the day-to-day operation of the construction site, that contractor shall be identified and the owner shall submit a Contractor Certification form found in Attachment C of the proposed General Permit. As an operator of the site, any contractor performing work at the site also has responsibility for compliance with the terms of the General Permit.

Upon receipt of a complete NOI signed by the owner, the Secretary of DENR makes the decision to grant or deny coverage, or request additional information.

### ***Existing Construction Projects***

For existing construction operations already covered under the current General Permit, a NOI for Reauthorization found in Attachment E of the proposed General Permit needs to be submitted to continue coverage under the renewed General Permit. Coverage under the current General Permit will expire on the effective date of the renewed General Permit. If a permittee does not submit a NOI for Reauthorization prior to the effective date of the General Permit, the permittee's coverage under the current General Permit will be terminated and any storm water discharges associated with construction activity at the site will not be authorized and could be subject to enforcement.

### ***Secretary Designation***

While most construction sites less than one acre do not significantly impact surface waters in South Dakota, this is not universally the case. In some cases, the Secretary of DENR may require smaller construction sites to obtain coverage under a permit. In making this determination, the Secretary will take into account the beneficial uses of the receiving waters, the slope of the project, the management of the site, and other appropriate factors.

DENR is making the proposed General Permit available to these designated sites. Alternatively, the owner of the designated may request an individual permit for the site.

### ***Oil and Gas Exemption***

In Title 40 of the Code of Federal Regulations, Section 122.26(a)(2) states that EPA may not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing or treatment operations or transmission facilities, composed

entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

Therefore, owners of oil and gas field activities are exempt from the permitting requirements for any construction activity at these facilities. However, DENR does expect these operations to employ best management practices to minimize the discharge of pollutants from the site and ensure the South Dakota Surface Water Quality Standards are maintained.

## **RECEIVING WATERS**

### ***Beneficial Uses***

The South Dakota Surface Water Quality Standards designate beneficial uses for all waters of the state. These classifications designate the minimum quality at which the surface waters of the state are to be maintained and protected. All waterbodies in South Dakota have been assigned one or more of the following beneficial uses:

- (1) Domestic water supply waters;
- (2) Coldwater permanent fish life propagation waters;
- (3) Coldwater marginal fish life propagation waters;
- (4) Warmwater permanent fish life propagation waters;
- (5) Warmwater semipermanent fish life propagation waters;
- (6) Warmwater marginal fish life propagation waters;
- (7) Immersion recreation waters;
- (8) Limited contact recreation waters;
- (9) Fish and wildlife propagation, recreation, and stock watering waters;
- (10) Irrigation waters; and
- (11) Commerce and industry waters.

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

### ***Total Maximum Daily Load***

A Total Maximum Daily Load (TMDL) is a calculation of the maximum amount of a pollutant a waterbody can receive and still meet water quality standards. Under current EPA regulations, states establish TMDLs that include wasteload allocations from point sources, load allocations from non-point sources, and natural background conditions. Wasteload allocations are defined as the portion of a water body's loading capacity allocated to point source dischargers. TMDLs are established at levels necessary to attain and maintain the state surface water quality standards. TMDLs include seasonal variations and margins of safety to take into account any lack of knowledge about the relationship between the effluent limits and instream water quality.

TMDLs are developed on a pollutant- and waterbody-specific basis. In some instances, TMDLs may combine multiple pollutants into one set of TMDL documents. However, the specific TMDL wasteload and load allocations are pollutant-specific. States are responsible for

establishing TMDLs, which EPA approves. Once approved by EPA, TMDLs are implemented through water quality management plans and through surface water discharge permits.

The proposed General Permit is a Surface Water Discharge permit that requires best management practices to ensure the surface water quality standards are met and maintained. Therefore, the General Permit will be able to authorize discharges to waterbodies that are listed as impaired or have an approved TMDL. However, if DENR determines a specific site has the potential to cause or contribute to an impairment of the surface water quality standards, DENR can require the owner to implement additional controls and/or obtain an individual discharge permit.

## **EFFLUENT LIMITS**

### ***Use of Narrative Limits***

Under the federal Clean Water Act, dischargers shall comply with both technology-based and water quality-based effluent limits. Where EPA has not yet issued a technology-based effluent limitation guideline, as is the case for the construction industry, states are expected to determine the appropriate technology-based level of control based on best professional judgment.

The federal Clean Water Act allows states and EPA to meet the requirement for technology-based limits using non-numeric, or “narrative,” effluent limits in permits where appropriate. EPA has developed regulations allowing the use of narrative best management practices as effluent limits (40 CFR §122.44(k)). The proposed General Permit, like the current General Permit, includes non-numeric effluent limits, including best management practices, to ensure state and federal requirements are met.

All permittees are required to implement control measures to minimize pollutants in storm water discharges. The proposed General Permit does not mandate the specific control measures permittees must use to meet the effluent limits in the proposed General Permit. Instead, the permittee shall select, design, and implement the controls needed to meet the applicable effluent limits at each specific site. The control measures can be structural devices or actions (such as processes, procedures, schedules of activities, prohibitions on practices, and other management practices) to minimize water pollution due to storm water runoff. This Statement of Basis provides examples of control measures, but permittees are expected to tailor these controls to their sites, as well as improve upon them as necessary to meet General Permit effluent limits. The examples emphasize prevention over treatment.

In an effort to make the requirements of the General Permit easier to understand and implement, DENR is specifically stating the narrative effluent limits in the proposed General Permit. In the current General Permit, the requirements for controlling pollutant discharges were combined with the storm water pollution prevention plan and inspection requirements, making it more difficult to understand DENR’s expectations with respect to the permittee’s compliance. These proposed changes do not alter DENR’s bottom-line intentions with this General Permit. Instead, these changes are intended to more clearly articulate the General Permit’s requirements.

### ***Effluent Limits***

Effective immediately and lasting through the life of the General Permit, all permittees shall comply with the narrative effluent limits below, which are based on best management practices to meet the South Dakota Surface Water Quality Standards and Best Professional Judgment (BPJ). All permittees are expected to meet the following effluent limits to minimize<sup>2</sup> the pollutants present in the discharges associated with construction activity.

1. **Precipitation Design Event.** All sediment and erosion controls shall be selected, designed, and installed to minimize the pollutants present in runoff from a rainfall event of up to two (2) inches in a 24-hour period.

In most areas of South Dakota, the two-year, 24-hour storm event is about 2 inches (see Appendix B). Both EPA and the South Dakota Department of Transportation have used a two-year, 24-hour storm event as the design event for determining the capacity of storm water controls. By establishing a 2-inch rain event as the design flow for storm water controls in the proposed General Permit, DENR will provide a consistent requirement for all permittees and ensure controls are designed to minimize pollutants present in the runoff from these events.

In setting this limit, DENR recognizes it is not possible to completely eliminate the discharge of pollutants. However, by requiring permittees to take steps to minimize the pollutants present in the discharge, the South Dakota Surface Water Quality Standards will be protected.

2. **Sediment Controls.** Permittees are required to implement sediment controls based on the amount of land disturbed by the project. This effluent limit is based on the number of *disturbed* acres, not on the entire project size. Phasing a project to minimize the amount of disturbed land is one of the most effective ways to minimize pollutants in a storm water discharge from a construction site. Therefore, this effluent limit is developed to encourage permittees to minimize the number of disturbed acres by stabilizing portions of the project and/or phasing the construction whenever possible.

In addition, sloping and managing a construction site to minimize the number of disturbed acres draining to a common location reduces the pollutants present in a storm water discharge from a construction site. This limit has also been developed to encourage permittees to minimize the number of acres draining to a common location.

The sediment control requirements are as follows:

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<sup>2</sup> The current General Permit does not include a definition of the term “minimize.” However, that term is used frequently, in addition to the terms “eliminate or reduce” and “prevent.” In the proposed General Permit, DENR is clarifying the term “minimize” to mean reduce and/or eliminate to the extent achievable using control measures (including best management practices) that are technologically available and economically achievable and practicable in light of best industry practices.

- a. For drainage locations serving less than 10 disturbed acres at one time, smaller sediment basins and/or sediment traps shall be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions) of the construction area.

Note: A sediment basin providing storage for a calculated volume of runoff from a 2-inch precipitation event in a 24-hour period may be provided instead of perimeter controls.

- b. For common drainage locations that serve an area with 10 or more acres disturbed at one time, a temporary or permanent sediment basin shall be provided. This basin shall provide storage for a calculated volume of runoff from the drainage area from a 2-inch precipitation event in a 24-hour period. Permittees should contact DENR's Water Rights Program at (605) 773-3352 to determine if there are additional requirements that must be met for installing a sediment basin.
- c. Where it is not possible to construct a temporary sediment basin for drainage locations that serve 10 or more disturbed acres at one time, smaller sediment basins and/or sediment traps or equivalent controls shall be used. At a minimum, equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions).

In determining whether installing a sediment basin is possible, the permittee may consider factors such as site soils, slope, available area on-site, site infiltration, runoff coefficients, etc. In any event, the permittee shall consider public safety, especially as it relates to children, as a design factor for the sediment basin, and alternative sediment controls shall be used if site limitations would preclude a safe design. Structural controls may be necessary due to the lag time before vegetation becomes effective. In addition, vegetative controls cannot be effectively employed in areas where soil is continually disturbed. Options for such controls include silt fences, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, sediment traps, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Placement of structural controls in flood plains should be avoided.

The permittee shall document the rationale for using alternative sediment controls instead of a sediment basin. This rationale will be reviewed by DENR during inspections of the construction site.

3. **Maintenance of Sediment Controls.** The permittee shall maintain all sediment controls in effective working order. If the controls are not operating effectively, the permittee shall perform maintenance on the controls as necessary to maintain the continued effectiveness of the storm water controls and before the next anticipated storm event or

within seven (7) days of identifying the need for maintenance, whichever comes first. At a minimum, the permittee shall:

- a. Remove sediment from sedimentation ponds when design capacity has been reduced by 50% or more.
- b. Remove sediment from silt fences and other controls before the deposit reaches 50% of the above-ground height.

When sediment controls are not properly maintained, the effectiveness of the control is limited. Therefore, the proposed General Permit includes a specific maintenance requirement to ensure DENR's requirements for maintenance on sediment controls are clearly communicated and to ensure the continued effectiveness of such controls. The erosion and sediment controls required for compliance with the effluent limits shall be maintained from the beginning of the construction activity until final stabilization is complete. The permittee shall properly dispose of the sediment removed from the sediment controls.

4. **Off-Site Sediment Tracking and Dust Control.** The permittee shall minimize dust generation and vehicular tracking of soil off-site to paved surfaces.

Dust and dirt-tracking can be minimized by measures such as:

- Providing gravel or paving at entrance/exit drive paths, parking areas and unpaved transit ways on the site carrying significant amounts of traffic;
- Providing entrance wash racks or stations for trucks; and
- Performing street sweeping. At a minimum, street sweeping shall be performed if other best management practices are not adequate to minimize sediment from being tracked on to the street.

5. **Off-Site Accumulations.** If sediment escapes the construction site, the permittee shall remove the off-site accumulations of sediment at a frequency sufficient to minimize impacts. The permittee shall revise the storm water pollution prevention plan and implement controls to minimize further off-site sedimentation.

Note: If sediment accumulates in waters of the state, it may be necessary to contact the United States Army Corps of Engineers to obtain additional permits for the removal of the sediment.

6. **Inlet Protection.** All storm drain inlets that would receive storm water flows from the construction site shall be protected with appropriate best management practices during construction to minimize the discharge of pollutants from the site. The inlet protection shall be maintained until all sources that have the potential for discharging to the inlet have reached final stabilization.

7. **Erosive Velocity Control.** Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel to minimize erosion and protect the receiving waters.

Oftentimes, construction activities and the associated controls re-route drainage patterns and concentrate the flow off the site. Land development can significantly increase storm water runoff volume and peak velocity if appropriate storm water management measures are not implemented. These concentrated runoff flows and increased discharge velocities can greatly accelerate erosion near the outlet of structural measures and cause downstream sedimentation. To mitigate these effects, the permittee shall place velocity dissipation devices at discharge points (such as at the outlet of sediment basins) and along the length of a runoff conveyance, as necessary, to provide a non-erosive flow. Velocity dissipation devices help to protect a water body's natural, pre-construction uses and characteristics, both physical and biological.

8. **Soil Stockpiles.** Temporary soil stockpiles shall have silt fence or other effective controls to minimize sediment runoff, at a minimum. Soil stockpiles shall not be placed in surface waters, including storm water conveyances such as curb and gutter systems, or conduits and ditches, or where likely to be disturbed during storm events. DENR encourages the use of erosion controls for the stockpiles in conjunction with the sediment controls.
9. **Erosion Control and Stabilization.** The permittee shall stabilize disturbed portions of the site as soon as possible, but in no case more than 14 days after construction activity has temporarily or permanently ceased on any portion of the site. An exception to this effluent limit is allowed if earth-disturbing activities will be resumed within 21 days. All other exceptions shall be approved on an individual basis by the Secretary.

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

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

10. **Construction and Waste Materials.** Permittees shall properly handle, store, and dispose of litter, construction debris, construction chemicals, and concrete washout to prevent pollutants from entering storm water discharges. Permittees are required to minimize the discharge of solid materials to waters of the state (except where authorized by a Section

404 permit from the United States Army Corps of Engineers). When construction and waste materials are not properly handled, storm water runoff can become polluted.

11. **Spills / Releases in Excess of Reportable Quantities.** The proposed General Permit does not authorize construction operators to discharge hazardous substances or oil resulting from on-site spills. Permittees are subject to federal reporting requirements of 40 CFR Part 110, Part 117, and Part 302 relating to spills or other releases of oils or hazardous substances. The permittee shall have the capacity to control, contain, and remove such spills if they do occur.

Note: Spills in excess of reportable quantities shall be properly reported.

Storm water runoff from spills of hazardous materials or oil could result in pollutants entering the discharge from the construction site. Therefore, if such spills do occur, the permittee shall implement controls to minimize the potential for contamination of the storm water.

12. **Site Inspections.** The permittee shall conduct an inspection of the site at least once every seven (7) calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater, or a snowmelt event that causes surface erosion. Once a site has been temporarily stabilized and construction has ceased for the winter, such inspections shall be conducted at least once per month.

Note: The current General Permit allows site inspections to be reduced to once a month during winter months when the ground is frozen and there is little potential for runoff. The proposed General Permit changes this requirement; the reduced inspection frequency is only allowed if the site was properly stabilized prior to the winter months.

The inspections shall be conducted by personnel who are familiar with the General Permit conditions and with the proper installation and operation of storm water controls. Section 3.12.4 of the proposed General Permit contains the requirements for documenting the site inspections.

The storm water pollution prevention plan shall be revised if the site inspections identify any non-compliance with the effluent limits. The changes shall be implemented at the site within seven (7) calendar days following the inspection.

Many of the General Permit requirements can be reduced as portions of the site are stabilized. For example, controls may be removed and inspections ceased for a stabilized area, as long as there is no further threat of pollutants in any discharges from the stabilized area. In this situation, it would not be necessary for the permittee to revise the Notice of Intent. Instead, the permittee shall thoroughly document all activities leading up to and including final stabilization in the storm water pollution prevention plan, so that an inspector will understand that controls and regular inspections are no longer needed in that area.

## STORM WATER POLLUTION PREVENTION PLAN

The permittee is required to develop and implement a Storm Water Pollution Prevention Plan (SWPPP) **prior** to submitting a NOI for new projects. This is a change from the current permit, which allowed permittees to submit the NOI before completing the SWPPP, provided the SWPPP was developed and implemented prior to commencing construction. Permittees will now be required to certify they have developed the SWPPP when the NOI is submitted.

A large number of sites are already covered under the current General Permit. While the proposed General Permit is essentially consistent with DENR's requirements under the current General Permit, there are some changes. Existing permittees will have until **July 1, 2010**, to update the pollution prevention plan to reflect the requirements of the new General Permit.

The SWPPP details the Best Management Practices (BMPs) the permittee will implement to meet the effluent limits specified in the General Permit. The General Permit requirements for the storm water pollution prevention plan were designed for maximum flexibility to allow the development of the needed storm water controls based on the specifics of the site. Some of the factors to consider when developing the plan include: local development requirements and/or building codes; precipitation patterns for the area at the time the project will be underway; soil types; slopes; sensitivity of nearby water bodies; safety concerns of the storm water controls (i.e., potential safety hazards of water in storm water retention ponds to humans and wildlife; the potential of drawing birds to retention ponds and the hazards they pose to aircraft); and coordination with other site operators.

The General Permit requires the storm water controls be described in the storm water pollution prevention plan and implemented at the site. The following information provides some examples of pollution prevention measures or best management practices. A more thorough description of these practices is given in *Developing Your Pollution Prevention Plan: A Guide for Construction Sites* (U.S. EPA, 2007). An electronic version of this document is available from EPA's web site (<http://cfpub.epa.gov/npdes/stormwater/const.cfm>), or a hardcopy of the summary document may be obtained from DENR or EPA upon request. A table listing common BMPs and their uses is also included in Appendix A of this Statement of Basis.

### ***Erosion Controls***

Erosion controls are the most effective measure to prevent off-site sedimentation. These controls provide the first line of defense in preventing off-site sedimentation and are designed to prevent erosion through protection and preservation of the soil.

**Stabilization.** Stabilization practices are the primary means of erosion control. Stabilization refers to covering or maintaining an existing cover over the soil. Vegetative cover includes grasses, trees, vines, shrubs, etc. Stabilization measures can also include non-vegetative controls such as geotextiles, riprap, or gabions (wire mesh boxes filled with rock). Mulches, such as straw or bark, can also be effective, especially when used with vegetation. Stabilization minimizes erosion potential by absorbing the force of raindrops that would otherwise erode unprotected soil, by allowing water to infiltrate into the ground instead of running off the surface, and by slowing the velocity of runoff, allowing sediment to filter out before reaching surface waters. Stabilization minimizes the levels of suspended sediment in discharges and receiving waters.

Examples of stabilization measures include, but are not limited to, those summarized below:

- **Temporary Vegetation.** The seeding of temporary vegetation provides a cover in areas where earth-disturbing activities have temporarily ceased, but will resume later in the construction project. Without temporary stabilization, soil can be exposed to precipitation for an extended period leaving it vulnerable to erosion, even though earth-disturbing activities are not occurring in these areas. Temporary seeding practices have been found to be up to 95% effective in minimizing erosion.
- **Permanent Seeding.** Establishing a permanent and sustainable ground cover at a site stabilizes the soil and minimizes sediment in runoff. Permanent ground cover also provides aesthetic benefits, in addition to environmental protection.
- **Mulching.** Mulching is often combined with permanent and temporary seeding. Where temporary or permanent vegetation is not yet established or is not feasible, spreading plant residues or other suitable materials on the soil surface can stabilize exposed soil. Mulching by itself provides a measure of temporary erosion control, although it generally is not as effective as vegetation. Mulching in conjunction with seeding provides erosion protection prior to the onset of plant growth. In addition, mulching protects newly applied seeds, providing a higher likelihood of successful vegetation. To maintain its effectiveness, mulch should be anchored to resist wind and rain displacement.
- **Sod Stabilization.** Sod stabilization involves establishing long-term stands of grass by planting sod on exposed surfaces. When appropriate sod is chosen and maintained, it can prevent more than 99% of the soil loss that would occur without stabilization, and is the most immediately effective vegetation method available. However, the cost of sod stabilization (relative to other vegetative controls) typically limits its use to situations where a quick vegetative cover is desired (e.g., steep or erodible slopes). Sod is also sensitive to climate and may require intensive watering and fertilization.
- **Vegetative Buffer Strips.** Vegetative buffer strips are areas where the natural vegetation has been left undisturbed. DENR recommends retaining the existing vegetation in place whenever possible. Vegetative buffer strips are encouraged at the top and bottom of a slope to slow runoff at critical locations, decreasing erosion and allowing sedimentation. Vegetative buffer strips can be especially useful for very narrow linear construction projects, such as underground utilities or pipelines, around property boundaries, and adjacent to receiving waters such as streams or wetlands.
- **Preservation of Trees.** This practice involves preserving selected trees already on-site prior to development. Mature trees provide extensive canopy and root systems, which protect and hold soil in place. Shade trees also keep soil from drying rapidly, decreasing the soil's susceptibility to erosion. Measures taken to protect trees can vary significantly, from simply installing tree armor and fences, to more complex measures, such as building retaining walls and tree wells.

- **Check Dams.** Check dams are small temporary dams constructed across a swale or drainage ditch to reduce the velocity of runoff, thereby minimizing erosion in the swale or ditch.
- **Level Spreader.** Level spreaders are outlets for dikes and flow channels consisting of an excavated depression that converts a concentrated runoff into a diffuse flow and releases it onto areas stabilized by existing vegetation.
- **Subsurface Drain.** Subsurface drains allow water to drain more effectively through the soil and transport water to an area where the runoff can be managed effectively. Drains can be made of tile, pipe, or tubing.
- **Pipe Slope Drain.** A pipe slope drain is a temporary conveyance collecting runoff and transferring it down a slope to prevent erosion on the face of the slope.
- **Rock Outlet Protection.** Rock protection, such as riprap, placed at a storm water outlet can reduce the depth and velocity of water so the flow will not cause scouring or downstream erosion.

Care should be taken when installing controls to ensure natural flow is not obstructed.

**Contouring and Protecting Sensitive Areas.** Contouring refers to the practice of building in harmony with the natural flow and contour of the land. By minimizing changes in the natural contour of the land, existing drainage patterns are preserved as much as possible, minimizing erosion. Minimizing the amount of regrading will also minimize the amount of disturbed soil. Preserving sensitive areas, such as steep slopes and wetlands, should also be a priority. The disturbance of soil on steep slopes should be avoided due to vulnerability to erosion. Wetlands should be protected because they provide flood protection, pollution mitigation, and essential aquatic habitat. This permit does not authorize the disturbance of wetlands. The permittee shall contact the United States Army Corps of Engineers at (605) 224-8531 to determine any requirements for wetlands that may be disturbed or impacted during construction.

**Phasing.** Permittees shall construct new projects in phases whenever possible to minimize the amount of bare soil that is exposed at one time and the amount of stabilization or other controls that would be required.

**Diversion.** Erosion can be minimized by diverting runoff away from the disturbed areas to stable areas. Structural practices include, but are not limited to, those summarized below:

- **Earthen Dike.** Earthen dikes are temporary berms or ridges of compacted soil that channel water to a desired location. Earthen dikes should be stabilized with vegetation or another equally effective method.

- **Drainage Swales.** A drainage swale is a channel lined with grass, riprap, asphalt, concrete or other materials. Swales are installed to convey runoff without causing erosion.

### ***Sediment Controls***

Sediment controls are designed to remove sediment from runoff before the runoff is discharged from the site. These controls should be used in conjunction with erosion controls. Methods for removing sediment from runoff include diverting flows to a trapping or storage device or filtering flows through on-site devices. All sediment control practices require proper maintenance (e.g., removal of collected sediment) to remain functional and should be designed to avoid presenting a safety hazard, especially in areas frequented by humans and wildlife. Major types of sediment control practices are summarized below:

- **Silt Fence.** Silt fence is a barrier of geotextile fabric (filter cloth) used to intercept sediment in runoff. The silt fence shall be firmly anchored and may require additional support, such as reinforcing with wire mesh. Used alone, silt fences are inappropriate for flows of concentrated high volume or high velocity. Silt fences shall be properly installed and carefully maintained to ensure structural stability. The sediment shall be removed as it accumulates.
- **Sediment Traps.** A sediment trap is a containment area where sediment-laden runoff is temporarily detained under quiescent conditions, allowing sediment to settle out before the runoff is discharged. Sediment traps are formed by excavating or constructing an earthen embankment across a low drainage area.
- **Storm Drain Inlet Protection.** Storm drain inlet protection minimizes sediment entering storm drainage systems prior to permanent stabilization of disturbed areas. Examples include a sediment filter or an excavated detention area around a storm drain inlet.

This list provides examples of common sediment controls. However, other examples include temporary sedimentation basins, sump pits, entrance stabilization, waterway crossings, and wind breaks. The permittee is responsible for selecting, installing, and maintaining the controls necessary to ensure the effluent limits in the proposed General Permit are met.

### ***Storm Water Management Measures***

Construction frequently causes significant alterations in the characteristics of the affected land. One such change is a decrease in the overall permeability of the site, which can dramatically affect the site's flow patterns. An increase in runoff may increase the amount of pollutants carried by the runoff. In addition, some activities (e.g., automobile travel on newly built roads) can result in higher pollutant concentrations in runoff compared to pre-construction levels. **The county or municipal authority in the area of the construction should always be consulted when drainage changes are anticipated.** The permittee is responsible for obtaining any necessary drainage permits from the county prior to discharging or changing drainage patterns.

Traditional storm water management controls attempt to limit increases in the amount of runoff and pollution discharged from land impacted by construction. A summary of some storm water management controls is provided below:

- **On-Site Infiltration.** Encouraging infiltration through measures such as trenches or basins can reduce the volume and pollutant loadings of storm water discharges from a site. Infiltration structures tend to minimize impacts to an area's natural hydrologic characteristics. If properly designed and installed, infiltration structures can reduce high flows, recharge the groundwater, reduce storm water discharge volumes and pollutant loads, and inhibit downstream erosion.
- **Flow Reduction by Vegetation or Natural Depressions.** Vegetation or natural depressions can remove pollutants, improve infiltration, and minimize erosion. The use of vegetation can protect habitats and enhance the appearance of a site. These vegetative measures include grass swales and filter strips, as well as trees that are either preserved or planted during construction. Incorporating check dams into flow paths can provide additional infiltration and flow reduction. In general, the costs of vegetative controls are less than other storm water measures. However, given their limited capacity to accept large volumes of runoff, vegetative controls should be used in combination with other storm water devices.
- **Outfall Velocity Reduction Devices.** Outfall velocity reduction devices include riprap and stone or concrete flow spreaders. These devices slow the flow of water discharged from a site, minimizing erosion.
- **Retention Structures/Artificial Wetlands.** Retention structures are ponds and artificial wetlands that are designed to maintain a permanent pool of water. Properly installed and maintained retention structures (also known as wet ponds) can achieve a high removal rate of sediment, biochemical oxygen demand (BOD), organic nutrients, and metals. They are most cost-effective when used to control runoff from larger, intensively developed sites. These structures rely on settling and biological processes to remove pollutants. Retention ponds and artificial wetlands can also become wildlife habitats, recreation and landscape features, and increase local property values. Public safety and sound engineering judgment are stressed in the implementation of any storm water measure, control or best management practice.
- **Water Quality Detention Structures.** Storm water detention structures, which include extended detention ponds, control the flow rate after a storm event. Extended detention ponds are usually designed to completely drain within 24 to 48 hours and to remain dry at other times. These structures can provide pollutant removal efficiencies similar to those of retention ponds. Extended detention systems are typically designed to provide both water quality and water quantity (flood control) benefits.

Structural measures should be installed on upland areas to the extent feasible. The installation of such measures may be subject to section 404 of the federal Clean Water Act if they will be located in wetlands or other waters of the state.

The Department recognizes that not all controls work equally well in all circumstances. Individual site conditions should be taken into consideration when choosing proper storm water management controls.

#### ***Housekeeping Best Management Practices (BMPs)***

Pollutants can also be discharged in storm water from construction sites due to poor housekeeping. The effluent limits stated above require permittees to properly handle, store, and dispose of litter, construction debris, construction chemicals, and concrete washout to prevent pollutants entering storm water discharges. To ensure this limit is met, permittees shall implement the following best management practices to prevent the discharge of pollutants:

- Designate areas for equipment maintenance and repair, taking steps to minimize spills and control the runoff from these areas;
- Provide waste receptacles at convenient locations. The receptacles should be covered and the waste should be regularly collected;
- Provide appropriate control of equipment wash waters, such as concrete washouts, to prevent unauthorized dry weather discharges and avoid mixing the wash water with storm water;
- Provide protected storage areas for chemicals, paints, solvents, fertilizers, gasoline, and other potentially toxic materials. These areas should provide containment to prevent storm water from entering the chemical storage area and prevent leaks from leaving the chemical storage area; and
- Provide adequately maintained sanitary facilities.

#### ***Keeping Storm Water Pollution Prevention Plans Current***

The storm water pollution prevention plan is intended to be a living document. The permittee shall update and amend the plan as site conditions change or if the plan proves to be ineffective at minimizing the level of pollutants in the storm water discharge.

#### ***Post-Construction Storm Water Management***

The SWPPP should consider necessary practices to manage and control storm water runoff after construction operations have been completed. Construction operators are required to comply with applicable federal, state, tribal, or local requirements regarding the design and installation of post-construction storm water controls. The General Permit addresses only the installation of these measures; not the ongoing operation and maintenance of them after cessation of construction activities and final stabilization. Permittees are responsible only for the installation and maintenance of storm water management measures until final stabilization of the site.

The plan shall include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels. Such post-construction practices may include:

- Storm water ponds;
- Flow reduction by use of open vegetated swales and natural depressions;
- Infiltration of runoff onsite through the use of ponds or vegetation;
- Velocity dissipation devices at discharge locations and along the length of any outfall channel to minimize erosion and protect the receiving water; and
- Sequential systems which combine several practices.

Some discharges of pollutants from post-construction storm water management structures may need to be authorized under a different surface water discharge permit (e.g., the construction project was an industrial facility required to obtain coverage under the General Permit for Storm Water Discharges Associated with Industrial Activity).

DENR strongly encourages operators to use low impact development or green infrastructure practices that promote infiltration and reduce storm water volumes after development whenever possible. Additional information on green infrastructure practices can be found at <http://www.epa.gov/npdes/greeninfrastructure>.

## **SELF-MONITORING REQUIREMENTS**

### ***Site Inspections***

The permittee shall ensure that qualified personnel inspect the site at least once every seven days and within 24 hours after any rain event that is 0.5 inches or greater or a snowmelt event that causes surface erosion. Where runoff is unlikely due to winter conditions (e.g. the site is covered with snow, ice, or frozen ground) **and** the site has been temporarily stabilized, such inspections shall be conducted at least once every month. The inspection shall include all disturbed areas of the construction site that have not reached final stabilization, structural control measures, areas used for storage of materials, and locations where vehicles enter or exit the site. These areas shall be inspected for evidence of, or the potential for, pollutants entering the drainage system and erosion. Sediment control measures shall be inspected to ensure that they are operating correctly and that sediment is not tracked offsite. Stabilized areas should also be inspected to ensure that stabilization measures are still in place and effective.

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

For all of these inspections, records shall be kept with the storm water pollution prevention plan and made available to DENR or EPA upon request. The records shall include:

- (1) Date and time of the inspections;
- (2) Name(s) and title(s) of personnel conducting the inspections;
- (3) Findings of the inspections;
- (4) Corrective actions taken in response to the inspection findings;
- (5) Dates and amounts of all rainfall events greater than 0.5 inches in 24 hours; and
- (6) Documentation of any changes made to the storm water pollution prevention plan.

The storm water pollution prevention plan shall be revised if the site inspections identify any non-compliance with the effluent limits. The plan shall be revised and the changes implemented within seven (7) calendar days following the inspection.

#### ***Record-Keeping Requirements***

The storm water pollution prevention plan and a copy of DENR's letter granting coverage under the General Permit shall be maintained on site, or made readily available, from the date construction activities are initiated until final stabilization is achieved and coverage under the General Permit is terminated. The permittee shall retain copies of storm water pollution prevention plans and all reports required by the General Permit and records of all data used to complete the Notices of Intent and Termination for this permit for a period of at least three years from the date that the site is finally stabilized. This period may be extended by request of the Secretary at any time.

#### ***Duty to Provide Information***

If requested, the permittee shall submit the storm water pollution prevention plan to DENR, EPA, or the local agency approving sediment and erosion control plans, grading plans or storm water management plans. In the case of a storm water discharge to a municipal separate storm sewer system (MS4), the permittee shall submit the storm water pollution prevention plan to the municipal operator of the system upon request.

#### ***Sampling Requirements***

The proposed General Permit does not require effluent monitoring as a permit requirement or as an application requirement. An adequate, fully implemented Storm Water Pollution Prevention Plan should be sufficient to meet the effluent limits of the General Permit. Therefore, sampling and testing of storm water for specific parameters is not required on a routine basis under the General Permit. However, the Secretary reserves the right to require sampling and testing on a case-by-case basis, in the event there is reason to suspect noncompliance with the effluent limits or to measure the effectiveness of the BMPs in removing pollutants in the effluent.

### **TERMINATION OF COVERAGE**

After construction activities are completed in an area, the site shall be permanently stabilized as soon as possible to prevent further soil erosion. When construction activities are complete and final stabilization has been achieved, the permittee is required to submit a Notice of Termination (NOT) to DENR. The NOT indicates that all earthmoving activities have ended and the site has

achieved final stabilization as required by the General Permit. Coverage under the General Permit shall be maintained until all disturbed areas on the entire project site have achieved final stabilization, as defined in the General Permit.

“Final Stabilization” means one of the following:

1. All soil disturbing activities at the site have been completed and a uniform perennial vegetative cover with a density of 70% of the native cover for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed; or
2. When background native vegetation will cover less than 100 percent of the ground (e.g., arid areas, beaches), the 70 percent coverage criteria is adjusted as follows: if the native vegetation covers 50 percent of the ground, 70 percent of 50 percent ( $0.70 \times 0.50 = 0.35$ ) would require 35 percent total cover for final stabilization. On sites with no natural vegetation, no vegetative stabilization is required.
3. For construction projects on land used for agricultural purposes, final stabilization may be accomplished by returning the disturbed land to its pre-construction 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 that are not being returned to their pre-construction agricultural use shall meet the final stabilization criteria in (1) or (2) above.

As noted above for a larger common plan of development, the developer as the original permittee can transfer coverage for selected properties as the individual lots are sold. A developer may request to be released from the General Permit requirements once all of the lots have been sold and he/she no longer owns any part of the property. The developer shall ensure coverage under the General Permit is properly transferred to each new owner and provide documentation of the sale(s) prior to submitting the request for release under the General Permit. Permit coverage will remain in effect for the lots in the development that have not been stabilized, with each of the individual lot owners a co-permittee. DENR will hold each individual lot owner responsible for final stabilization of their site.

The individual lot owner shall submit a NOT to DENR certifying the lot has been stabilized when all construction is complete and final stabilization has been reached on that lot. Permit coverage remains in effect for the remaining lots until a NOT has been submitted for each lot.

### **REQUIRING AN INDIVIDUAL PERMIT**

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

change in permit coverage, including reasoning for this decision, an application form, and a deadline for filing the application, will be provided to the permittee by DENR.

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

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

### **QUALIFIED LOCAL PROGRAM**

The regulations at 40 CFR 122.44(s) allow DENR to designate a permitted MS4's local construction storm water program as a qualified local program (QLP). Once designated, the QLP would be allowed to implement all or part of the state's construction storm water program. The QLP shall include all requirements of the proposed General Permit and meet the requirements of 40 CFR 122.44(s) to be approved.

The storm water regulations allow DENR to waive state permitting requirements for construction activities less than 5 acres, but not for larger construction activities. However, this would result in a situation where some construction activities within a municipality would be permitted by the QLP and some would be permitted by DENR. This could create a significant amount of confusion.

Therefore, DENR will require all construction activities to submit a Notice of Intent to be covered under DENR's proposed General Permit. The QLP would be authorized to implement all other components of the state's construction storm water program, such as inspections and enforcement, within the jurisdiction of the QLP. The department will act in an oversight role to review the activities of the QLP. The permittee would then be deemed to be in compliance with the requirements of the General Permit as long as all requirements of the QLP are met. Any violation of the QLP requirements would also be a violation of the General Permit.

Currently only the city of Sioux Falls is approved as a QLP. If additional municipalities are approved as a QLP in the future, a modification to the General Permit will be offered for public comment in the municipality's local newspaper.

### **ENDANGERED SPECIES**

Compliance with the terms and conditions of this proposed General Permit will ensure no listed endangered species are impacted.

## **GENERAL PERMIT DURATION**

The General Permit is proposed to be issued for five years. Periodically during the term of this General Permit and at the time of renewal, the permittee may be requested to reaffirm the eligibility of the permitted site to discharge under this General Permit.

The proposed General Permit specifies procedures for continued coverage if the General Permit expires prior to a replacement permit being issued. In short, the expired General Permit would remain in full force and effect until the earliest of:

- The General Permit is reissued or replaced;
- The permittee terminates coverage by submitting a Notice of Termination;
- Issuance of an individual permit for the permittee's discharges; or
- A formal decision by the Secretary of DENR not to reissue the General Permit, at which time all permittees shall seek coverage under an alternative general permit or an individual permit.

## **PERMIT CONTACT**

Any questions pertaining to this Statement of Basis can be directed to Dale Healey, Natural Resources Project Engineer at (605) 773-3351.

September 30, 2009

## **APPENDIX A**

### **Common Best Management Practices**

## Construction Site Best Management Practices (BMPs)

BEST MANAGEMENT PRACTICE	USES
Block and Gravel Inlet Protection	<ul style="list-style-type: none"> <li>• Used in small drainage areas before the area has been permanently stabilized</li> <li>• Where there is danger of silting in an inlet</li> </ul>
Buffer Zones	<ul style="list-style-type: none"> <li>• Floodplains, next to wetlands, along stream banks, and next to steep, unstable slopes</li> </ul>
Check Dams	<ul style="list-style-type: none"> <li>• Across swales or drainage ditches to reduce the velocity of flow</li> </ul>
Dust Control	<ul style="list-style-type: none"> <li>• Used where open, dry areas of soil are anticipated on the site</li> </ul>
Drainage Swale or Earth Dike	<ul style="list-style-type: none"> <li>• Divert upslope flows from disturbed areas and to divert runoff to a stabilized outlet</li> <li>• To reduce the length of slope the runoff will cross</li> <li>• At the perimeter of the construction site to prevent sediment-laden runoff from leaving the site</li> <li>• To direct sediment-laden runoff to a sediment trapping device</li> </ul>
Excavated Gravel Inlet Protection	<ul style="list-style-type: none"> <li>• Used in small drainage areas before the area has been permanently stabilized</li> <li>• Where there is danger of silting in an inlet</li> <li>• Where ponds around the inlet structure could be a problem to traffic on site</li> </ul>
Filter Fabric Inlet Protection	<ul style="list-style-type: none"> <li>• Used in small drainage areas before the area has been permanently stabilized</li> <li>• Where there is danger of silting in an inlet</li> </ul>
Geotextiles	<ul style="list-style-type: none"> <li>• Stabilize the flow on channels and swales</li> <li>• Areas where slopes are steeper than 2:1</li> <li>• Where runoff is flowing across the area</li> </ul>
Mulching	<ul style="list-style-type: none"> <li>• Used on recently planted slopes to protect seedlings until they become established</li> <li>• When seedlings need protection from inclement weather</li> </ul>
Permanent Seeding and Planting	<ul style="list-style-type: none"> <li>• Areas where soils are unstable because of their texture, structure, water table, winds, or slopes</li> <li>• Filter strips, buffer areas, vegetated swales, steep slopes, and stream banks</li> </ul>
Pipe Slope Drain	<ul style="list-style-type: none"> <li>• On slopes before permanent storm water drainage structures have been installed</li> <li>• Where diversion measures have been used to concentrate flows</li> <li>• On any slope where concentrated runoff crossing the face of the slope may cause gullies, channel erosion, or saturation of slide-prone soils</li> <li>• As an outlet for a natural drainageway</li> </ul>
Silt Fence	<ul style="list-style-type: none"> <li>• Immediately upstream of the point(s) of runoff discharge from a site before flow becomes concentrated</li> <li>• Below disturbed areas where runoff may occur in the form of overland flow</li> </ul>

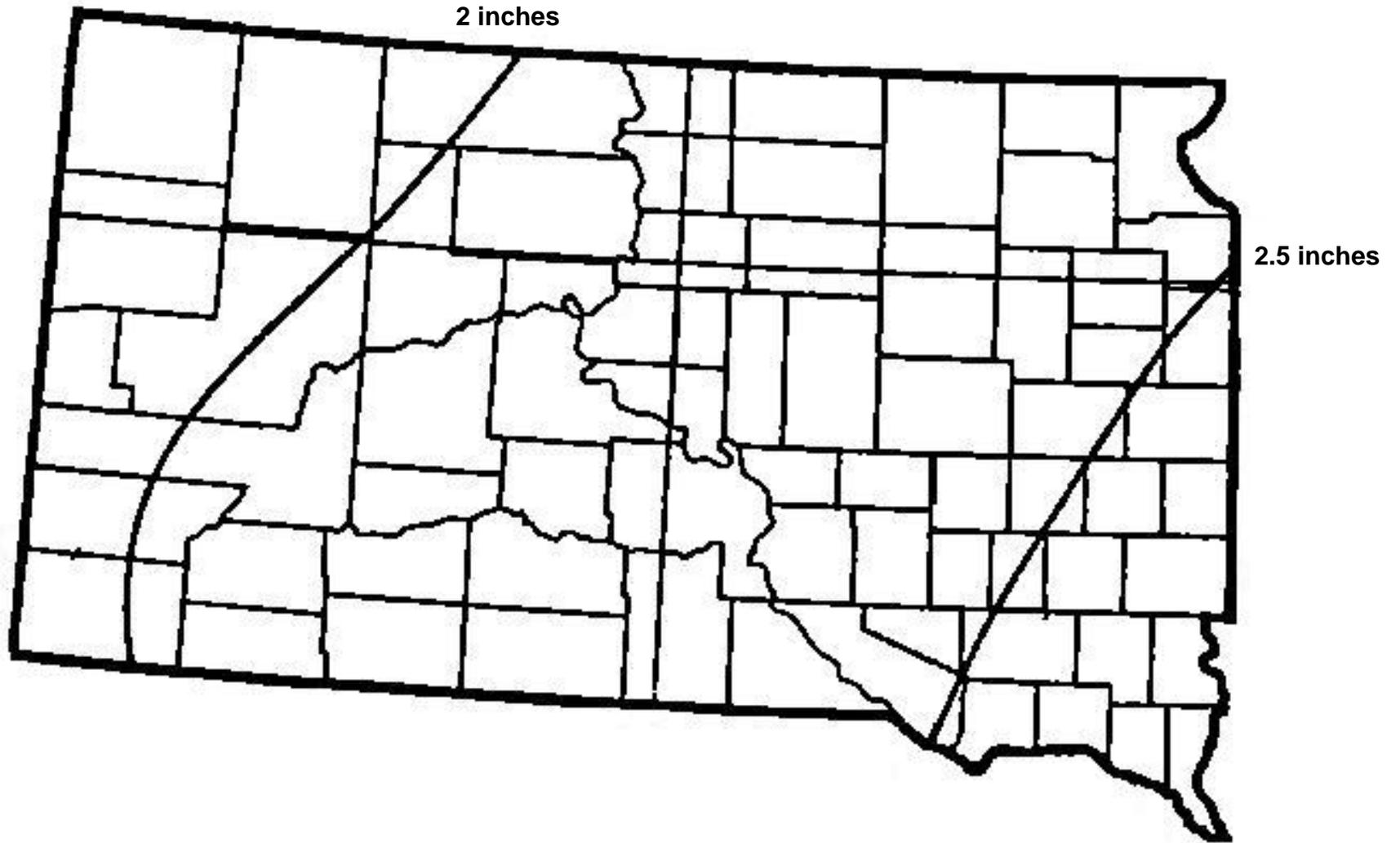
<b>BEST MANAGEMENT PRACTICE</b>	<b>USES</b>
Stabilized Construction Entrance	<ul style="list-style-type: none"> <li>• Wherever vehicles are leaving a construction site and enter onto a public road</li> <li>• At any unpaved entrance/exit where there is risk of transporting mud or sediment off-site</li> </ul>
Temporary Sediment Trap	<ul style="list-style-type: none"> <li>• At the outlet of the perimeter controls installed during the first stage of construction</li> <li>• At the outlet of any structure which concentrates sediment-laden runoff, e.g. at the discharge point of diversions, channels, slope drains, or other runoff conveyances</li> <li>• Above a storm water inlet that is in line to receive sediment-laden runoff</li> </ul>
Temporary Seeding	<ul style="list-style-type: none"> <li>• Areas which have been disturbed by construction and which are likely to be re-disturbed, e.g. denuded areas, soil stockpiles, dikes, dams, sides of sediment basins, and temporary road banks</li> </ul>

Information obtained from the Environmental Protection Agency's "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices" (September 1992)

**APPENDIX B**

**Two-Year, 24-Hour Rainfall Map**

**2-Year Return Period, 24-hour Duration Precipitation, inches  
(SCS, 1986):**



## **Addendum to the Statement of Basis Response to Comments**

**PERMIT TYPE:** General Surface Water Discharge Permit for **Construction Activities** in South Dakota

**PERMIT NUMBER:** SDR100000

### **BACKGROUND**

On October 1, 2009, the South Dakota Department of Environment and Natural Resources (DENR) offered its proposed General Permit for Storm Water Discharges Associated with Construction Activities in South Dakota. The permit was published in 11 daily newspapers across the state, announcing the availability of the general permit and requesting comments.

DENR received comments from five entities: the Sioux Falls Infrastructure Review Advisory Board, the city of Sioux Falls, the South Dakota Department of Transportation, the South Dakota Historic Preservation Office, and the Home Builders Association of the Sioux Empire. This document details DENR's response to these comments and outlines our changes to the permit as a result of these comments.

### **COMMENTS**

#### *Sioux Falls Infrastructure Review Advisory Board (IRAB) Comments*

1. Section 3.12: Please clarify what the SD DENR interpretation of "temporarily stabilized" will be for a winter condition.

*As noted in the Statement of Basis for the general permit, temporary stabilization practices can include seeding of temporary vegetation, mulching, geotextiles, sod stabilization, vegetative buffer strips, preservation of trees and mature vegetative buffer strips, and other appropriate measures. The site conditions will ultimately dictate the steps necessary to temporary stabilize each site. However, DENR's expectation is these steps will ensure erosion and sedimentation are minimized during spring runoff.*

2. Section 3.2 2: Revise language for sediment basin storage volume design to allow for the use of 3,600 CF per acre of disturbed area or the calculated volume of runoff from the disturbed drainage area from a 2" precipitation event in a 24-hour period.

*DENR's initial intention with this requirement is that a sediment basin must be designed to contain the amount of water that would be generated from a two-inch rain event. However, the Sioux Falls Infrastructure Review Advisory Board (and the city of Sioux Falls, see below) raise a good point that merits further clarification. If the permittee provides adequate calculations that demonstrate the amount of runoff that*

*would actually be generated during a two-inch precipitation event in a 24-hour period based on soil types, runoff coefficients, etc., the department will accept those calculations as part of the SWPPP when determining compliance with the permit. If those calculations are not completed and included in the SWPPP, DENR will expect the sediment basins and other controls to be designed based on the volume needed to contain 2 inches of precipitation for every acre disturbed. This equates to approximately 7,200 CF per acre. The current language in the permit is appropriate to address this issue and no further changes are necessary.*

3. Section 3.3: Allow local Qualifying Local Program (QLP) to allow early removal of sediment controls (e.g. sediment basins and sediment traps) from larger common plans of development and sale if adequate controls are in place for individual lot development.

*In this general permit, DENR is approving the city of Sioux Falls as a qualifying local program. DENR recognizes Sioux Falls' program is different than the state's program. Many of these differences have been developed to meet the unique needs of the city. Other differences are acceptable in light of DENR's review of Sioux Falls' entire storm water program. For example, DENR recognizes the city of Sioux Falls allows permittees to remove sediment controls over the winter months.*

*The city of Sioux Falls is able to more closely monitor the permittees in Sioux Falls than DENR is able to on a state-wide basis. Therefore, it is acceptable and appropriate to approve the city's system with such variances, in light of Sioux Falls' inspection program.*

*However, DENR does not believe this approach would be effective on a state-wide basis or even necessarily effective for other communities. Therefore, we are not going to make any changes to Section 3.3 in light of this comment. Instead, DENR is proposing the following changes to Section 5.3 of the general permit (formerly Section 5.4):*

*To receive approval as a DENR will review all qualified local programs, DENR will review the local requirements to ensure they comply submitted for approval to ensure they meet or exceed with both state requirements outlined in this General Permit and federal requirements in 40 CFR 122.44(s). DENR may authorize minor variations and alternative standards in lieu of the specific conditions of the General Permit based upon the unique comprehensive control measures established in the qualifying local program.*

*If DENR approves a qualifying local program, the program requirement shall at the minimum meet DENR's requirements. This would include all templates and forms. DENR will review the each qualifying local program for recertification during the renewal of its municipal separate storm sewer system permit at least every five (5) years for recertification.*

*These changes clarify the fact that a qualifying local program is allowed to be unique, provided it meets the overarching goals of South Dakota's program. DENR believes this more adequately addresses the concerns raised in this comment.*

4. Section 3.6: Revise to allow for QLP exceptions as they relate to winter conditions, public safety, and/or private property damage.

*See DENR's response to Comment #3 above. DENR believes this adequately addresses the concerns raised in this comment.*

5. Section 4.1: Propose to change language to only require those areas outside of an accepted QLP to have their SWPPP prepared prior to submittal of an NOI.

*The city of Sioux Falls requires all SWPPPs for projects within city limits to be submitted to the city for review and approval. DENR supports and approves of this aspect of the city's program and we do not want to create potential conflicts between the general permit and the city's required sequence of SWPPP submittal and approval. DENR is simply asking a permittee to certify the SWPPP has been developed at the time the NOI is submitted. The SWPPP does not have to be approved by the City of Sioux Falls at the time the NOI is submitted. The city can continue to work with the permittees in Sioux Falls to review and approve the SWPPPs.*

6. Section 5.4.3: Revise language to clarify the NOI must be submitted to the SD DENR.

*DENR agrees. This change has been made and is reflected in permit condition 5.3.2, formerly Section 5.4.3., as follows (Note: the numbering of this section has changed slightly due to other changes as summarized in this document). :*

*If a construction site is within the jurisdiction of a qualifying local program, the operator shall submit a Notice of Intent to DENR to be covered under the General Permit and comply with all requirements of the qualifying local program.*

### ***City of Sioux Falls Comments***

#### **GENERAL COMMENTS AND DISCUSSIONS:**

1. Ensure that any modification that have or will be made to this draft permit have corresponding changes made to the permit's Statement of Basis.

*When DENR develops a permit for public notice, the statement of basis describes the rationale and supporting documentation for the development of the proposed permit conditions. Therefore, the statement of basis is a final document upon public notice and is not changed, even if comments are received. Instead, DENR develops a formal response to all comments received during the public notice period. This provides a good record documenting both DENR's original permit rationale, as well as any changes that were made as a result of comments. These comments will be added as an attachment to the original Statement of Basis.*

2. It is our understanding that the City of Sioux Falls Stormwater Construction's Qualifying Local Program (QLP) will be required to be updated to reflect the conditions and requirements of this new General Permit when its Municipal Separate Stormwater Sewer System (MS4) surface water discharge permit #SDS-000001 is renewed.

*It may be necessary for the city of Sioux Falls to make some changes to its MS4 program in light of this general permit. However, as noted above in DENR's response to Comment #3 from the Sioux Falls Infrastructure Review Advisory Board, we are approving Sioux Falls' current program as a qualifying local program.*

*When the City of Sioux Falls MS4 permit is renewed, DENR will discuss any required changes with the city and develop a schedule giving the city time to make those changes (if changes are deemed to be necessary). These changes will be offered for public comment before the city's MS4 permit is finalized. At this time, DENR is not requiring the city to make changes to its program.*

3. Ensure that there is adequate language in permit or statement of basis to allow the SD DENR to authorize and approve local variations and alternatives to a QLP from conditions of this General Permit to clarify and provide more efficient management of local stormwater programs.

*DENR agrees and has reworded Section 5.3.1, as noted above.*

4. What is the current and future terminology trend in this industry to use stormwater or storm water?

*The terms "stormwater" and "storm water" seem to be used interchangeably. The Administrative Rules of South Dakota, Section 74:52:01:01 includes a definition of "storm water discharges associated with industrial activity" and "storm water discharge associated with small construction activity". Therefore, DENR chose to use the term as two words, "storm water," in the general permit.*

#### PERMIT SPECIFIC COMMENTS:

1. Section 1.0: Definitions
  - a. Recommend provide a definition for "temporary revegetation"
  - b. Recommend provide a definition for "permanent revegetation"
  - c. Recommend provide definition for "temporary stabilization measures"
  - d. "Storm Water Management Plan" Concern that definition may cause confusion with current intent of other sections of permit (e.g. Section 5.3).

*While DENR is trying to be more prescriptive with this general permit, the inherent nature of the storm water program is to implement site specific BMPs to protect water quality. DENR believes that by adding formal definitions for "temporary revegetation," "permanent revegetation," and "temporary stabilization measures," we could risk the*

*flexibility necessary for the implementation of the general permit. Therefore, no changes will be made to the general permit in response to comments a., b., and c.*

*In response to comment d., DENR has made some changes. The definition of “storm water management plan” was intended to clarify this referred to an MS4’s plan for managing storm water runoff within the jurisdiction of the MS4. However, DENR agrees there were some confusing references to “storm water management plan” in the general permit. The requirement to consider runoff from post construction is adequately addressed in Section 4.2.2.b. in the general permit. Therefore, DENR removed the section entitled “Post Construction,” which was originally labeled “Section 5.3.” The section formerly labeled 5.4 is now the new Section 5.3.*

2. Section 2.4 4: Allow QLP to develop and administer an alternative system to relay the importance of achieving final stabilization and transfer of General Permit coverage to new owner(s) within larger common plan of development or sale. Similar to the process currently being implemented by the Sioux Falls Minor Impact Construction Site (MICS) Program.

*Please see DENR’s response to Comment #3 from the Sioux Falls Infrastructure Review Advisory Board above.*

3. Section 3.12: Please clarify what the SD DENR interpretation of “temporarily stabilized” will be for a winter condition.

*See DENR’s response to Comment #1 from the Sioux Falls Infrastructure Review Advisory Board above.*

4. Section 3.2 1.: First sentence delete “shall” and insert “may” since smaller sites may adequately be controlled by silt fence, buffer strips or equivalent sediment controls.

*Section 3.2.1 requires smaller sites to have sediment basins or sediment traps. DENR agrees with the city that smaller sites could be adequately controlled by silt fences, buffer strips, or other controls. Silt fences and buffer strips are considered sediment traps. Therefore, no changes are needed to this section.*

5. Section 3.2 2: Revise language for sediment basin storage volume design to allow for the use of 3,600 CF per acre of disturbed area or the calculated volume of runoff from the disturbed drainage area from a 2” precipitation event in a 24-hour period.

*See DENR’s response to Comment #2 from the Sioux Falls Infrastructure Review Advisory Board above.*

6. Section 3.3 1.: Allow local Qualifying Local Program (QLP) to allow early removal of sediment controls (e.g. sediment basins and sediment traps) from larger common plans of development and sale if adequate controls are in place for individual lot development.

*Please see DENR's response to Comment #3 from the Sioux Falls Infrastructure Review Advisory Board above.*

*In addition to the changes outlined in Section 5.3.1, DENR is changing Section 5.3.2 as follows:*

*If a construction site is within the jurisdiction of a qualifying local program, the operator shall submit a Notice of Intent to DENR to be covered under the General Permit and comply with all requirements of the qualifying local program. ~~The construction site is then authorized to discharge storm water associated with construction activity under the qualifying local program requirements only.~~ Compliance with the qualifying local program requirements is deemed to be compliance with this General Permit. A violation of qualifying local program requirements is also a violation of this General Permit.*

*DENR believes these changes adequately address the flexibility needed in the general permit to allow the city of Sioux Falls to continue implementing its MS4 program.*

7. Section 3.6: Revise to allow for QLP exceptions as they relate to winter conditions, public safety, and/or private property damage.

*Please see DENR's responses to Comment #3 from the Sioux Falls Infrastructure Review Advisory Board and Comment #6 from the city above.*

8. Section 4.1: Propose to change language to only require those areas outside of an accepted QLP to have their SWPPP prepared prior to submittal of an NOI.

*Please see DENR's response to Comment #5 from the Sioux Falls Infrastructure Review Advisory Board above*

9. Section 4.1: Recommend adding the following paragraph.
  - a. Permitted sites within a QLP shall update their SWPPP at the time that the QLP has adopted modifications to reflect the conditions and requirements of this General Permit.

*Permitted sites within QLPs must work with their local MS4 to determine a reasonable schedule for implementation of any new requirements. Under this general permit, we are approving the City of Sioux Falls' current program as a QLP. As noted above, DENR acknowledges differences between this general permit and Sioux Falls' MS4 programs. However, DENR does not want to be too prescriptive in QLP requirements in this general permit, as that could limit flexibility for other MS4s that wish to receive approval as a qualifying local program.*

10. Section 4.2 2. b.: Requirement to include post construction BMPs along with the SWPPP is in conflict and more restrictive than permit Section 5.3 which just requires this to be

completed before submittal of the NOT. Sioux Falls QLP requires post-construction BMP design during plan set but is not required as part of SWPPP.

***DENR agrees and, as noted above, we deleted the original Section 5.3. In accordance with South Dakota Codified Law 46A-10A-20, the SD Legislature has given local governments the authority to address drainage issues. Post construction storm water issues are drainage issues that need to be addressed through the local MS4 programs.***

***However, EPA regulations require a permittee's SWPPP give some consideration to post construction impacts. Therefore, Section 4.2.2.b. will remain in the final permit.***

11. Section 5.2 1.: Recommend the following language change to this section.  
“When individual lots that were included as a portion of the original common plan are sold before completion of entire plan, the permittee shall ensure the lot is properly stabilized in accordance with Section 3.9 or formally transfer that responsibility to the new owner prior to transfer of ownership.”

***The permit already requires temporary stabilization if no work is going to take place for 14 days or more at the site. DENR believes that in most cases, it will be necessary for a developer to stabilize these individual lots prior to transfer to meet this requirement.***

***When responsibility is transferred to the new owner, the new owner becomes responsible for entire permit compliance, not just temporary stabilization of the site. Therefore, DENR does not believe this recommended change is necessary.***

***However, in response to this comment, DENR added Section 2.6 (4) to clarify transfer of coverage and multiple owners:***

***The General Permit allows for co-permittees on a site. However, if a permittee has transferred coverage to a new owner and no longer has responsibility for any portion of the site, a NOT shall be submitted by the previous owner terminating coverage under the General Permit.***

12. Section 5.2 2.: Recommend adding language at end of sentence “or subsequently sold and General Permit is again transferred.” Necessary to address the possibility of multiple owners of property prior to final development.”

***This section addresses a current owner and permittee transferring coverage to a new owner. The property could change hands multiple times. However, in that scenario, there is still a current owner transferring coverage to new owner. The language as currently written does not preclude a future change in ownership.***

13. Section 5.2 2.: Repeat comment #2 above concerning QLP alternative programs.

***Noted.***

14. Section 5.3: Need clarification that construction sites within Phase I and II MS4s must comply with local stormwater program post construction control measures. Need further clarification that some construction sites may be protected by regional post construction water quality BMPs while some may need to develop site-specific post construction water quality BMPs. Concern that requiring post construction plans during SWPPP may be too early or requiring the plans at time of NOT may be too late. Recommend following language for this section:

“Pollution caused by storm water discharges from the site after construction is completed, including but not limited to rooftops, parking lots, roadways and the maintenance of pervious and impervious areas, should be addressed by BMPs on a regional or site-specific basis. Post construction water quality assessments should be addressed during the construction design phase of project. Construction site within the jurisdictional boundaries of a Phase I or Phase II permitted MS4 shall address the local program’s post construction pollution minimum control measures.”

*As noted above, DENR has removed this section.*

15. Section 5.4 2.” Recommend adding the following sub section:
  - a. DENR may authorize minor variations and alternative standards in lieu of specific conditions of this General Permit based upon unique comprehensive control measures established in the QLP.

*Please see DENR’s response to Comment #3 from the Sioux Falls Infrastructure Review Advisory Board above.*

16. Section 5.4.3: Revise language to clarify the NOI must be submitted to the SD DENR.

*This change has been made and is reflected in Section 5.3.2.*

17. Attachment D: Finalize form and include page 2.

*The form has been finalized and page 2 is now included.*

### ***South Dakota Department of Transportation Comments***

1. Section 2.6 TERMINATING COVERAGE: Consider adding provisions for partial permit termination for larger projects (i.e. greater than 100 AC). Jobs would be eligible to terminate specific areas at different times.

*DENR expects the SWPPP to be continually updated to identify stabilized areas. On large construction sites, DENR encourages and supports the concept of phasing construction to minimize the impact due to disturbed areas. With this in mind, there may well be areas that have reached final stabilization. These areas should be*

*identified in the SWPPP as complete. Once an area of the site has reached final stabilization and is complete, many of the permit conditions are no longer required for those portions. For example, it would not be necessary to maintain erosion controls or conduct weekly inspections of these areas. However, permit coverage must be retained until the entire project has reached final stabilization or coverage has been transferred to a new owner.*

2. Section 3.0 EFFLUENT LIMITS: 3.1 Precipitation Design Event – Consider using IDF Curves for determining 2 year events.

*During the development of the permit, DENR reviewed the best ways to set a design flow for the effluent limits. We determined that having a consistent statewide design standard of 2" would be the simplest way to implement this requirement and would alleviate confusion.*

Will there be guidelines regarding TMDL's?

*As noted in the Statement of Basis:*

*“The proposed General Permit is a Surface Water Discharge permit that requires best management practices to ensure the surface water quality standards are met and maintained. Therefore, the General Permit will be able to authorize discharges to waterbodies that are listed as impaired or have an approved TMDL. However, if DENR determines a specific site has the potential to cause or contribute to an impairment of the surface water quality standards, DENR can require the owner to implement additional controls and/or obtain an individual discharge permit.”*

*For further information, please see the 2008 Integrated Report for Surface Water Quality Assessment, available at: <http://denr.sd.gov/documents/08IRFinal.pdf>*

3. Section 5.0 SPECIAL CONDITIONS: Is Section 5.3 necessary in all instances? This appears to be more geared for wetlands or highly sensitive environmental areas.

*As noted above, DENR removed Section 5.3.*

4. CONTRACTOR CERTIFICATION FORM: Is this intended to be included in the plans?

*Thank you for noting that omission. Signature lines have been added to the certification form.*

#### *State Historic Preservation Office Comment*

*During the comment period, the State Historic Preservation Office (SHPO) made DENR aware of their obligation to assure compliance with the state and federal historical*

*preservation acts. SHPO must be provided the opportunity to comment on any projects that have the potential to encroach upon, damage or destroy portions of the national or state register listed properties. Therefore, DENR added a question on the Notice of Intent form asking if this property will encroach, damage, or destroy one of these sites and included a link to verify these locations. If the applicant answers ‘yes’ to that question on the NOI, DENR will provide SHPO with a copy of the NOI and allow them opportunity to comment before issuing permit coverage.*

### ***Home Builders Association of the Sioux Empire (HBASE) Comments***

1. Page 6, Section 2.4.2: “Upon receipt of a complete NOI, the Secretary shall make the decision to grant or deny coverage or request additional information. If the Secretary grants coverage under the General Permit, a letter of authorization will be sent to the permittee.” – HBASE recommends DENR establish a timeframe to review and respond to a permittee’s NOI in an efficient and reasonable amount of time.

*Section 2.4.1 states the NOI must be submitted at least 15 days prior to commencement of work at the site. This 15-day period is to allow DENR time to process the application and avoid delays with the construction project. DENR is issuing a general permit for construction activities to streamline the permitting process and avoid delays. We make every effort to issue permits well within the 15-day time period and in extreme circumstances have worked with a project to issue coverage within an hour or less of receiving the application.*

*However, there are circumstances beyond DENR’s control that could delay the issuance of general permit coverage. Two examples are highlighted above. If a project could impact impaired waters or historic properties, DENR might need to delay general permit coverage. Therefore, we feel it is best to leave the language as currently written. We will continue to expedite our issuance of general permit coverage whenever possible.*

2. Page 8, Section 3.2.2: “For common drainage locations that serve an area with 10 or more acres disturbed at one time, a temporary or permanent sediment basin shall be provided. The basin shall provide storage for a calculated volume of runoff from the disturbed drainage area from a 2-inch precipitation event in a 24-hour period.” - HBASE encourages DENR to revise language for sediment basin storage volume design to allow for the use of 3,600 cubic feet per acre of disturbed area or the calculated volume runoff from the disturbed drainage area from a 2” precipitation event in a 24-hour period.

*Please see DENR’s responses to Comment #2 from the Sioux Falls Infrastructure Review Advisory Board and Comment #6 from the city above.*

3. Page 9, Section 3.4: “The permittee shall minimize dust generation and vehicular tracking of soil off-site.” – HBASE suggests modifying the above language by removing

“minimize dust generation” as follows: “The permittee shall provide for vehicular tracking of soil off-site.”

***Minimizing dust generation is a requirement of the current General Permit. In addition, DENR feels this is a good housekeeping practice and an important way to protect water quality. Therefore, DENR will leave this requirement in the General Permit.***

4. Page 9, Section 3.6: “All storm drain inlets that receive storm water flows from the construction site shall be protected with appropriate best management practices during construction to minimize the discharge of pollutants from the site. The inlet protection shall be maintained until all sources with the potential for discharging to the inlet have reached final stabilization.” – HBASE suggests revising this language to allow Qualified Local Program exceptions as they relate to winter conditions, public safety, and/or property damage.

***Please see DENR’s response to Comment #3 from the Sioux Falls Infrastructure Review Advisory Board above.***

5. Page 9, Section 3.9: “The permittee shall stabilize disturbed portions of the site as soon as possible, but in no case more than 14 days after construction activity has temporarily or permanently ceased on any portion of the site. An exception to this effluent limit is allowed if earth-disturbing activities will be resumed within 21 days. All other exceptions shall be approved on an individual basis by the Secretary.” – HBASE suggests adding “BMP’s” to the above language as follows: “The permittee shall stabilize disturbed portions of the site as soon as possible with BMP’s but in no case more than 14 days after construction activity has temporarily or permanently ceased on any portion of the site.”

***DENR agrees. Section 3.9 has been modified and now states:***

***“The permittee shall stabilize disturbed portions of the site as soon as possible with appropriate BMPs, but in no case more than 14 days after construction activity has temporarily or permanently ceased on any portion of the site.”***

6. Page 10, Section 3.12.1: “All(sp) inspection of the site shall be conducted at least once every seven (7) calendar days and within 24 hours of the end of storm that is 0.5 inches or greater, or a snowmelt event that causes surface erosion.” – HBASE suggest revising site inspections to “once every 14 calendar days and within 48 hours of the end of a storm that is 0.5 inches or greater.”

***DENR believes more frequent inspections are necessary. It is not uncommon for construction sites in South Dakota to experience multiple precipitation events in a short period of time. This can lead to an increased chance of erosion and sedimentation. The site inspections are necessary to ensure the best management practices employed at the site are in effective working order and minimizing pollutants to the maximum extent practicable.***

Page 10, Section 3.12.1: “Once a site has been temporarily stabilized and construction has ceased for the winter, such inspections shall be conducted at least once per month.” – HBASE suggests clarification from DENR on its interpretation of “temporary stabilized” during the winter.

*See DENR’s response to Comment #1 from the Sioux Falls Infrastructure Review Advisory Board above.*

7. Page 12, Section 4.1: “The Storm Water Pollution Prevention Plan, also referred to as “the SWPPP,” shall be developed prior to the submittal of the NOI and shall be implemented for all construction activity.” – HBASE suggests revising language to only require those areas outside of an accepted Qualifying Local Program to have their SWPPP prepared prior to submittal of an NOI.

*See DENR’s response to Comment #5 from the Sioux Falls Infrastructure Review Advisory Board above.*

8. Page 15, Section 5.2.2: “Upon transfer of coverage, an individual lot owner becomes a co-permittee and is responsible for permit compliance on their lot until final stabilization is reached.” – HBASE suggests the following language change: “Upon transfer of coverage(sp), an individual lot owner becomes a co-permittee and is the primary party for permit compliance on their lot until final stabilization is reached.”

*DENR agrees. Section 5.2.2 has been modified and now states:*

*“Upon transfer of coverage, an individual lot owner becomes a co-permittee and is the primary party responsible for permit compliance on their lot until final stabilization is reached.”*

9. Page 16, Section 5.4.2: “If DENR approves a qualifying local program, the program requirements shall at the minimum meet DENR’s requirements.” – HBASE suggests adding an additional language that states, “DENR may authorize minor variations and alternative standards in lieu of specific conditions of this General Permit based upon unique comprehensive control measures established in the QLP.”

*DENR agrees and has reworded Section 5.3.1, as noted above in Comment #3 from the Sioux Falls Infrastructure Review Advisory Board above.*

10. Page 16, Section 5.4.3: “If a construction site is within the jurisdiction of a qualifying local program, the operator shall submit a Notice of Intent to be covered under the General Permit and comply with all requirements of the qualifying local program.” – HBASE suggest revising language to clarify the NOI must be submitted to the DENR.

*DENR agrees. This change has been made as noted above in DENR’s response to question #6 by the city of Sioux Falls.*

11. Page 17, Section 6.2.2: “If the permittee wishes to continue an activity regulated by this General Permit after its expiration date, the permittee must submit a Notice of Intent.” – HBASE suggests DENR send notice to permittees that they must re-submit a Notice of Intent.

***DENR agrees, and this is the approach DENR used for reissuing the current General Permit and DENR will take that suggestion into consideration when the permit is renewed in five years.***