

APPENDIX B

GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH  
CONSTRUCTION ACTIVITY

**MONTANA DEPARTMENT  
OF ENVIRONMENTAL QUALITY**

AUTHORIZATION TO DISCHARGE UNDER  
THE MONTANA POLLUTANT DISCHARGE ELIMINATION SYSTEM

**GENERAL PERMIT  
FOR STORM WATER DISCHARGES ASSOCIATED  
WITH CONSTRUCTION ACTIVITY**

In compliance with Montana Code Annotated (MCA) 75-5-101 et seq., the Administrative Rules of Montana (ARM) 17.30.1301 et seq., and ARM 17.30.601 et seq., operators who submit a complete Notice of Intent package for a storm water discharge associated with construction activity under this General Permit for Storm Water Discharges Associated with Construction Activity are authorized to discharge storm water from construction activities to surface waters in accordance with the conditions set forth in Parts I, II, III, IV, and V of this General Permit.

This General Permit shall become effective June 8, 2002.

This General Permit shall expire at midnight, December 31, 2006.

FOR THE MONTANA DEPARTMENT  
OF ENVIRONMENTAL QUALITY

\_\_\_\_\_  
Thomas D. Reid, Supervisor  
Water Quality Discharge Permit Section  
Water Protection Bureau  
Permitting and Compliance Division

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2002

## PREAMBLE

The purpose of this Preamble is to provide the operators who submit a Notice of Intent package for a storm water discharge associated with construction activity under the General Permit for Storm Water Discharges Associated with Construction Activity a summary of the requirements for compliance with this General Permit.

The basic principle of the General Permit is to identify areas or activities that may contribute pollutants to surface waters and to consider practical methods to reduce such pollutants from your operation. The degree of pollution control necessary will vary depending on the site and the situation. For example, if you are constructing a road on perfectly flat ground where there are no surface waters in close proximity to your activities, the potential to cause pollution of surface waters is minimal, and only minimal erosion and sediment controls would be expected. On the other hand, if you are constructing a highway and there are several stream drainages, etc. in close proximity to your project, very comprehensive and complete pollution controls would be expected.

The major pollutant that could be a potential problem for construction sites will be sediment discharges from increased erosion. If the project will impact a waterbody, you must ensure that minimal sediment reaches surface waters by using appropriate erosion and sediment control measures. The discharge of turbid water may cause a violation of this General Permit. Adequate erosion and sediment control measures must also be used to prevent sediment discharges to riparian areas and ephemeral streams.

Other pollutants likely to be a problem at construction sites are fuels, lubricating oils, construction materials, fertilizers, and pesticides. Managing these materials properly (such as keeping them as far away as possible from surface waters or preventing spills of these materials) is a primary factor in ensuring pollutants do not reach surface waters through storm water runoff.

In order to help characterize the construction activity, potential sources of pollutants, and BMPs to help ensure pollutants do not reach surface waters, operators are required to develop and implement a SWPPP. The basic requirements of the SWPPP are provided in Part IV. of this General Permit.

# **PART I. COVERAGE UNDER THIS GENERAL PERMIT**

## **A. General Permit Area**

The General Permit applies to all areas of the State of Montana.

## **B. Sources Covered Under this General Permit**

This General Permit covers all projects or activities which meet the definition of "storm water discharge associated with construction activity" as defined in Part V.T.15. of this General Permit. For determining whether coverage under this General Permit is required, the total land area of disturbance that is part of a larger common plan of development or sale must be used.

Determination of the acreage of disturbance does not typically include disturbance for routine maintenance activities on existing roads where the line and grade of the road is not being altered, nor does it include the paving of existing roads.

The General Permit may also cover storm water discharges from support activities related to a construction site (e.g. concrete or asphalt batch plants, equipment staging yards, material storage areas, etc.). This is provided that:

1. The support activity is not a commercial operation serving multiple unrelated construction projects and does not operate beyond the completion of the construction activity.
2. Appropriate controls and measures are identified in the Storm Water Pollution Prevention Plan (SWPPP) for the discharge from the support activity.

All discharges must be in accordance with the submitted SWPPP and the provisions of this General Permit. Any other direct discharge and/or wastewater discharge to surface waters is prohibited unless covered by another MPDES permit.

This General Permit does not relieve the operator(s) from responsibility for compliance with any other applicable federal, state, or local law, rule, standard, ordinance, order, judgment, or decree.

Permittees who have an active permit authorization under the 1997-2002 General Discharge Permit for Storm Water Associated with Construction Activity (issued prior to the effective date of this 2002-2006 General Permit) shall refer to Part I.C.5. of this reissued General Permit for requirements on continued General Permit coverage for their storm water discharge associated with construction activity.

## **C. Notice of Intent (NOI) Submittal Procedures**

### **1. Notice of Intent Package**

Any person who is the operator of a storm water discharge associated with construction activity which requires coverage under the General Permit as stated in Part I.B. of this General Permit shall submit a complete Notice of Intent (NOI) package to the Department.\* The complete NOI package consists of:

- a. An NOI completed on a standard NOI form developed by the Department, which provides all of the required information stated in Part I.C.2. of this General Permit, and signed by the operator(s) based on the signatory requirements stated in Part V.G. and H. of this General Permit.
- b. A separate SWPPP (document and related plans) which has been completed in accordance with the requirements identified in Part IV. of this General Permit and signed by the operator(s) based on the signatory requirements stated in Part V.G. and H. of this General Permit.
- c. The application fee and first year annual fee, as required by ARM 17.30.201. (Note: New fee rules including fee amounts are effective as of February 2002.)

\* For a storm water discharge associated with construction activity with construction-related disturbance under 5 acres of total land area, an NOI package is not required until the Department formally incorporates EPA Phase II requirements into the Administrative Rules of Montana.

## 2. NOI Form

The NOI form requires, at a minimum, the following information:

- a. Name and address of all construction activity operator(s) as defined in Part V.T.8. of this General Permit.
- b. Contact person and telephone number for all construction activity operator(s).
- c. Construction project/site name, address, and county (for MDT projects, also provide project number and designation).
- d. Project site latitude and longitude for the center of the construction activity's disturbance, or the endpoints for lineal projects (in degrees, minutes, and seconds).
- e. Name of receiving surface waters. Indicate the nearest perennial surface water body receiving the storm water discharge and include a description of the flow path(s) for the storm water discharges to these receiving surface waters and the approximate distances as necessary (such as through ditches, coulees, other ephemeral streams, and/or intermittent streams). Indicate whether storm water will be discharging to a municipally owned storm sewer system; if so, indicate the receiving surface waters and a description of the flow path(s) as is pertinent.
- f. Estimated construction start date and completion date through site final stabilization.
- g. A USGS topographic map indicating the location of the project and nearby surface waters.
- h. An estimate of the area (in acres) to be disturbed due to construction-related activity.
- i. A brief description of the purpose and nature of the construction activity.
- j. An indication of the type of construction activity fee submitted based on Part V.S. of this General Permit. This must be either a "commercial or public" construction activity, or a "residential (single family dwelling)" construction activity. If residential (single family dwelling)

is indicated, a description of the scope of the overall construction project supporting this fee type category must also be indicated.

k. If multiple operators are identified, an indication of which operator(s) is responsible for the submittal of fees to the Department (such as future annual fees).

l. If multiple operators are identified, an indication of which operator is responsible for the submittal of the Notice of Termination form. This must include an indication of which operator has primary responsibility, and what those responsibilities are, during major construction phases, particularly after earthwork is completed and through final stabilization. If only one operator is identified as the responsible party for final stabilization and, consequently, the submittal of the Notice of Termination form, then this operator shall also be the responsible party for fees identified in Part I.C.2.k. above.

### 3. NOI Package Submittal

A signed and complete NOI form, a signed and complete SWPPP, and the required application and annual fees must be submitted to the following address:

Montana Department of Environmental Quality  
Water Protection Bureau  
Storm Water Program  
1520 East Sixth Avenue  
PO Box 200901  
Helena, MT 59620-0901

### 4. NOI Package Receipt Confirmation Letter

The Department will provide all identified operator(s) on the NOI form with a Confirmation Letter acknowledging the receipt of the complete Notice of Intent package.

Receipt by the Department of the complete NOI package by the construction start date where construction-related disturbance will initiate shall provide coverage to discharge storm water under the General Permit. If any of the required items in the NOI package are not complete or are not submitted to the Department, coverage for storm water discharge associated with construction activity under the General Permit will not initiate until the required items are received by the Department.

Receipt by the Department of the complete NOI package constitutes a full agreement by the operator(s) to meet and comply with all requirements stated in this General Permit.

The operator(s) should submit complete NOI packages, with all components submitted at the same time, to ensure efficient NOI processing by the Department, to prevent delay of construction activity, and to minimize potential storm water discharge compliance problems.

### 5. NOI Submittal Requirements for Permittees Authorized under the Preceding 1997-2002 General Discharge Permit for Storm Water Associated with Construction Activity

The operator(s) of ongoing construction projects as of the effective date of this General Permit, which have an active permit authorization under the 1997-2002 General Discharge Permit for Storm Water Associated with Construction Activity, shall:

- a. Submit an NOI package according to Part I.C.1., 2., and 3. of this General Permit within 90 days of the effective date of this General Permit. If the operator(s) is eligible to submit a Notice of Termination under Part V.R. of this General Permit (e.g., construction is finished and final stabilization has been achieved) before the 90th day, an NOI package is not required to be submitted.
- b. For the first 90 days from the effective date of this General Permit, comply with the terms and conditions of the 1997-2002 General Discharge Permit for Storm Water Associated with Construction Activity, except that, for Notice of Terminations, the requirements of Part V.R. in this 2002-2006 General Permit shall apply.
- c. Update their SWPPP to comply with the requirements of Part IV. of this General Permit within 90 days after the effective date of this General Permit.
- d. If a Notice of Termination is not to be submitted before the 90<sup>th</sup> day after the effective date of this General Permit (e.g., construction is not finished and/or final stabilization has not been achieved by this date), submit an NOI fee according to ARM 17.30.201 with the NOI form. This fee will be waived if the original permit application for authorization under the 1997-2002 General Permit was stamp-received by the Department between January 1, 2002 and the effective date of this 2002-2006 General Permit.

## **PART II. EFFLUENT LIMITATIONS AND SPECIAL CONDITIONS**

Effective immediately upon the submittal of a complete Notice of Intent package for coverage under this General Permit and lasting through the expiration date, the following effluent limitations apply.

- A. There must be no discharge of process wastewater pollutants to surface waters. Discharges to surface waters of material other than storm water must be in compliance with a Montana Pollutant Discharge Elimination System (MPDES) permit other than this General Permit.
- B. All discharges to surface waters covered by this General Permit must be composed entirely of storm water. Discharges must consist of water generated only through rainfall precipitation and snowmelt.
- C. A discharge of storm water associated with construction activity must not cause or contribute to a violation of water quality standards.
- D. The operator(s) shall develop and maintain all BMPs and storm water management controls in accordance with the SWPPP required in Part IV. Of this General Permit.

## **PART III. MONITORING, REPORTING, AND RECORDS RETENTION REQUIREMENTS**

### ***A. Monitoring Requirements***

1. The operator(s) shall implement and maintain Best Management Practices (BMPs) to minimize potential pollutants in storm water discharges, as identified in the SWPPP.
2. Storm water discharges associated with construction activity must be monitored by the operator(s) as specified in this section to evaluate the adequacy and effectiveness of the erosion and sediment control measures and BMPs.
3. All erosion and sediment control measures must be inspected and maintained by or under the direction of the operator(s) at least once every fourteen calendar days and within 24 hours after any storm event of 0.5 inches or greater.
4. The frequency of the inspections required in Part III.A.3. may be reduced to monthly, as follows:
  - a. After the operator(s) has completed earthwork and construction activities at the construction site and has installed the SWPPP erosion and sediment control measures and other BMPs necessary to establish final stabilization at a later date, or
  - b. Between December 1 and March 1.

In either case, all sediment and erosion control measures and other BMPs must be in place as identified in the SWPPP. This change in inspection frequency and its schedule for implementation must be indicated in the SWPPP.

5. All inspections and monitoring performed above under Part III.A.3. and 4. of this General Permit must be documented and kept in accordance with Part III.C.2. and 3. of this General Permit.
6. The operator(s) of a storm water discharge associated with construction activity with construction-related disturbance of 5 acres or more of total land area, which has had active General Permit coverage for 1 year or more, shall perform an annual inspection of the site by the 1 year anniversary date of the submittal of the NOI package or the initiation of active permit coverage. The annual inspection must:
  - a. Identify areas contributing to the storm water discharge associated with construction activity and evaluate whether measures to reduce pollutant loadings identified in the SWPPP are adequate and properly implemented in accordance with the requirements in this General Permit or whether additional controls are needed.
  - b. Be summarized in a report that includes a certification of compliance with the SWPPP and General Permit and any incidents of non-compliance. Such report and certification must be signed in accordance with the signatory requirements of Part V.G. and H. of this General Permit. This inspection record, report, and certification must be maintained in accordance with Part III.C.2. and C.3. of this General Permit.



## **B. Reporting Requirements**

### 1. Notification of Facility Contact Changes

The operator(s) shall notify the Department in writing of any change of the designated contact person, mailing address, and/or telephone number (as originally identified in the Notice of Intent) within 15 calendar days of this change.

### 2. Spill/Release Notification

The operator(s) shall submit written notification to the Department Storm Water Program (mailing address is stated in Part I.C.3. of this General Permit) within two business days of the detection of any unregulated significant spill or release in any area(s) which has the potential to introduce pollutants into storm water runoff other than sediment. This notification must provide: the Notice of Intent number; the name of the construction activity project; the operator(s) as identified on the Notice of Intent form; a description of the time and duration of the spill/release; the specific location and contaminant fate of the spill/release; a description of the quantity and type of material spilled/released; measures being taken to investigate and/or remediate the spill/release; any known or potential impacts to storm water discharges due to the spill/release; and any BMPs to be implemented to minimize and/or prevent similar spills/releases in the future.

### 3. Noncompliance Reporting

If, for any reason, the operator(s) does not comply with or will be unable to comply with any condition specified in this General Permit, the operator(s) shall notify the Department as soon as possible by phone and provide the Department with the following information, in writing, within five calendar days of becoming aware of such condition:

- a. A description of the discharge or other cause of noncompliance;
- b. The period of noncompliance, including exact dates and times; or, if not identified, the anticipated time the noncompliance is expected to continue; and,
- c. Additional measures being taken to reduce, eliminate, and prevent recurrences of the non-complying discharge or other cause of noncompliance.

4. All reports, notifications, and inquiries regarding the conditions of this General Permit must be provided to the Department at:

Montana Department of Environmental Quality  
Water Protection Bureau  
Storm Water Program  
1520 East Sixth Avenue  
PO Box 200901  
Helena, MT 59620-0901  
(406) 444-3080

### **C. Records Retention**

#### 1. Permit Retention Requirements

The operator shall retain a copy of this General Permit, a copy of the completed and signed Notice of Intent form, a copy of the Department's Confirmation Letter for receipt of the Notice of Intent package, and a copy of the completed and signed Storm Water Pollution Prevention Plan (SWPPP) at the construction activity project site at all times during the active coverage period provided under this General Permit. If no permanent offices/buildings are located at the facility site, copies of these documents must be retained at the office of the operator's contact person identified on the Notice of Intent form and at the office of the primary operator(s) responsible for the implementation of the SWPPP and must be brought to the site at all times with these identified operator(s). If the person(s) designated as responsible contact/individual is replaced during the active coverage period provided under this General Permit, the operator(s) shall ensure measures are in place to transfer and familiarize replacement personnel with the requirements pertaining to these documents.

#### 2. Inspection and Uncontrolled Release Records

The operator(s) shall keep a record of inspections, the date and time inspected, and the name of the person performing the inspection. Uncontrolled releases of mud or muddy water or "significant sediment" (as defined in Part V.T.13. of this General Permit) found off the site or entering into surface waters must be recorded with a brief explanation as to the measures taken to prevent future releases as well as any measures taken to clean up the sediment that has left the site. This inspection record must be made available to the Department upon request. Any occurrence of noncompliance must be reported according to Part III.B.3. of this General Permit.

#### 3. Required Period of Record Retention

All records and information resulting from the monitoring activities required by this General Permit, a copy of the completed and signed NOI form, a copy of the DEQ NOI Package Receipt Confirmation Letter, and a copy of the completed and signed SWPPP shall be retained by the operator(s) for a minimum of 3 years from the date the site is finally stabilized, or longer if requested by the Department.

## **PART IV. STORM WATER POLLUTION PREVENTION PLAN**

A. The operator(s) shall develop a Storm Water Pollution Prevention Plan (SWPPP) and submit a copy of the SWPPP at the same time as the Notice of Intent form. This operator shall implement the SWPPP at the time construction activity commences. The objective of the SWPPP is to minimize the erosion of disturbed land during construction and post-construction activities and to minimize pollutants, such as sediment, fuels, oil, grease, fertilizer, pesticides, concrete truck washout, etc., from discharging to surface waters. It is the responsibility of the operator(s) to ensure the SWPPP requirements stated in this General Permit are complied with. Incomplete SWPPPs are a violation of this General Permit. The Department may take (or initiate) enforcement action if an operator is found to have prepared an incomplete SWPPP.

The SWPPP must:

1. Be signed in accordance with the signatory requirements in Part V.G. and H. of this General Permit,
2. Be maintained at the construction site in accordance with Part III.C. of this General Permit, and
3. Provide for compliance with the terms and schedule of the SWPPP and be updated as necessary.

B. The SWPPP must be implemented for the entire duration of the project, beginning with disturbance related to construction activity and lasting through establishment of site final stabilization of disturbed areas.

C. The Department may notify the operator(s), that the SWPPP is not in compliance with this General Permit. This determination of SWPPP deficiency may be derived through site inspection or through a review of the SWPPP. After such notification from the Department, the operator(s) shall make changes to the SWPPP and submit a written certification to the Department indicating the necessary changes have been made. Unless otherwise provided by the Department, the operator(s) shall have seven calendar days after such notification to make the necessary changes to the SWPPP. When the Department makes such notification, the operator(s) shall provide the Department with a copy of revisions to the SWPPP.

D. The operator(s) shall amend the SWPPP 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 surface waters, or if the SWPPP proves to be ineffective in achieving the general objectives of controlling pollutants in a storm water discharge associated with construction activity. When such revisions are made to the SWPPP based upon this General Permit condition, the operator(s) shall provide the Department with a copy of revisions to the SWPPP.

E. The SWPPP may include any erosion and sediment control measures or Best Management Practices (BMPs), including but not limited to the use of sediment basins, berms, barriers, filter strips, covers, diversion structures, seeding, and sodding.

F. Any SWPPP that is prepared for a construction activity which includes 20 acres or more in total disturbance related to construction activity, must be reviewed and stamped by a professional engineer licensed in the State of Montana.

G. The SWPPP must include at least the following items:

1. Site Description: Each plan must at a minimum, provide a description of the following:
  - a. The nature of the construction activity, including a proposed implementation schedule for major activities;
  - b. Estimates of the total area of the site, and all other sites if a phased development project, and the area of the site that is expected to undergo disturbance related to construction activity;
  - c. Site map(s) indicating:

- Areas of total development and, at a minimum, areas of "disturbance" related to construction activity (including support activities related to a construction site concrete or asphalt batch plants, equipment staging yards, material storage areas, material borrow areas, etc.);
- Drainage patterns;
- Approximate slopes anticipated after major grading activities;
- Areas used for the storage of soils or wastes;
- Areas used for the storage of fuel(s);
- Location of all erosion and sediment control measures or structures;
- Areas where vegetative measures are to be implemented;
- The location of impervious structures (including buildings, roads, parking lots, outdoor storage areas, etc.) after construction is completed;
- The location of all surface waters on or near to the construction activity site (including perennial and intermittent water bodies, ephemeral streams, springs, wetlands with standing water, etc.),
- The boundary of the 100-year floodplain, if determined; and
- A north arrow and map scale;

d. The character and erodibility of sediment and other earth material to be disturbed at the project site, including cut/fill material to be used;

e. For a storm water discharge associated with construction activity with construction-related disturbance of 5 acres or more of total land area, an estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the NOI is completed;

f. The names of receiving surface waters and a description of the size, type, and location of each point source discharge or outfall. If there is no distinguishable point source discharge or outfall to the receiving surface waters, a description of storm water runoff flow and drainage patterns into the receiving surface waters must be provided. If the discharge is to a municipal separate storm sewer, the location of any storm sewer discharge into receiving surface waters; and

g. A description of storm water discharges from support activities related to a construction site (e.g. concrete or asphalt batch plants, equipment staging yards, material storage areas, etc.).

## 2. BMPs and Storm Water Management Controls

Each operator(s) covered by this General Permit shall develop, as part of the SWPPP, a description of BMPs and storm water management controls appropriate for the site, including a brief description of applicable local erosion and sediment control requirements. The following

minimum components must be addressed, including a schedule for implementation, unless otherwise authorized in writing by the Department.

a. A description of stabilization measures which must, to the degree practicable, preserve existing vegetation and re-vegetate areas of construction-related disturbance as soon as possible after grading or construction. In developing vegetative measures, the operator(s) shall consider: temporary seeding, permanent seeding, mulching, sod stabilization, vegetative buffer/filter strips, grassed waterways, erosion control blankets, and tree and shrub planting.

b. A description of structural measures which indicates how, to the degree practicable, the operator(s) will divert storm water flows from exposed soil, store these flows, or otherwise limit runoff from exposed areas of the site. In developing structural measures, the operator(s) shall consider: straw bale dikes, silt fences, earth dikes, brush barriers, drainage swales, check dams, subsurface drains, pipe slope drains, rock outlet protection, drain inlet and outlet protection, temporary drain diversions, sediment traps, temporary sediment basins, infiltration trenches or basins, and retaining walls. The operator(s) should also consider the proximity of structural measures with respect to floodplains, and if there are other alternatives, avoid the placement of structural BMPs within the floodplain.

c. None of the temporary control structures, including silt fences and straw bale dikes, shall be removed until permanent vegetation and site stabilization has taken place. The only exception to this would be where temporary control structures need to be moved or removed in order to allow continuing construction activities to occur, in which case equivalent measures must be implemented to ensure the same level of protection in minimizing potential pollutant discharges.

d. Off-site vehicle tracking of sediments from the construction site must be controlled or minimized, particularly onto paved road surfaces, in order to minimize the potential impairment of storm water quality.

e. When trucking saturated soils from the site, either tight leak-proof trucks must be used or loads must be required to drain until drippage has been reduced to less than 1 gallon per hour before leaving the site.

H. BMPs must minimize or prevent "significant sediment" (as defined in Part V.T.13. of this General Permit) from leaving the construction site.

I. If "significant sediment" (as defined in Part V.T.13. of this General Permit) results from the failure of erosion or sediment control measures, the operator(s) shall evaluate the effectiveness of such measures or other BMPs and incorporate improvements to minimize the potential for "significant sediment".

J. If "significant sediment" (as defined in Part V.T.13. of this General Permit) results from the failure of erosion or sediment control measures, the material must be cleaned up and placed back on the site or disposed of in an acceptable manner. The material must not be washed into the storm sewer(s), drainageway(s), or receiving surface waters. This does not waive any obligations for the operator(s) to obtain other permits or permissions to clean up the "significant sediment."

K. A description of measures to control pollutants in storm water discharges that will occur after construction operations have been completed must be addressed in the SWPPP, including a brief description of applicable local erosion and sediment control requirements. Such measures may include: storm water detention structures (including wet ponds), storm water retention structures, flow attenuation by use of open vegetated swales and natural depressions, and infiltration of runoff on-site.

## **PART V. STANDARD CONDITIONS**

### ***A. Duty to Comply***

The operator(s) shall comply with all conditions of this General Permit. Any General Permit noncompliance constitutes a violation of the Act and is grounds for enforcement action, for termination of coverage under the General Permit, revocation and reissuance, modification of coverage under the General Permit, or for denial of General Permit coverage renewal. The operator(s) shall give the Department advance notice of any planned changes at the permitted activity that may result in permit noncompliance.

The Montana Water Quality Act (75-5-631, MCA) and the federal Clean Water Act (Section 309) provide significant penalties for any person who violates a General Permit condition. Any person who violates any condition of this General Permit is subject to a civil penalty not to exceed \$25,000 per day per violation, or an administrative penalty not to exceed \$10,000 per day per violation, as well as any other appropriate sanction provided by Section 309 of the Clean Water Act.

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

An expired General Permit remains in full force and effect until the General Permit is reissued. Those operator(s) who submitted Notices of Intent prior to the expiration date or who were granted coverage under the General Permit before it expired, are covered by the expired permit until the General Permit is reissued.

### ***C. Need to Halt or Reduce Activity not a Defense***

It shall not be a defense for an operator(s) 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 General Permit.

### ***D Duty to Mitigate***

The operator(s) shall take all reasonable steps to minimize or prevent any discharge in violation of this General Permit that has a reasonable likelihood of adversely affecting human health or the environment.

### ***E. Duty to Provide Information***

The operator(s) shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating coverage under this General Permit, or to determine compliance with this General Permit. The operator(s) shall also furnish to the Department, upon request, copies of records required to be maintained under this General Permit.

### ***F. Other Information***

When the operator(s) becomes aware that he failed to submit any relevant facts or submitted incorrect information in a Notice of Intent package or any report to the Department, he shall promptly submit such facts or information.

### ***G. Signatory Requirements***

All Notices of Intent, SWPPPs, Notices of Termination, and reports or information, must be signed and certified.

1. All Notices of Intent, SWPPPs, Notices of Termination, and reports required by this General Permit must be signed by the following persons or by a duly authorized representative of these persons as provided in Part V.G.2. of this General Permit:
  - a. For a corporation, by a responsible corporate officer;
  - b. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively;
  - c. For a municipality, state, federal, or other public agency, by either a principal executive officer or ranking elected official.
2. A person is a duly authorized representative of the person stated above in Part V.G.1. of this General Permit only if:
  - a. The authorization is made in writing by the person stated in Part V.G.1. of this General Permit and submitted to the Department, and
  - 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 plant manager, operator of a well or a well field, superintendent, 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).
3. Changes to authorization. If an authorization under Part V.G.2. of this General Permit is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or activity, a new authorization satisfying the requirements of Part V.G.2. of this General Permit must be submitted to the Department prior to, or together with, any SWPPP revisions, reports, or other information requiring the signature of a duly authorized representative.

### ***H. Certification***

Any person signing a document required under this General Permit shall make the following certification:

"I certify under penalty of the 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 gather and evaluate 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."

***I. Penalties for False Statements and Falsifying Monitoring***

Under Section 75-5-633, MCA, the Montana Water Quality Act provides that any person who knowingly makes any false statement, representation, or certification in any Notice of Intent, record, report, plan, or other document filed or required to be maintained under this General Permit or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this General Permit shall upon conviction be punished by a fine of not more than \$25,000 or by imprisonment for not more than 6 months or both.

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

Nothing in this General Permit shall be construed to preclude the institution of any legal action or relieve the operator(s) from any responsibilities, liabilities, or penalties to which the operator(s) is or may be subject under Section 311 of the Clean Water Act.

***K. Property Rights***

The issuance of this General 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 General Permit are severable, and if any provision of this General Permit, or the application of any provision of this General Permit to any circumstance, is held invalid, the application of such provision to other circumstances and the remainder of this General Permit shall not be affected thereby.

***M. Transfers***

A Notice of Intent cannot be transferred to a new operator(s). A new operator of a facility must submit a new Notice of Intent package according to the procedures in Part I.C. of this Permit prior to taking responsibility for the construction activity. If the new operator(s) chooses to develop a new SWPPP, the new operator(s) shall be expected to implement the old SWPPP until the new plan is developed, implemented, and submitted to the DEQ.

***N. Proper Operation and Maintenance***

The operator(s) 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 operator(s) to achieve compliance with the conditions of this General Permit and with the requirements of Storm Water Pollution Prevention Plans. Proper operation and maintenance includes 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 an operator(s) only when necessary to achieve compliance with the conditions of the General Permit.



### ***O. Inspection and Entry***

The operator(s) shall allow the Department or the Regional Administrator, or authorized representative thereof, upon the presentation of credentials and other documents as may be required by law, to:

1. At reasonable times, enter upon the operator(s)'s premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this General Permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this General Permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), measures, or operations regulated or required under this General Permit; and
4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance, any substances or parameters at any location.

### ***P. Permit Actions***

Coverage under this General Permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the operator(s) for a modification, revocation and reissuance, or termination, or notification of planned changes or anticipated noncompliance, does not stay any General Permit condition.

### ***Q. Reopener Provision***

If there is evidence indicating an exceedance of a water quality standard due to any storm water discharge associated with construction activity that is covered by this General Permit, the operator(s) may be required to develop and implement a corrective action plan, which may include additional BMPs or the need to apply for and obtain coverage under an individual MPDES permit.

### ***R. Notice of Termination (NOT)***

1. Where a site has been finally stabilized or where the operator(s) at a site changes, the operator(s) shall submit a standard DEQ Notice of Termination (NOT) form that has been signed in accordance with Part V.G. and H. of this General Permit. The standard DEQ Notice of Termination form that is used must be the 2002 updated version (or a subsequent revision) and must include the following information:
  - a. The mailing address of the construction activity site. Where a mailing address for the site is not available, the location of the site must be described by the latitude and longitude for the center of the construction activity disturbance, or the endpoints for lineal projects (in degrees, minutes, and seconds);
  - b. The name, address, and telephone number of the operator(s) as identified in the Notice of Intent;

- c. The MPDES Notice of Intent number as stated in the NOI Package Receipt Confirmation Letter described in Part I.C.4. of this General Permit;
- d. Certification indicating the site has achieved final stabilization, or the operator(s) of the project has changed; and
- e. The Notice of Termination form must be signed in accordance with Part V.G. and include the signature certification in accordance with Part V.H. of this General Permit. The Notice of Termination must be sent to the following address:

Montana Department of Environmental Quality  
Water Protection Bureau  
Storm Water Program  
1520 East Sixth Avenue  
PO Box 200901  
Helena, MT 59620-0901

Failure to submit a Notice of Termination shall result in additional annual permit fee accumulation until notification has been received.

- 2. For the operator(s) identified on the Notice of Intent form submitted to the Department, only one Notice of Termination form shall be submitted when final stabilization of disturbed areas associated with the construction activity has been satisfactorily accomplished.
- 3. If more than one operator is stated on the Notice of Intent form and an operator(s) desires to be relieved of responsibility for a particular portion and/or period of the General Permit coverage period, then the operator(s) shall so indicate on the Notice of Intent form when it is submitted. Consequently, the Notice of Intent form must specify which operator is responsible for the submittal of the Notice of Termination. This would typically pertain to situations where a hired contractor has completed earthwork activities and the owner elects to accept sole responsibility for compliance with the General Permit (including annual fees) from the cessation of earthwork activities through final stabilization of the site and the formal submittal of the Notice of Termination form.

**S. Fees**

- 1. The operator(s) is required to submit payment of an annual fee as set forth in ARM 17.30.201. (Note: New fee rules (including fee amounts) are effective as of February 2002.) When there is more than one operator specified on the Notice of Intent form, there shall be an indication of which operator is responsible for payment of the annual fees. If the operator(s) fails to pay the annual fee within 90 days after the due date for the payment, the Department may:
  - a. Impose an additional assessment consisting of 15 percent of the fee, plus interest, on the required fee computed at the rate established under 15-31-510(3), MCA; or
  - b. Suspend the effective date of the Notice of Intent for General Permit coverage or, if the nonpayment involves an annual permit fee, suspend the coverage under the General Permit for which the fee is required. The Department may lift suspension at any time up to 1 year after the

suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments, and interest imposed under this sub-section. Suspensions are limited to 1 year, after which the coverage under the General Permit through the Notice of Intent will be terminated.

2. Fees submitted for storm water discharges associated with construction activity are divided into two categories based on the following:

a. A "residential (single family dwelling)" construction activity is the construction of any building, structure, access, utility, or related disturbance utilized for single family occupancy on a distinct and individual lot or parcel of land and that is not combined with or a part of construction activity related to other lots, parcels of land, or single family dwellings; and

b. A "commercial or public" construction activity is a construction activity that does not meet the above criteria as a "residential (single family dwelling)" construction activity and that includes the development of subdivisions and other projects, which are part of a common plan for development or sale.

An indication of which of these two categories a construction activity meets must be provided on the NOI form as required in Part I.C.2.j. of this General Permit.

#### ***T. Definitions***

1. The "Act" means the Federal Clean Water Act.

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

3. The "Department" means the Montana Department of Environmental Quality.

4. "Disturbance" related to construction activity means areas that are subject to clearing, excavating, grading, stockpiling earth materials, and placement/removal of earth material performed during construction projects.

5. "Ephemeral stream" means a stream or part of a stream that flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and whose channel bottom is always above the local water table.

6. "Final stabilization" means all soil disturbing activities at the site have been completed, and a vegetative cover has been established with a density of at least 70 percent of the pre-disturbance levels, or equivalent permanent, physical erosion reduction methods have been employed. Final stabilization using vegetation shall be accomplished using seeding mixtures or forbs, grasses, and shrubs, which are adapted to the conditions of the site. Establishment of a vegetative cover capable of providing erosion control equivalent to pre-existing conditions at the site will be considered final stabilization.

7. "Larger common plan of development or sale" means a contiguous area where multiple separate and distinct construction activities are planned to occur at different times on different schedules under one plan. These separate and distinct construction activities which form a larger common plan of development or sale may have areas of disturbance which are not physically connected.

8. "Operator" for the purpose of permitting "storm water discharge associated with construction activity" means any "owner or operator" as defined in ARM 17.30.1304 associated with a construction project, who is a person designated as an eligible signatory pursuant to Part V.G. of this General Permit, and who meets either of the following two criteria:

a. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or

b. The party has day-to-day operational control of those activities at a project, which are necessary to ensure compliance with a Storm Water Pollution Prevention Plan for the site or other General Permit conditions (e.g., is authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions).

If multiple operators are identified on the Notice of Intent form, a particular operator may be an "operator" for a particular segment or phase of the construction activity and/or "storm water discharge associated with construction activity". An example is if contracted help is used for earthwork, but not through to final stabilization of the site.

An "operator" is not a person(s) at the construction project site employed by the designated eligible signatory pursuant to Part V.G. of this General Permit (such as construction equipment users).

An "operator" shall be considered to have operational control over all their subcontractors.

9. "Point source" means any discernible, confined, or 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 discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

10. "Receiving surface waters" is the river, stream, lake, etc., which receives the discharge from the site.

11. "Regional administrator" means the administrator of Region VIII of the Environmental Protection Agency, which has jurisdiction over federal water pollution control activities in the state of Montana.

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

13. "Significant sediment" means mud, dirt, sediment, or similar material exceeding 1.0 cubic foot in volume which is deposited in any area of 100 square feet or less on public or private streets or property adjacent to the construction site. "Deposited" includes direct deposit, dropping, discharge, or placement as a result of erosion.

14. "Storm water" means storm water runoff, snowmelt runoff, and surface runoff and drainage.

15. "Storm water discharge associated with construction activity" means a discharge from construction activity due to disturbance from clearing, grading and excavation, except operations that result in the disturbance of less than 1 acre of total land area. Construction activity also includes the disturbance of less than 1 acre of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb 1 acre or more. Irregardless of the acreage of disturbance for a construction activity, this definition includes any other construction activity designated by the Department based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters. For storm water discharge associated with a construction activity, which has disturbance less than 5 acres, the acreage of disturbance does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

16. "SWPPP" or "Storm Water Pollution Prevention Plan" means a document developed to help identify sources of pollution potentially affecting the quality of storm water discharges associated with a facility or activity and to ensure implementation of measures to minimize and control pollutants in storm water discharges associated with a facility or activity. The Department determines specific requirements and information to be included in a SWPPP based on the type and characteristics of a facility or an activity and on the respective MPDES permit requirements.

17. "Surface waters" means any waters on the earth's surface including, but not limited to, streams, lakes, ponds, and reservoirs and irrigation and drainage systems discharging directly into a stream, lake, pond, reservoir or other surface water. Water bodies used solely for treating, transporting, or impounding pollutants shall not be considered surface water.