

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-6586-3]

**Final Modification of the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges From Construction Activities****AGENCY:** Environmental Protection Agency (EPA), Region 4.**ACTION:** Notice of final modification of NPDES general permit for storm water discharges from construction activities.

**SUMMARY:** Section 405 of the Water Quality Act of 1987 (WQA) added section 402(p) of the Clean Water Act (CWA) which requires the Environmental Protection Agency (EPA) to develop a phased approach to regulate storm water discharges under the National Pollutant Discharge Elimination System (NPDES) program. EPA published a final regulation on November 16, 1990, (55 FR 47990) establishing permit application requirements for storm water discharges associated with industrial activity. EPA defined the term "storm water discharge associated with industrial activity" in a comprehensive manner to cover a wide variety of facilities. This definition greatly expanded the number of industrial facilities subject to the NPDES program. Construction activities that disturb at least five acres of land and have point source discharges to waters of the U.S. are defined as an "industrial activity" per 40 CFR 122.26(b)(14)(x).

40 CFR 122.4(d) and (i) prohibit EPA from authorizing discharges which will cause or contribute to the impaired use of waters of the U.S. Currently, facilities discharging to waters listed in accordance with the requirements of Section 303(d) of the Clean Water Act would most likely be required to apply for individual permit coverage, which is resource intensive for both the applicant and the NPDES permit issuing authority. Therefore, EPA Region 4 has concluded that additional permitting measures in the existing storm water general permit for construction activities are necessary to assure that storm water discharges to 303(d) waters, listed for TSS, do not cause or contribute to the impaired designated use of a water body.

The following provides notice for a final modification of the NPDES general permit, accompanying response to comments, and fact sheet for storm water discharges from construction activities in the following areas of Region 4:

Indian Country Lands within the State of Alabama  
The State of Florida  
Indian Country Lands within the State of Florida  
Indian Country Lands within the State of Mississippi  
Indian Country Lands within the State of North Carolina

**DATES:** This general permit modification shall be effective on July 1, 2000. Deadlines for compliance with the modification conditions are included in today's notice.

**ADDRESSES:** Notices of Intent (NOIs) submitted in accordance with this permit to receive coverage under this permit and Notices of Termination (NOTs) to terminate coverage under this permit must be sent to Storm Water Notice of Intent (4203), 401 M Street, SW, Room 2104 Northeast Mail, Washington, DC 20460. The complete administrative record is available from the U.S. Environmental Protection Agency, Region 4, Freedom of Information Officer, 61 Forsyth St. S.W., Atlanta, GA 30303. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Mr. Floyd Wellborn, telephone number (404) 562-9296, or Mr. Michael Mitchell, telephone number (404) 562-9303, or at the following address: United States Environmental Protection Agency, Region 4, Water Management Division, NPDES and Biosolids Permits Section, Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, GA 30303.

**SUPPLEMENTARY INFORMATION:****Table of Contents.**

- I. Introduction
- II. Coverage of General Permit
- III. Changes from the Proposed Permit
- IV. Summary of Permit Conditions
- V. Cost Estimates
- VI. Unfunded Mandates Reform Act
- VII. Paperwork Reduction Act
- VIII. Regulatory Flexibility Act
- IX. Summary of Responses to Comments on the Proposed Permit
- X. Section 401 Certification
- XI. Official Signatures

**I. Introduction**

In 1972, the Federal Water Pollution Control Act (also referred to as the Clean Water Act (CWA)) was amended to provide that the discharge of any pollutants to waters of the United States from any point source is unlawful, except if the discharge is in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. In 1987, § 402(p) was added to the CWA to establish a comprehensive framework for addressing storm water discharges under the NPDES program. Section

402(p)(4) of the CWA clarifies the requirements for EPA to issue NPDES permits for storm water discharges associated with industrial activity. On November 16, 1990 (55 FR 47990), EPA published final regulations which define the term "storm water discharge associated with industrial activity."

On March 31, 1998, EPA Region 4 issued a general permit for discharges of storm water from construction activities "associated with industrial activity" to reduce the administrative burden of issuing an individual NPDES permit to each construction activity.

**II. Coverage of General Permit**

Section 402(p) of the Clean Water Act (CWA) clarifies that storm water discharges associated with industrial activity to waters of the United States must be authorized by an NPDES permit. On November 16, 1990, EPA published regulations under the NPDES program which defined the term "storm water discharge associated with industrial activity" to include storm water discharges from construction activities (including clearing, grading, and excavation activities) that result in the disturbance of five or more acres of total land area, including areas that are part of a larger common plan of development or sale (40 CFR 122.26(b)(14)(x)). The term "storm water discharge from construction activities" will be used in this document to refer to storm water discharges from construction sites that meet the definition of a storm water discharge associated with industrial activity.

This modification of the general permit may authorize storm water discharges to waters listed on the 1998 EPA approved 303(d) list (or any subsequently approved list, hereafter referenced as the EPA approved 303(d) list), for Total Suspended Solids (TSS), or other parameters associated with sediments, from existing construction sites (facilities where construction activities began before the effective date of this modification, and final stabilization is to occur after the effective date of this modification) and new construction sites. New construction sites are those facilities where disturbances associated with construction activities commence after the effective date of this modification. To obtain authorization under the general permit, a discharger must submit a complete NOI and comply with the terms of the permit. The terms and conditions of this modification are applicable to all qualifying facilities even if coverage under the permit began prior to the effective date of the modification.

### III. Changes From the July 21, 1999 Proposed Permit Modification (Amended August 25, 1999)

- Applicants are now required to contact the permit issuing authority for help in determining if they are discharging to 303(d) listed waters.
- The final issuance will only include the 1998 EPA approved 303(d) list for water segments listed for TSS.
- The entire general permit with the modification's are being reprinted in today's notice. The species list in Appendix C, however, has not been reprinted and can be found in the March 31, 1998 Federal Register notice (63 FR 15621) or at the following web site: <http://www.epa.gov/owm/esalst2.htm>
- The proposed modification in the July 21, 1999 **Federal Register** (64 FR 39136) incorrectly identified a change in Part I.C. "Authorization." Today's Notice correctly changes Part II.B. "Contents of Notice of Intent." Part II.B.9. of today's permit asks for certification of eligibility under Part I.B.3.e.(2) (Endangered Species) and I.B.3.f. (Historic Preservation).
- Typographical errors in Parts II.B.10. and VII.G.2.d. were corrected to properly identify the signature requirements of Part VII.G. Previously, the permit had incorrectly indicated Part VI.G which does not exist.
- The qualified personnel has been further defined in Part V.D.4. as a State certified storm water operator. A State certified storm water operator is one who has completed the Florida Storm water, Erosion and Sediment Control Training and Certification Program for Inspectors and Contractors. Furthermore they have passed the course examination.

### IV. Summary of Modification Conditions

#### *For Facilities in Florida*

In order to get construction general permit coverage, applicants must determine if the facility discharges to waters listed on the EPA approved 303(d) list for impairment due to Total Suspended Solids.

#### *For Facilities on Indian Country Lands*

In order to get construction general permit coverage, applicants must determine if the facility discharges to waters impaired for either Total Suspended Solids, Turbidity, Silt or Sediment. It is incumbent upon the applicant to contact the Environmental Coordinator of the Tribe on whose lands the discharge occurs if you are unsure whether or not the facility will be discharging to impaired waters for

either of the above referenced parameters.

#### *What To Do Next*

For all facilities, if the determination is made that you will be discharging to waters impaired because of either Total Suspended Solids or other parameters associated with sediments (or in the case of discharges on Indian Country lands; TSS, Turbidity, Silt or Sediment) the facility must comply with the terms and conditions of Part III.C. of the permit.

- The permittee shall monitor, during regular working hours, once per month within the first 30 minutes of a qualifying storm event or within the first 30 minutes of the beginning of the discharge of a previously collected qualifying event for Settleable Solids (ml/l), Total Suspended Solids (mg/l), Turbidity (NTUs) and Flow (MGD). A qualifying event is defined as a rain event of 0.5 inches or greater in a 24-hour period.

- Where the receiving water has flow upstream from the discharge, a background sample for Settleable Solids, Total Suspended Solids and Turbidity shall be taken instream at middepth and immediately upstream from the influence of the discharge of storm water from the site. If there is no upstream flow, instream monitoring is not required.

- The soil type and average slope of the drainage area for each outfall shall be reported with the Discharge Monitoring Report submitted in accordance with Part III.C.5. of the permit.

This permit does not authorize the discharge of storm water, from construction activities, which causes or contributes to the impairment of the designated use of waters of the United States.

### V. Cost Estimates

The two major costs associated with monitoring requirements. One is the acquisition of monitoring equipment and the other is the fee incurred for laboratory analysis of the sample. While EPA recognizes that this is an increased cost from the general permit prior to its modification, it is no more expensive than an individual permit which would most likely have similar requirements. In addition, the cost of compliance with a general permit is lower than that of an individual permit. Therefore, there is a comparative financial benefit to coverage under the general permit even with monitoring requirements from coverage under an individual permit.

### VI. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under UMA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, UMA section 205 generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of UMA section 205 do not apply when they are inconsistent with applicable law. Moreover, UMA section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes an explanation with the final rule why the alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under UMA section 203 a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating and advising small governments on compliance with the regulatory requirements.

#### *A. UMA Section 202 and the Construction General Permit*

UMA section 202 requires a written statement containing certain assessments, estimates and analyses prior to the promulgation of certain general notices of proposed rulemaking (2 U.S.C. 1532). UMA section 421(10) defines "rule" based on the definition of rule in the Regulatory Flexibility Act. Section 601 of the Regulatory Flexibility Act defines "rule" to mean any rule for which an agency publishes a general notice of proposed rulemaking pursuant to section 553 of the Administrative Procedure Act. EPA does not propose to issue NPDES general permits based on

APA section 553. Instead, EPA relies on publication of general permits in the **Federal Register** in order to provide "an opportunity for a hearing" under CWA section 402(a), 33 U.S.C. 1342(a). Nonetheless, EPA has evaluated permitting alternatives for regulation of storm water discharges associated with construction activity. The general permit that EPA proposes to modify would be virtually the same NPDES general permit for discharges of storm water from construction activities that many construction operators have used over the past year since most will not be discharging to 303(d) listed waters. For those who are discharging to 303(d) listed waters and come under the new monitoring and reporting requirements, general permits provide a more cost and time efficient alternative for the regulated community to obtain NPDES permit coverage than that provided through individually drafted permits.

#### *B. UMA Section 203 and the Construction General Permit*

Agencies are required to prepare small government agency plans under UMA section 203 prior to establishing any regulatory requirement that might significantly or uniquely affect small governments. "Regulatory requirements" might, for example, include the requirements of this NPDES general permit for discharges associated with construction activity. EPA envisions that some municipalities—those with municipal separate storm sewer systems serving a population over 100,000—may elect to seek coverage under this general permit where they are the operators of construction activities. For municipalities with a population of less than 100,000, however, a permit application is not required until August 7, 2001, for a storm water discharge associated with construction activity where the construction site is owned or operated by a municipality. (See 40 CFR 122.26(e)(1)(ii)&(g)).

In any event, any such permit requirements would not significantly affect small governments because most State laws already provide for the control of sedimentation and erosion in a similar manner as today's general permit. Permit requirements also would not uniquely affect small governments because compliance with the permit's conditions affects small governments in the same manner as any other entity seeking coverage under the permit; thus, UMA section 203 would not apply.

#### **VII. Paperwork Reduction Act**

EPA has reviewed the requirements imposed on regulated facilities in this

final general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et. seq.* EPA did not prepare an Information Collection Request (ICR) document for today's permit because the information collection requirements in this permit have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

#### **VIII. Regulatory Flexibility Act**

Under the Regulatory Flexibility Act, U.S.C. 601 *et. seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No Regulatory Flexibility Analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's permit modification provides small entities with an application option that is less burdensome than individual applications. The other requirements have been designed to minimize significant economic impacts of the rule on small entities and does not have a significant impact on industry. In addition, the permit reduces significant administrative burdens on regulated sources. Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this permit will not have a significant impact on a substantial number of small entities.

#### **IX. Responses to Comments**

The following is a summary of the issues identified by EPA that were raised regarding the modification of the general permit for storm water from construction activities and EPA's response to those issues.

Several commenters asked for a clarification of the definition of a qualifying event. Specifically, is a qualifying event measured within the 24 hours of a calendar day or is it a rolling 24 hours? EPA's intent is to require monitoring of one event that produces 0.5 inches of rain fall in a rolling 24 hour period, during a calendar month.

Several commenters asked how one would know to take a grab in the first 30 minutes of the rain event if you don't know if the storm is a qualifying event yet. If the retention on the site delays the discharge, then collection of a sample during the first 30 minutes is not required. EPA acknowledges that the facility may take samples in anticipation of a qualifying event, that are never sent to the lab because the event did not qualify for sampling.

One commenter asked how would one know when to sample if there was a fairly continuous discharge from current and previously collected events since the first thirty minutes of discharge may not be discernable. In the case of the rain events being close together, a sample would be collected within the first 30 minutes after the start of the qualifying event. Since only one sample per month is required, monitoring of any subsequent discharge is not required.

Comments were submitted on how is monitoring conducted during off hours or if the monitoring stations are too far away to monitor during the first 30 minutes. It is incumbent on the permittee to plan for monitoring during regular working. This of course may mean that all discharges from a qualifying event in a given month may occur during non-regular working hours. In such a case, the permittee should indicate "no discharge from a qualifying event occurred during regular working hours" in lieu of sampling results on the Discharge Monitoring Report (DMR) form and submit it to the EPA. If the facility is too big to collect samples from all the outfalls on the same day, subsequent events within the month should be considered for other outfalls. This does not release the permittee from compliance responsibility should there be only one qualifying event during a given month. The document NPDES Storm Water Sampling Guidance Document (EPA 833-F-92-001, July 1992) discusses this in Part 2.9 of the document beginning on page 31.

Comments were submitted asking if the permit requires the installation of an automatic sampler to comply with the sampling requirements. The permit does not require the installation of an automatic sampler but it does require compliance with the monitoring conditions. It is up to the permittee to determine if the only way for the facility to comply with the permit is to install an automatic sampler.

Several commenters indicated that the cost of monitoring would be excessive without any real benefit to the environment. One commenter suggested that a more effective approach to sediment control would be requiring a "qualified person" to conduct the sediment and erosion control onsite. While EPA understands that the monitoring in the modified general permit is an increase over the conditions of the March 31, 1998 reissued general permit, the cost is no more than would be for compliance with an individual permit. In addition, EPA's evaluation of the cost, based on

EPA's own lab expenses, is significantly less than the estimation of the commenters.

One commenter requested clarification of when a facility is discharging directly to a 303(d) listed water body segment. Only those discharges whose collection systems overflowed or release discharges directly to listed segments would be required to monitor. Discharges which flow through tributaries, which themselves are not listed, or local collection systems, such as Municipal Separate Storm Sewer Systems (MS4), are not required to monitor under the modified permit. Co-permittees who discharge to another permittee's collection system which then discharges to a listed segment may be required to monitor. Such a determination would be conducted at the request of the permittee discharging directly to the listed segment. Discharges to piped MS4s which are ultimately discharging to 303(d) listed waters are not required to monitor.

One commenter asserted that the EPA's decision to include protective monitoring appears unsupported by sufficient data demonstrating that additional protection of waters is required. The introduction in the July 21, 1999 **Federal Register** (64 FR 39136) justifies the inclusion of monitoring based on the requirements of 40 CFR Part 122.4 (d) and (i), which disallow the authorization of discharges which contribute to the impaired use of a receiving water. No previously existing data is required to conclude that the addition of particulates from a construction site has the potential to contribute to the impaired use of a receiving water when it is currently impaired due to particulate pollution. If the permit issuing authority determines that an individual facility contributes to the impaired use of a water segment, an individual permit will be required for the discharges from that facility. EPA suspects that the majority of sites will not contribute to the impairment. It would be unreasonable to leave it to assumption though. The purpose of the monitoring is, in fact, to aid in the determination of whether an individual facility is contributing to the impairment. In addition, the CWA, section 308(a) allows for monitoring to determine if a violation of a prohibition, such as 40 CFR 122.4(d) or (i), has occurred.

One commenter perceived and objected to the notion that the construction industry was being made to bearing the cost of stream monitoring for the development of Florida's Total Maximum Daily Loads (TMDL) and

further contends that the construction industry is not the only contributor of solids to the waters of the State. EPA is not including this monitoring to develop stream data for a TMDL. As stated previously, it is included to determine compliance with 40 CFR 122.4. However, since the data is being collected anyway, an additional benefit will be the availability of the data once development of a TMDL is underway. It is common practice in developing a TMDL to use available data collected by many sources. EPA does concur that the construction industry is not the sole source of solids to water bodies and therefore not the sole cause of impairment to a 303(d) listed water. It is certain, though, that it is a possible source and is essential to determine what individual facilities may contribute to the impaired use of a listed water segment.

One commenter expressed concern over using Florida's 303(d) list since it is continually updated to include newly listed water segments making it difficult to know in advance if the construction site will discharge to a listed water body. EPA acknowledges this concern and has changed the final permit to require monitoring only at facilities discharging to water segments listed on the EPA approved 303(d) list. Contact the EPA for information on updates to the list.

One commenter contended that EPA Region 4's proposal to include monitoring in the general permit conflicts with EPA Headquarter's proposal to develop effluent guidelines for the construction industry which wouldn't include numerical limits but simply Best Management Practices (BMP). Currently, there is no effluent guideline for this activity; however, effluent guidelines have technology based requirements and are not usually protective of state water quality standards.

One commenter believes that the monitoring requirements place an unfair burden on facilities discharging to waters known to be impaired since all the waters in the State have not yet been assessed. Revisions have been made in the final permit to ensure currently listed waters and any added in the future are protected by the requirements of this permit.

One commenter challenged EPA's consideration of the Unfunded Mandates Reform Act which requires Federal Agencies to consider least costly, more cost-effective and/or least burdensome alternatives. The commenter pointed out that EPA contended that the evaluation performed regarding permitting options

for the regulation of storm water discharges from construction activities is sufficient to meet this requirement since it will be virtually the same NPDES general permit (see Part VI of this notice). One should understand that the general permit is a voluntary permit. Any time a facility deems compliance with the general permit too burdensome or costly, they are free to apply for an individual permit. For those sites discharging to 303(d) listed waters, the alternative to this modification would be an individual NPDES permit which would be more costly to comply with. Therefore, the EPA chosen alternative of modifying the general permit to include conditions on construction sites discharging to 303(d) listed waters is considerate of the Unfunded Mandates Reform Act.

One commenter was confused about the pollutant to look for in the EPA Approved 303(d) list. In one **Federal Register**, the pollutant which triggered monitoring was silt and/or sediment and in the other it was total suspended solids. At this point the 303(d) list expresses impairment due to solids as the pollutant total suspended solids. So, TSS is the one which currently triggers monitoring. However, should subsequent approved lists contain other indicators of solids transportation to the receiving waters, those parameters would trigger the monitoring requirements as well.

Several commenters proposed the delay of the issuance of the modification which requires monitoring until the Total Maximum Daily Load (TMDL) management proposal is finalized. One commenter believes that the EPA's proposal for managing TMDLs to impaired waters would be sufficient to assess the contribution of solids in the discharges of storm water runoff from construction activities to waters of the United States which are impaired because of TSS, turbidity, silt or sedimentation. And another commenter suggested that monitoring in the general permit to determine Best Management Practice (BMP) effectiveness is premature. While it may be true that the TMDL program may adequately assess the over arching contribution from such facilities, it cannot assess an individual facility's contribution and whether or not the discharges from a particular facility cause or contribute to the further impairment of the receiving water. And while other EPA efforts are ongoing to set national standards, effluent guidelines and design criteria do not prevent mishaps and the improper installation and maintenance of BMPs. In addition, the Clean Water Act (1987, as amended) and 40 CFR Part 122

compels EPA to address the site specific discharges of pollutants to waters of the U.S. and particularly the discharges of a pollutant to waters impaired because of that pollutant. EPA continues to believe that including conditions in the general permit addressing the discharges of solids to waters impaired because of solids is the least burden on the regulated community and on EPA while remaining consistent with the requirements of the CWA.

On this point, the commenters, believe that the proposed monitoring conditions would be inadequate to determine the effect on an impaired water of solids in the storm water discharge. One commenter suggested that the nebulous difference between point and non-point source discharges under EPA's wet weather programs made monitoring ineffective in determining whether or not a discharge causes or contributes to the impairment of a water body. EPA reserves the right to terminate coverage under the general permit for facilities which demonstrate that the discharges from the site have the reasonable potential to cause or contribute to the impairment in the listed water body. In such a case, EPA may at its discretion require the permittee to cease discharging to the impaired water body or to apply for an individual permit so that facility specific discharge limitations and pollution prevention plan requirements could be established. Non-point source contributions of sediments are addressed under Section 319 of the Clean Water Act.

#### X. Section 401 Certification

Certification of the proposed permit modification was requested from the State of Florida by letter dated January 22, 1999. The Florida Department of Environmental Protection (FDEP) waived certification of the proposed permit modification via a letter dated July 13, 1999. The State did include comments on the permit modification in the waiver letter. Certification of the proposed permit was requested from the Miccosukee Tribe of Indians of Florida by letter dated June 23, 1997. Certification of the proposed permit is deemed waived in accordance with the provisions of 40 CFR 124.53(c). Certification of the proposed permit

modification was requested from the Seminole Tribe of Florida by letter dated February 8, 1999. The Seminole Tribe of Florida provided certification of the proposed permit modification via a letter dated April 15, 1999.

#### XI. Official Signatures

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this permit will not have a significant impact on a substantial number of small entities.

**Authority:** Clean Water Act, 33 U.S.C 1251 *et seq.*

Dated: April 20, 2000.

**John H. Hankinson, Jr.,**  
*Regional Administrator, Region 4.*

#### Appendix A

From the effective date of this permit, applicants are to use the existing Notice of Intent form (EPA 3510-9, published in the March 6, 1998 **Federal Register**, 63 FR 11253) referenced in this Appendix to obtain permit coverage. According to the provisions in Part II.B. of this permit, applicants are reminded that they are certifying that they meet all eligibility requirements of Part I.B. of this permit and are informing the Director of their intent to be covered by, and comply with, those terms and conditions. These conditions include certifications that the applicant's storm water discharges and storm water-related discharge activities will not adversely affect listed endangered or threatened species, their critical habitat, or places either listed or eligible for listing on the National Register of Historic Places.

#### Appendix B

From the effective date of this permit, permittees are to use the existing Notice of Termination form (EPA Form 3510-7) contained in this Addendum until they are instructed by the Director (EPA) to use a revised version. Permittees are to complete, sign and submit the form in accordance with Part VII.G of the permit when terminating permit coverage at a construction project when one or more of the conditions contained in Part IX have been met.

#### Appendix C—Endangered Species Guidance

##### I. Instructions

A list of species that EPA has determined may be affected by the activities covered by the construction general permit will be included in the final issued permit. These species will be listed by county. In order to get construction general permit coverage, applicants must:

- Indicate in the box provided on the NOI whether any species listed in this Appendix are in proximity to the facility, and
- Certify pursuant to Section I.B.3.e. of the construction general permit that their storm water discharges, and BMPs constructed to control storm water runoff, are not likely, and will not be likely to adversely affect species identified in Appendix C of this permit. The species list can be found in the March 31, 1998 **Federal Register** notice (63 FR 15621) or at the following web site: <http://www.epa.gov/owm/esalst2.htm>. To do this, please follow steps 1 through 4 below.

##### Step 1: Review the County Species List Below to Determine if Any Species are Located in the Discharging Facility County

If the facility is within one (1) mile of the county line, a review of the bordering county's list must be made as well to determine the presence of species. If no species are listed in a facility's county, or adjacent county as mentioned in the previous sentence, or if a facility's county is not found on the list, an applicant is eligible for construction general permit coverage and may indicate in the NOI that no species are found in proximity and provide the necessary certification. If species are located in the county, or in the adjacent county as mentioned above, follow step 2 below. Where a facility is located in more than one county, the lists for all counties should be reviewed.

##### Step 2: Determine if any Species May Be Found "In Proximity" to the Facility

A species is in proximity to a facility's storm water discharge when the species is:

- Located in the path or immediate area through which or over which contaminated point source storm water flows from industrial activities to the point of discharge into the receiving water.
- Located in the immediate vicinity of, or nearby, the point of discharge into receiving waters.
- Located in the area of a site where storm water BMPs are planned or are to be constructed.

The area in proximity to be searched/surveyed for listed species will vary with the size of the facility, the nature and quantity of the storm water discharges, and the type of receiving waters. Given the number of facilities potentially covered by the construction general permit, no specific method to determine whether species are in proximity is required for permit coverage under the construction general permit. Instead, applicants should use the method or methods which best allow them to determine to the best of their knowledge whether species are in

proximity to their particular facility. These methods may include:

- *Conducting visual inspections:* This method may be particularly suitable for facilities that are smaller in size, facilities located in non-natural settings such as highly urbanized areas or industrial parks where there is little or no nature habitat; and facilities that discharge directly into municipal storm water collection systems. For other facilities, a visual survey of the facility site and storm water drainage areas may be insufficient to determine whether species are likely to be located in proximity to the discharge.

- *Contacting the nearest State Wildlife Agency or U.S. Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS) offices.* Many endangered and threatened species are found in well-defined areas or habitats. That information is frequently known to state or federal wildlife agencies. FWS has offices in every state. NMFS has a regional office in St. Petersburg, Florida.

- *Contacting local/regional conservation groups.* These groups inventory species and their locations and maintain lists of sightings and habitats.

- *Conducting a formal biological survey.* Larger facilities with extensive storm water discharges may choose to conduct biological surveys as the most effective way to assess whether species are located in proximity and whether there are likely adverse effects.

If no species are in proximity, an applicant is eligible for construction general permit coverage and may indicate that in the NOI and provide the necessary certification. If listed species are found in proximity to a facility, applicants must follow step 3 below.

### **Step 3: Determine if Species Could be Adversely Affected by the Facility's Storm Water Discharges or by BMPs to Control Those Discharges**

*Scope of Adverse Effects:* Potential adverse effects from storm water include:

- *Hydrological.* Storm water may cause siltation, sedimentation or induce other changes in the receiving waters such as temperature, salinity or pH. These effects will vary with the amount of storm water discharged and the volume and condition of the receiving water. Where a storm water discharge constitutes a minute portion of the total volume of the receiving water, adverse hydrological effects are less likely.

- *Habitat.* Storm water may drain or inundate listed species habitat.
- *Toxicity.* In some cases, pollutants in storm water may have toxic effects on listed species.

The scope of effects to consider will vary with each site. Applicants must also consider the likelihood of adverse effects on species from any BMPs to control storm water. Most adverse impacts from BMPs are likely to occur from the construction activities.

*Using earlier ESA authorizations for construction general permit eligibility:* In some cases, a facility may be eligible for construction general permit coverage because actual or potential adverse effects were addressed or discounted through an earlier ESA authorization. Examples of such authorization include:

- An earlier ESA section 7 consultation for that facility.
- A section 10(a) permit issued for the facility.
- An area-wide Habitat Conservation Plan applicable to that facility.
- A clearance letter from the Services (which discounts the possibility of an adverse impacts from the facility).

In order for applicants to use an earlier ESA authorization to meet eligibility requirements: (1) The authorization must adequately address impacts for storm water discharges and BMPs from the facility on endangered and threatened species, (2) it must be current because there have been no subsequent changes in facility operations or circumstances which might impact species in ways not considered in the earlier authorization, and (3) the applicant must comply with any requirements from those authorizations to avoid or mitigate adverse effects to species. Applicants who wish to pursue this approach should carefully review documentation for those authorizations ensure that the above conditions are met.

If adverse effects are not likely, an applicant is eligible for construction general permit coverage and may indicate in the NOI that species are found in proximity and provide the necessary certification. If adverse effects are likely, follow step 4 below.

### **Step 4: Determine if Measures Can be Implemented to Avoid any Adverse Effects**

If an applicant determines that adverse effects are likely, it can receive coverage if appropriate measures are undertaken to avoid or eliminate any actual or potential

adverse affects prior to applying for permit coverage. These measures may involve relatively simple changes to facility operations such as re-routing a storm water discharge to bypass an area where species are located.

At this stage, applicants may wish to contact the FWS and/or NMFS to see what appropriate measures might be suitable to avoid or eliminate adverse impacts to species.

If applicants adopt these measures, they must continue to abide by them during the course of permit coverage.

If appropriate measures are not available, the applicant is not eligible at that time for coverage under the construction general permit. Applicants should contact the appropriate EPA regional office about either:

- Entering into Section 7 consultation in order to obtain construction general permit coverage, or
- Obtaining an individual NPDES storm water permit.

## **Appendix D—Discharging to Impaired Waters Guidance**

### **I. Instructions**

#### *For Facilities in Florida*

In order to get coverage under this NPDES permit for storm water discharges from construction sites, applicants must determine if the facility discharges to waters listed on the EPA approved 303(d) list for impairment due to Total Suspended Solids.

#### *For Facilities on Indian Country Lands*

In order to get coverage under this NPDES permit for storm water discharges from construction sites, applicants must determine if the facility discharges to waters impaired for either TSS, turbidity, silt or sediment. It is incumbent upon the applicant to contact the Environmental Coordinator of the Tribe on whose lands the discharge occurs if you are unsure whether or not the facility will be discharging to impaired waters for either of the above referenced parameters.

#### *Next Steps*

For all facilities, if the determination is made that you will be discharging waters impaired because of either TSS, turbidity, silt or sediment, the facility must comply with the terms and conditions of Part III.C. of the permit.

## APPENDIX E—EPA APPROVED 303(D) LIST

HUC name	Water segment	MAPID	WBID	Parameters of concern
ALAFIA RIVER .....	TURKEY CK AB LTL ALAFI .....	24	1578B	Coliforms, Nutrients, Turbidity.
ALAFIA RIVER .....	POLEY CREEK .....	25	1583	Coliforms, Nutrients, Turbidity.
APALACHICOLA RIVER .....	APALACHICOLA RIVER .....	10	375D	Turbidity.
APALACHICOLA RIVER .....	GREGORY MILL CREEK .....	13	1135	Dissolved Oxygen, Nutrients, Turbidity, Total Suspended Solids.
APALACHICOLA RIVER .....	EQUILOXIC CREEK .....	14	1109A	Dissolved Oxygen, Turbidity, Mercury (Based on Fish Consumption Advisory).
APALACHICOLA RIVER .....	LITTLE GULLY CREEK .....	15	1039	Coliforms, Dissolved Oxygen, Turbidity.
APALACHICOLA RIVER .....	FLAT CREEK .....	26	487	Coliforms, Nutrients, Turbidity, Total Suspended Solids.
BLACKWATER RIVER .....	BLACKWATER RIVER .....	4	24A	Total Suspended Solids, Coliforms, Mercury (Based on Fish Consumption Advisory).
BLACKWATER RIVER .....	EAST FORK .....	53	18A	Coliforms, Total Suspended Solids.
BLACKWATER RIVER .....	MANNING CREEK .....	59	127	Coliforms, Turbidity, Total Suspended Solids.
BLACKWATER RIVER .....	MARE CREEK .....	79	88	Dissolved Oxygen, Turbidity.
BLACKWATER RIVER .....	BIG JUNIPER CREEK .....	84	19	Coliforms, Turbidity.
BLACKWATER RIVER .....	BIG COLDWATER CREEK .....	96	18	Coliforms, Total Suspended Solids.
CHARLOTTE HARBOR .....	NO. PRONG ALLIGATOR CR .....	30	2071	Dissolved Oxygen, Coliforms, Turbidity.
CHIPOLA RIVER .....	CHIPOLA RIVER (Dead Lakes) .....	1	51A	Coliforms, Turbidity, Mercury (Based on Fish Consumption Advisory).
CHOCTAWHATC HEE BAY .....	CHOCTAWHATC HEE BAY AB C ...	24	78C	Biochemical Oxygen Demand, Coliforms, Nutrients, Turbidity, Total Suspended Solids, Mercury (Based on Fish Consumption Advisory).
CHOCTAWHATC HEE RIVER .....	CHOCTAWHATC HEE RIVER .....	0	49E	Coliforms, Turbidity, Total Suspended Solids.
CHOCTAWHATC HEE RIVER .....	BRUCE CREEK .....	11	343	Coliforms, Turbidity.
CHOCTAWHATC HEE RIVER .....	CHOCTAWHATC HEE RIVER .....	14	49	Coliforms, Turbidity, Total Suspended Solids, Mercury (Based on Fish Consumption Advisory).
CHOCTAWHATC HEE RIVER .....	CAMP BRANCH .....	21	251	Coliforms, Nutrients, Turbidity.
CHOCTAWHATC HEE RIVER .....	CHOCTAWHATC HEE RIVER .....	24	49F	Coliforms, Nutrients, Total Suspended Solids, Turbidity, Mercury (Based on Fish Consumption Advisory).
CHOCTAWHATC HEE RIVER .....	ALLIGATOR CREEK .....	26	123	Coliforms, Biological Oxygen Demand, Dissolved Oxygen, Nutrients, Turbidity
CHOCTAWHATC HEE RIVER .....	SIKES CREEK .....	27	142	Coliforms, Dissolved Oxygen, Total Suspended Solids, Turbidity.
CHOCTAWHATC HEE RIVER .....	FISH BRANCH .....	28	130	Coliforms, Dissolved Oxygen, Total Suspended Solids, Turbidity.
CRYSTAL RIVER TO ST. PETE .....	ST JOE CREEK .....	6	1668A	Dissolved Oxygen, Coliforms, Nutrients, Total Suspended Solids, Biochemical Oxygen Demand.
CRYSTAL RIVER TO ST. PETE .....	BONN CREEK .....	8	1668B	Dissolved Oxygen, Coliforms, Nutrients, Turbidity, Biochemical Oxygen Demand.
ECONFINA-FENH OLLOWAY .....	ROCKY CREEK .....	0	3489	Turbidity, Coliforms.
ECONFINA-FENH OLLOWAY .....	FENHOLLOWAY BL PULP .....	14	3473B	Dissolved Oxygen, Nutrients, Total Suspended Solids, Un-ionized Ammonia, Biochemical Oxygen Demand, Mercury (Based on Fish Consumption Advisory).
ESCAMBIA RIVER .....	SCAMBIA RIVER .....	2	10F	Coliforms, Total Suspended Solids, Turbidity, Mercury (Based on Fish Consumption Advisory).
ESCAMBIA RIVER .....	ESCAMBIA RIVER .....	4	10E	Coliforms, Dissolved Oxygen, Turbidity, Mercury (Based on Fish Consumption Advisory).
ESCAMBIA RIVER .....	ESCAMBIA RIVER .....	6	10D	Coliforms, Total Suspended Solids, Turbidity, Mercury (Based on Fish Consumption Advisory).
ESCAMBIA RIVER .....	PINE BARREN CREEK .....	28	5	Coliforms, Turbidity.
ESCAMBIA RIVER .....	LITTLE PINE BARREN CR .....	31	87	Coliforms, Turbidity.

## APPENDIX E—EPA APPROVED 303(D) LIST—Continued

HUC name	Water segment	MAPID	WBID	Parameters of concern
ESCAMBIA RIVER .....	ESCAMBIA RIVER .....	42	10C	Coliforms, Total Suspended Solids, Turbidity, Mercury (Based on Fish Consumption Advisory).
ESCAMBIA RIVER .....	BIG ESCAMBIA CREEK .....	43	10	Coliforms, Total Suspended Solids, Turbidity.
HILLSBOROUGH RIVER .....	TWO HOLE BRANCH .....	0	1489	Nutrients, Turbidity, Biochemical Oxygen Demand, Coliforms.
HILLSBOROUGH RIVER .....	SPARKMAN BRANCH .....	2	1561	Dissolved Oxygen, Coliforms, Nutrients, Turbidity, Total Suspended Solids.
HILLSBOROUGH RIVER .....	HILLSBOROUGH RIVER .....	5	1443 A	Dissolved Oxygen, Coliforms, Nutrients, Total Suspended Solids, Mercury (Based on Fish Consumption Advisory).
HILLSBOROUGH RIVER .....	BAKER CREEK .....	10	1522C	Dissolved Oxygen, Coliforms, Lead, Nutrients, Turbidity.
HILLSBOROUGH RIVER .....	COW HOUSE CREEK .....	17	1534	Dissolved Oxygen, Coliforms, Nutrients, Turbidity, Total Suspended Solids.
HILLSBOROUGH RIVER .....	FLINT CREEK .....	18	1522A	Dissolved Oxygen, Coliforms, Lead, Nutrients, Turbidity, Biochemical Oxygen Demand.
HILLSBOROUGH RIVER .....	BLACKWATER CREEK .....	27	1482	Dissolved Oxygen, Coliforms, Nutrients, Turbidity, Biochemical Oxygen Demand.
HILLSBOROUGH RIVER .....	BIG DITCH .....	30	1469	Coliforms, Nutrients, Turbidity.
HILLSBOROUGH RIVER .....	NEW RIVER .....	38	1442	Dissolved Oxygen, Coliforms, Nutrients, Turbidity, Total Suspended Solids.
INDIAN RIVER, SOUTH .....	FELSMERE CANAL .....	20	3136	Dissolved Oxygen, Nutrients, Total Suspended Solids.
INDIAN RIVER, SOUTH .....	NO. PRONG SEBASTIAN R .....	26	3128	Dissolved Oxygen, Copper, Nutrients, Turbidity, Total Suspended Solids.
KISSIMMEE RIVER .....	LAKE KISSIMMEE NORTH .....	47	3183A	Nutrients, Turbidity, Mercury (Based on Fish Consumption Advisory).
KISSIMMEE RIVER .....	DEAD RIVER .....	55	1472C	Nutrients, Turbidity.
KISSIMMEE RIVER .....	CANOE CREEK .....	56	3181	Turbidity.
KISSIMMEE RIVER .....	REEDY CREEK .....	58	3170A	Nutrients, Turbidity.
KISSIMMEE RIVER .....	REEDY CREEK .....	66	3170C	Dissolved Oxygen, Nutrients, Turbidity, Coliforms.
KISSIMMEE RIVER .....	BONNET CREEK .....	73	3170D	Nutrients, Turbidity.
KISSIMMEE RIVER .....	SHINGLE CREEK .....	75	3169A	Dissolved Oxygen, Coliforms, Nutrients, Turbidity, Biochemical Oxygen Demand.
MANATEE RIVER .....	CEDAR CREEK .....	3	1926	Dissolved Oxygen, Coliforms, Nutrients, Total Suspended Solids.
MANATEE RIVER .....	BRADEN RIVER AB WARD L .....	5	1914	Dissolved Oxygen, Coliforms, Nutrients, Total Suspended Solids.
MANATEE RIVER .....	UNNAMED STREAM .....	8	1913	Dissolved Oxygen, Coliforms, Total Suspended Solids.
MANATEE RIVER .....	GAMBLE CREEK .....	35	1819	Dissolved Oxygen, Coliforms, Turbidity, Nutrients.
MYAKKA RIVER .....	MYAKKA RIVER .....	44	1981B	Dissolved Oxygen, Coliforms, Nutrients, Total Suspended Solids.
MYAKKA RIVER .....	MUD LAKE SLOUGH .....	46	1958	Dissolved Oxygen, Coliforms, Nutrients, Turbidity, Total Suspended Solids.
MYAKKA RIVER .....	OWEN CREEK .....	60	1933	Dissolved Oxygen, Coliforms, Turbidity, Nutrients, Total Suspended Solids.
NASSAU RIVER .....	LITTLE MILL CREEK .....	0	2157	Turbidity, Coliforms, Nutrients.
NASSAU RIVER .....	NASSAU RIVER .....	11	2148B	Dissolved Oxygen, Nutrients, Turbidity, Total Suspended Solids, Coliforms.
NASSAU RIVER .....	PLUMMER CREEK .....	16	2130	Nutrients, Turbidity, Dissolved Oxygen, Coliforms.
OCHLOCKONEE RIVER .....	OCHLOCKONEE RIVER .....	9	1297B	Dissolved Oxygen, Coliforms, Nutrients, Turbidity.
OCHLOCKONEE RIVER .....	MEGGINNIS ARM RUN .....	33	809	Nutrients, Turbidity, Total Suspended Solids, Biochemical Oxygen Demand, Dissolved Oxygen.



## APPENDIX E—EPA APPROVED 303(D) LIST—Continued

HUC name	Water segment	MAPID	WBID	Parameters of concern
OCHLOCKONEE RIVER .....	HARBINWOOD ESTATES DN .....	46	746	Nutrients, Turbidity, Total Suspended Solids, Biochemical Oxygen Demand.
OCHLOCKONEE RIVER .....	LITTLE RIVER .....	51	424	Coliforms, Nutrients, Turbidity, Total Suspended Solids.
OCHLOCKONEE RIVER .....	JUNIPER CREEK .....	60	682	Coliforms, Nutrients, Turbidity.
OCHLOCKONEE RIVER .....	OCHLOCKONEE RIVER .....	88	1297F	Coliforms, Nutrients, Turbidity, Mercury (Based on Fish Consumption Advisory).
OCHLOCKONEE RIVER .....	SWAMP CREEK .....	94	427	Coliforms, Nutrients, Turbidity, Total Suspended Solids.
OKLAWAHA RIVER .....	DORA CANAL .....	0	2772	Nutrients, Turbidity, Biochemical Oxygen Demand.
OKLAWAHA RIVER .....	APOPKA MARSH .....	22	2856	Dissolved Oxygen, Nutrients, Turbidity, Un-ionized Ammonia.
OKLAWAHA RIVER .....	LAKE APOPKA OUTLET .....	25	2835A	Dissolved Oxygen, Nutrients, Turbidity, Total Suspended Solids, Biochemical Oxygen.
OKLAWAHA RIVER .....	HELENA RUN .....	33	2832	Dissolved Oxygen, Nutrients, Turbidity, Un-ionized Ammonia, Total Suspended.
OKLAWAHA RIVER .....	HAYNES CREEK REACH .....	43	2817A	Dissolved Oxygen, Coliforms, Nutrients, Turbidity, Total Suspended Solids.
OKLAWAHA RIVER .....	NONCONTRIBUTING AREA .....	45	2809	Dissolved Oxygen, Nutrients, Turbidity.
OKLAWAHA RIVER .....	IRRIGATED FARM .....	47	2811	Dissolved Oxygen, Nutrients, Turbidity.
OKLAWAHA RIVER .....	OKLAWAHA RIV AB DAISY .....	68	2740D	Dissolved Oxygen, Coliforms, Nutrients, Turbidity, Biochemical Oxygen.
OKLAWAHA RIVER .....	DAISY CREEK .....	90	2769	Dissolved Oxygen, Nutrients, Turbidity, Coliforms, Iron.
OKLAWAHA RIVER .....	OKLAWAHA R/SUNNYHILL .....	111	2740F	Dissolved Oxygen, Nutrients, Turbidity, Total Suspended Solids, Biochemical Oxygen Demand, Coliforms.
OKLAWAHA RIVER .....	CROSS CREEK .....	112	2754	Dissolved Oxygen, Nutrients, Total Suspended Solids, Biochemical Oxygen Demand.
PEACE RIVER .....	PRAIRIE CREEK .....	20	1962	Dissolved Oxygen, Nutrients, Turbidity.
PEACE RIVER .....	PEACE R AB JOSHUA CK .....	30	1623C	Dissolved Oxygen, Nutrients, Total Suspended Solids, Mercury (Based on Fish Consumption Advisory).
PEACE RIVER .....	LIMESTONE CREEK .....	37	1921	Dissolved Oxygen, Coliforms, Nutrients, Total Suspended Solids.
PEACE RIVER .....	PEACE R AB CHARLIE CK .....	39	1623D	Coliforms, Nutrients, Turbidity, Total Suspended Solids, Mercury (Based on Fish Consumption Advisory).
PEACE RIVER .....	PEACE R AB OAK CK .....	41	1623E	Nutrients, Turbidity, Total Suspended Solids, Mercury (Based on Fish Consumption Advisory).
PEACE RIVER .....	WHIDDEN CREEK .....	61	1751	Nutrients, Turbidity, Total Suspended Solids, Dissolved Oxygen.
PEACE RIVER .....	PEACE R AB BOWLEGS CK .....	66	1623J	Dissolved Oxygen, Coliforms, Nutrients, Turbidity, Total Suspended Solids.
PEACE RIVER .....	PEACE CR TRIB CANAL .....	68	1613	Dissolved Oxygen, Coliforms, Nutrients, Turbidity. Total Suspended Solids.
PEACE RIVER .....	WEST WALES DRAINAGE CA .....	71	1626	Dissolved Oxygen, Nutrients, Turbidity.
PEACE RIVER .....	SADDLE CK BE L HANCOCK .....	74	1623K	Dissolved Oxygen, Coliforms, Un-ionized Ammonia, Nutrients, Turbidity, Total
PEACE RIVER .....	WAHNETA FARMS DRAIN CANAL	81	1580	Dissolved Oxygen, Coliforms, Nutrients, Turbidity.

## APPENDIX E—EPA APPROVED 303(D) LIST—Continued

HUC name	Water segment	MAPID	WBID	Parameters of concern
PEACE RIVER .....	BANANA LAKE CANAL .....	92	1549A	Dissolved Oxygen, Coliforms, Nutrients, Turbidity, Total Suspended Solids.
PEACE RIVER .....	LAKE LENA RUN .....	96	1501A	Dissolved Oxygen, Coliforms, Nutrients, Turbidity, Total Suspended Solids.
PEACE RIVER .....	PEACE CREEK DR CANAL .....	97	1539	Dissolved Oxygen, Coliforms, Nutrients, Turbidity, Total Suspended Solids.
PENSACOLA BAY .....	PENSACOLA BAY .....	2	548E	Copper, Lead, Biological Oxygen Demand, Nutrients, Turbidity, Total Suspended.
PENSACOLA BAY .....	JONES CREEK .....	8	846A	Coliforms, Dissolved Oxygen, Nutrients, Turbidity.
PENSACOLA BAY .....	JACKSON CREEK .....	14	846B	Dissolved Oxygen, Coliforms, Nutrients, Total Suspended Solids, Turbidity.
PENSACOLA BAY .....	EAST RIVER BAY .....	18	701	Coliforms, Turbidity.
PENSACOLA BAY .....	ESCAMBIA BAY (S) .....	23	548B	Dissolved Oxygen, Coliforms, Nutrients, Total Suspended Solids, Turbidity.
PENSACOLA BAY .....	ESCAMBIA BAY .....	36	548A	Dissolved Oxygen, Coliforms, Nutrients, Total Suspended Solids, Turbidity.
PENSACOLA BAY .....	PACE MILL CREEK .....	46	420	Coliforms, Dissolved Oxygen, Total Suspended Solids, Turbidity.
PERDIDO BAY .....	EIGHTMILE CREEK .....	21	624	Coliforms, Turbidity.
PERDIDO BAY .....	ELEVENMILE CREEK .....	22	489	Nutrients, Turbidity, Total Suspended Solids, Biochemical Oxygen Demand, Dissolved Oxygen, Coliforms, Un-ionized Ammonia.
PERDIDO RIVER .....	JACKS BRANCH .....	11	291	Coliforms, Dissolved Oxygen, Turbidity.
PERDIDO RIVER .....	BRUSHY CREEK .....	36	4	Coliforms, Dissolved Oxygen, Total Suspended Solids, Turbidity.
SARASOTA BAY .....	CLOWERS CREEK .....	41	1975A	Nutrients, Turbidity, Coliforms.
SOUTHEAST FLORIDA COAST .....	E. HOLLOWAY CANAL .....	48	3277B	Nutrients, Dissolved Oxygen, Total Suspended Solids, Biochemical Oxygen Demand, Coliforms.
SOUTHEAST FLORIDA COAST .....	S-7 .....	70	3263	Dissolved Oxygen, Mercury, Nutrients, Turbidity, Mercury (Based on Fish Consumption Advisory).
SOUTHEAST FLORIDA COAST .....	WCA1 NORTH SECTOR .....	83	3252C	Dissolved Oxygen, Coliforms, Nutrients, Total Suspended Solids.
SOUTHEAST FLORIDA COAST .....	CANAL E-4 .....	93	3256D	Coliforms, Turbidity, Nutrients.
SOUTHEAST FLORIDA COAST .....	N. NEW RIVER CANAL .....	94	3248	Dissolved Oxygen, Nutrients, Turbidity, Total Suspended Solids, Mercury (Based on Fish Consumption Advisory).
SOUTHEAST FLORIDA COAST .....	HILSSBORO CANAL .....	95	3248A	Dissolved Oxygen, Coliforms, Un-ionized Ammonia, Nutrients, Turbidity.
SOUTHEAST FLORIDA COAST .....	S-3 .....	96	3251	Dissolved Oxygen, Nutrients, Turbidity, Mercury (Based on Fish Consumption Advisory).
SOUTHEAST FLORIDA COAST .....	WEST PALM BEACH CANAL .....	102	3238	Dissolved Oxygen, Coliforms, Un-ionized Ammonia, Nutrients, Turbidity, Total Suspended Solids, Mercury (Based on Fish Consumption Advisory).
SOUTHEAST FLORIDA COAST .....	715 FARMS .....	106	3247	Dissolved Oxygen, Un-ionized Ammonia, Nutrients, Turbidity, Total Suspended Solids.
SOUTHEAST FLORIDA COAST .....	EAST BEACH .....	109	3244	Dissolved Oxygen, Un-ionized Ammonia, Nutrients, Turbidity, Total Suspended Solids.
SOUTHEAST FLORIDA COAST .....	L-8 .....	111	3233	Dissolved Oxygen, Nutrients, Turbidity, Mercury (Based on Fish Consumption Advisory).
SOUTHEAST FLORIDA COAST .....	SOUTH FORK ST. LUCIE .....	133	3210B	Dissolved Oxygen, Nutrients, Total Suspended Solids, Biochemical Oxygen Demand, Coliforms.

## APPENDIX E—EPA APPROVED 303(D) LIST—Continued

HUC name	Water segment	MAPID	WBID	Parameters of concern
ST JOHNS RIVER, LOWER .....	MILL BRANCH .....	25	2592	Dissolved Oxygen, Coliforms, Nutrients, Turbidity, Biochemical Oxygen Demand.
ST JOHNS RIVER, LOWER .....	WEST RUN INTERCEPTER D .....	28	2569	Dissolved Oxygen, Iron, Silver, Nutrients, Turbidity, Total Suspended Solids, Biochemical Oxygen Demand.
ST JOHNS RIVER, LOWER .....	DOG BRANCH .....	34	2578	Dissolved Oxygen, Nutrients, Turbidity, Lead.
ST JOHNS RIVER, LOWER .....	RICE CREEK .....	36	2567A	Dissolved Oxygen, Iron, Lead, Cadmium, Silver, Nutrients, Turbidity, Total Suspended Solids, Biochemical Oxygen Demand.
ST JOHNS RIVER, LOWER .....	MILL CREEK .....	77	2460	Dissolved Oxygen, Coliforms, Nutrients, Turbidity, Iron.
ST JOHNS RIVER, LOWER .....	STJ RIV AB TROUT RIV .....	87	2213D	Coliforms, Nutrients, Turbidity, Total Suspended Solids.
ST JOHNS RIVER, LOWER .....	SWIMMING PEN CREEK .....	94	2410	Nutrients, Lead, Cadmium, Silver, Zinc, Total Suspended Solids.
ST JOHNS RIVER, LOWER .....	GROG BRANCH .....	96	2407	Dissolved Oxygen, Coliforms, Turbidity, Iron, Total Suspended Solids.
ST JOHNS RIVER, LOWER .....	JULINGTON CREEK .....	115	2351	Dissolved Oxygen, Coliforms, Nutrients, Turbidity, Total Suspended Solids.
ST JOHNS RIVER, LOWER .....	GOODBYS CREEK .....	138	2326	Nutrients, Turbidity, Total Suspended Solids, Biochemical Oxygen.
ST JOHNS RIVER, LOWER .....	FISHING CREEK .....	145	2324	Dissolved Oxygen, Copper, Nutrients, Turbidity, Total Suspended Solids.
ST JOHNS RIVER, LOWER .....	BUTCHER PEN CREEK .....	151	2322	Coliforms, Copper, Nutrients, Turbidity, Total Suspended Solids, Dissolved Oxygen.
ST JOHNS RIVER, LOWER .....	POTTSBURG CREEK .....	170	2265B	Coliforms, Nutrients, Copper, Turbidity.
ST JOHNS RIVER, LOWER .....	WILLS BRANCH .....	178	2282	Copper, Nutrients, Turbidity, Total Suspended Solids, Dissolved Oxygen, Coliforms.
ST JOHNS RIVER, LOWER .....	CEDAR RIVER .....	181	2262	Dissolved Oxygen, Coliforms, Nutrients, Turbidity, Lead, Zinc, Copper.
ST JOHNS RIVER, LOWER .....	MCCOY CREEK .....	182	2262A	Lead, Copper, Zinc, Nutrients, Total Suspended Solids.
ST JOHNS RIVER, LOWER .....	STJ RIV AB ICWW .....	211	2213B	Coliforms, Turbidity, Total Suspended Solids.
ST JOHNS RIVER, LOWER .....	STJ RIV AB DAMES PT .....	212	2213C	Nutrients, Turbidity, Total Suspended Solids.
ST JOHNS RIVER, LOWER .....	ORTEGA RIVER .....	221	2213P	Nutrients, Coliforms, Lead, Copper, Total Suspended Solids, Dissolved Oxygen.
ST JOHNS RIVER, LOWER .....	STJ RIV AB MOUTH .....	224	2213A	Fluoride, Total Suspended Solids.
ST JOHNS RIVER, LOWER .....	LITTLE TROUT RIVER .....	236	2206	Nutrients, Total Suspended Solids.
ST JOHNS RIVER, UPPER .....	DRAINED FARMLAND .....	19	3140	Dissolved Oxygen, Nutrients, Turbidity.
ST JOHNS RIVER, UPPER .....	STJ RIV AB LK WASHINGT .....	33	2893P	Dissolved Oxygen, Iron, Lead, Nutrients, Turbidity, Mercury (Based on Fish Consumption Advisory).
ST JOHNS RIVER, UPPER .....	STJ RIV AB LK POINSETT .....	40	2893L	Dissolved Oxygen, Nutrients, Turbidity, Mercury (Based on Fish Consumption Advisory).
ST JOHNS RIVER, UPPER .....	LONG BRANCH .....	52	3030	Dissolved Oxygen, Coliforms, Iron, Nutrients, Biochemical Oxygen Demand, Turbidity.
ST JOHNS RIVER, UPPER .....	RAVENNA PARK DITCHES .....	108	2962	Dissolved Oxygen, Coliforms, Nutrients, Iron, Turbidity.
ST JOHNS RIVER, UPPER .....	STJ RIV AB WEKIVA R .....	113	2893C	Dissolved Oxygen, Lead, Nutrients, Total Suspended Solids, Biochemical Oxygen Demand.
ST JOHNS RIVER, UPPER .....	STJ RIV AB LAKE GEORGE .....	123	2893Z	Dissolved Oxygen, Nutrients, Total Suspended Solids.

## APPENDIX E—EPA APPROVED 303(D) LIST—Continued

HUC name	Water segment	MAPID	WBID	Parameters of concern
ST MARKS RIVER .....	MUNSON SLOUGH (ABOVE LAKE)	15	807D	Dissolved Oxygen, Coliforms, Nutrients, Turbidity.
ST MARKS RIVER .....	EAST DRAINAGE DITCH .....	23	916	Nutrients, Turbidity, Total Suspended Solids, Biochemical Oxygen Demand, Coliforms.
ST MARKS RIVER .....	ST AUGUSTINE BRANCH .....	28	865	Nutrients, Turbidity, Total Suspended Solids, Biochemical Oxygen Demand, Coliforms.
ST MARKS RIVER .....	CENTRAL DRAINAGE DITCH .....	30	857	Nutrients, Turbidity, Total Suspended Solids, Biochemical Oxygen Demand, Chemical Oxygen Demand, Coliforms.
ST MARKS RIVER .....	LAKE LAFAYETTE .....	31	756	Nutrients, Coliforms, Turbidity.
ST MARKS RIVER .....	GODBY DITCH .....	36	820	Nutrients, Turbidity, Total Suspended Solids, Biochemical Oxygen Demand.
ST MARYS RIVER .....	ST. MARYS RIVER .....	19	2097C	Dissolved Oxygen, Nutrients, Total Suspended Solids, Coliforms.
SUWANNEE RIVER, UPPER .....	ROARING CREEK .....	9	3392	Dissolved Oxygen, Nutrients, Total Suspended Solids, Turbidity.
SUWANNEE RIVER, UPPER .....	SWIFT CREEK .....	15	3375	Dissolved Oxygen, Nutrients, Total Suspended Solids.
TAMPA BAY .....	DELANEY CREEK .....	34	1605	Dissolved Oxygen, Coliforms, Lead, Nutrients, Turbidity, Biochemical Oxygen Demand.
TAMPA BAY .....	YBOR CITY DRAIN .....	39	1584A	Nutrients, Total Suspended Solids, Biochemical Oxygen Demand, Chemical Oxygen Demand.
TAMPA BAY .....	DIRECT RUNOFF TO BAY .....	42	1603	Nutrients, Total Suspended Solids, Biochemical Oxygen Demand, Chemical Oxygen Demand.
TAMPA BAY .....	SIXMILE CREEK .....	48	1536B	Dissolved Oxygen, Coliforms, Nutrients, Turbidity, Biochemical Oxygen Demand.
TAMPA BAY .....	ROCKY CREEK .....	60	1507	Dissolved Oxygen, Coliforms, Nutrients, Total Suspended Solids.
TAYLOR CREEK .....	CHANDLER HAMMOCK SLOUGH ..	6	3199B	Nutrients, Turbidity, Dissolved Oxygen.
TAYLOR CREEK .....	TAYLOR CR .....	7	3205	Dissolved Oxygen, Nutrients, Turbidity.
WITHLACOOCHEE RIVER NORTH	JUMPING GULLY CREEK .....	0	3318	Dissolved Oxygen, Nutrients, Turbidity.
WITHLACOOCHEE RIVER NORTH	WITHLACOOCHEE RIVER .....	2	3315	Dissolved Oxygen, Nutrients, Turbidity, Mercury (Based on Fish Consumption Advisory).
YELLOW RIVER .....	YELLOW RIVER .....	1	30A	Dissolved Oxygen, Turbidity, Mercury (Based on Fish Consumption Advisory).
YELLOW RIVER .....	TURKEY CREEK .....	14	117	Coliforms, Turbidity.
YELLOW RIVER .....	YELLOW RIVER .....	21	30	Coliforms, Turbidity, Mercury (Based on Fish Consumption Advisory).

### Final Modification of the NPDES General Permit for Storm Water Discharges From Construction Activities Preface

#### Table of Contents

- I. Coverage Under This Permit
- II. Notice of Intent Requirements
- III. Special Conditions, Management Practices, and Other Non-Numeric Limitations
- IV. Unpaved Rural Roads
- V. Storm Water Pollution Prevention Plans
- VI. Retention of Records
- VII. Standard Permit Conditions
- VIII. Reopener Clause
- IX. Termination of Coverage

#### X. Definitions

The Clean Water Act (CWA) provides that storm water discharges associated with industrial activity from a point source (including discharges through a municipal separate storm sewer system) to waters of the United States are unlawful, unless authorized by a National Pollutant Discharge Elimination System (NPDES) permit. The terms “storm water discharge associated with industrial activity”, “point source” and “waters of the United States” are critical to determining whether a facility is subject to this requirement. Complete

definitions of these terms are found in the definition section (Part X) of this permit. The following modifies the previously issued NPDES general permit for the discharges of storm water from construction activities.

#### Part I. Coverage Under This Permit

##### A. Permit Area

The permit, except the parts listed below, covers all areas administered by Region 4:

All Indian Country Lands within the State of Alabama, except Part IV and

Part V.D.2.a.(1), NPDES Permit No. ALR10\*##I

State of Florida, excluding Indian lands, NPDES Permit No. FLR10\*###

All Indian Country Lands within the State of Florida, except Part IV and Part V.D.2.a.(1), NPDES Permit No. FLR10\*##I

All Indian Country Lands within the State of Mississippi, except Part IV and Part V.D.2.a.(1), NPDES Permit No. MSR10\*##I

All Indian Country Lands within the State of North Carolina, except Part IV and Part V.D.2.a.(1), NPDES Permit No. NCR10\*##I

#### B. Eligibility

1. This permit may authorize all discharges identified in the pollution prevention plan of storm water associated with industrial activity from construction sites (those sites or common plans of development or sale, including unpaved roads, that will result in the disturbance of five or more acres total land area or less than five acres if the Director designates the site under Section 402(p)(2)(e) of the CWA; henceforth referred to as storm water discharges from construction activities) occurring after the effective date of this permit (including discharges occurring after the effective date of this permit where the construction activity was initiated before the effective date of this permit), except for discharges identified under paragraph I.B.3.

2. This permit may authorize storm water discharges from construction sites that are mixed with storm water discharges associated with industrial activity from industrial sources other than construction, where:

a. The industrial source other than construction is located on the same site as the construction activity;

b. Storm water discharges associated with industrial activity from the areas of the site where construction activities are occurring are in compliance with the terms of this permit; and

c. Storm water discharges associated with industrial activity from the areas of the site where industrial activities other than construction are occurring (including storm water discharges from dedicated asphalt plants and dedicated concrete plants at the construction site) are in compliance with the terms, including applicable NOI or application requirements, of a different NPDES general permit or individual permit authorizing such discharges.

3. Limitations on Coverage. The following storm water discharges from construction sites are not authorized by this permit:

a. Storm water discharges associated with industrial activity that originate from the site after construction activities have been completed and the site has undergone final stabilization;

b. Discharges that are mixed with sources of non-storm water, other than discharges identified in Part III.A of this permit which are in compliance with Part V.D.5 (non-storm water discharges) of this permit;

c. Storm water discharges associated with construction activities that are subject to an existing NPDES individual or general permit or which are issued a permit in accordance with paragraph VII.N (requiring an individual permit or an alternative general permit) of this permit. Such discharges may be authorized under this permit after an existing permit expires, provided the existing permit did not establish numeric limitations for such discharges;

d. Storm water discharges from construction sites that the Director (EPA) has determined to be or may reasonably be expected to be causing or contributing to a violation of a water quality standard;

e. Storm water discharges from construction sites if the discharges may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat;

(1) All applicants must follow the procedures provided at Appendix C of this permit when applying for permit coverage.

(2) A discharge of storm water associated with construction activity may be covered under this permit only if the applicant certifies that they meet at least one of the following criteria. Failure to continue to meet one of these criteria during the term of the permit will result in the storm water discharges associated with construction ineligible for coverage under this permit.

(a) The storm water discharge(s), and the construction and implementation of Best Management Practices (BMPs) to control storm water runoff, are not likely to adversely affect species identified in Appendix C of this permit or critical habitat for a listed species; or

(b) The applicant's activity has received previous authorization under Section 7 or section 10 of the Endangered Species Act and that authorization addressed storm water discharges and/or BMPs to control storm water runoff (e.g., developer included impact of entire project in consultation over a wetlands dredge and fill permit under Section 7 of the Endangered Species Act); or

(c) The applicant's activity was considered as part of a larger, more comprehensive assessment of impacts

on endangered species under Section 7 or Section 10 of the Endangered Species Act that which accounts for storm water discharges and BMPs to control storm water runoff (e.g., where an area-wide habitat conservation plan and Section 10 permit is issued which addresses impacts from construction activities including those from storm water, or a National Environmental Policy Act (NEPA) review is conducted which incorporates ESA Section 7 procedures); or

(d) Consultation under Section 7 of the Endangered Species Act is conducted for the applicant's activity which results in either a no jeopardy opinion or a written concurrence on a finding of not likely to adversely affect; or

(e) The applicant's activity was considered as part of a larger, more comprehensive site-specific assessment of impacts on endangered species by the owner or other operator of the site and that permittee certified eligibility under item (a), (b), (c), or (d) above (e.g. owner was able to certify no adverse impacts for the project as a whole under item (a), so the contractor can then certify under item (e)).

(3) The applicant must comply with any terms and conditions imposed under the eligibility requirements of paragraphs (1)(a), (b), (c), (d), or (e) above to ensure that storm water discharges or BMPs to control storm water runoff are protective of listed endangered and threatened species and/or critical habitat. Such terms and conditions must be incorporated in the applicant's storm water pollution prevention plan.

(4) For the purposes of conducting consultation to meet the eligibility requirements of paragraph (1)(d) above, applicants are designated as non-Federal representatives. See 50 CFR 402.08. However, applicants who choose to conduct consultation as a non-Federal representative must notify EPA and the appropriate Office of the Fish and Wildlife Service office in writing of that decision.

(5) This permit does not authorize any "taking" (as defined under Section 9 of the Endangered Species Act) of endangered or threatened species.

(6) This permit does not authorize any storm water discharges, nor require any BMPs to control storm water runoff, that are likely to jeopardize the continued existence of any species that are listed as endangered or threatened under the Endangered Species Act or result in the adverse modification or destruction of habitat that is designated as critical under the Endangered Species Act.

f. Storm water discharges that would affect a property that is listed or is eligible for listing in the National Historic Register maintained by the Secretary of Interior may be in violation of the National Historic Preservation Act. A discharge of storm water associated with construction activity may be covered under this permit only if the applicant certifies that either:

(1) The storm water discharge(s), and the construction and implementation of BMPs to control storm water runoff, do not affect a property that is listed or is eligible for listing in the National Historic Register maintained by the Secretary of Interior; or,

(2) The applicant consults with the State Historic Preservation Officer (SHPO) or the Tribal Historic Preservation Officer (THPO) on the potential for adverse effects which results in a no effect finding; or

(3) The applicant has obtained and is in compliance with a written agreement between the applicant and the SHPO or THPO that outlines all measures to be undertaken by the applicant to mitigate or prevent adverse effects to the historic property; or

(4) The applicant agrees to implement and comply with the terms of a written agreement between another owner/operator (e.g., subdivision developer, property owner, etc.) and the SHPO or THPO that outlines all measures to be undertaken by operators on the site to mitigate or prevent adverse effects to the historic property; or

(5) The applicant's activity was considered as part of a larger, more comprehensive site-specific assessment of effects on historic properties by the owner or other operator of the site and that permittee certified eligibility under item (1), (2), (3), or (4) above.

g. Discharges of storm water associated with industrial activity from construction sites not specifically identified in the pollution prevention plan in accordance with Part V of this permit. Such discharges not identified in the plan are subject to the upset and bypass rules in Part VII of this permit.

### C. Authorization

1. A discharger must submit a Notice of Intent (NOI) in accordance with the requirements of Part II of this permit, using an NOI form provided by the Director (or a photocopy thereof), in order for storm water discharges from construction sites to be authorized to discharge under this general permit.<sup>1</sup>

2. Where a new operator is selected after the submittal of an NOI under Part

II, a new NOI must be submitted by the operator in accordance with Part II, using an NOI form provided by the Director (or a photocopy thereof).

3. Unless notified by the Director to the contrary, dischargers who submit an NOI in accordance with the requirements of this permit are authorized to discharge storm water from construction sites under the terms and conditions of this permit 2 days after the date that the NOI is postmarked. The Director may deny coverage under this permit and require submittal of an application for an individual NPDES permit based on a review of the NOI or other information (see Part VII.L of this permit).

### Part II. Notice of Intent Requirements

#### A. Deadlines for Notification.

1. Except as provided in paragraphs II.A.2, II.A.3, II.A.4, and II.A.5, individuals who intend to obtain coverage under this general permit for storm water discharges from a construction site (where disturbances associated with the construction project commence before the effective date of this permit), including unpaved rural roads, shall submit a Notice of Intent (NOI) in accordance with the requirements of this Part within 30 days of the effective date of this permit;

2. Individuals who intend to obtain coverage under this general permit for storm water discharges from a construction site, including unpaved rural roads, where disturbances associated with the construction project commence after April 28, 2000, shall submit an NOI in accordance with the requirements of this Part, at least 2 days prior to the commencement of construction activities (e.g. the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities). Prior to submitting this NOI, except for owners of facilities located within Indian country, as defined in 18 U.S.C. 1151, the owner of a storm water management system must receive a State of Florida storm water or environmental resource permit from either the Florida Department of Environmental Protection (FDEP) or a Florida Water Management District (FWMD);

3. For storm water discharges from construction sites, including unpaved rural roads, where the operator changes (including projects where an operator is selected after an NOI has been submitted under Parts II.A.1 or II.A.2), an NOI in accordance with the requirements of this Part shall be submitted at least 2 days prior to when

the operator commences work at the site; and

4. EPA will accept an NOI in accordance with the requirements of this Part after the dates provided in Parts II.A.1, 2 or 3 of this permit. EPA shall, in such instances, use its discretion in initiating any appropriate enforcement actions.

5. Applicants who have submitted a completed NOI for coverage under the administratively continued previous general permit, issued September 25, 1992 (57 FR 44412), or applicants who have submitted a completed NOI for coverage under the general permit after its expiration shall automatically receive coverage under today's permit. If the applicant cannot certify that they meet all applicable eligibility requirements of Part I.B of today's permit or cannot be covered by, or comply with, the terms and conditions of this permit, then the applicant shall notify the director, in accordance with the requirements of Part IX of this permit, within 90 days of the effective date of this permit.

#### B. Contents of Notice of Intent

Notices of Intent, as referenced in Appendix A, submitted to the permit issuing authority shall be signed in accordance with Part VII.G of this permit by all of the entities identified in Part II.B.2. The NOI shall include the following information:

1. The mailing address, and location (including the county) of the construction site for which the notification is submitted. Where a mailing address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township and range to the nearest quarter section;

2. The name, address and telephone number of the operator(s) with day to day operational control that have been identified at the time of the NOI submittal, and operator status as a Federal, State, private, public or other entity. Where multiple operators have been selected at the time of the initial NOI submittal, NOIs must be attached and submitted in the same envelope. When an additional operator submits an NOI for a site with an existing NPDES permit, the NOI for the additional operators must indicate the number for the existing NPDES permit;

3. The location of the first outfall in latitude and longitude to the nearest 15 seconds and the name of the receiving water(s) into which that outfall discharges, or if the discharge is through a municipal separate storm sewer, the

<sup>1</sup> A copy of the approved NOI form is provided in Appendix A of this notice.

name of the municipal operator of the storm sewer and the ultimate receiving water(s). (All other outfalls must be listed in the pollution prevention plan as required by Part V.);

4. The permit number of any NPDES permit(s) for any discharge(s) (including any storm water discharges or non-storm water discharges) from the site;

5. An indication of whether the owner or operator has existing quantitative data which describes the concentration of pollutants in storm water discharges (existing data should not be included as part of the NOI); and

6. An estimate of project start date and completion dates, estimates of the number of acres of the site on which soil will be disturbed, and a certification that a storm water pollution prevention plan has been prepared for the site in accordance with Part V of this permit. (A copy of the plans or permits should not be included with the NOI submission). For activities located in the State of Florida, the applicant shall submit a narrative statement certifying that the storm water pollution prevention plan for the facility provides compliance with approved State of Florida issued permits, erosion and sediment control plans and storm water management plans. The applicant shall also submit a copy of the cover page of the State permit issued by FDEP or a FWMD to the facility for the storm water discharges associated with construction activity.

7. A certification that a storm water pollution prevention plan, including both construction and post-construction controls, has been prepared for the site in accordance with Part IV of this permit, and such plan provides compliance with approved State/Tribal and/or local sediment and erosion plans or permits and/or storm water management plans or permits in accordance with Part IV.D.2.d of this permit. (A copy of the plans or permits should not be included with the NOI submission). The applicant shall also submit a copy of the cover page of the State permit issued by FDEP or a FWMD to the facility for the storm water discharges associated with construction activity.

8. Whether, based on the instructions in Appendix C, any species identified in Appendix C are in proximity to the storm water discharges covered by this permit or the BMPs to be used to comply with permit conditions.

9. Under which section(s) of Part I.B.3.e.(2) (Endangered Species) and Part I.B.3.f. (Historical Preservation) the applicant is certifying eligibility.

10. The following certifications shall be signed in accordance with Part VII.G.

"I certify, under penalty of law, that I have read and understand the Part I.B. eligibility requirements for coverage under the general permit for storm water discharges from construction activities, including those requirements relating to the protection of endangered species identified in Appendix C."

"To the best of my knowledge the discharges covered under this permit, and the construction and operation of BMPs to control storm water runoff, are not likely to adversely affect any species identified in Appendix C of this permit, or are otherwise eligible for coverage under this permit, in accordance with Part I.B.3.e of the permit, due to previous authorization under the Endangered Species Act, or agreement to implement protective measures required by the Director as a condition of eligibility."

"I further certify, to the best of my knowledge, that such discharges, and construction of BMPs to control storm water runoff, do not have an effect on properties listed or eligible for listing on the National Register of Historic Places under the National Historic Preservation Act, or are otherwise eligible for coverage, in accordance with Part I.B.3.f. of the permit, due to a previous agreement under the National Historic Preservation Act."

"I understand that continued coverage under this storm water general permit is contingent upon maintaining eligibility as provided for in Part I.B."

#### C. Where To Submit

1. Facilities which discharge storm water associated with industrial activity must use an NOI form provided by the Director (or photocopy thereof). Currently, applicants may use the NOI form published in the September 29, 1995 **Federal Register** (60 FR 51265). The final version of the NOI form proposed in the June 2, 1997 **Federal Register** (62 FR 29785) shall be used when published in the **Federal Register**. Forms are also available by calling (404) 562-9296. NOIs must be signed in accordance with Part VII.G of this permit. NOIs are to be submitted to the Director of the NPDES program in care of the following address: Storm Water Notice of Intent (4203), 401 M Street, SW., Room 2104, Northeast Mall, Washington, DC 20460.

2. A copy of the NOI, or other indication that storm water discharges from the site are covered under an NPDES permit, and a brief description of the project shall be posted at the construction site in a prominent place for public viewing (such as alongside a building permit).

#### D. Additional Notification

Facilities which are operating under approved State or local sediment and erosion plans, grading plans, or storm water management plans shall also submit signed copies of the Notice of

Intent to the State or local agency approving such plans in accordance with the deadlines in Part II.A of this permit (or sooner where required by State or local rules). Facilities which discharge storm water associated with construction activities to a municipal separate storm water system within Broward, Dade, Duval, Escambia, Hillsborough, Lee, Leon, Manatee, Orange, Palm Beach, Pasco, Pinellas, Polk, Sarasota or Seminole Counties shall submit a copy of the NOI to the operator of the municipal separate storm sewer system. Included within these counties, the Florida Department of Transportation (FDOT), incorporated municipalities, and Chapter 298 Special Districts shall also be notified where they own or operate a municipal separate storm sewer system receiving storm water discharges associated with construction activity covered by this permit.

#### E. Permit Renewal

If this general permit is not reissued prior to its expiration date, all facilities desiring to retain continued coverage shall submit another NOI form at least 180 days prior to the expiration of this permit. This submittal shall also satisfy the notification requirement to be covered under the reissued permit.

### Part III. Special Conditions, Management Practices, and Other Non-Numeric Limitations

#### A. Prohibition on Non-Storm Water Discharges

1. Except as provided in paragraph I.B.2 and III.A.2, all discharges covered by this permit shall be composed entirely of storm water.

2. a. Except as provided in paragraph III.A.2.(b), discharges of material other than storm water must be in compliance with an NPDES permit (other than this permit) issued for the discharge.

b. The following non-storm water discharges may be authorized by this permit provided the non-storm water component of the discharge is in compliance with paragraph V.D.5 and the storm water management system is designed to accept these discharges and provide treatment of the non-storm water component sufficient to meet Florida water quality standards: Discharges from fire fighting activities; fire hydrant flushings; waters used to spray off loose solids from vehicles (waste waters from a more thorough cleaning, including the use of detergents or other cleaners is not authorized by this part) or control dust in accordance with Part V.D.2.c.(2); potable water sources including waterline flushings;

irrigation drainage; routine external building washdown which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; and foundation or footing drains where flows are not contaminated with process materials such as solvents. Discharges resulting from ground water dewatering activities at construction sites are not covered by this permit. Applicants in the State of Florida seeking coverage for these discharges must contact the Florida Department of Environmental Protection.

#### *B. Releases in Excess of Reportable Quantities*

1. The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. This permit does not relieve the permittee of the reporting requirements of 40 CFR part 117 and 40 CFR part 302. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR 117 or 40 CFR 302, occurs during a 24-hour period:

a. The permittee is required to notify the National Response Center (NRC) (800-424-8802 or for Region 4, 404-562-8702) in accordance with the requirements of 40 CFR 117 and 40 CFR 302 as soon as he or she has knowledge of the discharge;

b. The permittee shall submit within 14 calendar days of knowledge of the release a written description of: The release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken in accordance with Part III.B.3 of this permit to EPA Region 4 Office at the address provided in Part VI.C (addresses) of this permit; and

c. The storm water pollution prevention plan required under Part V of this permit must be modified within 14 calendar days of knowledge of the release to: provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

2. Spills. This permit does not authorize the discharge of hazardous

substances or oil resulting from an on-site spill.

#### *C. Discharges to Impaired Waters*

Facilities that have coverage under this general permit prior to its modification on July 1, 2000 shall be in compliance with Parts III.C.1. through 5. within 30 days of the effective date of this modification.

Facilities that apply for coverage under the general permit after July 1, 2000 which discharge storm water from construction activities directly to waters of the United States which are listed on the EPA approved 303(d) list (or any subsequently approved list, hereafter referenced as EPA approved 303(d) list) for total suspended solids (TSS), or other indicators of solids transportation such as turbidity, siltation or sedimentation, see Appendix D, shall comply with the following:

1. The permittee shall monitor by grab sample, during regular working hours, once per month within the first 30 minutes of a qualifying event or within the first 30 minutes of the beginning of the discharge of a previously collected qualifying event for Settleable Solids (ml/l), Total Suspended Solids (mg/l), Turbidity (NTUs) and Flow (MGD).

2. Where the receiving water has flow upstream from the discharge, a background sample for Settleable Solids, Total Suspended Solids and Turbidity shall be taken instream at middepth and immediately upstream from the influence of the discharge of storm water from the site.

3. The soil type and average slope of the drainage area for each outfall shall be reported with the Discharge Monitoring Report submitted in accordance with Part III.C.5. of the permit.

4. A qualifying event for the purpose of this section is a rain event of 0.5 inches or greater in a 24-hour period.

5. Data collected in accordance with Part III.C. of the permit shall be submitted to EPA once per month.

This permit does not authorize the discharge of storm water, from construction activities, which causes or contributes to the impairment of the designated use of waters of the United States.

#### **Part IV. Unpaved Rural Roads**

A. Applicability. The provisions of this part are applicable to the construction of roads, except roads constructed and associated with silviculture and agricultural activities as defined by 40 CFR Part 122, that disturb five (5) acres or more and will remain unpaved after construction is complete.

B. Construction. In the State of Florida, construction of unpaved rural roads where the possibility of a point source discharge to surface waters exists, must all erosion and sediment controls and storm water management practices as needed to be consistent with the requirements set forth in State Water Policy (Chapter 62-40, FAC), the applicable storm water or environmental resource permitting requirements of the FDEP or appropriate FWMD, and the guidelines contained in the Florida Development Manual: A Guide to Sound Land and Water Management (FDEP, 1988) and any subsequent amendments.

C. Notice of Termination. Where a site has been finally stabilized and all storm water discharges from construction activities that are authorized by this permit are eliminated (see Part IX.A.5. for the definition of eliminated), or where the operator of all storm water discharges at a facility changes, the operator of the facility may submit a Notice of Termination that is signed in accordance with Part VII.G of this permit.

#### **Part V. Storm Water Pollution Prevention Plans**

A storm water pollution prevention plan shall be developed for each construction site covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction site. In addition, the plan shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges associated with industrial activity at the construction site and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

##### *A. Deadlines for Plan Preparation and Compliance*

The plan shall:

1. Be completed (including certifications required under Part V.E) prior to the submittal of an NOI to be covered under this permit and updated as appropriate;

2. The plan shall provide for compliance with the terms and schedule of the plan beginning with the initiation of construction activities.



### *B. Signature and Plan Review*

1. The plan shall be signed in accordance with Part VII.G, and be retained on-site at the facility which generates the storm water discharge in accordance with Part V (retention of records) of this permit.

2. The permittee shall submit plans to the State agency which issued the storm water or environmental resource permit referenced in Part II.B.6. and shall make plans available upon request to the Director; a State or local agency approving sediment and erosion plans, grading plans, or storm water management plans; or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system.

3. The Director may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this Part. Such notification shall identify those provisions of the permit which are not being met by the plan, and identify which provisions of the plan requires modifications in order to meet the minimum requirements of this Part. Within 7 days of such notification from the Director, (or as otherwise provided by the Director), or authorized representative, the permittee shall make the required changes to the plan and shall submit to the Director a written certification that the requested changes have been made.

### *C. Keeping Plans Current.*

The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States, including the addition of or change in location of storm water discharge points, and which has not otherwise been addressed in the plan or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part V.D.2 of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with construction activity. In addition, the plan shall be amended to identify any new contractor and/or subcontractor that will implement a measure of the storm water pollution prevention plan (see Part V.E). Amendments to the plan shall be prepared, dated, and kept as separate documents from the original plan. The amendments to the plan may be

reviewed by EPA in the same manner as Part V.B above. Amendments to the plan must be submitted to the State agency which issued the State storm water or environmental resource permit.

### *D. Contents of Plan*

The storm water pollution prevention plan shall include the following items:

1. Site Description. Each plan shall provide a description of pollutant sources and other information as indicated:

- a. A description of the nature of the construction activity;
- b. A description of the intended sequence of major activities which disturb soils for major portions of the site (e.g. grubbing, excavation, grading);
- c. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading, or other activities;
- d. An estimate of the runoff coefficient of the site before, during and after construction activities are completed using "C" from the Rational Method, and existing data describing the soil or the quality of any discharge from the site and an estimate of the size of the drainage area for each outfall;
- e. A site map indicating drainage patterns and approximate slopes anticipated after major grading activities, areas of soil disturbance, an outline of areas which may not be disturbed, the location of major structural and nonstructural controls identified in the plan, the location of areas where stabilization practices are expected to occur, surface waters (including wetlands), and locations where storm water is discharged to a surface water; and,
- f. The location in terms of latitude and longitude, to the nearest 15 seconds, of each outfall, the name of the receiving water(s) for each outfall and the amount of any wetland acreage at the site.

2. Controls. Each plan shall include a description of appropriate controls and measures that will be implemented at the construction site. The plan will clearly describe for each major activity identified in Part V.D.1.b appropriate control measures and the timing during the construction process that the measures will be implemented. (For example, perimeter controls for one portion of the site will be installed after the clearing and grubbing necessary for installation of the measure, but before the clearing and grubbing for the remaining portions of the site. Perimeter controls will be actively maintained until final stabilization of those portions of the site upward of the perimeter control. Temporary perimeter controls

will be removed after final stabilization). All controls shall be consistent with the requirements set forth in the State Water Policy of Florida (Chapter 62-40, Florida Administrative Code), the applicable storm water or environmental resource permitting requirements of the FDEP or appropriate FWMD, and the guidelines contained in the Florida Development Manual: A Guide to Sound Land and Water Management (FDEP, 1988) and any subsequent amendments. The description and implementation of controls shall address the following minimum components:

a. Erosion and Sediment Controls. (1) Stabilization Practices. A description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized. Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures. A record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site and when stabilization measures are initiated shall be included in the plan. Stabilization measures shall be initiated as soon as practicable, but in no case more than 14 days, in portions of the site where construction activities have temporarily or permanently ceased.

(2) Structural Practices. A description of structural practices, to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site; and in the State of Florida, in accordance with the requirements set forth in Section 62-40, 420, FAC, and the applicable storm water or environmental resource regulations of the FDEP or appropriate FWMD. Such practices may include silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural practices should be placed on upland soils unless a State of Florida wetland resource management permit or environmental resource permit issued pursuant to Chapters 373 or 403, FS, and applicable regulations of the FDEP or FWMD authorize otherwise. The

installation of these devices may be subject to Section 404 of the CWA.

(a) For common drainage locations that serve an area with more than 10 disturbed acres at one time, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. The 3,600 cubic feet of storage area per acre drained does not apply to flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin. For drainage locations which serve more than 10 disturbed acres at one time and where a temporary sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent controls are not attainable, smaller sediment basins and/or sediment traps should be used. At a minimum, silt fences, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area.

(b) For drainage locations serving less than 10 acres, sediment basins and/or sediment traps should be used. At a minimum, silt fences or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area unless or a sediment basin providing storage for 3,600 cubic feet of storage per acre drained is provided.

b. Storm Water Management. A description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. In the State of Florida, the description of controls shall be consistent with the requirements set forth in the State Water Policy of Florida (Chapter 62-40, FAC), the applicable storm water or environmental resource permitting regulations of the guidelines contained in the Florida Development Manual: A Guide to Sound Land and Water Management (FDEP, 1988), and any subsequent amendments. Structural measures should be placed on upland soils unless a State of Florida wetland resource management permit or environmental resource permit issued pursuant to Chapters 373 or 403, FS, and applicable regulations of the FDEP or FWMD authorize otherwise. The installation of these devices may be subject to Section 404 of the CWA. This NPDES permit only addresses the installation of storm water management measures, and not the ultimate operation and maintenance of such structures after the construction

activities have been completed and the site has undergone final stabilization. Permittees are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with industrial activity have been eliminated from the site. However, all storm water management systems shall be operated and maintained in perpetuity after final stabilization in accordance with requirements set forth in the State of Florida storm water or environmental resource permit issued for the site.

(1) Such practices may include: Storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems (which combine several practices). In the State of Florida, pursuant to the requirements of section 62-40.432, FAC, the storm water management system shall be designed to remove at least 80 percent of the average annual load of pollutants which cause or contribute to violations of water quality standards (95 percent if the system discharges to an Outstanding Florida Water). The pollution prevention plan shall include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels.

(2) Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel for the purpose of providing a non-erosive velocity flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g. no significant changes in the hydrological regime of the receiving water). Equalization of the predevelopment and post-development storm water peak discharge rate and volume shall be a goal in the design of the post-development storm water management system.

c. Other Controls. (1) Waste Disposal. No solid materials, including building materials, shall be discharged to waters of the United States, except as authorized by a Section 404 permit and by a State of Florida wetland resource management permit or environmental resource permit issued pursuant to chapters 373 or 403, FS, and the applicable regulations of the FDEP or FWMD.

(2) Off-site vehicle tracking of sediments and the generation of dust shall be minimized.

(3) The plan shall ensure and demonstrate compliance with applicable State and/or local waste disposal, sanitary sewer or septic system regulations.

(4) The plan shall address the proper application rates and methods for the use of fertilizers and pesticides at the construction site and set forth how these procedures will be implemented and enforced. Nutrients will be applied only at rates necessary to establish and maintain vegetation such that discharges will not cause or contribute to violations of State surface or ground water quality standards.

(5) The plan shall ensure that the application, generation, and migration of toxic substances are limited and that toxic materials are properly stored and disposed.

d. Approved State or Local Plans. (1) Facilities which discharge storm water associated with construction activity must include in their storm water pollution prevention plan procedures and requirements specified in applicable sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State, Tribal or local officials. Permittees shall provide a certification in their storm water pollution prevention plan that their storm water pollution prevention plan reflects requirements applicable to protecting surface water resources in sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State, Tribal or local officials. Permittees shall comply with any such requirements during the term of the permit. This provision does not apply to provisions of master plans, comprehensive plans, non-enforceable guidelines or technical guidance documents that are not identified in a specific plan or permit that is issued for the construction site.

(2) Storm water pollution prevention plans must be amended to reflect any change applicable to protecting surface water resources in sediment and erosion site plans or site permits, or storm water management site plans or site permits, approved by State or local officials, for which the permittee receives written notice. Where the permittee receives such written notice of a change, the permittee shall provide a recertification in the storm water pollution plan that the storm water pollution prevention plan has been modified to address such changes.

(3) Dischargers seeking alternative permit requirements shall submit an individual permit application in accordance with Part VII.L of the permit

at the address indicated in Part V.C of this permit for the appropriate Regional Office, along with a description of why requirements in approved State or local plans or permits, or changes to such plans or permits should not be applicable as a condition of an NPDES permit.

3. Maintenance. A description of procedures to ensure the timely maintenance of vegetation, erosion and sediment controls and other protective measures identified in the site plan.

4. Inspections. Qualified personnel (one who is provided by the discharger and who has completed the Florida Storm water, Erosion and Sediment Control Training and Certification Program for Inspectors and Contractors and who has passed the examination) shall inspect all points of discharge into waters of the United States or to a municipal separate storm sewer system and all disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, structural control measures, and locations where vehicles enter or exit the site at least once every seven calendar days and within 24 hours of the end of a storm that is 0.25 inches or greater. Where sites have been finally stabilized; such inspection shall be conducted at least once every month.

a. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the storm water system. The storm water management system and erosion and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly. In the State of Florida, where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in meeting the performance standards set forth in State Water Policy (chapter 62-40, FAC) and the applicable storm water or environmental resource permitting regulations of the FDEP or appropriate FWMD. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.

b. Based on the results of the inspection, the site description identified in the plan in accordance with paragraph V.D.1 of this permit and pollution prevention measures identified in the plan in accordance with paragraph V.D.2 of this permit shall be revised as appropriate, but in no case later than 7 calendar days following the inspection. Such modifications shall provide for timely

implementation of any changes to the plan within 7 calendar days following the inspection.

c. A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph V.D.4.b of the permit shall be made and retained as part of the storm water pollution prevention plan for at least three years from the date that the site is finally stabilized. Such reports shall identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G of this permit.

5. Non-Storm Water Discharges—Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A.2 of this permit that are combined with storm water discharges associated with construction activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

#### *E. Contractors*

1. The storm water pollution prevention plan must clearly identify, for each measure identified in the plan, the contractor(s) and/or subcontractor(s) that will implement the measure. All contractors and subcontractors identified in the plan must sign a copy of the certification statement in Part V.E.2 of this permit in accordance with Part VII.G of this permit. All certifications must be included in the storm water pollution prevention plan.

2. Certification Statement. All contractors and subcontractors identified in a storm water pollution prevention plan in accordance with Part V.E.1 of this permit shall sign a copy of the following certification statement before conducting any professional service identified in the storm water pollution prevention plan:

"I certify under penalty of law that I understand the terms and conditions of the general National Pollutant Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification."

The certification must include the name and title of the person providing the signature in accordance with Part VII.G of this permit; the name, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

#### **Part VI. Retention of Records**

A. The permittee shall retain copies of storm water pollution prevention plans and all reports required by this permit, and records of all data used to complete the Notice of Intent to be covered by 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 Director at any time.

B. The permittee shall retain a copy of the storm water pollution prevention plan required by this permit at the construction site from the date of project initiation to the date of final stabilization.

C. Addresses. Except for the submittal of NOIs (Part II.C) and NOTs (Part IX), all written correspondence directed to the U.S. Environmental Protection Agency concerning discharges in the State of Florida or an Indian lands located in Region 4, and subject to coverage under this permit, including the submittal of individual permit applications, shall be sent to the address listed below: U.S. EPA, Region 4, Surface Water Permits Section, Water Management Division, Atlanta Federal Center, 61 Forsyth St., SW, Atlanta, GA 30303.

#### **Part VII. Standard Permit Conditions**

##### *A. Duty To Comply*

1. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. Penalties for Violations of Permit Conditions.

a. Criminal—(1) Negligent Violations. The CWA provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(2) Knowing Violations. The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is

subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(3) **Knowing Endangerment.** The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than \$250,000, or by imprisonment for not more than 15 years, or both.

(4) **False Statement.** The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than 2 years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See Section 309.c.4 of the Clean Water Act).

b. **Civil Penalties**—The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed \$25,000 per day for each violation.

c. **Administrative Penalties**—The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

(1) **Class I penalty.** Not to exceed \$10,000 per violation nor shall the maximum amount exceed \$25,000.

(2) **Class II penalty.** Not to exceed \$10,000 per day for each day during which the violation continues nor shall the maximum amount exceed \$125,000.

#### *B. Continuation of the Expired General Permit*

This permit expires at midnight 5 years from April 28, 2000. If this general permit is not reissued prior to its expiration date, all facilities desiring to retain continued coverage shall submit another NOI form at least 180 days prior to the expiration of this permit. This submittal shall also satisfy the

notification requirement to be covered under the reissued permit. Facilities that have not obtained coverage under this permit by the expiration date of this permit cannot become authorized to discharge under the continued permit.

The authorization to discharge under the continued previous general permit, issued on September 25, 1992 (57 FR 44412), expired 90 days from February 23, 1998.

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

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

E. **Duty to Provide Information.** The permittee shall furnish within a reasonable time to the Director; an authorized representative of the Director; a State or local agency approving sediment and erosion plans, grading plans, or storm water management plans; or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system, any information which is requested to determine compliance with this permit or other information.

F. **Other Information.** When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, he or she shall promptly submit such facts or information.

G. **Signatory Requirements.** All Notices of Intent, storm water pollution prevention plans, reports, certifications or information either submitted to the Director or the operator of a large or medium municipal separate storm sewer system, or that this permit requires be maintained by the permittee, shall be signed as follows:

1. All Notices of Intent shall be signed as follows:

a. For a corporation: By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (1) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

(2) The manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000 (in second-quarter 1980 dollars) if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or

c. For a municipality, State, Federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

2. All reports required by the permit and other information requested by the Director or authorized representative of the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director.

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

c. **Changes to authorization.** If an authorization under paragraph II.B.3. is no longer accurate because a different operator has responsibility for the overall operation of the construction site, a new notice of intent satisfying the requirements of paragraph II.B. must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

d. **Certification.** Any person signing documents under paragraph VII.G shall make the following certification:

"I certify, under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons

who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

#### *H. Penalties for Falsification of Reports*

Section 309(c)(4) of the Clean Water Act provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or by both.

#### *I. Penalties for Falsification of Monitoring Systems*

The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

#### *J. Oil and Hazardous Substance Liability*

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

#### *K. Property Rights*

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

#### *L. Severability*

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other

circumstances, and the remainder of this permit shall not be affected thereby.

#### *M. Transfers*

Coverage under this permit is not transferable to any person except after notice to the Director. The Director may require termination of permit coverage by the current permittee in accordance with Part IX of this permit; and the subsequent submission a Notice of Intent to receive coverage under the permit by the new applicant in accordance with Part II of this permit.

#### *N. Requiring an Individual Permit or an Alternative General Permit*

1. The Director may require any person authorized by this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the Director to take action under this paragraph. Where the Director requires a discharger authorized to discharge under this permit to apply for an individual NPDES permit, the Director shall notify the discharger in writing that a permit application is required. This notification shall include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for the discharger to file the application, and a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. Applications shall be submitted to the appropriate Regional Office indicated in Part V.C of this permit. The Director may grant additional time to submit the application upon request of the applicant. If a discharger fails to submit in a timely manner an individual NPDES permit application as required by the Director under this paragraph, then the applicability of this permit to the individual NPDES permittee is automatically terminated at the end of the day specified by the Director for application submittal.

2. Any discharger authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. In such cases, the permittee shall submit an individual application in accordance with the requirements of 40 CFR 122.26(c)(1)(ii), with reasons supporting the request, to the Director at the address for the appropriate Regional Office indicated in Part V.C of this permit. The request may be granted by issuance of any individual permit or an alternative general permit

if the reasons cited by the permittee are adequate to support the request.

3. When an individual NPDES permit is issued to a discharger otherwise subject to this permit, or the discharger is authorized to discharge under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Director.

#### *O. State/Environmental Laws*

1. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

2. No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

#### *P. Proper Operation and Maintenance*

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also include adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance require the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

#### *Q. Inspection and Entry*

The permittee shall allow the Director or an authorized representative of EPA, the State, or, in the case of a construction site which discharges through a municipal separate storm sewer, an authorized representative of the municipal operator or the separate storm sewer receiving the discharge,

upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect, at reasonable times, any facilities or equipment (including monitoring and control equipment); and

4. Sample or monitor, at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA, any substances or parameter at any location on the site.

#### R. Permit Actions

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

#### S. Planned Changes

The permittee shall amend the pollution prevention plan as soon as possible identifying any planned physical alterations or additions to the permitted facility.

#### T. Twenty-Four Hour Reporting

(1) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause: the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

#### U. Bypass

(1) *Definitions.* (i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

(ii) Severe property damage means substantial physical damage to property

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

#### (2) Bypass not exceeding limitations.

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs S(3) and S(4).

#### (3) Notice.

(i) *Anticipated bypass.* If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(ii) *Unanticipated bypass.* The permittee shall submit notice of an unanticipated bypass as required in paragraph R. of this section (24-hour notice).

(4) *Prohibition of bypass.* (i) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) The permittee submitted notices as required under paragraph S(3) of this section.

(ii) The Director may approve an anticipated bypass after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph S(4)(i) of this section.

#### Part VIII. Reopener Clause

A. If there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with industrial activity covered by this permit, the discharger may be required to obtain an individual permit or an alternative general permit in accordance with Part I.C of this permit or the permit may be modified to include different limitations and/or requirements.

B. Permit modification or revocation will be conducted according to 40 CFR 122.62, 122.63, 122.64 and 124.5.

C. This permit may be modified, or alternatively, revoked and reissued, to comply with any applicable provisions of the Phase II storm water regulations once they are issued.

#### Part IX. Termination of Coverage

##### A. Notice of Termination

Where a site has been finally stabilized and all storm water discharges from construction sites that are authorized by this permit are eliminated (see Part IX.A.5. for the definition of eliminated), or where the operator of all storm water discharges at a facility changes, the operator of the facility may submit a Notice of Termination that is signed in accordance with Part VII.G of this permit within 14 days of final stabilization of the site. The Notice of Termination shall include the following information:

1. The mailing address, and location of the construction site for which the notification is submitted. Where a mailing address for the site is not available, the location can be described in terms of the latitude and longitude of the approximate center of the facility to the nearest 15 seconds, or the section, township and range to the nearest quarter section;

2. The name, address, and telephone number of the operator seeking termination of permit coverage;

3. The NPDES permit number for the storm water discharge identified by this Notice of Termination;

4. An identification of whether the storm water discharges associated with industrial activity have been eliminated or the operator of the discharges has changed; and

5. The following certification signed in accordance with Part VII.G (signatory requirements) of this permit:

I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by a NPDES general permit have otherwise been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water associated with industrial activity by the general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this notice of termination does not release an operator from liability for any violations of this permit or the Clean Water Act."

For the purposes of this certification, elimination of storm water discharges associated with construction activity means that all disturbed soils at the identified facility have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, or that all storm water discharges associated with construction activities from the identified site that are authorized by a NPDES general permit have otherwise been eliminated.

#### *B. Where To Submit*

Applicants are to use the NOT form published in the September 29, 1995 **Federal Register** (60 FR 51265). All Notices of Termination are to be sent, using the form provided by the Director (or a photocopy thereof),<sup>2</sup> to the following address: Storm Water Notice of Termination (4203), 401 M Street, SW, Room 2104 Northeast Mall, Washington, DC 20460.

#### *C. Additional Notification*

A copy of the Notice of Termination shall be sent to the State agency which issued the State storm water or environmental resource permit for the site and, if the storm water management system discharges to a municipal separate storm sewer system within Broward, Dade, Duval, Escambia, Hillsborough, Lee, Leon, Manatee, Orange, Palm Beach, Pasco, Pinellas, Polk, Sarasota or Seminole Counties, to the owner of that system. Included within these counties, the Florida Department of Transportation (FDOT), incorporated municipalities, and chapter 298 Special Districts also shall be notified where they own or operate a municipal separate storm sewer system receiving storm water discharges associated with construction activity covered by this permit.

#### **Part X. Definitions**

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Commencement of Construction—The initial disturbance of soils associated with clearing, grading, or excavating

activities or other construction activities.

CWA means Clean Water Act or the Federal Water Pollution Control Act.

Dedicated portable asphalt plant—A portable asphalt plant that is located on or contiguous to a construction site and that provides only asphalt to the construction site that the plant is located on or adjacent to. The term dedicated portable asphalt plant does not include facilities that are subject to the asphalt emulsion effluent limitation guideline at 40 CFR 443.

Dedicated portable concrete plant—A portable concrete plant that is located on or contiguous to a construction site and that provides only concrete to the construction site that the plant is located on or adjacent to.

Director means the Regional Administrator of the Environmental Protection Agency or an authorized representative.

Final Stabilization means that all soil disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% of the 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.

Flow-weighted composite sample means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

Large and Medium municipal separate storm sewer system means all municipal separate storm sewers that are either: (i) located in an incorporated place (city) with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census (these cities are listed in Appendices F and G of 40 CFR Part 122); or (ii) located in the counties with unincorporated urbanized populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties (these counties are listed in Appendices H and I of 40 CFR Part 122); or (iii) owned or operated by a municipality other than those described in paragraph (i) or (ii) and that are designated by the Director as part of the large or medium municipal separate storm sewer system.

NOI means notice of intent to be covered by this permit (see Part II of this permit.)

NOT means notice of termination (see Part IX of this permit).

Operator means any party associated with the construction project that meets either of the following 2 criteria: (1) The party has operational control over project specifications (including the ability to make modifications in specifications), or (2) the party has day-to-day operational control of those activities at a project site which are necessary to ensure compliance with the storm water pollution prevention plan or other permit conditions (e.g., they are authorized to direct workers at the site to carry out activities identified in the storm water pollution prevention plan or comply with other permit conditions).

Point Source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharges. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

Runoff coefficient means the fraction of total rainfall that will appear at the conveyance as runoff.

Storm Water means storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm Water Associated with Industrial Activity means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program. For the categories of industries identified in paragraphs (i) through (x) of this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of

<sup>2</sup> A copy of the approved NOT form is provided in Appendix A of this notice.



industries identified in paragraph (xi) of this definition, the term includes only storm water discharges from all areas (except access roads and rail lines) listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the: storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally or municipally owned or operated that meet the description of the facilities listed in this paragraph (i)–(xi) of this definition) include those facilities designated under 122.26(a)(1)(v). The following categories of facilities are considered to be engaging in “industrial activity” for purposes of this subsection:

- (i) Facilities subject to storm water effluent guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) of this definition);
- (ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;
- (iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact

with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator;

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

(v) Landfills, land application sites, and open dumps that have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA;

(vi) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221–25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i)–(vii) or (ix)–(xi) of this subsection are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR 503;

(x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221–25, (and which are not otherwise included within categories (i)–(x)).<sup>3</sup>

Waters of the United States means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate “wetlands”;

(c) All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;

(f) The territorial sea; and

(g) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA are not waters of the United States.

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<sup>3</sup> On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exclusion for manufacturing facilities in category (xi) which do not have materials or activities exposed to storm water to the EPA for further rulemaking. (Nos. 90–70671 and 91–70200).