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December 4, 2015

Via Certified First Class Mail

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United States Environmental Protection Agency
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Washington, DC 20460

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The Attorney General of the United States
U.S. Department of Justice
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Washington, DC 20530-0001

John Penn Whitescarver (**WHITESCARVER**) submits this letter pursuant to section 505 of the Clean Water Act as notice of their intent to sue the United States Environmental Protection Agency (EPA) for violations of the Clean Water Act ("CWA"). *See* CWA § 505, 33 U.S.C. § 1365; 40 CFR § 135.2. In particular, WHITESCARVER intends to sue the Administrator of EPA for failure to perform mandatory duties under 33 U.S.C. § 1365(a)(2), by approving a defective NPDES general permit that was issued by the Florida Department of Environmental Protection (FDEP) titled *NPDES Generic Permit for Stormwater Discharge from Large and Small Construction Activities* in February 2015 containing significant errors including:

DEPT. OF JUSTICE - ENRD
ENVIRONMENT DIVISION
15 DEC 22 A9:39

- (1) Using the words "7 calendar days" instead of using the word "immediately"
- (2) Incorrectly stating the national standard for the EPA Effluent Guidelines (EGL) is for the protection of water quality rather than a technology based standard.

WHITESCARVER intends to file suit any time after sixty (60) days following the postmarked date of this letter to obtain an order directing the Administrator of the Environmental Protection Agency (EPA) to withdraw approval of the said general permit and direct the FDEP to issue the general permit with the corrections identified above and to take such corrective action within 30 days of the order to correct errors in the general permit. WHITESCARVER will request the court allow recovery of attorneys' fees and costs of litigation and to obtain any other appropriate relief allowed under CWA § 505(a) & (d), 33 U.S.C. § 1365(a) & (d).

WHITESCARVER's suit will seek an order to the Environmental Protection Agency's (EPA) Administrator to make a determination regarding the withdrawal of the NPDES authority from the state of Florida and to recover attorneys' fees and costs of litigation and to obtain any other appropriate relief. WHITESCARVER will file the suit on behalf of himself and Florida citizens.

Facts

- A. The State of Florida, Department of Environmental Protection issued a NPDES Generic Permit for Stormwater Discharge from Large and Small Construction Activities with an Effective Date: 02/2015. (See DEP Document NO. 62-621-300(4)(a). On Page 11 the permit reads:

5.4 Do I have to use Stabilization Measures?

You must initiate stabilization measures within 7 calendar days after construction activities have temporarily or permanently ceased for any portion of the site.

- B. The Administrator of the U.S. Environmental Protection Agency (EPA) has violated the Clean Water Act by approving the issuance of a faulty general permit and by failing to require the use the correct words in the permit. The State wrongly used the words "7 calendar days" instead of the correct word "immediately." The correct words come from the EPA promulgated Effluent Limitation Guideline (ELG) for the Construction and Development (C&D Industrial Category, as follows:

Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days.

EPA Website defines Effluent Limitations Guidelines (ELG): *Effluent guidelines are national standards for wastewater discharges to surface waters and publicly owned treatment works (sometimes called municipal sewage treatment plants). We issue effluent guidelines for categories of existing sources and new sources under Title III of the Clean Water Act. The standards are technology-based (i.e. they are based on the performance of treatment and control technologies); they are not based on risk or impacts upon receiving waters.*

Therefore, the Secretary of the FDEP (with EPA approval) incorrectly modified the national standard from the word “immediately” to “7 calendar days.”

C. The Florida Department of Environmental Protection (FDEP) relies on a paragraph in the Federal Register /Vol. 79, No. 44 /Thursday, March 6, 2014 /Rules and Regulations, Page 12664

“The final rule allows an exemption from stabilization in limited circumstances. In general, stabilization represents sound industry practice to minimize discharges from an active construction site. Industry representatives have pointed out to the Agency that there are limited circumstances where this requirement may not make sense. Therefore the rule gives permitting authorities flexibility to provide a waiver from stabilization in limited circumstances (an example might be a motocross track where the intended function is an unstabilized area). Rather than specify in this national rule all such circumstances, which would likely miss some reasonable exception, the rule allows permitting authorities to define these circumstances at the time of permitting. As stated above, however, EPA expects that sound industry practice of stabilizing the site immediately will be the norm.”

HOWEVER, THE STATE DID NOT PROVIDE A WAIVER FROM STABILIZATION IN LIMITED CIRCUMSTANCES.

FURTHERMORE, WHILE THE FLEXIBILITY FOR A WAIVER IS DISCUSSED IN THE PREAMBLE OF THE RULE, NO SUCH WAIVER IS ACTUALLY IN THE RULE EXCEPT FOR ARID, SEMIARID, AND DROUGHT-STRICKEN AREAS.

The March 6, 2014 Federal Register (FR) only applies to changes to the effluent limitations guidelines (ELG). There was no change to the stabilization rule. The stabilization rule was promulgated in the FR VOL74, No.229 on December 9, 2009 and was not subject to change. The December 9, 2009 rule makes a clear statement on page 63050 that permitting authorities (states) “must incorporate those limitations into NPDES permits as effluent limitations” and “must include permit limitations at least as stringent as those promulgated in this regulation.”

The EPA and the Florida DEP do not have the discretion to modify the national performance standard for the construction and development industrial category. The EPA has a non-discretionary duty to comply with the regulation and they did not.

D. The CWA requires permits issued to non-municipal dischargers to require compliance with a level of treatment performance equivalent to “Best Available Technology Economically Achievable (BAT)” or “Best Conventional Pollutant Control Technology (BCT) by July 1, 1989, for existing sources, and consistent with “New Source Performance Standards (NSPS)” for new sources.

The Florida Construction General permit fails to meet this standard. The issued general permit is less stringent than the ELG.

EPA has a process and a checklist to review permit prior to being issued. The checklist requires Disapproval of any permit that does not include a specific numerical limit (or other requirement) for any pollutant parameter that is part of an ELG applicable to a discharger. The checklist provides for the use of different language, but only if it is consistent with the C&D rule language. It is not consistent.

E. Furthermore, effluent guidelines are technology bases standards and are not based on water quality impacts. (See the definition of Effluent Guidelines above)

The following are places in the Florida permit (that are the EPA Effluent Limitations Guidelines) where the Secretary of FDEP incorrectly relates the national standards to water quality:

5.2.1 Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters that are covered under this permit so as to not cause a violation of water quality standards or offsite sedimentation.

5.2.2 Minimize the exposure of building materials, building products, construction wastes, trash, and landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, toxic substances, and other materials present on the site to rain and to stormwater that may run onto or across your site so as to not cause or contribute to a violation of water quality standards.

These failures violate the EPA nondiscretionary duties.

F. EPA Permit Review Process

EPA has a permit review process that allows the EPA permit reviewer to accept different language, but it must be consistent with the C&D rule language. This is not legal. The EGL does not provide for different language, consistent or not.

See NPDES Permit Quality Review (PQR) Standard Operating Procedures, Draft, July 2013. Attachment I.2 NPDES PQR CGP Checklist Draft July 2013 State Construction General Permit Quality Review. Section IV.B. Soil Stabilization, Dewatering, and Surface Outlets, sub paragraphs 1. a. i. on page 5 states "Allows the reviewer to accept different language, but it must be consistent with the C&D rule language."

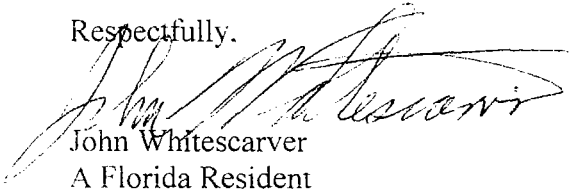
NOTICE

By this letter, WHITESCARVER Inc. now gives notice to the EPA Administrators and the Secretary of FDEP that WHITESCARVER intends to sue the Administrator of the Environmental Protection Agency for failure to perform a non-discretionary duty.

Attachments

1. State of Florida Department of Environmental Protection NPDES Generic Permit For Stormwater Discharge from Large and Small Construction Activities 02/2015
2. Construction and Development Effluent Guidelines. Federal Register / Vol. 79, No.44 Thursday, March 6, 2014 /Rules and Regulations, beginning page 12661 and Federal Register / Vol. 74, No. 229 Tuesday, December 1, 2009, beginning page 62996

Respectfully,



John Whitescarver
A Florida Resident
6082 SE Landing Way, Unit 9
Stuart, Florida 34997

State of Florida

Department of Environmental Protection

NPDES Generic Permit

For

Stormwater Discharge from Large and Small Construction Activities

Effective Date: 02/2015

This permit is issued under the provisions of Section 403.0885, Florida Statutes, and applicable rules of the Florida Administrative Code pursuant to the Department's federally-approved National Pollutant Discharge Elimination System (NPDES) stormwater regulatory program. Stormwater discharge associated with large construction activity, as defined at 40 C.F.R. Part 122.26(b)(14)(x) and herein, is regulated pursuant to Section 402(p)(2) of the federal Clean Water Act (CWA). Stormwater discharge associated with small construction activity, as defined at 40 C.F.R. 122.26(b)(15) and herein, is regulated pursuant to Section 402(p)(6) of the CWA. This permit constitutes authorization to discharge stormwater associated with large and small construction activities to surface waters of the State, including through a Municipal Separate Storm Sewer System (MS4). Until this permit is terminated, modified or revoked, permittees that have properly obtained coverage under this permit are authorized to discharge to surface waters of the State, including through an MS4, in accordance with the terms and conditions of this permit.

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HOW TO USE THIS DOCUMENT

This generic permit is written in plain English. It sets forth a series of questions along with the answers that are designed to make it easier for you to understand who needs a permit, how you get permit coverage, and what you must do to meet the permit's requirements. Underlined blue words are terms that are defined in Part 8, Definitions and Acronyms. If you click on these words, you will be taken to the part of the document where the term is defined. To get back to your original part of the document, you must install the "BACK" button for Word.

To install the "BACK" button and "FORWARD" button, complete these steps:

1. Click the Microsoft office button or FILE in the top left corner of your Word window.
2. Click on "Word Options" at the bottom of the menu.
3. Click on "Customize" from the left pane.
4. In "Choose commands from" drop-down menu, select "All Commands".
5. From the list of commands find "Back" and click "Add"
6. Similarly, find "Forward" and click "Add"

This Document Constitutes Your Permit

PART 1: PERMIT COVERAGE	
	<i>Do I need this permit for my project?</i>

1.1 When is this permit required?

An NPDES Stormwater construction generic permit is required for any construction activities that:

- 1.1.1 Disturb one or more acres of land or disturb less than one acre of land but are part of a common plan of development or sale; and
- 1.1.2 Discharge stormwater to surface waters of the state or to surface waters of the State through a municipal separate storm sewer system (MS4).

You, the Responsible Authority, shall apply either for an individual permit or for coverage under this National Pollutant Discharge Elimination System (NPDES) Construction Generic Permit (CGP). The Responsible Authority of a construction activity is ultimately responsible for obtaining and complying with this permit.

1.2 What does the CGP allow me to do?

The CGP allows you to discharge surface stormwater associated with large or small construction activity to waters of the State, either directly or through an MS4.

1.3 If I obtain the CGP, do I still need an Environmental Resource Permit (ERP) or other permit?

Obtaining coverage under the CGP does not relieve you of the requirement to obtain an Environmental Resource Permit (ERP). If an ERP is required then contact the Department, the appropriate water management district, or a delegated local program for more information. You may also need to obtain other required permits from federal, state, or local governments.

1.4 Do I need this permit if I am one of several contractors working at a common site?

- 1.4.1 If you are a contractor or subcontractor acting under the direction of an operator or other entity who has received coverage under the CGP for your construction activities, you do not have to obtain your own coverage under this permit, but must be named on the operator's SWPPP and separately sign the SWPPP certification (see Part 4.5).

- 1.4.2 If you are not named in the SWPPP or are not acting under the direction of the responsible authority who has obtained permit coverage, you must obtain your own permit.

1.5 Are there any limitations of coverage?

The following stormwater discharges from construction sites are not authorized by this permit. This permit specifically does not allow you to do any of the following:

- 1.5.1 Cause or contribute to a violation of surface water quality standards;
- 1.5.2 Discharges stormwater mixed with non-stormwater, except as otherwise provided in Part 3 of this CGP;
- 1.5.3 Discharge stormwater that originates from the site after construction activities have been completed and the site has undergone final stabilization;
- 1.5.4 Discharges that are mixed with sources of non-stormwater;
- 1.5.5 Discharges stormwater associated with construction activities that are covered under an existing generic or individual permit. Such discharges may be authorized under this permit after the existing generic permit or individual permit term of coverage expires or is terminated, provided the existing permit did not establish numeric limitations for such discharges; or
- 1.5.6 Discharges stormwater associated with construction activity that the Department has determined to be or may reasonably be expected to be causing or contributing to a violation of surface water quality standards.

<p>PART 2: YOUR APPLICATION = NOTICE OF INTENT (NOI)</p>	
	<p><i>How do I apply for coverage under this permit?</i></p>

2.1 How do I apply for coverage under this permit?

You must:

- 2.1.1 Submit a "Notice of Intent to Use Generic Permit for Stormwater Discharge from Large and Small Construction Activities, DEP Form 62-621.300(4)(b)," also known as Notice of Intent or NOI, to the Department; and
- 2.1.2 Submit the required permit application fee. For Large construction sites disturbing 5 or more acres, the required fee is \$400. For Small construction sites disturbing 1- 4.99 acres, the required fee is \$250. Land disturbances less than one acre of land but are part of a common plan of development or sale must apply for coverage.

2.2 What must I do before applying for the CGP?

Before you submit your NOI, you must develop and be ready to implement a Stormwater Pollution Prevention Plan (SWPPP). The minimum requirements for a SWPPP are listed in Part 4.

2.3 Where can I obtain and file my NOI and permit fee?

- 2.3.1 You can submit your NOI and payment electronically through the Department business portal at <http://www.fldepportal.com/go/>. Permit fees must be paid by check, credit card or debit card.
- 2.3.2 Alternatively, you can submit a paper copy of your NOI by downloading the form at: http://www.dep.state.fl.us/water/stormwater/npdes/permits_forms.htm and submitting it, along with your permit fee, to the Notices Center.

2.4 Who can sign the NOI?

The responsible authority must sign the NOI unless the responsible authority designates a duly authorized representative who may sign on the responsible authority's behalf as prescribed in Part 8.9.

2.5 When is the NOI due?

- 2.5.1 For a new project, you must submit a complete NOI and permit fee at least 2 calendar days before commencement of construction by clearing, grading, excavating, demolition, or other construction activities disturbing soil. An application is complete upon submittal of all requested information, submittal of the required permit fee, and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired.
- 2.5.2 For a project continuing beyond the five-year term of any existing CGP permit coverage, you must submit the complete NOI and permit fee at least 2 calendar days before your current permit expires to renew your coverage.
- 2.5.3 For a project where the operator changes, the new operator must submit the complete NOI and permit fee at least 2 calendar days before assuming control of the project.

2.6 What happens after I submit my NOI and Permit fee?

Your NOI will be determined complete or incomplete:

- 2.6.1 If incomplete, the Department will contact you to request additional information or request payment of the required permit fee.
- 2.6.2 If complete, the Department will send you an acknowledgment letter that will identify the term of your permit coverage.
- 2.6.3 You must post a copy of the NOI or, post a copy of the acknowledgment letter at the construction site in a prominent place for public viewing, such as alongside a building permit.
- 2.6.4 If your project discharges stormwater to an MS4, you must send a copy of the NOI or the acknowledgement letter within 7 calendar days of receipt to the operator of the MS4.

2.7 What is the term of my permit coverage?

- 2.7.1 The term of your permit coverage begins 2 calendar days after the Department determines your submittal complete, and lasts 5 years or until you terminate your coverage under the permit.

PART 3: DISCHARGES	
	<i>What discharges are allowed under this permit?</i>

3.1 What discharges are allowed under this permit?

With limited exceptions, the CGP only allows stormwater discharges associated with construction activities and dewatering operations described in Part 3.4. The exceptions are listed below (see Parts 3.2 and 3.4).

3.2 What non-stormwater discharges does the CGP allow?

You can discharge the following types of non-stormwater discharges, if they are listed in your SWPPP and your SWPPP includes appropriate pollution prevention procedures as to not cause or contribute to a violation of water quality standards.

- 3.2.1 Discharges from firefighting activities.
- 3.2.2 Fire hydrant flushings.
- 3.2.3 Waters without detergents used to spray off loose solids from vehicles.
- 3.2.4 Waters used to control dust.
- 3.2.5 Potable water sources such as waterline flushings.
- 3.2.6 Landscape irrigation water and drainage.
- 3.2.7 Routine external building washdown provided no detergents are used.
- 3.2.8 Pavement washwaters that do not contain detergents, leaks, spills of toxic or hazardous materials.
- 3.2.9 Air conditioning condensate.
- 3.2.10 Spring water.
- 3.2.11 Foundation or footing drain flows that are not contaminated with process material such as solvents.
- 3.2.12 Noncontaminated ground water associated with dewatering activities as described in Part 3.4.

3.3 What non-stormwater discharges are prohibited by the CGP?

The following non-stormwater discharges are prohibited by the CGP:

- 3.3.1 Wastewater from concrete washout.
- 3.3.2 Wastewater from washout or cleanout of stucco, paint, form release oils, curing compounds, and other construction materials.
- 3.3.3 Fuels, oils, or other pollutants from vehicle and equipment operation and maintenance.
- 3.3.4 Soaps, detergents, solvents, or other cleaners.
- 3.3.5 Hazardous substances or oil resulting from an on-site spill.

- 3.3.6 Solid materials, including building materials.
- 3.3.7 Any other non-stormwater discharge not specifically allowed by Part 3.2 of the CGP.

3.4 Can I discharge water from groundwater dewatering operations under this permit?

- 3.4.1 The CGP authorizes the discharge of uncontaminated ground water.
- 3.4.2 If your project site is uncontaminated, in accordance with Part 3.4.3 below, you are authorized under the CGP to discharge uncontaminated groundwater resulting from construction-related dewatering operations. To obtain this authorization, you must complete Part VI of the NOI. The operator is responsible for ensuring the groundwater is uncontaminated.
- 3.4.3 An uncontaminated site must meet the following conditions:
The property is either (a) not identified as a contaminated site and there is no identified contaminated site within 500 feet, or (b) it is identified as a contaminated site, but DEP documentation confirms that the contamination has been remediated or the pollutants of concern from the contaminated site are not present in groundwater at the project site at concentrations equal to or greater than the surface water criteria in Rule 62-302.530, F.A.C.
- 3.4.4 Documentation that the project site is uncontaminated must be kept at the project site with the SWPPP.
- 3.4.5 Appropriate dewatering BMPs shall be implemented to ensure that discharges from dewatering operations do not cause or contribute to violations of water quality standards. (See Part 5.8.) The BMPs must be included in the Dewatering Section of the SWPPP.
- 3.4.6 Discharges from dewatering operations must:
 - a) Not include visible floating solids or foam;
 - b) When feasible, discharge onto vegetated upland areas of the site where the water can infiltrate. As an alternative, the water can be discharged into the permitted stormwater system serving the project site.

Note: Backwash water should be managed such that it is not discharged directly to waters of the State. Backwash water may be hauled away for proper disposal or returned to the beginning of the treatment process.

3.5 What if I suspect the discharge from dewatering operations are from a contaminated site?

- 3.5.1 If a discharge from dewatering operations causes or contributes to a water quality violation, the permittee shall contact the Department. This permit only authorizes the discharge of uncontaminated groundwater. A site that does not meet the conditions of 3.4.3 may qualify for coverage under Rule 62-621.300(1), F.A.C., or under an individual wastewater permit on the appropriate form listed in Rule 62-620.910, F.A.C.
- 3.5.2 Coverage under this permit may be suspended, revoked and reissued, or terminated in accordance with Rule 62-620.345, F.A.C., if the Department determines that there has been a violation of any of the terms or conditions of the permit, there has been a violation of state water quality standards or the permittee has submitted false, incomplete or inaccurate data or information.

<p>PART 4: STORMWATER POLLUTION PREVENTION PLAN (SWPPP)</p>	
	<p><i>How do I develop my stormwater pollution prevention plan?</i></p>

4.1 What is the purpose of the SWPPP?

The purpose of the SWPPP is to document how you will comply with the requirements of this permit.

4.2 How do I develop my (SWPPP)?

You must prepare a SWPPP following standard industry practices. You can find training, samples, guidance, templates, and links to other resources to help you develop your SWPPP on our web page:

<http://www.dep.state.fl.us/water/stormwater/npdes/construction3.htm>.

4.3 When must I start following my SWPPP?

You must develop your SWPPP before you submit your NOI. You must start following your SWPPP when you receive coverage under this permit. If your SWPPP requires perimeter controls, they must be installed before the commencement of your construction activities.

4.4 Where do I keep my SWPPP and other records and how long do I have to retain them?

4.4.1 Keep all of these records at the construction site, or at an appropriate alternative location as specified in the NOI.

4.4.2 You must maintain a site log notebook or computer file folder that contains copies of the NOI, the acknowledgement letter granting coverage, your SWPPP, all your inspections reports, records, and all notifications from the Department concerning your site.

4.4.3 Keep all of these records for three years from the date that the site has reached final stabilization and the Notice of Termination (NOT) is submitted.

4.5 How often must I update my SWPPP?

You must keep your SWPPP current. You must sign and date any changes to the SWPPP and keep them as attachments to the original plan. Whenever any of the following events occur, you have seven calendar days to update your SWPPP:

- 4.5.1 There is a change in design, construction, operation, or maintenance that has a significant effect on the discharge from your project.
- 4.5.2 There is a new discharge point or outfall.
- 4.5.3 There is a change in the location of a discharge point or outfall.
- 4.5.4 An inspection (see Part 6) reveals that BMPs are ineffective at eliminating or minimizing pollutants in the stormwater discharged from the site.
- 4.5.5 There is a new operator, contractor, or subcontractor implementing any portion of the SWPPP. If a new operator is taking over a portion of the project site, you must update your SWPPP to note the area that is no longer covered by your CGP and inform the new operator in writing that you are no longer covering construction activities in that area. This documentation must be kept as part of your SWPPP. (See Part 1.4).
- 4.5.6 A release containing a hazardous substance in an amount equal to or greater than a reportable quantity occurs during a 24-hour period. (See Part 9.2 for important information about releases of hazardous substances in excess of reportable quantities.)

4.6 Who needs to sign the SWPPP?

All contractors and subcontractors identified in the SWPPP must sign a copy of the following certification statement before conducting any construction activities at the site. The certifications must have the name and title of the person signing the certification; the name, address, and telephone number of the contracting firm; and the signature date.

"I certify under penalty of law that I understand, and shall comply with, the terms and conditions of the State of Florida Generic Permit for Stormwater Discharge from Large and Small Construction Activities and this Stormwater Pollution Prevention Plan."

4.7 What needs to be in the SWPPP?

Table 4.7-1 lists the items that must be included in your plan. The SWPPP must clearly identify the contractor(s) or subcontractor(s) that will implement each item.

Table 4.7.1 Contents of the SWPPP

Stormwater Team	Identify the personnel (by name or position) that are part of the stormwater team responsible for implementing the SWPPP, including the <u>qualified inspector</u> . List their individual responsibilities in developing or implementing the SWPPP.
Contractors /Subcontractors	List all the contractors or subcontractors who will be conducting construction activities at the site, and identify the areas of the site in which they will be working. All listed contractors and subcontractors must sign the certification.
Site/Construction Activities Description	<ul style="list-style-type: none"> • Describe the nature of the <u>construction activity</u>. • Describe the intended sequence and time table of major activities that will disturb soils. • Include the scheduled starting and ending date for each major activity such as land clearing, grubbing, grading, cut and fill, dewatering operations, installation of erosion and sediment controls, installation of stormwater management systems, paving, <u>final</u> or <u>temporary stabilization</u> of exposed soil, and removal of construction equipment and vehicles. • Estimate the total area of the site and the total area that is expected to be disturbed by excavation, grading, or other construction activity.

	<ul style="list-style-type: none"> • Include existing data on soil types and the quality of any existing discharge from the site. • For each proposed discharge point provide the following: <ul style="list-style-type: none"> ➤ Latitude and Longitude ➤ Drainage Area ➤ Surface Waters or MS4 • Estimate the amount of land that will be cleared during the construction activity for each drainage area.
Site Map	<p>Include a site map showing all of the following:</p> <ul style="list-style-type: none"> • Boundaries of the property. • Entrance/Exit Points • Locations where construction activities will occur. • Locations where dewatering operation will occur. • Drainage patterns and approximate slopes and elevations anticipated after major grading activities. • Areas of soil disturbance. • Areas which will not be disturbed. • Location of major <u>structural and nonstructural controls</u>. • Location of areas where <u>stabilization</u> practices are expected to occur. • Location of <u>surface waters</u> and wetlands. • Location where stormwater is proposed to be discharged during construction to a surface water or MS4.
Non-stormwater Discharges	List all non-stormwater discharges covered under this permit and the pollution prevention procedures that will be implemented. (See <u>Part 3.3</u>)
Dewatering Controls (Applicable)	Include a description of the <u>BMPs</u> that will be used to ensure that discharges of noncontaminated ground water from <u>dewatering operations</u> do not cause or contribute to violations of state water quality standards.
BMPs	Describe the BMPs that will be implemented for each major activity and the timing during the construction process that they will be implemented. (See <u>Part 5</u>)
Permanent stormwater management controls	Describe the stormwater management controls or BMPs (e.g., stormwater detention or retention systems, vegetated swales, or velocity dissipation devices at discharge points) that will be installed during the construction process to control pollutants in stormwater discharges. (See <u>Part 5.7</u>)
Inspections	Must be at least once every seven calendar days and within 24-hours of the end of a storm event that is 0.50 inches or greater (even if it rains on the weekend or a holiday) (See <u>Part 6</u>)
Maintenance	Describe the maintenance activities and schedules that will be followed to keep BMPs in good and effective operating condition.
Signed Certifications	Include all the signed contractors and subcontractors certifications in the SWPPP.

<p>PART 5: BEST MANAGEMENT PRACTICES (BMPs)</p>	
	<p><i>What BMPs apply to my project?</i></p>

5.1 What BMPs am I required to use on my project?

Construction activities must not cause or contribute to a water quality violation or offsite sedimentation. You are encouraged to phase your construction activities to avoid potential water quality violations. BMPs must be installed before the commencement of your construction activities.

All BMPs must be consistent with the guidelines contained in the State of Florida Erosion and Sediment Control Designer and Reviewer Manual, FDOT and FDEP (2013) <http://www.stormwater.ucf.edu/publications/2013RevisedDesignerManual.pdf>, or from <http://www.flrules.org/Gateway/reference.asp?No=Ref-04227>.

You are required to comply with the following:

- 5.1.1 You must implement pollution prevention control BMPs described in Part 5.2.
- 5.1.2 You must implement erosion and sediment control BMPs as described in Part 5.3.
- 5.1.3 You must stabilize soils in accordance with Part 5.4.
- 5.1.4 You must implement structural controls as described in Part 5.5.
- 5.1.5 You must implement dewatering BMPs as described in Part 5.8.
- 5.1.6 If you disturb more than 10 acres at any one time, you must comply with the requirements of Part 5.6 relating to sediment basins.
- 5.1.7 All BMPs must be maintained until Final Stabilization has been achieved for the portions of the site served by the BMPs. BMPs include pollution prevention controls, erosion and sediment controls, stabilization practices, and structural controls. All BMPs must be described in your SWPPP.
- 5.1.8 Dewatering BMPs must be maintained throughout the duration of dewatering operations.
- 5.1.9 Temporary perimeter controls must be removed after final stabilization.

5.2 What pollution prevention control BMPs must be implemented?

You must, at a minimum, install, implement, and maintain pollution prevention control BMPs that accomplish all of the following:

- 5.2.1 Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters that are covered under this permit so as to not cause a violation of water quality standards or offsite sedimentation.

- 5.2.2 Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, toxic substances, and other materials present on the site to rain and to stormwater that may run onto or across your site so as to not cause or contribute to a violation of water quality standards.
- 5.2.3 Minimize the discharge of pollutants from spills and leaks. Your SWPPP must include and you must implement chemical spill and leak prevention and response procedures.

5.3 What erosion and sediment control BMPs apply?

You must, at a minimum, install, implement, and maintain appropriate erosion and sediment controls that accomplish all of the following so as to not cause or contribute to a violation of water quality standards and minimize offsite sedimentation:

- 5.3.1 Control stormwater volume and velocity within the site to minimize soil erosion and offsite sedimentation.
- 5.3.2 Control stormwater peak discharge rates and volume to minimize erosion at discharge outfalls and to minimize downstream channel and stream bank erosion.
- 5.3.3 Minimize the amount of soil exposed during the construction activity.
- 5.3.4 Minimize the disturbance of steep slopes.
- 5.3.5 Minimize sediment discharges from the site.
- 5.3.6 Minimize off-site vehicle tracking of sediments onto paved surfaces and the generation of dust so as to prevent the potential for water quality violations and offsite sedimentation. If sediment escapes the construction site, remove off-site accumulations of sediment at a frequency sufficient to minimize off-site impacts.
- 5.3.7 In selecting your sediment and erosion controls, you must consider factors such as the amount, frequency, intensity, and duration of precipitation; the characteristics of the resulting stormwater; and the site's soil characteristics, including the range of soil particle sizes expected to be present on the site.

5.4 Do I have to use Stabilization Measures?

You must initiate stabilization measures within 7 calendar days after construction activities have temporarily or permanently ceased for any portion of the site.

Stabilization measures include:

- Temporary seeding.
- Permanent seeding.
- Mulching.
- Geotextiles.
- Sod stabilization.
- Vegetative buffer strips.
- Protection of trees.
- Preservation of mature vegetation.
- Other appropriate measures.

- 5.4.1 You must include in your SWPPP, and update when necessary, 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.
- 5.4.2 You must achieve Final Stabilization prior to filing a Notice of Termination in accordance with Part 7.1 or the expiration of coverage under this, or a subsequent, generic permit.

5.5 Do I have to use Structural Practices?

You must use controls to accomplish the following:

- 5.5.1 As necessary to prevent violations of water quality or offsite sedimentation, you must divert flows from exposed soils, store flows, retain sediment on site, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site.
- 5.5.2 Structural practices to prevent violations of water quality or offsite sedimentation, which may include the following: silt fences, earth dikes, diversions, swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, coagulating agents, and temporary or permanent sediment basins.
- 5.5.3 Silt fences or equivalent structural controls are required for all side slope and down slope boundaries of the construction area.
- 5.5.4 Structural best management practices must be placed on upland soils unless a State of Florida environmental resource permit issued pursuant to Chapter 373, F.S., or applicable regulations of the DEP or WMD otherwise authorize.

5.6 What requirements apply to sediment basins?

If you have 10 or more disturbed acres on your site, the following design requirements shall be met:

- For drainage basins with 10 or more disturbed acres at one time, a temporary (or permanent) sediment or wet detention basin providing 3,600 cubic feet of storage per acre drained must be provided until final stabilization of the site. The 3,600 cubic feet of storage area per acre drained does not apply to flows from off-site areas and flows from on-site 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 basins with 10 or more disturbed acres at one time and where a temporary sediment basin providing 3,600 cubic feet of storage per acre drained is not attainable, a combination of smaller sediment basins, sediment traps, wet detention systems, or other best management practices must be used.
- 5.6.1 For drainage basins of less than 10 disturbed acres, sediment basins and sediment traps are recommended but not required.
 - 5.6.2 Areas that will be used for permanent stormwater infiltration treatment (e.g., stormwater retention basins) should not be used for temporary sediment basins unless appropriate measures are taken to assure removal of accumulated fine sediments, to avoid excessive compaction of soils by construction machinery or equipment, and to assure that the design infiltration capacity is met.

5.7 What requirements apply to permanent stormwater management controls?

Your SWPPP must include a description of stormwater management controls or BMPs (e.g., stormwater detention or retention systems, vegetated swales, or velocity dissipation devices at discharge points) that will be installed during the construction process to control pollutants in stormwater discharges that will occur during construction and after construction operations have been completed.

Under this CGP, you are only responsible for the installation and maintenance of stormwater management controls until the construction activities have been completed and the site has undergone final stabilization. However, all stormwater management systems and BMPs must be operated and maintained in perpetuity after final stabilization in accordance with requirements set forth in the State of Florida environmental resource permit issued under Part IV, Chapter 373, F.S.

5.8 What Dewatering BMPs can I use?

The operator shall develop and implement site specific control measures or BMPs to minimize or eliminate pollutant discharges resulting from dewatering operations to surface waters of the state. Appropriate BMPs shall have been developed and implemented upon commencement of the discharge. The most common BMPs for treating dewatering discharges include sediment traps and basins, weir and dewatering tanks, filters, and chemical treatment. These technologies and approaches provide a number of options to achieve sediment removal. The sizes of the particle that make up the sediments are a key consideration in selecting sediment control options.

PART 6: INSPECTIONS	
	<i>How should I inspect my project?</i>

6.1 When must I inspect my site? By whom?

Your site must be inspected at least once every seven calendar days and within 24 hours of the end of a storm event that is 0.50 inches or greater (even if it rains on the weekend or a holiday). Your site must be inspected by a qualified inspector that you must provide.

6.2 What must your inspection cover?

Your qualified inspector must:

- 6.2.1 Inspect all stormwater discharges from the site to ensure BMPs are not causing or contributing to violations of water quality standards or resulting in offsite sedimentation. <http://www.dep.state.fl.us/water/wqssp/classes.htm>
- 6.2.2 Inspect the BMPs identified in the SWPPP to ensure that they are installed, maintained, and operating correctly and effectively.
- 6.2.3 Inspect all areas used for storage of materials that are exposed to rainfall and runoff to ensure all BMPs are being used and maintained properly.
- 6.2.4 Inspect all locations where vehicles enter or exit the site for evidence of offsite sediment tracking and inform operator of all actions needing to be taken to remove sediments on the road and prevent it in the future.
- 6.2.5 Inspect all distributed areas and discharge points for signs of visible erosion and sedimentation.

6.3 What information must be included in the inspection report?

The report must contain all of the following:

- 6.3.1 Scope of the inspection.
- 6.3.2 Name(s) and qualifications of personnel making the inspection.
- 6.3.3 Date(s) of the inspection.
- 6.3.4 Rainfall data.
- 6.3.5 Major observations relating to the implementation of the SWPPP.
- 6.3.6 Corrective actions taken since last inspection in accordance with Part 6.4.
- 6.3.7 Any incidents of non-compliance. (Where an inspection does not identify any incidents of non-compliance, the report must certify that the facility is in compliance with the SWPPP and the CGP.)
- 6.3.8 Signature of the qualified inspector that prepared the report. (See Part 9.1, below.)
- 6.3.9 Signature of a responsible authority. (See Part 9.1, below.)

6.4 If the inspection identifies needed corrective actions, when must they be accomplished?

Based on the results of the inspection, all corrective actions needed to assure proper

operation of all controls identified in your SWPPP or to ensure that the requirements of the permit are met must be done in a timely manner, but in no case later than 7 calendar days following the inspection or identification of the issue. If needed, you must revise your SWPPP and modify your controls in a timely manner, but in no case later than 7 calendar days following the inspection or identification of the issue. (See Part 4.4)

6.5 Can I temporarily suspend the weekly/0.5 inch inspections?

- 6.5.1 Once you have achieved final stabilization, you may suspend inspections.
- 6.5.2 You may reduce the frequency of inspections to once per month on your site if you:
 - 6.5.2.1 Have achieved temporary stabilization that is successful at stabilizing the site for the duration of your suspended construction activities; and
 - 6.5.2.2 Have your SWPPP updated as to why you are suspending construction activities at your site and have met the conditions of 6.5.1. The SWPPP must include:
 - a. The status and type of stabilization implemented,
 - b. The date the activities were suspended, and
 - c. The anticipated date activities will resume.
- 6.5.3 If construction activity resumes in this portion of the site at a later date, the inspection frequency immediately returns to the frequency required by this permit under Part 6.1. You are at all times responsible for ensuring that your temporary stabilization methods are in compliance with permit conditions.
- 6.5.4 If at any time after you suspend construction activities you determine the site will not resume activities during the term of your permit coverage, you must achieve Final Stabilization and file a Notice of Termination. During that intermediate period of time all terms of this permit will apply.

<p>PART 7: COMPLETION = NOTICE OF TERMINATION (NOT)</p>	
	<p><i>What should I do when my project is complete?</i></p>

7.1 What must I do when my project is complete or I no longer need the permit coverage?

Within 14 calendar days after your site has achieved final stabilization and all discharges authorized by this permit are eliminated or are authorized under a separate NPDES permit, you must submit a completed Notice of Termination (NOT) form.

7.1.1 All dewatering discharges authorized by this permit have ceased.

7.1.2 All construction activity discharges authorized by this permit have ceased.

Elimination of stormwater discharges associated with construction activity means that all disturbed soils at the site have been final stabilized, that temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, and that all stormwater discharges associated with construction activity from the site that are authorized by the CGP have been eliminated.

7.2 Can I transfer the CGP following a sale or transfer of project operation?

Coverage under the CGP is not transferable. The new owner/operator will need to complete a SWPPP and submit a new NOI and processing fee. You need to end the current permit coverage by submitting a Notice of Termination (NOT) within 14 calendar days of relinquishing control of the project to a new owner/operator. It is the responsibility of the new owner/operator to obtain coverage before the NOT is submitted.

7.3 How do I submit my NOT?

7.3.1 You can submit the form electronically: To file your NOT online go to:
<http://www.fldepportal.com/go/>

7.3.2 Alternatively you can submit a NOT by email to the Notices Center: To download the NOT go to:
http://www.dep.state.fl.us/water/stormwater/npdes/permits_forms.htm

For additional assistance please contact the Notice Center at: (866) 336-6312 (toll-free).

7.4 Who can sign the NOT?

The responsible authority must sign the NOI unless the responsible authority designates a duly authorized representative who may sign on the responsible authority's behalf.

7.5 What happens after I submit my NOT?

The Department will send you an acknowledgment letter by email. If your project discharged stormwater to a permitted MS4, you must send a copy of the NOT or the acknowledgement letter within 7 calendar days of receipt to the operator of the MS4.

<p>PART 8: DEFINITIONS AND ACRONYMS</p>	
	<p><i>What definitions and acronyms do I need to know?</i></p>

DEFINITIONS

8.1 "Best Management Practices" or "BMPs"

Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs also include sediment and erosion controls, stabilization measures, and pollution prevention controls as described in: State of Florida Erosion and Sediment Control Designer and Reviewer Manual, FDOT and FDEP (2013) <http://www.stormwater.ucf.edu/publications/2013RevisedDesignerManual.pdf>, or from <http://www.flrules.org/Gateway/reference.asp?No=Ref-04227>.

8.2 "Construction Activity"

The act or process of developing or improving land, including demolition and renovation activity, which involves the disturbance of soils not limited to, clearing, grading, and excavation.

8.3 "Contaminated Site"

Any site that contains or did contain pollutants of concern in the groundwater that exceed the surface water criteria in 62-302.530, F.A.C.

8.4 "Commencement of Construction"

Means the initial disturbance of soil associated with clearing, grading, or excavating activities or other construction activities.

8.5 "Common Plan of Development or Sale"

A single plan of development or sale for a site where one or more separate and distinct construction activities are occurring on one or more schedules by one or more contractors. This may include:

- Phased projects and projects with multiple lots, even if the separate phases or lots will be constructed under separate contract or by separate owners (e.g., a development where lots are sold to separate builders).
- A development plan that may be phased over multiple years, but is still under a consistent plan for long-term development.
- Projects in a contiguous area that may be unrelated but still under the same contract, such as construction of a building extension and a new parking lot at the same facility.
- Linear projects such as roads, pipelines, or utilities.

8.6 "Department" or "DEP"

The Florida Department of Environmental Protection.

8.7 "Dewatering activities"

For the purposes of this generic permit means temporarily lowering the ground water level, whether confined or unconfined, by mechanical pumping to allow for construction and excavation activities at the construction site covered by this generic permit.

8.8 "Discharge Point" or Outfall"

For the purposes of this permit, the location where collected and/or concentrated stormwater flows are discharged from the construction site.

8.9 "Duly Authorized Representative"

A duly authorized representative is a person who has been designated by the responsible authority to sign documents relating to this permit on the responsible authority's behalf. A responsible authority may authorize a duly authorized representative by submitting to the Notices Center, by email or in writing an authorization that names either an individual or a position having overall responsibility for the operation of the your project, such as the project engineer, project superintendent, a position of equivalent responsibility, or an individual or position having overall responsibility for implementing the CGP at the site.

If an authorization is no longer valid because a different individual or position has overall responsibility for the operation of your project, a new authorization satisfying the above requirements must be submitted to the Notices Center prior to or together with any reports, information, or applications to be signed by an authorized representative.

8.10 "Environmental Resource Permit" or "ERP"

The permit issued under Part IV, Chapter 373, F.S., by the Department, a WMD, or delegated local program that ensures that the stormwater flood control, stormwater treatment, and wetland protection requirements are met.

8.11 "Final Stabilization"

All soil disturbing activities at the site have been completed, and that a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of at least 70% for all unpaved areas and areas not covered by permanent structures has been established or equivalent permanent stabilization measures (e.g., geotextiles) have been employed.

8.12 "Groundwater"

Means water beneath the surface of the ground within a zone of saturation, whether or not flowing through known and definite channels.

8.13 "Large Construction Activity"

Construction activity that results in the disturbance of five or more acres of total land area. Large construction activity also includes the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale that will cumulatively disturb five acres or more.

8.14 "Municipal Separate Storm Sewer System" or "MS4"

An MS4 as defined in Chapter 62-624.200, F.A.C. (for more information)
<http://www.dep.state.fl.us/legal/Rules/shared/62-624.pdf>

8.15 "Nonstructural Controls"

Practices that are specifically intended to reduce the amount of pollution getting into stormwater or surface waters. Nonstructural controls are generally implemented to address the problem at the source. They do not require any structural changes to the facility. Examples of nonstructural control practices include pollution prevention BMPs, good housekeeping practices, and preventative maintenance programs.

8.16 "Notice of Intent" or "NOI"

Notice of Intent to be covered by this permit.

8.17 "Notice of Termination" or "NOT"

Notice of Termination to cease coverage under this permit.

8.18 "NPDES"

The Department's federally-approved National Pollutant Discharge Elimination System program authorized by Section 403.0885, F.S.

8.19 "NPDES Notices Center"

The place to which you submit your NOI, NOT, or other information related to the process of obtaining, implementing, or terminating coverage under the NPDES Program. The email address is: NPDES-stormwater@dep.state.fl.us

The mailing address is: NPDES Stormwater Notices Center, MS #3585
Florida Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

The phone number is: (866) 336-6312 (toll-free)

8.20 "Operator"

The person, firm, contractor, public organization, or other legal entity that owns or operates the construction activity and that has authority to control those activities at the project necessary to ensure compliance with the terms and conditions of this permit.

8.21 "Qualified Inspector"

A person that:

1. Has successfully completed the DEP Stormwater, Erosion, and Sedimentation Control Inspector Training Program and received a certificate of completion.
2. Has successfully completed an equivalent formal training program;
3. Is qualified by other training or practical experience in the field of stormwater pollution prevention and erosion and sedimentation control.

8.22 "Responsible Authority"

Per Rule 62-620.305, F.A.C., a responsible authority means:

1. For a corporation, a responsible corporate officer as described in Rule 62-620.305, F.A.C.
2. For a partnership or sole proprietorship, a general partner or the proprietor, respectively.
3. For a municipality, state, federal or other public facility, a principal executive officer or elected official.

8.23 "Small Construction Activity"

Construction activity resulting in the disturbance of equal to or greater than one acre and less than five acres of total land area. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale that will cumulatively disturb equal to or greater than one acre and less than five acres.

8.24 "Stabilization"

The use of vegetative and/or non-vegetative cover BMPs to prevent erosion and sediment loss in areas exposed through the construction process.

8.25 "Storm Event"

A rainfall event that results in a measurable amount of rain. A storm event is defined to be a separate event when there is at least four hours of no rain between periods of rainfall.

8.26 "Stormwater"

The flow of water which results from, and which occurs immediately following, a rainfall event.

8.27 "Stormwater discharge associated with construction activity"

The discharge of stormwater from large or small construction activities, including areas where soil disturbing activities, construction materials handling or storage, equipment storage or maintenance are located.

8.28 "Structural Controls"

Curbs, dikes, berms, swales, diversions, retention systems, detention systems or other structures which capture and treat stormwater to reduce pollutants in stormwater discharges.

8.29 "SWPPP"

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

8.30 "Surface Waters of the State"

Those surface waters, including wetlands that are described in section 403.031, F.S.

8.31 "Temporary Stabilization"

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

8.32 "Uncontaminated"

A discharge that does not cause or contribute to an exceedance of applicable water quality standards.

8.33 "Water Management District" or "WMD"

The Northwest Florida Water Management District, the Suwannee River Water Management District, the St. Johns River Water Management District, the Southwest Florida Water Management District or the South Florida Water Management District.

OTHER ACRONYMS

BMP Best Management Practice
C.F.R. Code of Federal Regulations
CGP Construction Generic Permit
ERP Environmental Resource Permit
F.A.C. Florida Administrative Code
FDEP Florida Department of Environmental Protection
F.S. Florida Statutes
MS4 Municipal separate storm sewer system
NOI Notice of Intent
NOT Notice of Termination
NPDES National Pollutant Discharge Elimination System
SWPPP Stormwater Pollution Prevention Plan

<p>PART 9: STANDARD PERMIT CONDITIONS</p>	
	<p><i>What are the other terms of this permit?</i></p>

Any permit noncompliance constitutes a violation of Section 403.161, F. S. and is grounds for enforcement action; for permit coverage termination, or revocation; or for denial of permit coverage renewal.

For unauthorized releases or spills of treated or untreated wastewater reported that are in excess of 1,000 gallons per incident, or where information indicates that public health or the environment will be endangered, the operator must notify the State Warning Point (800-320-0519 or 850-413-9911) as soon as practical but no later than 24 hours from the time the permittee becomes aware of the discharge.

All of the general conditions listed in Rule 62-621.250, F.A.C., are adopted herein by reference.

9.1 What are the signatory requirements for the CGP?

- 9.1.1 All NOI, NOT, SWPPP, reports, certifications, or information either submitted to the Department or the operator of an MS4, or that this permit requires you to maintain, must be signed by the responsible authority unless you designate a duly authorized representative by submitting to the Notices Center, in writing or by email, an authorization that names either an individual or a position having overall responsibility for the operation of the your project, such as the project engineer, project superintendent, a position of equivalent responsibility, or an individual or position having overall responsibility for implementing the CGP at the site.
- 9.1.2 If an authorization is no longer valid because a different individual or position has overall responsibility for the operation of your project, a new authorization satisfying the above requirements must be submitted to the Notices Center prior to or together with any reports, information, or applications to be signed by an authorized representative.
- 9.1.3 Inspection reports prepared pursuant to Part 6.4 must be signed by the qualified inspector that prepared them as well as by a responsible authority.
- 9.1.4 Any person signing documents under this permit, except contractor or subcontractor certifications under Part 4.5, must 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."

9.2 What should I do upon a release of hazardous substances exceeding reporting quantities?

The discharge of hazardous substances or oil in the stormwater discharge(s) from a facility or activity must be prevented or minimized in accordance with the applicable stormwater pollution prevention plan for the facility or activity. This permit does not relieve the operator of the reporting requirements of 40 C.F.R. part 117 and 40 C.F.R. 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 C.F.R. 117 or 40 C.F.R. 302, occurs during a 24 hour period:

- 9.2.1 The operator must notify the State Warning Point (800-320-0519 or 850-413-9911) as soon as he or she has knowledge of the discharge.
- 9.2.2 The operator must 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 remedial steps to be taken, to the Florida Department of Environmental Protection, NPDES Stormwater Section, Mail Station 3585, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400 or by email at NPDES-stormwater@dep.state.fl.us
- 9.2.3 The SWPPP required under Part 4 must be modified within seven 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 recurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

for the purposes of judicial review as of 1 p.m. Eastern Standard Time, December 15, 2009. Under Section 509(b)(1) of the Clean Water Act (CWA), judicial review of today's effluent limitations guidelines and new source performance standards may be obtained by filing a petition in the United States Circuit Court of Appeals for review within 120 days from the date of promulgation of these guidelines and standards. Under Section 509(b)(2) of the CWA, the requirements of this regulation may not be challenged later in civil or criminal proceedings brought to enforce these requirements.

List of Subjects in 40 CFR Part 450

Environmental protection.
Construction industry, Land development, Erosion, Sediment, Stormwater, Water pollution control.

Dated: November 23, 2009.

Lisa P. Jackson,
Administrator.

■ 40 CFR part 450 is added as follows:

PART 450—CONSTRUCTION AND DEVELOPMENT POINT SOURCE CATEGORY

Subpart A—General Provisions

Sec.

450.10 Applicability.

450.11 General definitions.

Subpart B—Construction and Development Effluent Guidelines

450.21 Effluent limitations reflecting the best practicable technology currently available (BPT).

450.22 Effluent limitations reflecting the best available technology economically achievable (BAT).

450.23 Effluent limitations reflecting the best conventional pollutant control technology (BCT).

450.24 New source performance standards reflecting the best available demonstrated control technology (NSPS).

Authority: 42 U.S.C 101, 301, 304, 306, 308, 401, 402, 501 and 510.

Subpart A—General Provisions

§ 450.10 Applicability.

(a) This part applies to discharges associated with construction activity required to obtain NPDES permit coverage pursuant to 40 CFR 122.26(b)(14)(x) and (b)(15).

(b) The provisions of § 450.22(a) do not apply to discharges associated with interstate natural gas pipeline construction activity.

(c) The New Source Performance Standards at § 450.24 apply to all new sources and are effective February 1, 2010.

(d) The BPT, BCT and BAT effluent limitations at § 450.21 through 450.23

apply to all sources not otherwise covered by paragraph (c) of this section and are effective February 1, 2010.

§ 450.11 General definitions.

(a) *New Source.* New source means any source, whose discharges are defined in 40 CFR 122.26(b)(14)(x) and (b)(15), that commences construction activity after the effective date of this rule.

(b) [Reserved]

Subpart B—Construction and Development Effluent Guidelines

§ 450.21 Effluent limitations reflecting the best practicable technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any point source subject to this subpart must achieve, at a minimum, the following effluent limitations representing the degree of effluent reduction attainable by application of the best practicable control technology currently available (BPT).

(a) *Erosion and Sediment Controls.* Design, install and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants. At a minimum, such controls must be designed, installed and maintained to:

(1) Control stormwater volume and velocity within the site to minimize soil erosion;

(2) Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and streambank erosion;

(3) Minimize the amount of soil exposed during construction activity;

(4) Minimize the disturbance of steep slopes;

(5) Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;

(6) Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible; and

(7) Minimize soil compaction and, unless infeasible, preserve topsoil.

(b) *Soil Stabilization.* Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have

permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the permitting authority. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the permitting authority.

(c) *Dewatering.* Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

(d) *Pollution Prevention Measures.* Design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented and maintained to:

(1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

(2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater; and

(3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

(e) *Prohibited Discharges.* The following discharges are prohibited:

(1) Wastewater from washout of concrete, unless managed by an appropriate control;

(2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;

(3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

(4) Soaps or solvents used in vehicle and equipment washing.

(f) *Surface Outlets.* When discharging from basins and impoundments, utilize outlet structures that withdraw water from the surface, unless infeasible.

§ 450.22 Effluent limitations reflecting the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any point source subject to this subpart must achieve, at a

minimum, the following effluent limitations representing the degree of effluent reduction attainable by application of the best available technology economically achievable (BAT).

(a) Beginning no later than August 2, 2010 during construction activity that disturbs 20 or more acres of land at one time, including non-contiguous land disturbances that take place at the same time and are part of a larger common plan of development or sale; and no later than February 2, 2014 during construction activity that disturbs ten or more acres of land area at one time, including non-contiguous land disturbances that take place at the same time and are part of a larger common plan of development or sale, the following requirements apply:

(1) Except as provided by paragraph (b) of this section, the average turbidity of any discharge for any day must not exceed the value listed in the following table:

Pollutant	Daily maximum value (NTU) ¹
Turbidity	280

¹ Nephelometric turbidity units.

(2) Conduct monitoring consistent with requirements established by the permitting authority. Each sample must be analyzed for turbidity in accordance with methods specified by the permitting authority.

(b) If stormwater discharges in any day occur as a result of a storm event in that same day that is larger than the local 2-year, 24-hour storm, the effluent limitation in paragraph (a)(1) of this section does not apply for that day.

(c) *Erosion and Sediment Controls.* The limitations are described at § 450.21(a).

(d) *Soil Stabilization.* The limitations are described at § 450.21(b).

(e) *Dewatering.* The limitations are described at § 450.21(c).

(f) *Pollution Prevention Measures.* The limitations are described at § 450.21(d).

(g) *Prohibited Discharges.* The limitations are described at § 450.21(e).

(h) *Surface Outlets.* The limitations are described at § 450.21(f).

§ 450.23 Effluent limitations reflecting the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any point source subject to this subpart must achieve, at a minimum, the following effluent limitations representing the degree of effluent reduction attainable by application of the best conventional pollutant control technology (BCT). The effluent limitations are described at § 450.21.

§ 450.24 New source performance standards reflecting the best available demonstrated control technology (NSPS).

Any new source subject to this subpart must achieve, at a minimum, the following new source performance standards representing the degree of effluent reduction attainable by application of the best available demonstrated control technology (NSPS): The standards are described at § 450.22.

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OF THE RETURN ADDRESS. FOLD AT DOTTED LINE
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