Proposed 2022 Construction General Permit (CGP) – Fact Sheet

Contents

I. Background

Congress passed the Federal Water Pollution Control Act of 1972 (Public Law 92-500, October 18, 1972) (hereinafter the "Clean Water Act" or "CWA"), 33 U.S.C. 1251 et seq., with the stated objectives to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Section 101(a), 33 U.S.C. 1251(a). To achieve this goal, the CWA provides that "the discharge of any pollutant by any person shall be unlawful" except in compliance with other provisions of the statute. CWA section 301(a). 33 U.S.C. 1311. The CWA defines "discharge of a pollutant" broadly to include "any addition of any pollutant to navigable waters from any point source." CWA section 502(12). 33 U.S.C. 1362(12). EPA is authorized under CWA section 402(a) to issue a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of any pollutant from a point source. These NPDES permits are issued by EPA regional offices or NPDES-authorized state or tribal agencies. Since 1972, EPA and the authorized states have issued NPDES permits to thousands of dischargers, including industrial (e.g., manufacturing, energy and mining facilities) and municipal (e.g., sewage treatment plants) facilities. As required under Title III of the CWA, EPA has promulgated Effluent Limitations Guidelines (ELGs) and New Source Performance Standards (NSPS) for many industrial point source categories, and these requirements must be incorporated into NPDES permits. 33 U.S.C. 1311(b). The Water Quality Act (WQA) of 1987 (Public Law 100-4, February 4, 1987) amended the CWA, adding CWA section 402(p), requiring implementation of a comprehensive program for addressing stormwater discharges. 33 U.S.C. 1342(p).

A. Clean Water Act Stormwater Program

Prior to the Water Quality Act of 1987, there were numerous questions regarding the appropriate means of regulating stormwater discharges within the NPDES program due to the serious water quality impacts of stormwater discharges, the variable nature of stormwater, and the large number of stormwater point sources. EPA undertook multiple regulatory actions to address these unique discharges. Congress, with the addition of section 402(p), established a structured and phased approach to address stormwater discharges and fundamentally altered the way stormwater is addressed under the CWA as compared with other point source discharges of pollutants. Section 402(p)(1) created a temporary moratorium on NPDES permits for point source stormwater discharges, except for those listed in section 402(p)(2), including dischargers already required to have a permit and discharges associated with industrial activity. In 1990, pursuant to section 402(p)(4), EPA promulgated the Phase I stormwater regulations for those stormwater discharges listed in 402(p)(2). See 55 FR 47990 (November 16, 1990). The Phase I regulations required NPDES permit coverage for discharges associated with industrial activity and from "large" and "medium" municipal separate storm sewer systems (MS4s). CWA section 402(p)(2). As part of that rulemaking, EPA interpreted stormwater "discharges associated with industrial activity" to include stormwater discharges associated with "construction activity" as defined at 40 CFR 122.26(b)(14)(x). See 55 FR 48033-34. As described in the Phase I regulations, dischargers must obtain authorization to discharge (or "permit coverage"), including discharges associated with construction activity, including clearing, grading, and excavation, if the construction activity:

- will result in the disturbance of five acres or greater; or
- will result in the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or greater.

See 40 CFR 122.26(b)(14)(x) and (c)(1).

Section 402(p)(5) and (6) establishes a process for EPA to evaluate potential sources of stormwater discharges not included in the Phase I regulations and to designate discharges for regulation to protect water quality. Section 402(p)(6) instructs EPA to "issue regulations…which

designate stormwater discharges, other than those discharges described in [section 402(p)(2)], to be regulated to protect water quality and shall establish a comprehensive program to regulate such designated sources." In 1999, pursuant to the broad discretion granted to the Agency under section 402(p)(6), and in response to a court remand in *Natural Resources Defense Council v. EPA*, 966 F.2d 1292, 1306 (9th Cir. 1992) (holding that EPA had failed to explain in its 1990 Phase 1 stormwater rule why stormwater discharges from construction sites disturbing less than five acres were not industrial in nature), EPA promulgated the Phase II stormwater regulations that designated discharges associated with "small" construction activity and "small" MS4s. 64 FR 68722 (December 8, 1999). NPDES permit coverage is required for discharges associated with "small" construction activity, including clearing, grading, and excavation, if the construction activity:

- will result in land disturbance of equal to or greater than one acre and less than five acres; or
- will result in disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres.

See 40 CFR 122.26(b)(15).

EPA continues to have discretionary authority under section 402(p)(6) to designate additional stormwater discharges for regulation under the CWA to protect water quality. The NPDES regulations establish a process for exercising discretion to designate and require NPDES permits for unregulated stormwater discharges. See 40 CFR 122.26(a)(9)(i)(C)-(D); see also *Envt Defense Ctr. v. EPA*, 344 F.3d 832, 873-76 (9th Cir. 2003).

B. NPDES Permits for Stormwater Discharges Associated With Construction Activity

The NPDES regulations provide two options for obtaining authorization to discharge or "permit coverage": general permits and individual permits. A brief description of these types of permits as they apply to construction and development (C&D) sites follows:

1. ***General NPDES Permits.*** The vast majority of discharges associated with construction activity are covered under NPDES general permits. EPA, states, and tribes use general permits to cover a group of similar dischargers under one permit. See 40 CFR 122.28. General permits simplify the process for dischargers to obtain authorization to discharge, provide permit requirements for any eligible discharger that files a Notice of Intent (NOI) to be covered, and reduce the administrative workload for NPDES permitting authorities. General permits, including the fact sheet describing the rationale for permit conditions, are issued by NPDES permitting authorities after an opportunity for public review of and comment on the proposed general permit. Typically, to obtain authorization to discharge under a construction general permit, a discharger (any operators of the construction site; typically, a developer, builder, and/or contractor) submits to the permitting authority an NOI to be covered under the general permit. An NOI is not a permit or a permit application (see *Texas Independent Producers and Royalty Owners Ass'n v. EPA*, 410 F.3d 964, 977-78 (7th Cir. 2005)), but by submitting the NOI, the discharger asserts and acknowledges that it is eligible for coverage under the general permit and that it agrees to the conditions in the published general permit. Discharges associated with the construction activity are authorized consistent with the terms and conditions established in the general permit.

   After reviewing information regarding permit eligibility contained in the NOI, EPA, states and tribes may notify a construction site operator that it must, instead, apply for an individual permit if the permitting authority determines that the operator does not meet the eligibility conditions for coverage under the general permit. Examples of situations

that might trigger such a determination are when the proposed discharges will not meet applicable water quality standards, or when they may adversely affect a Federally listed threatened or endangered species. In some cases, the permitting authority may allow the operator to proceed with coverage under the general permit provided additional control measures designed to address the specific issue at hand are implemented.

2. ***EPA Construction General Permit (CGP).*** Since 1992, EPA has issued a series of Construction General Permits (CGPs) that cover areas where EPA is the NPDES permitting authority. At present, EPA is the permitting authority in four states (Massachusetts, New Hampshire, New Mexico, and Idaho), the District of Columbia, Puerto Rico and all other U.S. territories with the exception of the Virgin Islands, construction projects undertaken by Federal Operators in four states (Colorado, Delaware, Vermont, and Washington), most Indian Country lands and a couple of other specifically designated activities in specific states (*e.g., oil and gas activities in Texas and Oklahoma)*. See Appendix B for a complete list of areas covered by EPA's CGP. For the 2022 CGP, EPA will no longer be the permitting authority for Idaho (except for sites located in Indian country lands) or for oil and gas activities in Texas, since those states will by the time of issuance be fully authorized to implement the NPDES program for these areas. The 2017 CGP became effective on February 16, 2017 (see 82 FR 6534) and expires at midnight on February 16, 2022. The 2017 CGP was also modified in 2019 (see 84 FR 24503). The 2022 CGP will replace the 2017 CGP.

3. ***Individual NPDES Permits.*** A permitting authority may require any construction site to apply for an individual permit rather than using the general permit. Likewise, any discharger may apply to be covered under an individual permit rather than seek coverage under an otherwise applicable general permit. See 40 CFR 122.28(b)(3). Unlike a general permit, an individual permit is intended to be issued to one permittee, or a few co-permittees. Individual permits for stormwater discharges from construction sites are rarely used, but when they are, they are most often used for very large projects or projects located in sensitive watersheds. EPA estimates that less than one half of one percent (< 0.5%) of all construction sites in the country are covered under individual permits.

C. Technology-Based Effluent Limitations Guidelines and Standards in NPDES Permits

Effluent limitations guidelines (ELGs) and new source performance standards (NSPSs) dictate technology-based effluent limitations in permits under CWA sections 301 and 306 for categories of point source discharges. These ELGs and NSPS, which can be either numeric or non-numeric, must be incorporated into NPDES permits, as appropriate, along with water quality-based effluent limitations, if necessary. ELGs and NSPSs are based on the degree of control that can be achieved using various levels of pollutant control technology as defined in Title III of the CWA and summarized as follows:

1. **Best Practicable Control Technology Currently Available (BPT).** The CWA requires EPA to specify BPT effluent limitations for conventional, toxic, and nonconventional pollutants. In doing so, EPA must determine what level of control is technologically available and economically practicable. CWA section 301(b)(1)(A). In specifying BPT, EPA must look at a number of factors. EPA considers the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application. The Agency also considers the age of the equipment and facilities, the process employed and any required process changes, engineering aspects of the application of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the Administrator deems appropriate. CWA section 304(b)(1)(B).

2. **Best Available Technology Economically Achievable (BAT)**. BAT effluent limitations are applicable to toxic (priority) and nonconventional pollutants. EPA has identified 65 pollutants and classes of pollutants as toxic pollutants, of which 126 specific pollutants have been designated priority toxic pollutants. See 40 CFR 401.15 and 40 CFR part 423, Appendix A. In general, BAT represents the best available performance of facilities through application of the best control measures and practices economically achievable including treatment techniques, process and procedure innovations, operating methods, and other alternatives within the point source category. CWA section 304(b)(2)(A). The factors EPA considers in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the processes employed, the engineering aspects of the control technology, potential process changes, non-water quality environmental impacts (including energy requirements), and such factors as the Administrator deems appropriate. CWA section 304(b)(2)(B).

3. **Best Conventional Pollutant Control Technology (BCT).** The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with BCT for discharges from existing point sources. BCT is not an additional limitation but replaces Best Available Technology (BAT) for control of conventional pollutants. In addition to other factors specified in CWA section 304(b)(4)(B), the Act requires that EPA establish BCT limitations after consideration of a two- part "cost-reasonableness" test. EPA explained its methodology for the development of BCT limitations in July 1986. 51 FR 24974 (July 9, 1986). Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD_5), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. See 40 CFR 401.16. The Administrator has designated oil and grease as an additional conventional pollutant. 44 FR 44501 (July 30, 1979). CWA section 304(b)(4)(B).

4. **Best Available Demonstrated Control Technology (BADT) for New Source Performance Standards (NSPS).** NSPS apply to all pollutants and reflect effluent reductions that are achievable based on the BADT. New sources, as defined in CWA section 306, can install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the greatest degree of effluent reduction attainable through the application of the best available demonstrated control technology. In establishing NSPS, CWA section 306 directs EPA to take into consideration similar factors that EPA considers when establishing BAT, namely the cost of achieving the effluent reduction and any non-water quality, environmental impacts and energy requirements. CWA section 306(1)(B).

NPDES permits issued for construction stormwater discharges are required under Section 402(a)(1) of the CWA to include conditions for meeting technology-based ELGs established under Section 301 and, where applicable, any NSPS established under Section 306. Once an ELG or NSPS is promulgated in accordance with these sections, NPDES permits must incorporate limits based on such limitations and standards. See 40 CFR 122.44(a)(1). Prior to the promulgation of national ELGs and/or NSPS, permitting authorities must establish and include in NPDES permits technology-based effluent limitations on a case-by-case basis based on their best professional judgment. See CWA section 402(a)(1)(B); 125.3(a)(2)(ii)(B).

D. EPA's Construction and Development Effluent Limitations Guidelines and New Source Performance Standards

On December 1, 2009, EPA promulgated ELGs and NSPSs to control the discharge of pollutants from construction sites. See 74 Fed. Reg. 62996, and 40 CFR 450.21. These requirements, known as the "Construction and Development Rule" or "C&D rule," became

effective on February 1, 2010. Following the promulgation of the C&D rule in 2009, several parties filed petitions for review of the final rule, identifying potential deficiencies with the dataset that the EPA used to support its decision to adopt a numeric turbidity limitation as well as other issues. On March 6, 2014, pursuant to a settlement agreement to resolve the litigation, EPA finalized amendments to the C&D rule that withdrew the numeric turbidity limitation and monitoring requirements, and also provided clarification regarding several other requirements of the rule. See 79 Fed. Reg. 12661 and 80 Fed. Reg. 25235. Because the 2022 CGP is being issued after the effective date of the 2014 C&D rule amendments, EPA must incorporate these requirements into this permit. Therefore, the 2022 CGP includes revisions that reflect the 2014 C&D rule amendments, as well as maintains existing changes that were made to the 2017 CGP to incorporate the other portions of C&D rule requirements not affected by the 2014 amendments. A summary of the C&D rule requirements is included in Section II below.

II. Summary of C&D Rule Requirements

The C&D rule requirements include non-numeric effluent limitations that apply to all permitted discharges from construction sites (40 CFR 450.21). The effluent limitations are structured to require construction operators to first prevent the discharge of sediment and other pollutants through the use of effective planning and erosion control measures; and second, to control discharges that do occur through the use of effective sediment control measures. Operators must implement a range of pollution control and prevention measures to limit or prevent discharges of pollutants, including those from dry weather discharges as well as wet weather (i.e., stormwater).

The non-numeric effluent limitations are designed to prevent or minimize the mobilization and stormwater discharge of sediment and sediment-bound pollutants, such as metals and nutrients, and to prevent or minimize exposure of stormwater to construction materials, debris and other sources of pollutants on construction sites. In addition, these non-numeric effluent limitations limit the generation of dissolved pollutants, such as nutrients, organics, pesticides, herbicides and metals that may be present naturally in the soil on construction sites, such as arsenic or selenium, or may have been contributed by previous activities on the site such as agriculture or industrial activity. These pollutants, once mobilized by rainfall and stormwater, can detach from the soil particles and become dissolved pollutants. Once dissolved, these pollutants would not be removed by down-slope sediment controls. Source control through minimization of soil erosion is therefore the most effective way of controlling the discharge of these pollutants.

The C&D rule's non-numeric effluent limits are as follows (see 40 CFR 450.21):

A. Erosion and Sediment Controls

Operators must 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 to minimize soil erosion in order to minimize pollutant discharges;
2. Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points;
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 discharge, and soil characteristics, including the range of soil particle sizes expected to be present on the site;

6. Provide and maintain natural buffers around waters of the United States, direct stormwater to vegetated areas and maximize stormwater infiltration to reduce pollutant discharges, unless infeasible;
7. Minimize soil compaction. Minimizing soil compaction is not required where the intended function of a specific area of the site dictates that it be compacted; and
8. Unless infeasible, preserve topsoil. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed.

B. Soil Stabilization Requirements

Operators must, at a minimum, initiate soil stabilization measures 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. 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. Stabilization must be completed within a period of time determined by the permitting authority. In limited circumstances, stabilization may not be required if the intended function of a specific area of the site necessitates that it remain disturbed.

C. Dewatering Requirements

Operators must minimize the discharge of pollutants from dewatering trenches and excavations. Discharges are prohibited unless managed by appropriate controls.

D. Pollution Prevention Measures

Operators must 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. Minimization of exposure is not required in cases where the exposure to precipitation and to stormwater will not result in a discharge of pollutants, or where exposure of a specific material or product poses little risk of stormwater contamination (such as final products and materials intended for outdoor use); 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 from C&D sites 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, operators must utilize outlet structures that withdraw water from the surface, unless infeasible.

This fact sheet discusses in the sections below how EPA has incorporated these requirements into its proposed 2022 CGP. The discussion will include a summary of each provision and the Agency's rationale for articulating the provision in this way. EPA notes that most of the 2017 CGP's provisions are retained in the proposed 2022 CGP.

III. Summary of Significant Changes to the 2017 CGP

A. Process Used to Identify Proposed Permit Changes

EPA made a concerted effort in the early stages of developing this proposed permit to reach out to stakeholders that could be affected by modifications to the permit requirements. This outreach included multiple meetings with stakeholders representing the construction industry, environmental interests, and state permitting authorities. The purpose of these meetings was to help identify areas of the 2017 CGP that, in the view of these groups, call for further clarification or modification to more effectively achieve the pollutant reduction objectives of the permit, the C&D Rule, and the CWA. EPA also queried its Regional enforcement personnel to determine where the permit could be clarified or where further specifics could help improve compliance. The feedback obtained from these meetings directly informed the types of clarifications and other changes EPA is including in the proposed permit, as well as the areas where the Agency is soliciting further feedback during the public comment period.

B. Summary of Proposed Changes

As an overall matter, the changes EPA is proposing for the 2022 CGP are narrow in scope, targeted at specific issues, and are not expected to have a significant cost impact on the regulated industry. EPA intentionally limited the types of changes being proposed to those that address specific areas of confusion or specific water quality problems brought to the Agency's attention by affected stakeholders and EPA compliance staff.

The following table summarizes the significant changes proposed for the 2022 CGP and groups each potential revision into one of three categories: Changes to Clarify Permit, Added Specificity, and Request for Comment. The table also identifies where each change, or request for comment, may be found in the proposed permit. A mark-up version of the proposed permit, showing the specific, proposed changes to the 2017 CGP, is posted at https://www.epa.gov/npdes/stormwater-discharges-construction-activities. A more detailed discussion of each proposed change and EPA's supporting rationale is included in Section VI.

	Summary of Proposed Change	Part(s) Where Change Appears
Changes to Clarify Permit	Update permit language related to water quality to reflect changes made to same provision in EPA's Multi-Sector General Permit (MSGP)	1.1.8, 1.1.9, 2.2.13.g, 7.2.6.b.v(c)
	Clarify that dewatering discharges from contaminated sites (as defined) are prohibited	1.3.6
	State clearly that EPA does not endorse specific stormwater control or SWPPP products or vendors	2.1, 7.1
	More clearly differentiate between routine maintenance fixes and corrective actions	2.1.4.b and c, 5.1.1
	Clarify that perimeter controls are required in addition to establishing a natural buffer between construction activities and waters of the U.S., where applicable	2.2.3.a
	Specify that soil stockpile requirements do not apply to rock piles	2.2.5
	Further clarify the flexibilities provided for arid and semi-arid areas during the seasonally dry period	2.2.14.b and c, 4.4.2, App. A
	Clarify when waste containers with lids must be closed	2.3.3.e.ii
	Provide examples to further explain how often inspections are required for multiple-day storm events	4.2.2
	For operators who choose to inspect once every 14 days and within 24 hours of a 0.25-inch storm, provide a snowfall equivalent to the 0.25-inch rainfall event	4.2.2
	Clarify that the SWPPP site map must be updated following site inspection to reflect any changes to stormwater controls, where applicable	4.6.4
	Clarify that inspection reports and SWPPPs may be kept in electronic form as long as they are accessible in the same way as a paper report	4.7.3, 5.1.1, 7.3
	Streamline corrective action documentation	5.4
	Consolidate stormwater team and training requirements	6.1, 6.2
	Update the Endangered Species Act eligibility procedures to clarify documentation required and include new website resources	Appendix D
Added Specificity	More specifically describe where perimeter controls are needed, how to install them to ensure effectiveness, and when to conduct repairs	2.2.3

	Summary of Proposed Change	Part(s) Where Change Appears
	Specify what types of pollution prevention requirements apply to petroleum and chemical containers based on the volume of the container	2.3.3.c
	Add specificity to dewatering discharge requirements: • Improve clarity of required controls for sediment and other pollutant discharges from dewatering activities • Include more detailed inspection requirements for dewatering activities, including: - Indicate on NOI if dewatering will occur on site - More frequent inspections for ground water dewatering - Specify areas of dewatering operation that must be inspected - Operators required to record times, estimated rate, and visual qualities of discharge, and to take and keep photos of dewatering controls and discharge • Specify that corrective action required if sediment plume or sheen observed in dewatering discharge	2.4, 4.3.2, 4.5.5, 4.6.3, 5.1.5
	Specify the options for obtaining the necessary training for personnel conducting site inspections, including providing an EPA-developed inspector training program	4.1, 6.3
	Specify that inspections include checking for signs of sedimentation at points downstream that could be attributable to the discharge	4.6.1.d
	Require photo documentation of stabilized site as part of permit termination	8.2.1.a, Appendix T
	Add question to the NOI for operators to indicate if other operators involved in the same project are also covered under the CGP	Appendix J
Requests for Comment	Whether to modify definition of operator to specifically include parties that determine acceptance of work and pay for work performed	1.1.1
	Whether additional discharges from sites discharging dewatering water should be made ineligible for coverage if the site is considered contaminated (as defined)	1.3.6
	Whether to extend the discharge authorization waiting period from the current 14 days to 30 days to facilitate review of eligibility related to protection of endangered or threatened species.	1.4.3

	Summary of Proposed Change	Part(s) Where Change Appears
	Whether the 5-acre disturbance threshold for stricter stabilization deadlines is incentivizing operators to phase construction disturbances, as intended by the requirement, and having the intended effect of encouraging the phasing of construction disturbances	2.2.14.a
	Whether existing waste control flexibilities should be applied to additional construction materials	2.3.3.a and e
	Whether the permit should require targeted sampling of the dewatering discharge from sites discharging to sediment-impaired waters or Tier 2, 2.5, or 3 waters	3.3
	Specific comments on the proposed changes to the inspector training requirements	6.3
	Feedback on criteria to use for taking and submitting photos of stabilized site for notices of termination	8.2.1.a

The following describes the changes that are proposed within the first two broad categories.

1. Changes to Clarity of the Permit

EPA proposes a number of relatively minor changes that focus on improving the clarity of provisions where permittees, EPA compliance staff, or other stakeholders have raised questions. These changes generally do not change the underlying requirement from the 2017 CGP, but rather attempt to make EPA's original intent clearer. It is EPA's hope that these proposed clarifications improve the overall understanding of the permit's requirements from all perspectives, including the permitting authority, permittees, and the general public. The proposed changes to improve clarity include the following:

- *Approved stormwater control and stormwater pollution prevention plan products* – EPA includes new language in the permit to clearly state that the Agency does not endorse specific stormwater control or stormwater pollution prevention plan (SWPPP) products or vendors. Industry stakeholders suggested to include such language to help discourage some vendors from misleadingly suggesting that EPA or the permit approves of specific products. See footnotes 12 and 59 in Parts 2.1 and 7.1, respectively, of the proposed permit.
- *Differentiate between routine maintenance and corrective action* – EPA proposes to define routine maintenance as repairs to or replacement of stormwater controls that can be completed within 24 hours of first discovering the need for the repair or replacement. If a repair (or replacement) takes longer than 24 hours, the permit would require that it be treated as a corrective action. This change addresses feedback provided by industry stakeholders who have observed that there is considerable confusion about which maintenance repairs are considered routine versus those that should be treated as corrective actions. See Parts 2.1.4.b and c, and 5.1.1 of the proposed permit.
- *Clarify application of perimeter control and natural buffer requirements* – EPA understands from conversations with stakeholders that there is confusion about whether perimeter controls are necessary on the site when the operator is already providing a natural buffer pursuant to the requirements of the permit. To address this confusion, EPA clarifies that perimeter controls must be installed upgradient of any natural buffers except in situations where the perimeter control is being used by the permittee to fulfill one of the buffer alternative requirements, in which case the permittee would not be required to install a second perimeter control. See Part 2.2.3.a of the proposed permit.
- *Clarify the permit flexibilities for arid and semi-arid areas* – The 2017 CGP establishes alternative stabilization and inspection schedules for arid and semi-arid areas that are reflective of the different climatic and precipitation conditions that exist in those areas. These stabilization and inspection schedule flexibilities apply during the "seasonally dry period" of the year when there is less risk of a discharge-producing storm event. The permit did not previously define the term "seasonally dry period," and EPA has received a number of questions from construction operators over the past several years about what this term means. For this reason, the proposed permit establishes a new definition to provide clarity, and includes resources in the form of maps and zip code tables to assist construction operators located in an arid or semi-arid area in determining when they may be operating during a seasonally dry period of the year. See Parts 2.2.14.b, 2.2.14.c, and 4.4.2 of the proposed permit, as well as the definition of "seasonally dry period" in Appendix A.
- *Clarified requirements for inspections during snowmelt conditions* – The permit proposes to add a numeric inspection threshold for snowfall precipitation that is equivalent to the 0.25-inch rain event, which triggers the need for an inspection if the operator chooses to inspect its site on a bi-weekly basis pursuant to Part 4.2.2. This change would clarify that where there is a discharge from snowmelt caused by an accumulation of 3.25 inches or greater of snow,

an inspection would be required. Permit holders requested this change and explained to EPA that without a numeric threshold, it is difficult for operators to know which snow events may trigger the need to inspect the site during the winter season. EPA relied on information from the National Oceanic and Atmospheric Administration (NOAA) to derive the 3.25-inch snowfall equivalent to the 0.25-inch rain event. See Part 4.2.2 of the proposed permit.

- *Availability of stormwater pollution prevention plan (SWPPP), inspection reports, and corrective action log in electronic form* – The 2017 CGP currently enables operators to keep their SWPPP, inspection reports, and corrective action records in electronic form, as long as it can be accessed and read by the permittee and by any EPA, state, or local inspection authorities in the same manner as a paper copy. EPA heard from permittees, however, who were uncertain about whether the flexibility to keep these documents in electronic form was available to them. EPA acknowledges that part of the problem is that its explanation about retaining documents in electronic form is currently included in a frequently asked question section of its stormwater website (see https://www.epa.gov/npdes/construction-general-permit-cgp-frequent-questions), and is not clearly stated in the permit. For this reason, the proposed permit includes text to make it clear that electronic versions of the SWPPP, inspection reports, and corrective action logs may be used as long as they meet certain minimum requirements. See footnotes 54, 55, and 66 to Parts 4.7.3, 5.4.3, and 7.3, respectively, of the proposed permit.

- *Updated process for Endangered Species Act eligibility determinations* – EPA proposes several updates to Appendix D of the CGP, which establishes procedures for operators to follow in determining their eligibility for coverage with respect to the protection of endangered and threatened species. The changes to Appendix D are primarily in the form of clarifications to existing procedures or updates to resources that operators can use to determine whether species are located in the "action area" of the construction site. EPA finalized similar changes as part of the Endangered Species Act consultation it completed as part of its issuance of the 2021 Multi-Sector General Permit (MSGP) for discharges from industrial activities (See Appendix E of the 2021 MSGP at https://www.epa.gov/npdes/stormwater-discharges-industrial-activities-epas-2021-msgp.) See Appendix D of the proposed permit.

2. *Added Specificity to Permit Requirements*

EPA is proposing select modifications to the permit to address specific problems that have come to the Agency's attention during the permit term or to incorporate enhancements that reflect current best practices. These proposed changes are narrowly focused on specific topics. The following is a summary of these proposed changes:

- *Perimeter control installation and maintenance requirements* – Due to the vital role that sediment controls installed along the downslope side of the construction site perimeter play in minimizing sediment discharges, it is important for the CGP requirements related to these controls to reflect best practices that are available, effective, and practicable. Reviewing a number of state permits and best management practice manuals during the development of the proposed permit, EPA concluded that some targeted proposed changes to the perimeter control requirements in the CGP are appropriate at this time. For this reason, EPA is proposing additional perimeter control installation and maintenance requirements that are focused on ensuring that these controls continue to work effectively. For example, under the proposed provision, if there is evidence of stormwater circumventing or undercutting the perimeter control after a storm event, the operator would be required to extend the length of the perimeter control or repair any undercut areas, whichever applies. This change is intended to ensure that maintenance of these controls is focused on fixing problems as soon as they are found and making sure they work effectively when the next storm event occurs. See Part 2.2.3 of the proposed permit.

- *Pollution prevention requirements for chemicals used and stored on site* – EPA is proposing changes to the pollution prevention requirements for diesel fuel, oil, hydraulic fuels, or other petroleum products, and other chemicals. These proposed changes respond to feedback EPA received from some permittees who recommended reframing the current permit requirements so they are proportionate to the volume of chemicals being used and stored on the site, and relative to the risk of a spill or leak. EPA agrees that the requirements in this section could be improved by strengthening the linkage between the type of pollution prevention control needed and the volume of the pollutant kept on site. Consistent with this principle, the proposed permit establishes control requirements that are appropriate for smaller-sized containers by requiring that the operator use water-tight containers, place them on a spill containment pallet (or similar device) if kept outside, and have a spill kit available at all times and in good working condition, and personnel available to respond quickly to a spill or leak. These controls will be effective at preventing a discharge from a spill or leak, while also having the added advantage of being moved more easily around the site. The proposed permit also includes controls that are more suitable to larger volumes of chemicals on site, such as requiring a temporary roof or secondary containment to prevent a discharge from a leak or spill. See Part 2.3.3.c of the proposed permit.
- *Dewatering discharge requirements* – EPA is proposing several changes to the permit's dewatering requirements to improve compliance and further reduce pollutant loads to waterways. EPA has noted violations with the permit's dewatering requirements at sites with controls that are improperly installed and maintained, resulting in significant discharges of sediment and other pollutants to receiving waters. Given the high rate at which dewatered water may be discharged, EPA inspection personnel have observed that it is possible that a site may discharge more sediment in several hours of poorly managed dewatering activities than might otherwise be discharged from a site via stormwater discharges over the entire course of the construction project. Additionally, EPA has found there to be good example provisions from state construction stormwater permits and standalone NPDES dewatering permits that can be used to strengthen the CGP's dewatering conditions.

  The proposed revisions to the permit add clarity to the existing pollutant control provisions, increase the number of inspections required while the dewatering discharge is occurring, establish a tailored checklist of problems to review during the inspection, and identify specific triggers for when corrective action is required. For example, one new inspection provision would require the operator to check whether a sediment plume, sheen, or hydrocarbon deposit on the bottom or shoreline of the receiving water was observed during a dewatering discharge. If such a plume, sheen, or deposit is observed, the permit would require the operator to, among other things, take immediate steps to suspend the discharge and ensure that the dewatering controls being used are operating effectively. During an inspection of the dewatering operation, the operator would also be required to take photographs of (1) the dewatering water prior to treatment by a stormwater control(s) and the final discharge after treatment; (2) the stormwater control; and (3) the point of discharge to any waters of the U.S. flowing through or immediately adjacent to the site. This documentation will help demonstrate how well the dewatering controls are working and will show where adaptations made after any problems have been found have resulted in improved pollutant control. See Parts 2.4, 4.3.2, 4.5.5, 4.6.3, and 5.1.5 of the proposed permit.
- *Training requirements for personnel conducting site inspections* – EPA is proposing to include modifications to the training requirements for personnel conducting site inspections. EPA considers these changes reasonable to address problems found during many of the Agency's own construction site inspections, in which EPA has observed that while some permittees are properly conducting inspections and documenting their findings in accordance with the permit, a large number are not. EPA proposes to address this problem

by strengthening the training requirements for inspection personnel to ensure their competency to conduct such inspections. For this reason, the proposed permit specifies that anyone carrying out inspections must either (1) have completed the new EPA construction inspection course developed for this permit and passed the exam, or (2) hold a current valid certification or license from a program that covers essentially the same principles as EPA's inspection course. The proposal also includes an exception to the new training requirement if the personnel are working under the supervision of a person who has the met the qualifications described above. These new proposed requirements are essentially an extension of what the 2017 CGP (and 2012 CGP) already required for the "qualified person" to conduct inspections.

EPA is in the process of developing a construction inspection training program that will be made available as an option to fulfill this new requirement to CGP permittees along with an accompanying exam that, if passed, will provide the person with documentation showing that they have successfully completed the EPA course. EPA plans to have the training program ready for use by the issuance of the final 2022 CGP, or to delay the implementation of the requirement until the EPA training is available. Documentation that the relevant personnel have completed the EPA course and passed the exam will serve as proof that the operator has met the new inspection training requirements. Alternatively, if the relevant personnel elect to obtain the required training through a different program that covers the same basic principles, the operator will need to provide documentation that these personnel have completed the program and are in possession of a current, valid certification or license. See Parts 4.1 and 6.3 of the proposed permit.

- *Documenting signs of sedimentation attributable to construction site discharges* – EPA specifies in the proposed permit that during the inspection, operators must check for signs of sedimentation (e.g., sand bars with no vegetation growing on top) at points downstream from the point of discharge that could be attributable to their discharges. This change is intended to address a frequent problem observed during EPA's compliance inspections that the permittee does not document obvious signs that its discharges have caused sedimentation in the receiving water. The intent of this proposed addition is to emphasize that the site inspection is an ideal time to examine whether there are any obvious signs of sedimentation attributable to the site's discharges, and to require documentation of such sedimentation. EPA does not specify in the permit a specific distance downstream of the site that operators much check for sedimentation that could be attributable to the discharge, given variable site-specific conditions. Instead, EPA expects that operators will account for the amount of sediment leaving the site in determining this distance. EPA notes that the CGP already requires operators to check for signs of visible erosion and sedimentation (i.e., sediment deposits) that have occurred and are attributable to the permittee's discharge at outfalls and, if applicable, on the banks of any waters of the U.S. flowing within or immediately adjacent to the site. See Part 4.6.1.d of the proposed permit.
- *Photo documentation of adequate site stabilization* – EPA's compliance inspectors have observed cases when operators prematurely terminate coverage under the CGP before the site is properly stabilized. The proposed permit adds a new provision requiring operators as part of their Notice of Termination (NOT) to take and submit photographs showing the stabilized areas of the site following completion of construction. EPA proposes this requirement primarily as an additional level of proof that permittees are complying with the stabilization requirements prior to terminating coverage. Given the importance of stabilization to preventing continuing erosion and sedimentation, EPA views the additional proposed photo documentation requirement to be a relatively inexpensive, effective, and straightforward way for the permittee to show the Agency that it has complied with the permit's final stabilization requirements. See Part 8.2.1.a of the proposed permit. Related to this proposed new requirement, EPA is also adding a check box to the NOT form to confirm

that the operator has attached photographs as required by Part 8.2.1.a to document compliance with the permit's final stabilization requirements.

- *Notice of Intent (NOI) questions* – EPA proposes to add new questions to the NOI form that construction operators will use to obtain coverage under the 2022 CGP. One question asks operators if dewatering water will be discharged during the course of their permit coverage. While EPA suspects that most CGP-covered projects discharge dewatering water during construction, it would be useful to the Agency to know what the prevalence of this practice is at its permitted sites. This question will provide a straightforward way of compiling information broadly about permittees and enable EPA to know which permittees may be affected by the permit's new proposed dewatering requirements. Another question asks the operator completing the NOI whether there are other operators who are also covered by the CGP at the same site and, if so, what their NPDES ID numbers are. Because the 2017 CGP NOI does not ask the operator to indicate whether there are multiple operators permitted for the same site, EPA is often unable to easily determine who all the permitted entities are at larger projects. The NOI form will also include a proposed new question that requires the operator to confirm that any personnel conducting inspections at the site will meet the modified training requirements in Part 6 of the permit. EPA also proposes clarifying edits to better explain the types of documentation that are needed for several of the eligibility criteria and edits to provide links to updated available mapping tools to assist operators in determining whether any listed or threatened species are known to occur in the action area of their project.

IV. Geographic Coverage of the Permit

This permit provides permit coverage for stormwater discharges associated with construction activities in areas not covered by an approved state NPDES program. The areas of geographic coverage of this permit are listed in Appendix B, and include the states of Massachusetts, New Hampshire, and New Mexico, as well as most Indian Country lands, and construction projects undertaken by Federal Operators in selected states. Permit coverage is also available in the District of Columbia, Puerto Rico, and all other U.S. territories with the exception of the Virgin Islands. EPA notes that the geographic area shown in Appendix B reflects the fact that the CGP will no longer provide permit coverage for sites in the state of Idaho (except for sites located in Indian country lands) or oil and gas discharges in the state of Texas because these states now have NPDES authority, including over construction stormwater discharges, for those areas.

V. Categories of Facilities That Can Be Covered Under This Permit

This permit covers stormwater discharges associated with construction activities located in one of the areas identified in Appendix B, which disturb one or more acres of land, or will disturb less than one acre, but are part of a common plan of development or sale that will ultimately disturb one acre or more. See 40 CFR 122.26(b)(14)(x) and (15), and Part 1.1 of the permit. The table below summarizes which construction activities may be covered by this permit:

Categories of facilities that can be covered under this permit

Examples of Affected Entities	North American Industry Classification System (NAICS) Code
Construction site operators disturbing one or more acres of land, or less than one acre but part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more, and performing the following activities:	
Construction of Buildings	236
Heavy and Civil Engineering Construction	237

Note that this list of NAICS codes covers those industry segments most likely to make use of this permit, but any construction operator that meets the eligibility requirements established for coverage is eligible. Eligibility for coverage by the permit is available to operators of "new sites," operators of "existing sites," "new operators of permitted sites," and operators of "emergency-related projects," as discussed in Part 1.2 and defined in Appendix A.

VI. Permit Requirements

This section outlines below the purpose of each provision, followed by the permit requirements (in text box), followed by any additional explanation of each provision.

Part 1: How to Obtain Coverage Under the CGP

Part 1 of the CGP details the provisions that must be met to obtain coverage under the permit. Although this section has been reorganized from prior permits, most of the requirements for coverage and the process to be followed for seeking coverage remain unchanged.

Part 1.1: Eligibility Conditions

The requirements in Part 1.1 describe all the conditions that must be met to be eligible for coverage under the CGP, as follows. Listing these eligibility conditions ensures that operators have verified that their particular construction project, and discharges from it, are eligible for coverage under this permit.

Part 1.1 (1.1.1 - 1.1.9)	Permit Requirements

1.1.1 You are an "operator" of a construction site for which discharges will be covered under this permit. For the purposes of this permit and in the context of stormwater discharges associated with construction activity, an "operator" is any party associated with a construction project that 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 that are necessary to ensure compliance with the permit conditions.

Where there are multiple operators associated with the same project, all operators must obtain permit coverage.[1] Subcontractors generally are not considered operators for the purposes of this permit.

1.1.2 Your site's construction activities:

a. Will disturb one or more acres of land, or will disturb less than one acre of land but are part of a common plan of development or sale (as defined in Appendix A) that will ultimately disturb one or more acres of land; or

b. Have been designated by EPA as needing permit coverage under 40 CFR § 122.26(a)(1)(v) or 40 CFR § 122.26(b)(15)(ii);

1.1.3 Your site is located in an area where EPA is the permitting authority and where coverage under this permit is available (see Appendix B);

1.1.4 Discharges from your site are not:

a. Already covered by a different NPDES permit for the same discharge; or

b. In the process of having coverage under a different NPDES permit for the same discharge denied, terminated, or revoked.[2], [3]

1.1.5 You are able to demonstrate that you meet one of the criteria listed in Appendix D with respect to the protection of species that are federally listed as endangered or threatened under the Endangered Species Act (ESA) and federally designated critical habitat;

1.1.6 You have completed the screening process in Appendix E relating to the protection of historic properties; and

1.1.7 You have complied with all requirements in Part 9 imposed by the applicable state, Indian tribe, or territory in which your construction activities and/or discharge will occur.

1.1.8 For "new sources" (as defined in Appendix A) only:

a. EPA has not, prior to authorization under this permit, determined that discharges from your site will ~~cause, have the reasonable potential to cause, or contribute to an excursion above any~~ not meet applicable water quality standards. Where such a determination is made prior to authorization, EPA may notify you that an individual permit application is necessary. However, EPA may authorize your coverage under this permit after you have included appropriate controls and implementation procedures designed to bring your discharge into compliance with this permit, specifically the requirement to meet water quality standards. In the absence of information demonstrating otherwise, EPA expects that compliance with the requirements of this permit, including the requirements applicable to such discharges in Part 3, will result in discharges that meet ~~will not cause, have the reasonable potential to cause, or contribute to an excursion above any~~ applicable water quality standards.

b. Discharges from your site to a Tier 2, Tier 2.5, or Tier 3 water[4] will not lower the water quality of the applicable water. In the absence of information demonstrating otherwise, EPA expects that compliance with the requirements of this permit, including the requirements applicable to such discharges in Part 3.2, will result in discharges that will not lower the water quality of such waters.

1.1.9 If you plan to add "cationic treatment chemicals" (as defined in Appendix A) to stormwater and/or authorized non-stormwater prior to discharge, you may not submit your Notice of Intent (NOI) ~~unless and~~ until you notify your applicable EPA Regional Office (see Appendix L) in advance and the EPA Regional Office authorizes coverage under this permit after you have included appropriate controls and implementation procedures designed to ensure that your use of cationic treatment chemicals will not

lead to discharges that do not meet ~~cause an exceedance of~~ water quality standards.

[1] If the operator of a "construction support activity" (see Part 1.2.1c) is different than the operator of the main site, that operator must also obtain permit coverage. See Part 7.1 for clarification on the sharing of permit-related functions between and among operators on the same site and for conditions that apply to developing a SWPPP for multiple operators associated with the same site.

[2] Parts 1.1.4a and 1.1.4b do not include sites currently covered under the 2017~~2~~ CGP that are in the process of obtaining coverage under this permit, nor sites covered under this permit that are transferring coverage to a different operator.

[3] Notwithstanding a site being made ineligible for coverage under this permit because it falls under the description of Parts 1.1.4a or 1.1.4b, above, EPA may waive the applicable eligibility requirement after specific review if it determines that coverage under this permit is appropriate.

[4] Note: Your site will be considered to discharge to a Tier 2, Tier 2.5, or Tier 3 water if the first water to which you discharge is identified by a state, tribe, or EPA as a Tier 2, Tier 2.5, or Tier 3 water. For discharges that enter a storm sewer system prior to discharge, the first water of the U.S. to which you discharge is the waterbody that receives the stormwater discharge from the storm sewer system. See list of Tier 2, Tier 2.5, and Tier 3 waters in Appendix F.

The definition of "operator" in Part 1.1.1 above is consistent with the 2012 and 2017 CGPs. Any party associated with a construction site that meets the first part of the definition of "operator" (i.e., *the party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications)* or the second part of the definition of "operator" (i.e., *the party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions)* must obtain NPDES permit coverage for its stormwater discharges associated with construction activity including clearing, grading, and excavation.

Request for Comment 1: At the request of several stakeholders in the regulated community, EPA is considering modifying the Part 1.1.1 definition of operator to better ensure that all parties with operational control over the project are permitted. Those stakeholders recommending a change to the definition have found that some entities who determine the acceptance of work and pay for work performed are not obtaining permit coverage because they believe the current definition of an operator excludes them. As a consequence, some permittees have found it difficult to get approval for additional expenditures needed to meet the conditions of the CGP (e.g., to pay for new or improved stormwater controls that are needed to ensure compliance) from the unpermitted entity who approves and pays for work done, but does not have the same incentive to comply with the permit.

The requested modification to the definition to address this problem is as follows (changes shown in underlined text):

> "… an "operator" is any party associated with a construction project that 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 determines acceptance of the work and payment for work performed to ensure compliance with the permit conditions; or
> b. …"

EPA requests comment on whether the definition of operator should be modified as suggested above. EPA also requests comment on whether the existing definition is already broad enough to capture those parties intended to be addressed by the new language, or if a

different modification to the definition of operator would be helpful to clarify the types of parties that should be permitted as operators.

Part 1.1 of the permit also clarifies the requirements with respect to projects with multiple operators. Where there are multiple operators associated with the same project, all operators must obtain permit coverage. Also, if the operator of a "construction support activity" (see Part 1.2.1.c) is different than the operator of the main site, that operator must also obtain permit coverage. For example, if a construction support activity for the project is owned by a separate owner, and if the separate owner meets the definition of "operator", that person must obtain permit coverage for discharges from the site where the support activities are located. However, if the construction support activity is owned or operated by the site operator, then the support activity must be included in the site operator's permit coverage, including any documentation provided in the NOI and SWPPP. Part 1.1 references Part 7.1 for clarification on the sharing of permit-related functions between and among operators on the same site and for conditions that apply to developing a SWPPP for multiple operators associated with the same site.

The requirements in Part 1.1.8, which apply to new sources, are designed to comply with 40 CFR 122.4(i) requirements that address the issuance of permits to new sources to waterbodies not meeting instream water quality standards. EPA notes that while Part 1.1.8 is designed to specifically implement 40 CFR 122.4(i), other water quality-based requirements apply to existing sources, as well as new sources. Part 3 of the permit includes water quality-based effluent limits applicable to all sources, which are designed to ensure that all discharges from all operators are controlled as necessary to meet water quality standards. Modifications are proposed to better reflect the objectives and requirements of the CWA and this permit to ensure that discharges from both new and existing sources meet applicable water quality standards, consistent with CWA sections 402(p)(3)(A) and 301(b)(1)(C). The 2017 CGP described the standard differently as to not "cause, have the reasonable potential to cause, or contribute to an excursion above any applicable water quality standards." Conforming changes are also made to Parts 1.1.9, 2.2.13.g, and 7.2.6.b.v(c).

Part 1.1.8 also requires operators to determine if they discharge to a Tier 2, Tier 2.5, or Tier 3 water, and if they do, to comply with specific requirements in the permit, which are intended to ensure that their discharges will not result in a lowering of water quality in the receiving water. This provision makes clear to operators their requirements for complying with antidegradation requirements, and provides assurance that operators' discharges will not lead to a lowering of water quality in the receiving water.

Part 1.1.9 clarifies what operators electing to use cationic treatment chemicals must do to be eligible for coverage under the permit. EPA includes Appendix L to the permit as a suggested format for notifying the operator's applicable EPA Regional Office about its intent to use cationic treatment chemicals.

EPA hereby incorporates by reference the discussion in the 2012 CGP fact sheet concerning background on cationic treatment chemicals as well as the Agency's rationale for adopting this provision. See section VI.2.4 "Use of Cationic Treatment Chemicals" on pages 20 through 28 of the 2012 CGP fact sheet, available at https://www.epa.gov/sites/production/files/2017-07/documents/2012_construction_general_permit_factsheet.pdf.

Part 1.2: Types of Discharges Authorized

Part 1.2 of the CGP provides operators with a comprehensive list of the types of discharges that are authorized once covered under this permit. This list makes operators aware of authorized stormwater and non-stormwater discharges, and of any additional requirements

associated with those discharges to minimize the discharge of pollutants, and also makes operators aware that any discharges not included on the list are not authorized under this permit. The new language in footnote 5 reminds operators to refer to the definition of "discharge" in Appendix A.

Part 1.2.1 lists categories of stormwater discharges that are authorized under the CGP, provided that all applicable permit limits and conditions are met.

Part 1.2.1	**Permit Requirements**

The following stormwater discharges are authorized under this permit provided that appropriate stormwater controls are designed, installed, and maintained (see Parts 2 and 3):

a. Stormwater discharges, including stormwater runoff, snowmelt runoff, and surface runoff and drainage, associated with construction activity under 40 CFR § 122.26(b)(14) or § 122.26(b)(15)(i);

b. Stormwater discharges designated by EPA as needing a permit under 40 CFR §122.26(a)(1)(v) or § 122.26(b)(15)(ii);

c. Stormwater discharges from construction support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided that:

i. The support activity is directly related to the construction site required to have permit coverage for stormwater discharges;

ii. The support activity is not a commercial operation, nor does it serve multiple unrelated construction sites;

iii. The support activity does not continue to operate beyond the completion of the construction activity at the site it supports; and

iv. Stormwater controls are implemented in accordance with Part 2 and Part 3 for discharges from the support activity areas~~.~~; and

d. Stormwater discharges from earth-disturbing activities associated with the construction of staging areas and the construction of access roads conducted prior to active mining.

Part 1.2.2 provides authorization for non-stormwater discharges from the operator's construction activity.

Part 1.2.2	**Permit Requirements**

The following non-stormwater discharges associated with your construction activity are authorized under this permit provided that, with the exception of water used to control dust and to irrigate vegetation in stabilized areas, these discharges are not routed to areas of exposed soil on your site and you comply with any applicable requirements for these discharges in Parts 2 and 3:

a. Discharges from emergency fire-fighting activities;

b. Fire hydrant flushings;

c. Landscape irrigation;

d. Water used to wash vehicles and equipment, provided that there is no discharge of soaps, solvents, or detergents used for such purposes;

e. Water used to control dust;

f. Potable water including uncontaminated water line flushings;
g. External building washdown, provided soaps, solvents, and detergents are not used, and external surfaces do not contain hazardous substances (as defined in Appendix A) (e.g., paint or caulk containing polychlorinated biphenyls (PCBs));
h. Pavement wash waters, provided spills or leaks of toxic or hazardous substances have not occurred (unless all spill material has been removed) and where soaps, solvents, and detergents are not used. You are prohibited from directing pavement wash waters directly into any water of the U.S., storm drain inlet, or stormwater conveyance, unless the conveyance is connected to a sediment basin, sediment trap, or similarly effective control;
i. Uncontaminated air conditioning or compressor condensate;
j. Uncontaminated, non-turbid discharges of ground water or spring water;
k. Foundation or footing drains where flows are not contaminated with process materials such as solvents or contaminated ground water; and
l. Construction dewatering water, not otherwise prohibited by Part 1.3.6, discharged in accordance with Part 2.4.

EPA proposes to redefine the term "non-turbid" as it is used in Parts 1.2.2.f, i, and j so that it emphasizes the visual qualities of water that is free from turbidity, as opposed to defining this term based on whether water quality standards are met. The proposed definition of "non-turbid" in Appendix A is as follows: "a discharge that is free from visual turbidity. For the purposes of this permit, visual turbidity refers to a sediment plume or other cloudiness in the water caused by sediment that can be identified by an observer." See Appendix A. The new definition is intended to provide a more meaningful definition that will be easier for permittees to apply in practice.

The proposed permit clarifies in Part 1.2.2.l that only those dewatering discharges that are not otherwise prohibited in Part 1.3.6 are considered authorized non-stormwater discharges under the permit. This clarification ensures consistency with the proposal to prohibit the discharge of dewatered ground water from contaminated sites in Part 1.3.6. Discharges from contaminated sites would not qualify as authorized non-stormwater discharges.

Part 1.2.3 allows the discharge of authorized stormwater or authorized non-stormwater discharges, commingled with a discharge authorized by a different NPDES permit and/or a discharge that does not require NPDES permit authorization.

Part 1.2.3	**Permit Requirements**
Also authorized under this permit are discharges of stormwater listed above in Part 1.2.2, or authorized non-stormwater discharges listed above in Part 1.2.2, commingled with a discharge authorized by a different NPDES permit and/or a discharge that does not require NPDES permit authorization.	

Part 1.3: Prohibited Discharges

Part 1.3 identifies the types of discharges that are prohibited from occurring at the operator's construction site. This list prohibits the following discharges:

Part 1.3 (1.3.1 - 1.3.6)	**Permit Requirements**
The discharges listed in this Part are prohibited outright or allowed only under the identified conditions. To prevent the ~~above-listed prohibited non-stormwater~~ discharges in Parts 1.3.1 through 1.3.6, operators must comply with the applicable pollution prevention requirements in	

Part 2.3 or ensure the discharge is authorized by another NPDES permit consistent with Part 1.2.3.

1.3.1 Wastewater from washout of concrete, unless managed by an appropriate control as described in Part 2.3.4;

1.3.2 Wastewater from washout and/or cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;

1.3.3 Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;

1.3.4 Soaps, solvents, or detergents used in vehicle and equipment washing or external building washdown; ~~and~~

1.3.5 Toxic or hazardous substances from a spill or other release~~.~~; and

1.3.6 Dewatering water discharged from a contaminated site.[7]

[7] The following are considered to be discharges from contaminated sites: sites subject to existing or former remediation activities (e.g., Superfund/CERCLA or RCRA sites).

Part 1.3 details the types of wastes and other pollutants that operators are prohibited from discharging under the permit. The requirement in Parts 1.3.1 through 1.3.4 above implement prohibitions included in the C&D rule at 40 CFR 450.21(e). The requirement in Part 1.3.5 to prohibit toxic or hazardous substances from a spill or other release corresponds to Part 3.1.I of the 2008 CGP ("you are not authorized to discharge hazardous substances or oil resulting from an on-site spill"). EPA includes the types of prohibited non-stormwater discharges in the permit as a reminder to the operator that the only authorized non-stormwater discharges are at Part 1.2.2.

EPA proposes to add discharges of dewatering water from contaminated sites to the list of prohibited discharges in Part 1.3. EPA proposes to define contaminated site for the purposes of this discharge prohibition (see footnote 7) as "discharges from contaminated sites: sites subject to existing or former remediation activities (e.g., Superfund/CERCLA or RCRA sites)." Permittees may use EPA's online mapping resources to determine if their site meets this definition of a contaminated site. For instance, EPA's "Cleanups in My Community" webpage includes an interactive map that can be viewed at different scales and allows the user to determine where Superfund and RCRA cleanup sites are located in nearby areas. See https://www.epa.gov/cleanups/cleanups-my-community.

Request for Comment 2: Related to the proposed prohibited discharges in Part 1.3.6 (dewatering discharges from a contaminated site), EPA requests comment on whether additional discharges from sites should be prohibited from coverage under this permit due to the possibility of those discharges containing contaminants. For instance, one EPA permit prohibits discharges from sites with ground water pollutants discovered as a result of construction-related activities where the source of pollutants may or may not be known; discharges from sites with naturally occurring ground water pollutants (e.g., metals); and stormwater or allowable non-stormwater discharges collected in an excavation, trench, foundations, vault, or other point of accumulation that is commingled with contaminated ground water or that has otherwise come into contact with any other wastewater or pollutant prohibited by this part. EPA would also welcome feedback on how to better define terms such as ground water pollutants and contaminated ground water if these additional restrictions are adopted. For instance, EPA could consider defining "ground water pollutants" simply as pollutants (as defined in Appendix A) that are present in ground water. Similarly, EPA could define "contaminated ground water" as ground water that contains a level of one or more pollutants that if discharged would not meet applicable water quality standards. Additionally, EPA requests comment on whether the prohibition should allow for case-by-case flexibility for Superfund or RCRA cleanup sites where

controls in place, such as capping, prevents exposure of surface accumulations of stormwater to buried wastes.

Any unauthorized non-stormwater discharges must be covered under an individual permit or alternative general permit. The need to obtain separate permit coverage for prohibited discharges is made clear by the proposed addition of language to Part 1.3 that states that if one of the described prohibited discharges will occur, the operator is required to "ensure the discharge is authorized by another NPDES permit consistent with Part 1.2.3."

Part 1.4: Submitting Your NOI

Part 1.4 carries out the fundamental requirement that discharges are not authorized until permit coverage is obtained, and that permit coverage is obtained for the CGP through the submission of a complete and accurate NOI may be followed by a minimum 14-day waiting period (or less if the construction activities involve an emergency-related project in Part 1.4.3).

Part 1.4	Permit Requirements
All "operators" (as defined in Appendix A) associated with your construction site, who meet the Part 1.1 eligibility conditions ~~requirements~~, and who seek coverage under this permit, must submit to EPA a complete and accurate NOI in accordance with the deadlines in Table 1 prior to ~~commencing~~ commencement of construction activities (as defined in Appendix A). **Exception:** If you are conducting construction activities in response to a public emergency (e.g., mud slides, earthquake, extreme flooding conditions, widespread disruption in essential public services), and the related work requires immediate authorization to avoid imminent endangerment to human health, public safety, or the environment, or to reestablish essential public services, you may discharge on the condition that a complete and accurate NOI is submitted within 30 calendar days after commencing construction activities (see Table 1) establishing that you are eligible for coverage under this permit. You must also provide documentation in your Stormwater Pollution Prevention Plan (SWPPP) to substantiate the occurrence of the public emergency.	

EPA recognizes that obtaining CGP coverage following the normal procedures is not feasible in situations requiring emergency-related construction. EPA includes the exception in Part 1.4 to ensure that the authorization process does not interfere with emergency-related construction projects required to avoid endangerment to human health, public safety, or the environment. By providing the operators of these projects with the ability to immediately begin work, and to postpone the NOI submission and SWPPP completion deadlines for 30 calendar days, EPA intends that these projects may proceed without delay. Once the initial 30 calendar days has expired, however, the operator must submit an NOI and complete a SWPPP.

Part 1.4.1: Prerequisite for Submitting Your NOI

Part 1.4.1 clarifies that completing development of the SWPPP consistent with Part 7 is a prerequisite to submitting an NOI for coverage under this permit.

Part 1.4.1	Permit Requirements
You must develop a SWPPP consistent with Part 7 before submitting your NOI for coverage under this permit.	

Part 1.4.2: How to Submit Your NOI

Part 1.4.2 clarifies the method by which operators are to submit their NOIs for permit coverage.

Part 1.4.2	**Permit Requirements**

You must use EPA's NPDES eReporting Tool (NeT) to electronically prepare and submit your NOI for coverage under the 2022 CGP~~,~~ unless you received a waiver from your applicable EPA Regional Office.

To access NeT, go to https://cdx.epa.gov/cdx.

Waivers from electronic reporting may be granted based on one of the following conditions:

a. If your operational headquarters is physically located in a geographic area (i.e., ZIP code or census tract) that is identified as under-served for broadband Internet access in the most recent report from the Federal Communications Commission; or

b. If you have limitations regarding available computer access or computer capability.

If the EPA Regional Office grants you approval to use a paper NOI, and you elect to use it, you must complete the form in Appendix J.

This is the second CGP that has made use of EPA's NPDES eReporting Tool (NeT), which replaces the previous electronic system required in the 2012 CGP, the eNOI system. Due to the expansion in Internet availability, greater efficiency in administrative processing, and reductions in cost to manage the system as compared to paper NOIs, it is required that NeT be the primary mechanism by which construction projects obtain permit coverage. If it is not possible for an operator to make use of NeT, that operator may submit a waiver request to the Regional Office and an explanation as to why use of NeT is infeasible. Operators must receive affirmative confirmation from the Regional Office to then use a paper NOI.

Part 1.4.3: Deadlines for Submitting Your NOI and Your Official Date of Permit Coverage

Part 1.4.2 specifies the deadlines for submitting NOIs for permit coverage and official start dates for permit coverage in Table 1. NOI submittal deadlines vary depending on when the operator commences construction activity. Table 1 summarizes the deadlines and permit coverage start dates based upon the type of construction project as follows:

Part 1.4.3	**Permit Requirements**

Table 1 NOI Submittal Deadlines and Official Start Date for Permit Coverage.

Type of Operator	**NOI Submittal Deadline**[~~87~~]	**Permit Authorization Date**[~~28~~]
Operator of a new site (i.e. a site where construction activities commence or after ~~February 16, 2017~~**[insert permit effective date]**)	At least 14 calendar days before commencing construction activities.	14 calendar days after EPA notifies you that it has received a complete NOI, unless EPA notifies you that your authorization is delayed or denied.
Operator of an existing site (i.e., a site with ~~2012~~2017 CGP coverage where construction activities commenced prior to ~~February 16, 2017~~**[insert permit effective date]**)	No later than ~~**May 17, 2017**~~**[insert 90 days after permit effective date]**.	
New operator of a permitted site (i.e., an operator that through transfer of ownership and/or	At least 14 calendar days before the date the transfer to the new operator will take place.	

operation replaces the operator of an already permitted construction site that is either a "new site" or an "existing site")		
Operator of an "emergency-related project" (i.e., a project initiated in response to a public emergency (e.g., natural disaster, disruption in essential public services), for which the related work requires immediate authorization to avoid imminent endangerment to human health or the environment, or to reestablish essential public services)	No later than 30 calendar days after commencing construction activities.	You are considered provisionally covered under the terms and conditions of this permit immediately, and fully covered 14 calendar days after EPA notifies you that it has received a complete NOI, unless EPA notifies you that your authorization is delayed or denied.

[87] If you miss the deadline to submit your NOI, any and all discharges from your construction activities will continue to be unauthorized under the CWA until they are covered by this or a different NPDES permit. EPA may take enforcement action for any unpermitted discharges that occur between the commencement of construction activities and discharge authorization.

[28] Discharges are not authorized if your NOI is incomplete or inaccurate or if you are not eligible for permit coverage.

The term "operator of a new site" in Table 1 is used to describe projects that commence earth disturbing activities on or after the effective date of the 2022 CGP. New sites include those new sources that are subject to the C&D rule's NSPSs because they commenced construction after February 1, 2010 (the effective date of the C&D rule). The term "new site" was adopted to avoid the confusion that would have resulted if the permit used the term "new source" to describe both projects that began construction after February 1, 2010, but before the effective date of the 2022 CGP, and those projects that begin on or after the effective date of the 2022 CGP.

The term "operator of an existing site" in Table 1 refers to construction projects that commenced activities prior to the effective date of the permit. Existing sites include both those activities that began prior to the February 1, 2010 effective date of the NSPS of the C&D rule, and may have been covered under the 2008 CGP, and those activities that are subject to the NSPS because they commenced after February 1, 2010, but before the effective date of the 2022 CGP.

The 14-day NOI submittal deadlines in Table 1 for operators of new sites and new operators of a new or existing site provides the Fish and Wildlife Service and the National Marine Fisheries Service (the "Services"), state and tribal historic preservation offices, and the public, with an opportunity to review these submissions and to inform EPA if they believe that more time is needed to review the potential impacts from the project. The 14 days between receipt of the NOI and authorization is referred to as the "waiting period."

During the 14-day waiting period, where one or both of the Services or the historic preservation office requests that they or EPA need to further explore whether a particular facility is eligible for permit coverage, EPA can delay authorization to allow such an assessment to take place. EPA may also use the waiting period to determine whether any more stringent control measures are necessary to ensure that discharges will meet applicable water quality standards, to be consistent with an applicable wasteload allocation (WLA), or to comply with state or tribal antidegradation requirements (i.e., meet applicable water quality standards).

Additionally, during this waiting period, the public has an opportunity to review the NOIs and request review of applicable SWPPPs. Anyone wishing to provide feedback to EPA can send information to the appropriate EPA Regional Office listed in Appendix B of the permit for consideration. EPA clarifies that this waiting period is not a public notice and comment period. EPA will consider any information provided to it during the waiting period, but does not plan to provide specific responses to comments received. Where appropriate, EPA will address concerns raised (e.g., will direct the relevant operator to make improvements to the designed stormwater controls as necessary to meet the requirements of the permit). Depending on the nature of the issue and the timing of the comments, EPA will take appropriate action either prior to or following discharge authorization. In addition, EPA may delay authorization if warranted, or may determine that the discharge is not eligible for authorization under this permit.

Table 1 describes that operators of emergency-related projects are considered provisionally covered under the permit immediately upon the start of construction, and unprovisionally covered 14 calendar days after EPA acknowledges receipt of their NOI through posted information on EPA's website (https://cdxnodengn.epa.gov/net-cgp/action/login), unless EPA notifies the operator that their authorization has been delayed or denied.

If the operator requests a waiver and submits a paper NOI, the 14-day period prior to permit coverage is the same as above, however, this period commences only after EPA completes manual entry of the paper NOI information into NeT. Note that if the paper NOI contains errors or is incomplete, this will result in delaying the commencement of the 14-day waiting period. The operator will be able to tell when the 14-day waiting period has begun by checking for their NOI in NeT at https://cdxnodengn.epa.gov/net-cgp/action/login.

Request for Comment 3: One of the reasons that the CGP includes a 14-day waiting period after submittal of the NOI and prior to authorization is to provide the U.S. Fish & Wildlife Service and National Marine Fisheries Service ("the Services") an opportunity to review the operator's eligibility determination related to potential impacts to endangered or threatened species. EPA requests comment on the possibility of extending the current 14-day waiting period to 30 days to better facilitate this review process. If you are opposed to extending the time period, please provide information on the potential impacts you may experience as a result of changing the waiting period from 14 to 30 days.

Part 1.4.4: Modifying your NOI

Part 1.4.4 describes the process for modifying an NOI if the operator needs to correct or update any fields.

Part 1.4.4	Permit Requirements
If after submitting your NOI you need to correct or update any fields, you may do so by submitting a "Change NOI" form using NeT. Waivers from electronic reporting may be granted as specified in Part 1.4.2~~1~~. If the EPA Regional Office has granted you approval to submit a paper NOI modification, you may indicate any NOI changes on the same NOI form in Appendix J. When there is a change to the site's operator, the new operator must submit a new NOI, and the previous operator must submit a Notice of Termination (NOT) form as specified in Part 8.3.	

Part 1.4.5: Your Official End Date of Permit Coverage

Part 1.4.5 describes how long permit coverage lasts.

Part 1.4.5	Permit Requirements
Once covered under this permit, your coverage will last until the date that:	

a. You terminate permit coverage consistent with Part 8; or

b. You receive permit coverage under a different NPDES permit or a reissued or replacement version of this permit after expiring on ~~February 16, 2022~~**[insert permit expiration date]**; or

c. You fail to submit an NOI for coverage under a reissued ~~revised~~ or replacement version of this permit before the deadline for existing construction sites where construction activities continue after this permit has expired.

Continuation of Coverage for Existing Operators After the 2022 Permit Expires

Note that if the 2022 CGP is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with section 558(c) of the Administrative Procedure Act (see 40 CFR 122.6) and remain in force and effect for discharges that were covered prior to its expiration. All operators granted permit coverage prior to the expiration date of the permit will automatically remain covered by the 2022 CGP until the earliest of:

a. The authorization for coverage under a reissued or replacement version of the permit following the timely submittal of a complete and accurate NOI requesting coverage under the new permit. If a timely NOI for coverage under the reissued or replacement permit is not submitted, coverage will terminate on the date that the NOI was due; or

b. The date of the submittal of an NOT; or

c. Issuance or denial of an individual permit for the operator's discharges; or

d. A final permit decision by EPA not to reissue the CGP, at which time EPA will identify a reasonable time period for covered dischargers to seek coverage under an alternative general permit or an individual permit. Coverage under this permit will terminate at the end of this time period.

EPA reserves the right to modify or revoke and reissue the 2022 CGP under 40 CFR 122.62 and 63, in which case the operator will be notified of any relevant changes or procedures to which operators may be subject.

Where EPA fails to issue a final general permit prior to the expiration of a previous general permit, EPA has the authority to administratively continue the permit for operators authorized to discharge under the prior general permit. However, EPA does not have the authority to provide coverage to construction projects not already authorized to discharge under that prior general permit. Once the five-year expiration date for this permit has passed, any such projects would need to obtain coverage under an individual permit, or other general permit that is in effect.

Part 1.5: Requirement to Post a Notice of Your Permit Coverage

The requirement in Part 1.5 is to provide notice to the public, and any other interested parties, that discharges from the construction site are authorized by EPA.

Part 1.5	Permit Requirements
You must post a sign or other notice of your permit coverage at a safe, publicly accessible location in close proximity to the construction site. The notice must be located so that it is visible from the public road that is nearest to the active part of the construction site, and it must use a font large enough to be readily viewed from a public right-of-way.[109] At a minimum, the notice must include:	

a. The NPDES ID (i.e., permit tracking number assigned to your NOI and the EPA webpage where a copy of the NOI can be found (https://permitsearch.epa.gov/epermit-search/ui/search));

b. A contact name and phone number for obtaining additional construction site information;

c. The Uniform Resource Locator (URL) for the SWPPP (if available), or the following statement: "If you would like to obtain a copy of the Stormwater Pollution Prevention Plan (SWPPP) for this site, contact the EPA Regional Office at [include the appropriate CGP Regional Office contact information found at https://www.epa.gov/npdes/contact-us-stormwater#regional];" and

d. The following statement "If you observe indicators of stormwater pollutants in the discharge or in the receiving waterbody, contact the EPA through the following website: https://www.epa.gov/enforcement/report-environmental-violations."

[10] If the active part of the construction site is not visible from a public road, then place the notice of permit coverage in a position that is visible from the nearest public road and as close as possible to the construction site.

By providing notice of permit coverage and other information about the site, interested parties are more easily able to obtain information about the construction site, such as the SWPPP, and identify the site when reporting potential permit violations. Note that operators are only required to provide copies of the SWPPP, upon request, to EPA; a state, tribal or local agency approving stormwater management plans; the operator of a storm sewer system receiving discharges from the site; or representatives of the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS). EPA may provide access to portions of the SWPPP to a member of the public upon request. Confidential Business Information (CBI) will be withheld from the public, but may not be withheld from EPA, USFWS, or NMFS. To improve transparency of the process to report possible violations, the notice of permit coverage must include information on how the public can contact EPA if stormwater pollution is observed in the discharge. Footnote 10 to clarifies that when the active part of the construction site is not visible from a public road, operators must place the notice of permit coverage in a position that is visible from the nearest public road and as close as possible to the construction site.

Part 2: Technology-Based Effluent Limitations

Part 2 organizes the stormwater effluent limitations into four sections:

- Part 2.1: General Stormwater Control Design, Installation, and Maintenance Requirements;
- Part 2.2: Erosion and Sediment Control Requirements;
- Part 2.3: Pollution Prevention Requirements; and
- Part 2.4: Construction Dewatering Requirements.

The stormwater control requirements in Part 2 are the technology-based effluent limitations that apply to all discharges associated with construction activity eligible for permit coverage. The requirements in Part 2 generally apply the national effluent limitations guidelines and new source performance standards in the Construction and Development Rule ("C&D rule") in 40 CFR Part 450 promulgated on December 1, 2009 (74 Fed. Reg. 62996), and amended on March 6, 2014 (79 Fed. Reg. 12661). These requirements apply to all permitted sites, including construction support activities that are covered under the permit under Part 1.2.1.c.

EPA's Incorporation of the Non-Numeric Limits

An operator can minimize the discharge of pollutants from construction sites by satisfying the non-numeric effluent limitations guidelines at 40 CFR 450.21 and by using various controls and practices, outlined in more detail as permit limitations by the permitting authority. EPA crafted the non-numeric effluent limitations guidelines in the C&D rule to allow flexibility in how the permitting authority implements these requirements in permits. See 74 FR 63016. As an example, 40 CFR 450.21(a)(5) requires construction operators to design, install, and maintain controls to "minimize sediment discharges from the site." Thus, each NPDES permitting authority has some discretion within this somewhat broad requirement, defined further at 40 CFR 450.21(a)(5), to further define what it means to minimize sediment discharges, or to achieve any of the other non-numeric limits. See 74 FR 63016.

Accordingly, this permit contains requirements that specifically implement or incorporate each of the C&D rule's non-numeric limits in order to minimize the discharge of pollutants from construction sites. This is consistent with EPA's objective to write general permits with conditions that are clear, specific, and measurable. In the sections that follow, EPA discusses the permit requirements, and explains how the language is consistent with the non-numeric effluent limits in the C&D rule upon which they are based.

Part 2.1: General Stormwater Control Design, Installation, and Maintenance Requirements

Part 2.1 establishes the overall principle for designing, installing, and maintaining stormwater controls that work to minimize the discharge of pollutants from construction sites, as required in 40 CFR 450.21.

Part 2.1	Permit Requirements
You must design, install, and maintain stormwater controls required in Parts 2.2, ~~and~~ 2.3, and 2.4 to minimize the discharge of pollutants in stormwater from construction activities.[12] To meet this requirement, you must: [12] The permit does not dictate the type of stormwater control to be used to comply with the requirements of this Part, nor does it recommend or endorse specific products or vendors. The choice of the specific type of stormwater control to use to comply with the requirements of this part is up to the operator.	

The proposed CGP includes a clarifying footnote (see footnote 12) that addresses a problem brought to EPA's attention by permittees involving private vendors marketing their stormwater control products as being endorsed or approved by EPA. The footnote clarification reminds the public that "[t]he permit does not dictate the type of stormwater control to be used to comply with the requirements of this Part, nor does it recommend or endorse specific products or vendors. The choice of the specific type of stormwater control to use to comply with the requirements of this part is up to the operator."

Part 2.1.1: Design Factors

Part 2.1.1 requires the operator to account for design factors that address the corresponding C&D rule requirements in 40 CFR 450.21(a)(2) and (5).

Part 2.1.1	Permit Requirements
Account for the following factors in designing your stormwater controls: **a.** The expected amount, frequency, intensity, and duration of precipitation; **b.** The nature of stormwater runoff (i.e., flow) and run-on at the site, including factors such as expected flow from impervious surfaces, slopes, and site drainage features. You must design stormwater controls to control stormwater volume, velocity, and peak flow rates to	

minimize discharges of pollutants in stormwater and to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points; and

c. The soil type and range of soil particle sizes expected to be present on the site.

It is important to consider precipitation characteristics so that earth-disturbing activities can be planned during periods with a lower risk of precipitation and so that erosion and sediment control practices can be designed to convey and manage the precipitation that is expected to occur. The requirement to design stormwater controls to account for the nature of stormwater discharges and run-on on the site and to reduce peak flowrates and total stormwater is intended to minimize scouring and erosion caused by stormwater discharges from the site. The requirement to account for soil characteristics, such as particle size distribution, erosivity, and cohesiveness, is also important for selecting and designing appropriate erosion and sediment controls.

Part 2.1.2: Good Engineering Practices

Part 2.1.2 implements the C&D rule requirement to "install effective erosion and sediment controls."

Part 2.1.2	Permit Requirements

Design and install all stormwater controls in accordance with good engineering practices, including applicable design specifications.[13~~11~~]

[13~~11~~] Design specifications may be found in manufacturer specifications and/or in applicable erosion and sediment control manuals or ordinances. Any departures from such specifications must reflect good engineering practices and must be explained in your SWPPP. You must also comply with any additional design and installation requirements specified for the effluent limits in Parts 2.2, ~~and~~ 2.3, and 2.4.

In order for stormwater controls to be effective, they must be properly designed and installed. EPA notes that design specifications may be found in manufacturer specifications and/or in applicable erosion and sediment control manuals or ordinances. Additionally, where it is appropriate to depart from such specifications, such departures must reflect good engineering practice and must be explained in the SWPPP.

Part 2.1.3: Complete Installation Prior to Commencement of Construction

Part 2.1.3 is intended to ensure that stormwater controls are installed and made operational to minimize pollutant discharges from the area of active disturbance.

Part 2.1.3	Permit Requirements

Complete installation of stormwater controls by the time each phase of construction activities has begun.

a. By the time construction activity in any given portion of the site begins, install and make operational any downgradient sediment controls (e.g., buffers, perimeter controls, exit point controls, storm drain inlet protection) that control discharges from the initial site clearing, grading, excavating, and other earth-disturbing activities.[14~~12~~]

b. Following the installation of these initial controls, install and make operational all stormwater controls needed to control discharges prior to subsequent earth-disturbing activities.

[14~~12~~] Note that the requirement to install stormwater controls prior to each phase of construction activities for the site does not apply to the earth disturbance associated with the actual installation of these controls. Operators should take all reasonable actions to minimize the discharges of pollutants during the installation of stormwater controls.

For example, prior to initial site clearing and grading activities, the operator must install perimeter controls, exit point controls, and, if applicable, storm drain inlet protections and natural buffers or equivalent sediment controls to control stormwater discharges from the initial disturbances. After this initial work is completed, the operator must install and make operational other controls, such as sediment traps or sediment basins, that are expected to treat stormwater during the remaining phases of construction. Where a project is conducted in phases, such as for a large-scale road project, the requirement is to install such controls prior to commencing earth-disturbing activities for the particular phase. After initial controls are installed, the operator must install and make operational any remaining stormwater controls as conditions allow.

Part 2.1.4: Maintain Controls in Effective Operating Condition

Part 2.1.4 implements the C&D rule requirement to "maintain effective erosion controls and sediment controls" at 40 CFR 450.21(a) and the NPDES requirement at 40 CFR 122.41(e) to "at all times properly operate and maintain all facilities and systems of treatment and control …."

Part 2.1.4	Permit Requirements

Ensure that all stormwater controls are maintained and remain in effective operating condition during permit coverage and are protected from activities that would reduce their effectiveness.

a. Comply with any specific maintenance requirements for the stormwater controls listed in this permit, as well as any recommended by the manufacturer.[15~~13~~]

b. If at any time you find that a stormwater control needs routine maintenance (i.e., a repair or replacement that can be completed within 24 hours), you must immediately initiate the needed ~~maintenance~~ work, and complete such work by the close of the next business day. Where you must repeatedly (i.e., 3 or more times) make the same routine maintenance fixes to the same control, or you find that the control was not installed or designed correctly in accordance with this Part, you must complete corrective actions in accordance with Part 5.

c. If at any time you find that a stormwater control needs repair or replacement that will take more than 24 hours to complete, you must comply with the corrective action requirements in Part 5.

[15~~13~~] Any departures from such maintenance recommendations made by the manufacturer must reflect good engineering practices and must be explained in your SWPPP.

Construction industry representatives informed EPA that there is considerable confusion as to the difference between routine maintenance, as used in Part 2.1.4.b, and repairs or replacements to stormwater controls that are considered corrective action, as used in Part 2.1.4.c. From their feedback, it is apparent that this confusion has resulted in a tendency among permittees to treat the vast majority of necessary on-site repairs to stormwater controls as routine when many may take more than the allotted time in Part 2.1.4 to fix and should, therefore, be treated as corrective action under Part 5. To remedy this confusion, and to improve compliance within the intended meaning of the permit, EPA proposes defining for the first time routine maintenance in Part 2.1.4 as "a repair or replacement that can be completed within 24 hours." This definition is consistent with EPA's intent that routine maintenance fixes be completed by the end of the next business day after the need for the repair or replacement is discovered. By contrast, if the needed repair or replacement will take more than 24 hours, the operator must treat this as a corrective action under Part 5. EPA also clarifies that if the operator finds that they must repeatedly (i.e., 3 or more times) make routine maintenance fixes to the same control, or that they find that the control was not installed or designed correctly, these problems must be treated as corrective actions under Part 5.

Part 2.2: Erosion and Sediment Control Requirements

Part 2.2 implements the C&D rule's requirement at 40 CFR 450.21(a) to "design, install, and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants," as well as the requirements in 40 CFR 450.21(b) for soil stabilization.

Part 2.2	Permit Requirements
You must implement erosion and sediment controls in accordance with the following requirements to minimize the discharge of pollutants in stormwater from construction activities.	

The specific sections of the permit within Part 2.2 include requirements that articulate what is required of CGP operators in order to comply with this effluent limitation established in the C&D rule.

Part 2.2.1: Natural Buffers

Part 2.2.1 implements the C&D rule's requirement to minimize the discharge of pollutants from the site by providing and maintaining "natural buffers around waters of the United States… unless infeasible." See 40 CFR 450.21(a)(6).

Part 2.2.1	Permit Requirements

Provide and maintain natural buffers and/or equivalent erosion and sediment controls when a water of the U.S. is located within 50 feet of the site's earth disturbances.

a. Compliance Alternatives. For any discharges to waters of the U.S. located within 50 feet of your site's earth disturbances, you must comply with one of the following alternatives:

i. Provide and maintain a 50-foot undisturbed natural buffer; or

ii. Provide and maintain an undisturbed natural buffer that is less than 50 feet and is supplemented by erosion and sediment controls that achieve, in combination, the sediment load reduction equivalent to a 50-foot undisturbed natural buffer; or

iii. If infeasible to provide and maintain an undisturbed natural buffer of any size, implement erosion and sediment controls to achieve the sediment load reduction equivalent to a 50-foot undisturbed natural buffer.

See Appendix G, Part G.2 for additional conditions applicable to each compliance alternative.

b. Exceptions. See Appendix G, Part G.2 for exceptions to the compliance alternatives.

This requirement applies to all project sites that are situated within 50 feet of a water of the U.S., with certain exceptions described in Appendix G of the permit. Appendix G provides guidance on which sites must comply with the buffer provision, and how to implement the different compliance alternatives.

EPA incorporates by reference the discussion in the 2012 CGP fact sheet concerning the Agency's rationale for adopting the specific buffer requirements. See section "Provide Natural Buffers or Equivalent Sediment Controls" on pages 41 through 65 of the 2012 CGP fact sheet, available at https://www.epa.gov/sites/production/files/2017-07/documents/2012_construction_general_permit_factsheet.pdf.

Part 2.2.2: Direct Stormwater to Vegetated Areas

Part 2.2.2 implements the C&D rule requirement at 40 CFR 450.21(a)(6). This requirement mandates reduction of the discharge of sediment and other pollutants through filtration and infiltration.

Part 2.2.2	Permit Requirements
Direct stormwater to vegetated areas and maximize stormwater infiltration and filtering to reduce pollutant discharges, unless infeasible.	

Operators can comply with this requirement by directing non-erosive flows leaving silt fences, filter berms, or other perimeter controls and sediment basins to natural buffers adjacent to streams or other vegetated areas on or adjacent to the property on which the construction activities will occur. Note that some site operators have found the use of level spreaders or other practices to be effective to prevent erosive discharges. These practices will help to prevent the formation of gullies and associated erosion. Examples of where it may be infeasible to direct discharges from stormwater controls to vegetated areas include those areas where pervious or vegetated areas within the project footprint are non-existent, such as in some highly urban areas.

Part 2.2.3: Install Perimeter Controls

The perimeter control requirements in Part 2.2.3 implement the C&D rule requirement to "install effective erosion and sediment controls."

Part 2.2.3	Permit Requirements

Install sediment controls along any perimeter areas of the site that are downslope from any exposed soil or other disturbed areas ~~will receive pollutant discharges~~.[16~~14~~]

a. The perimeter control must be installed upgradient of any natural buffers established under Part 2.2.1, unless the control is being implemented pursuant to Part 2.2.1a.i-iii.;

b. To prevent stormwater from circumventing the edge of the perimeter control, install the perimeter control on the contour of the slope and extend both ends of the control up slope (e.g., at 45 degrees) forming a crescent rather than a straight line;

c. After installation, to ensure that perimeter controls continue to work effectively:

- **i.** Remove sediment before it has accumulated to one-half of the above-ground height of any perimeter control.; and
- **ii.** After a storm event, if there is evidence of stormwater circumventing or undercutting the perimeter control, extend controls and/or repair undercut areas to fix the problem.

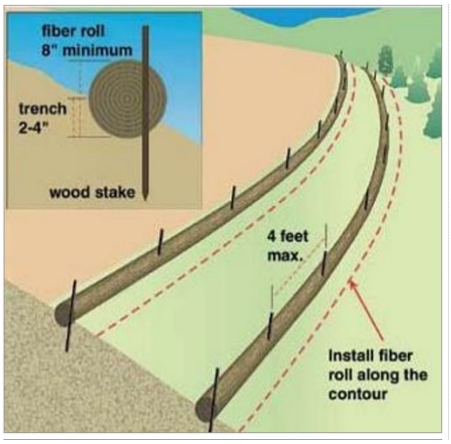
d. Exception. For areas at "linear construction sites" (as defined in Appendix A) where perimeter controls are infeasible (e.g., due to a limited or restricted right-of-way), implement other practices as necessary to minimize pollutant discharges to perimeter areas of the site.

[16~~14~~] Examples of perimeter controls include filter berms, different types of silt fence~~s~~ such as wire-backed, super silt fence, or multi-layer geotextile silt fence, compost filter socks, gravel barriers, ~~vegetative strips,~~ and temporary diversion dikes.

The requirement instructs operators as to where downslope sediment controls should be installed so that they are effectively situated to minimize the discharge of pollutants from the site. The proposed permit clarifies the description of where perimeter controls must be installed by specifying that they be installed "downslope from any exposed soil or other disturbed areas." This represents a slight change from the language used in the 2017 CGP provision, which emphasized that the controls be installed along perimeter areas that "will receive pollutant discharges." While the location on the site where perimeter controls are required remains the same, EPA views this change as offering a clearer way of describing where the perimeter controls must be installed.

EPA understands from conversations with stakeholders that there is confusion about whether perimeter controls are necessary under the Part 2.2.3 requirement when the operator is already providing a natural buffer in accordance with Part 2.2.1. To address this confusion, EPA clarifies in Part 2.2.3.a that perimeter controls must be installed upgradient of any natural buffers established under Part 2.2.1. The only exception to this requirement would be for situations where the permittee is using the perimeter control to fulfill the buffer alternative requirement in Part 2.2.1.a.ii or iii, in which case the permittee would not be required to install a second perimeter control in addition to the one installed to meet the Part 2.2.1.a.ii or iii requirement.

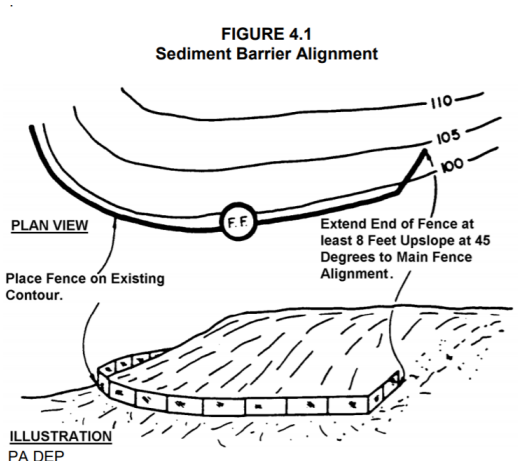
EPA also proposes additional perimeter control installation and maintenance requirements that are focused on ensuring that these controls continue to work effectively. One added provision would require the operator to "install the perimeter control on the contour of the slope and extend both ends of the control up slope (e.g., at 45 degrees) forming a crescent rather than a straight line." See Part 2.2.3.b. The purpose of this requirement is to prevent stormwater from flowing around the sides of the perimeter control. This requirement is consistent with existing standards for the design of common perimeter controls, including EPA's specifications for silt fences in its *Small Residential Lot SWPPP Template*[1] (see design criteria for use of a Sediment Silt Fence Barrier, p. 27) and other state stormwater Best Management Practice (BMP) guidelines. For instance, the Minnesota Pollution Control Agency's *Stormwater Manual* specifies that using fiber logs as perimeter controls on slopes requires that they be installed "on the contour, with ends turned upslope slightly to deter bypasses." See the Sediment control practices – Perimeter controls for disturbed areas[2] webpage. The webpage includes the following figure to illustrate what installing the control on the contour should look like:



The Pennsylvania Department of Environmental Protection's Erosion and Sediment Pollution Control Program Manual similarly specifies that "[t]he ends of sediment barriers should be turned upslope at 45 degrees to the main barrier alignment for a distance sufficient to elevate the bottom of the barrier ends to the elevation of the top of the barrier at the lowest point. This is to prevent runoff from flowing around the barrier rather than through it." (See p. 81). The state manual includes an illustration of how this should look in practice as follows:

[1] EPA. Small Residential Lot SWPPP Template. Available at: https://www.epa.gov/npdes/developing-stormwater-pollution-prevention-plan-swppp

[2] Minnesota Pollution Control Agency. *Minnesota Stormwater Manual.* Available at: https://stormwater.pca.state.mn.us/index.php?title=Sediment_control_practices_-_Perimeter_controls_for_disturbed_areas



The proposal also includes one new provision specifically focused on proper maintenance of perimeter controls. Under the proposed provision, the operator would be required after a storm event to extend the perimeter control or repair any undercut areas, whichever applies, if there is evidence of stormwater circumventing or undercutting the control. See Part 2.2.3.c.ii. The permit retains the requirement from previous permits to remove sediment before it has accumulated to one-half of the above-ground height of any perimeter control. See Part 2.2.3.c.i. These requirements implement the C&D rule requirement to "maintain effective erosion controls and sediment controls" at 40 CFR 450.21(a).

The requirement in (d) above provides flexibility for linear construction sites by allowing them to document in the SWPPP when it is infeasible to install perimeter controls in certain areas of the site, and instead allowing the use of other types of practices that will adequately minimize pollutant discharges to perimeter areas of the site. EPA established this provision in order to recognize that for some linear projects, perimeter controls are not always feasible (e.g., due to limited available space to install perimeter controls), and that other types of practices can be employed to minimize pollutant discharges. For example, in urban areas where, due to right-of-way limitations, perimeter controls could cause a safety hazard to vehicles and/or pedestrians, perimeter controls may not be feasible. Other practices that could be implemented to minimize pollutant discharges from perimeter areas for these types of sites could include conducting earth disturbances only on days when no precipitation will occur; limiting disturbances and stabilizing areas of exposed soil immediately; and avoiding disturbances to environmentally sensitive areas. The types of other practices to be implemented to adequately minimize pollutant discharges from perimeter areas must be based on site-specific conditions and reflect good engineering judgment.

While perimeter controls may not be feasible in the above circumstances, operators are reminded of the requirement under Part 2.1.1 to account for the required design factors for their stormwater controls and their overall obligation in Part 2 to minimize sediment discharges. In addition, the operator must ensure that sediment and other pollutants, which may escape the area of disturbance onto off-site streets, other paved areas, and sidewalks, are removed consistent with the mitigation requirements in Part 2.2.4.d.

EPA also notes that Part 2.2.3 only applies along any perimeter areas of the site that will receive pollutant discharges. If a portion of the construction site's perimeter area is not downslope from an area of earth disturbance, perimeter controls are not required in that portion of the site. Therefore, for instance, perimeter controls are not necessary in the perimeter area surrounding the following types of construction activities relating to linear projects:

- Pole sites where only overhead work is conducted;

- Use of pre-existing access roads or pad areas where no expansion or below-grade improvements *(e.g., no new earth disturbances)* will occur; and
- Areas where vegetation is left in place but needs to be trimmed (*e.g., mowing, weed whacking, etc.)* to allow temporary access (*e.g., overland travel)* or use of a site (*e.g., wire stringing site)*. In such circumstances, the ground cover (i.e., grasses and other low-growing vegetation, such as mosses, ferns, vines, shrubs, herbaceous plants, and root mats that are planted or that naturally occur) is retained and no grading occurs.

Part 2.2.4: Minimize Sediment Track-Out

Collectively, the requirements in Part 2.2.4 will result in the minimization of sediment that has been tracked out from the site onto paved surfaces and subsequently discharged in stormwater. The following practices are required for minimizing sediment track-out:

Part 2.2.4	Permit Requirements

Minimize sediment track-out.

a. Restrict vehicle use to properly designated exit points;

b. Use appropriate stabilization techniques[17~~15~~] at all points that exit onto paved roads.

  i. Exception: Stabilization is not required for exit points at linear utility construction sites that are used only episodically and for very short durations over the life of the project, provided other exit point controls[18~~16~~] are implemented to minimize sediment track-out;

c. Implement additional track-out controls[19~~17~~] as necessary to ensure that sediment removal occurs prior to vehicle exit; and

d. Where sediment has been tracked -out from your site onto paved roads, sidewalks, or other paved areas outside of your site, remove the deposited sediment by the end of the same business day in which the track-out occurs or by the end of the next business day if track-out occurs on a non-business day. Remove the track-out by sweeping, shoveling, or vacuuming these surfaces, or by using other similarly effective means of sediment removal. You are prohibited from hosing or sweeping tracked-out sediment into any stormwater conveyance, storm drain inlet, or water of the U.S.[20~~18~~]

[17~~15~~] Examples of appropriate stabilization techniques include the use of aggregate stone with an underlying geotextile or non-woven filter fabric, and turf mats.

[18~~16~~] Examples of other exit point controls include preventing the use of exit points during wet periods; minimizing exit point use by keeping vehicles on site to the extent possible; limiting exit point size to the width needed for vehicle and equipment usage; using scarifying and compaction techniques on the soil; and avoiding establishing exit points in environmentally sensitive areas (e.g., *karst areas; steep slopes)*.

[19~~17~~] Examples of additional track-out controls include the use of wheel washing, rumble strips, and rattle plates.

[20~~18~~] Fine grains that remain visible (e.g., staining) on the surfaces of off-site streets, other paved areas, and sidewalks after you have implemented sediment removal practices are not a violation of Part 2.2.4.

The requirement to restrict vehicle use to properly designated exit points in (a) above, the requirement for appropriate stabilization techniques at all points that exit onto paved roads in (b) above, and the requirement for the use of additional controls as necessary to ensure that sediment removal occurs prior to vehicle exit in (c) above, implement the C&D rule requirement to "minimize sediment discharges from the site." The requirement in (b) above also implements the C&D rule requirement to "minimize the amount of soil exposed during construction activity." The requirement in (d) above implements the C&D rule requirements to "minimize sediment

discharges" and the requirement to "minimize the discharge of pollutants from equipment and vehicle washing …."

The exception language in (b) is added here to reflect the guidance included in EPA's FAQ for the corresponding section of the 2012 permit (i.e., Part 2.1.2.3.b). Portions of this FAQ are repeated here to further explain the meaning of these requirements for linear utility projects:

> EPA acknowledges that the use of exit points for certain narrow linear utility projects can differ from traditional residential or commercial construction projects, where the same exit points are consistently used throughout the life of a project. Linear utility project disturbances, which include natural gas and electric transmission lines, typically consist of multiple disconnected areas of disturbance associated with access roads, stringing pull stations, laydown/staging yards, and pads. Because exit point stabilization is only required for points that exit onto paved roads, it will often be the case that exit point stabilization and the other track-out controls described in Parts 2.1.2.3.b [Part 2.2.4.b of the 2017 CGP] and 2.1.2.3.c [Part 2.2.4.c of the 2017 CGP] of the 2012 EPA CGP will not be required for linear utility projects that use existing unpaved roads to exit their work locations. However, to the extent that any sediment is tracked from existing access points onto paved roads, the requirement to remove tracked-out sediment in Part 2.1.2.3.d [Part 2.2.4.d of the 2017 CGP] still applies.
>
> Linear utility projects are also often constructed in phases with different access points corresponding to different phases or separate work locations within each phase. When access points are created for linear utility projects, they are often constructed as short ingress/egress locations from nearby existing roads, and are often used episodically and only for very short durations over the life of the project. Therefore, the types of exit point stabilization and other controls that are appropriate for these types of access points may differ from construction projects where access points are used more heavily and consistently throughout the life of the project. Examples of exit point stabilization techniques and controls that may be appropriate for access points that are used episodically and only for very short durations by such linear utility projects could include, but are not limited to, the following:
>
> - Using scheduling techniques to prevent the use of exit points during wet periods;
> - Minimizing exit point use by keeping vehicles onsite to the maximum extent possible;
> - Limiting exit point size to the width needed for vehicle usage and using scarifying and compaction techniques on the soil;
> - Using woody vegetation chips from the clearance of shrubs and trees on the exit point surface;
> - Avoiding locating exit points in environmentally sensitive areas (e.g., wetlands, karst areas, steep slopes); and
> - Conducting routine inspections (e.g., daily on scheduled work days) at exit points to assess the need to implement the mitigation measures in Part 2.1.2.3.d [Part 2.2.4 of the 2017 CGP].
>
> Exit point stabilization techniques must be selected to ensure that sediment track-out is minimized. To the extent that any sediment is tracked from the existing access point onto paved roads, all operators must ensure that it is

removed consistent with the mitigation requirements in Part 2.1.2.3.d [Part 2.2.4.d of the 2017 CGP] (e.g., sweeping, shoveling, vacuuming, or other similar means). For all projects, the exit point stabilization and controls must be selected based on site-specific conditions to meet the overall requirement in Part 2.1.2.3 [Part 2.2.4 of the 2017 CGP] to minimize sediment track-out, and must take into account safety considerations. The controls that are selected must also be documented in the SWPPP.

Note that EPA no longer allows for hosing down or sweeping pollutants into a stormwater conveyance where it is connected to a sediment basin, sediment trap, or similarly effective controls. Upon further consideration, EPA is concerned that this practice will lead to these controls being compromised, and that sweeping, shoveling, and vacuuming are standard and readily available approaches for removing sediment track-out.

Part 2.2.5: Manage Stockpiles or Land-Clearing Debris Piles

The requirements to control discharges from stockpiled sediment or soil are intended to prevent the discharge of sediment from stockpiled soil and dirt on the site.

Part 2.2.5	Permit Requirements

Manage stockpiles or land clearing debris piles composed, in whole or in part, of sediment and/or soil:[21]

a. Locate the piles outside of any natural buffers established under Part 2.2.1 and away from any stormwater conveyances, drain inlets, and areas where stormwater flow is concentrated;

b. Install a sediment barrier along all downgradient perimeter areas of sediment or soil stockpiles or land clearing debris piles;[22~~19~~]

c. For piles that will be unused for 14 or more days, provide cover[23~~20~~] or appropriate temporary stabilization (consistent with Part 2.2.14);

d. You are prohibited from hosing down or sweeping soil or sediment accumulated on pavement or other impervious surfaces into any stormwater conveyance, storm drain inlet, or water of the U.S.

[21] The requirements in Part 2.2.5 do not apply to the storage of rock, such as rip rap, landscape rock, pipe bedding gravel, and boulders. Refer to Part 2.2.3a for the requirements that apply to these types of materials.

[22~~19~~] Examples of sediment barriers include berms, dikes, fiber rolls, silt fences, sandbags, gravel bags, or straw bale.

[23~~20~~] Examples of cover include tarps, blown straw and hydroseeding.

EPA adds a clarification as part of the proposal to make it clear that this provision applies only to sediment or soil stockpiles or land clearing debris piles. The proposed footnote clarifies that the provision does not apply to the storage of rock, such as rip rap, landscape rock, pipe bedding gravel, and boulders. Requirements for these materials are found in Part 2.3.3.a. This clarification was requested by some permittees, who were not certain whether this provision applied to such materials as rip rap and other types of rock.

The required use of "appropriate temporary stabilization" when a pile will be unused ensures that pollutant discharges are minimized as a result of storm events, while at the same time it addresses the practicability of these controls by limiting this requirement to times when the piles are inactive. It is EPA's judgment that cover or appropriate temporary stabilization for these piles, such as tarps, blown straw, and hydroseeding, are all readily available and common erosion and sediment control products and technologies that operators will likely already be

using to comply with the stabilization requirements in Part 2.2.14. The use of these technologies for covering or temporarily stabilizing stockpiles when piles are inactive poses a small incremental cost relative to the total cost of all other stormwater controls on the site. In addition, some cover technologies, such as tarps, can be reused multiple times on the same site due to their durability and longevity.

Some states have similar requirements for stockpile cover or stabilization. For example, Delaware's sediment and stormwater regulations state that "Following soil disturbance or re-disturbance, Permanent or Temporary Stabilization shall be completed for perimeter sediment controls, topsoil stockpiles, and all other disturbed or graded areas on the project site within 14 calendar days unless more restrictive Federal requirements apply."[3] Another example is in Minnesota's CGP, which states "The Permittee(s) must stabilize all exposed soil areas (including stockpiles). Stabilization must be initiated immediately to limit soil erosion whenever any construction activity has permanently or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days."[4] North Dakota's CGP stabilization requirements for exposed soil also cover stockpiles that are not temporary, defined as land being idle for 14 or more calendar days.[5]

Note also that (d) does not allow for hosing down or sweeping pollutants into a stormwater conveyance where it is connected to a sediment basin, sediment trap, or similarly effective controls due to the concern that this practice will lead to these controls being compromised.

Part 2.2.6: Minimize Dust

The requirement is intended to minimize the discharge of sediment in stormwater from the generation of dust.

Part 2.2.6	Permit Requirements
On areas of exposed soil, minimize dust through the appropriate application of water or other dust suppression techniques to control the generation of pollutants that could be discharged in stormwater from the site.	

Dust suppression techniques prevent dust from being generated, minimizing the potential for the dust to accumulate where it is likely to discharge from the site in stormwater discharges.

Part 2.2.7: Minimize Steep Slope Disturbances

The requirement in Part 2.2.7 implements the C&D rule requirement to "minimize the disturbance of steep slopes" at 40 CFR 450.21(a)(4).

[3] Delaware Department of Natural Resources and Environmental Control, Regulations Governing the Control of Water Pollution, Section 9.1.02, known as Special Conditions for Stormwater Discharges Associated with Construction Activities. Available at http://regulations.delaware.gov/AdminCode/title7/5000/5101.pdf

[4] Minnesota Pollution Control Agency, General Permit Authorization to Discharge Stormwater associated with Construction Activity under the National Pollutant Discharge Elimination System/ State Disposal System Program. Available at https://www.pca.state.mn.us/sites/default/files/wq-strm2-68a.pdf

[5] North Dakota Department of Health, Authorization to Discharge Under the North Dakota Pollutant Discharge Elimination System - Stormwater Associated with Construction Activity, page 25. Available at http://www.ndhealth.gov/WQ/Storm/Construction/NDR10per20150401F.pdf

Part 2.2.7	Permit Requirements
Minimize the disturbance of "steep slopes" (as defined in Appendix A).	

The permit does not prevent or prohibit disturbance on steep slopes. EPA recognizes that for some projects, disturbance on steep slopes may be necessary for construction (e.g., a road cut in mountainous terrain). If disturbances to steep slopes are required for the project, EPA would recognize that it is not feasible to avoid the disturbance of steep slopes. EPA also notes that the requirement to minimize the disturbance of steep slopes does not apply to the creation of soil stockpiles. EPA incorporates by reference the discussion in the 2012 CGP fact sheet concerning this requirement. See part 2.1.2.6 "Minimize the Disturbance of Steep Slopes" on pages 67 through 68 of the 2012 CGP fact sheet, available at https://www.epa.gov/sites/production/files/2017-07/documents/2012_construction_general_permit_factsheet.pdf.

Part 2.2.8: Preserve Native Topsoil

Part 2.2.8 implements the C&D rule requirement to preserve topsoil, unless infeasible at 40 CFR 450.21(a)(8).

Part 2.2.8	Permit Requirements
Preserve native topsoil, unless infeasible.[24~~21~~] [24~~21~~] Stockpiling topsoil at off-site locations, or transferring topsoil to other locations, is an example of a practice that is consistent with the requirements in Part 2.2.8. Preserving native topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed. For example, some sites may be designed to be highly impervious after construction, and therefore little or no vegetation is intended to remain, or may not have space to stockpile native topsoil on site for later use, in which case, it may not be feasible to preserve topsoil.	

The requirement to preserve topsoil will help to maintain the soil structure on construction sites and provides a growing medium for vegetative stabilization measures. Better vegetative stabilization reduces erosion rates of the underlying soil and also increases the infiltrative capacity of the soil, thereby reducing the amount of sediment transported to downslope sediment and perimeter controls. Topsoil can be preserved by stockpiling the native topsoil on the site for later use (e.g., for vegetative stabilization), or by limiting disturbance and removal of the topsoil and associated vegetation. For example, topsoil can be preserved by limiting clearing and grading to only those areas where necessary to accommodate the building footprint. EPA notes that some projects may be designed to be highly impervious after construction, and therefore little or no vegetation is intended to remain. In these cases, EPA recognizes that preserving topsoil at the site would not be feasible. In addition, some sites may not have space to stockpile topsoil on site for later use, in which case, it may also not be feasible to preserve topsoil. EPA is aware that stockpiling of topsoil in off-site locations, or transfer of topsoil to other locations, is frequently used in these situations and EPA would view this as acceptable practice. However, EPA notes that stormwater discharges from any construction support activities meeting the requirements of Part 1.2.1.c will be subject to the permit requirements.

Part 2.2.9: Minimize Soil Compaction

Part 2.2.9 implements the C&D rule requirement to "minimize soil compaction." The requirement is intended to allow for infiltration and retention of stormwater to reduce stormwater discharge volume and velocity.

Part 2.2.9	Permit Requirements

In areas of your site where final vegetative stabilization will occur or where infiltration practices will be installed:

a. Restrict vehicle and equipment use in these locations to avoid soil compaction; and

b. Before seeding or planting areas of exposed soil that have been compacted, use techniques that rehabilitate and condition the soils as necessary to support vegetative growth.

To comply with this requirement, operators may either restrict vehicle and equipment use on areas that will be vegetatively stabilized or where infiltration practices will be installed, or use soil conditioning techniques to decompact soils to support vegetative growth. Specific types of soil conditioning techniques could include deep-ripping and decompaction or sub-soiling. EPA also notes that the requirement to minimize soil compaction does not apply to areas that will not be used for final vegetative stabilization or for areas where infiltration practices will not be installed. For example, the requirements do not apply to disturbed areas that will become paved surfaces, such as roads, foundations, footings, or on embankments, or on areas where soil compaction is necessary by design.

EPA notes that the requirement in (b) above is no longer conditioned on the feasibility of using soil conditioning or rehabilitation practices. In EPA's judgment, requiring these practices "as necessary" provides adequate flexibility to operators and does not significantly change the provision in the 2012 and 2017 CGPs. For example, in the 2012 CGP fact sheet, EPA explained that "the requirement to use soil conditioning techniques is not required in any area where it would not be feasible, such as on steep slope areas or any other areas where it is not safe for the required equipment." EPA would not find it to be "necessary" to use soil conditioning techniques in an area of the site where it was unsafe either because the required equipment is unable to be operated on steep slope areas or these areas are unlikely to be compacted in the first place given the safety concerns of operating heavy equipment in this area.

Part 2.2.10: Protect Storm Drain Inlets

Part 2.2.10 implements the C&D rule requirement to "minimize sediment discharges from the site" by requiring stormwater inlets to be protected with sediment controls during construction.

Part 2.2.10	Permit Requirements

a. Install inlet protection measures that remove sediment from discharges prior to entry into any storm drain inlet that carries stormwater ~~flow~~ from your site to a water of the U.S., provided you have authority to access the storm drain inlet;[26~~23~~] and

b. Clean, or remove and replace, the protection measures as sediment accumulates, the filter becomes clogged, and/or performance is compromised. Where there is evidence of sediment accumulation adjacent to the inlet protection measure, remove the deposited sediment by the end of the same business day in which it is found or by the end of the following business day if removal by the same business day is not feasible.

[26~~23~~] Inlet protection measures can be removed in the event of flood conditions or to prevent erosion.

Inlet protection measures prevent sediment-laden stormwater from being discharged into storm drains, and ultimately surface waters. The maintenance requirements in (b) support the need for the inlet measures to be kept in working condition so that they are effective at preventing the discharge of pollutants. Note that inlet protection measures can be removed in the event of flood conditions or to prevent erosion.

Note that EPA requires installation of inlet protection measures to any storm drain inlet that carries stormwater flow from the site to a water of the U.S. that you have authority to access, even if it is first directed to a sediment basin, sediment trap, or similarly effective controls. EPA is concerned that if the sediment basin, sediment trap, or similarly effective controls were to be compromised, unprotected inlets that receive stormwater from these controls would also be compromised.

Part 2.2.11: Minimize Erosion of Stormwater Conveyances

Part 2.2.11 implements the C&D rule requirement to "control stormwater discharges… to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points."

Part 2.2.11	Permit Requirements
Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points.[27~~24~~]	
[27~~24~~] Examples of control measures that can be used to comply with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of a stormwater conveyance and at the outfall to slow down stormwater ~~runoff~~.	

Examples of control measures that can be used to comply with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of a stormwater conveyance and at the outfall to slow down runoff.

Part 2.2.12: Sediment Basins or Similar Impoundment

Part 2.2.12 outlines the requirements that will apply to installation of sediment basins or similar impoundments.

Part 2.2.12	Permit Requirements
If you install a sediment basin or similar impoundment:	
a. Situate the basin or impoundment outside of any water of the U.S. and any natural buffers established under Part 2.2.1;	
b. Design the basin or impoundment to avoid collecting water from wetlands;	
c. Design the basin or impoundment to provide storage for either:	
i. The calculated volume of ~~runoff~~ stormwater from a 2-year, 24-hour storm (see Appendix H); or	
ii. 3,600 cubic feet per acre drained.	
d. Utilize outlet structures that withdraw water from the surface of the sediment basin or similar impoundment, unless infeasible;[28~~25~~]	
e. Use erosion controls and velocity dissipation devices to prevent erosion at inlets and outlets; and	
f. Remove accumulated sediment to maintain at least one-half of the design capacity and conduct all other appropriate maintenance to ensure the basin or impoundment remains in effective operating condition.	
[28~~25~~] The circumstances in which it is infeasible to design outlet structures in this manner are rare. Exceptions may include areas with extended cold weather, where using surface outlets may not be feasible during certain time periods (although they must be used during other periods). If you determine	

that it is infeasible to meet this requirement, you must provide documentation in your SWPPP to support your determination, including the specific conditions or time periods when this exception will apply.

Sediment basins are used on construction sites to minimize sediment discharges. They are typically placed at or near low points of drainageways in order to temporarily detain stormwater discharges, allowing sediment particulates to settle. Sediment basins are also designed to reduce peak flowrates, reducing downstream flooding and channel erosion. At the point of discharge, which is typically a pipe or channel, installation of riprap or other stabilization measures is often necessary because the concentrated discharge can cause erosion and additional pollutant discharges to waters of the U.S. Sediment basins are also designed to reduce flow duration impacts by reducing the total volume of stormwater being discharged or by providing extended detention to reduce discharge rates. The purpose of the requirements in this part is to provide specific design and maintenance requirements for the proper implementation of sediment basins, if used on a site.

The requirements in (a) and (b) above are design specifications that have been included in the CGP since the 2003 permit. The requirement in (d) above implements the following C&D rule requirement: "When discharging from basins and impoundments, utilize outlet structures that withdraw water from the surface, unless infeasible." EPA notes in the permit that the circumstances in which it will be infeasible to design outlet structures in this manner should be rare. Exceptions may include areas with extended cold weather and where using surface outlets may not be feasible during certain time periods (although it is expected that they would be used during other periods). If the operator determines that it is infeasible to meet this requirement, the operator must provide documentation in the SWPPP to support its determination, including the specific conditions or time periods when this exception will apply.

EPA also includes a requirement, subsection (e) above, to prevent erosion of the sediment basin and the inlet and outlet to implement the C&D rule requirement to "design, install and maintain effective erosion and sediment controls to minimize the discharge of pollutants," and the requirement to "control stormwater discharges … to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points." The requirement in (f) above implements the C&D rule requirement to "maintain effective erosion controls and sediment controls to minimize the discharge of pollutants."

Part 2.2.13: Use of Treatment Chemicals

Part 2.2.13 establishes the minimum requirements that apply to the use of treatment chemicals at permitted construction sites.

Part 2.2.13	Permit Requirements
If using treatment chemicals (e.g., *polymers, flocculants, coagulants*):	
a.	**Use conventional erosion and sediment controls before and after the application of treatment chemicals.** Chemicals may only be applied where treated stormwater is directed to a sediment control (e.g., *sediment basin, perimeter control*) before discharge.
b.	**Select appropriate treatment chemicals**. Chemicals must be appropriately suited to the types of soils likely to be exposed during construction and present in the discharges being treated (i.e., *the expected turbidity, pH, and flow rate of stormwater flowing into the chemical treatment system or area*).
c.	**Minimize discharge risk from stored chemicals.** Store all treatment chemicals in leak-proof containers that are kept under storm-resistant cover and surrounded by secondary containment structures (e.g., *spill berms, ~~decks~~ dikes, spill containment pallets*), or provide equivalent measures designed and maintained to minimize the potential discharge of treatment chemicals in stormwater or by any other means (e.g., *storing chemicals in a*

covered area, having a spill kit available on site and ensuring personnel are available to respond expeditiously in the event of a leak or spill).

d. Comply with state/local requirements. Comply with applicable state and local requirements regarding the use of treatment chemicals.

e. Use chemicals in accordance with good engineering practices and specifications of the chemical provider/supplier. Use treatment chemicals and chemical treatment systems in accordance with good engineering practices, and with dosing specifications and sediment removal design specifications provided by the provider/supplier of the applicable chemicals, or document in your SWPPP specific departures from these specifications and how they reflect good engineering practice.

f. Ensure proper training. Ensure that all persons who handle and use treatment chemicals at the construction site are provided with appropriate, product-specific training prior to beginning application of treatment chemicals. Among other things, the training must cover proper dosing requirements.

g. Perform additional measures specified by the EPA Regional Office for the authorized use of cationic chemicals. If you have been authorized to use cationic chemicals at your site pursuant to Part 1.1.9, you must perform all additional measures as conditioned by your authorization to ensure that the use of such chemicals will not result in discharges that do not meet ~~cause an exceedance of~~ water quality standards.

EPA incorporates by reference the discussion in the 2012 CGP fact sheet concerning the Agency's rationale supporting these requirements. See section "Use of Treatment Chemicals. (Part 2.1.3.3)" on pages 71 through 75 of the 2012 CGP fact sheet, available at https://www.epa.gov/sites/production/files/2017-07/documents/2012_construction_general_permit_factsheet.pdf.

Part 2.2.14: Site Stabilization

Part 2.2.14 implements the C&D rule requirement for soil stabilization in 40 CFR 450.21(b). This part requires the operator to implement and maintain stabilization measures that minimize erosion from exposed portions of the site.

Part 2.2.14	Permit Requirements

Stabilize exposed portions of the site. Implement and maintain stabilization measures (e.g., *seeding protected by erosion controls until vegetation is established, sodding, mulching, erosion control blankets, hydromulch, gravel*) that minimize erosion from exposed portions of the site in accordance with Parts 2.2.14a and 2.2.14b.

a. Stabilization Deadlines:[29]~~[26]~~

Total Amount of Land Disturbance Occurring At Any One Time[30]~~[27]~~	Deadline
i. Five acres or less (≤5.0) **Note: this includes sites disturbing more than five acres (>5.0) total over the course of a project, but that limit disturbance at any one time (i.e., phase the disturbance) to five acres or less (≤5.0)**	• Initiate the installation of stabilization measures immediately[31]~~[28]~~ in any areas of exposed soil where construction activities have permanently ceased or will be temporarily inactive for 14 or more calendar days;[32]~~[29]~~ and • Complete the installation of stabilization measures as soon as practicable, but no later than 14

	calendar days after stabilization has been initiated.[33~~30~~]
ii. More than five acres (>5.0)	• Initiate the installation of stabilization measures immediately[34~~31~~] in any areas of exposed soil where construction activities have permanently ceased or will be temporarily inactive for 14 or more calendar days;[35~~32~~] and • Complete the installation of stabilization measures as soon as practicable, but no later than seven (7) calendar days after stabilization has been initiated.[36~~33~~]

b. Exceptions:

i. **Arid, semi-arid, and drought-stricken areas** (as defined in Appendix A). If it is the seasonally dry period (as defined in Appendix A) or a period in which drought is occurring, and vegetative stabilization measures are being used:

(a) Immediately initiate and, within 14 calendar days of ~~a~~ temporary or permanent cessation of work in any portion of your site, complete the installation of temporary non-vegetative stabilization measures to the extent necessary to prevent erosion;

(b) As soon as practicable, given conditions or circumstances on the site, complete all activities necessary to seed or plant the area to be stabilized; and

(c) If construction is occurring during the seasonally dry period, indicate in your SWPPP the beginning and ending dates of the seasonally dry period and your site conditions. Also include the schedule you will follow for initiating and completing vegetative stabilization.

ii. **Unforeseen circumstances.** Operators that are affected by unforeseen circumstances[37~~34~~] that delay the initiation and/or completion of vegetative stabilization:

(a) Immediately initiate and, within 14 calendar days, complete the installation of temporary non-vegetative stabilization measures to prevent erosion;

(b) Complete all soil conditioning, seeding, watering or irrigation installation, mulching, and other required activities related to the planting and initial establishment of vegetation as soon as conditions or circumstances allow it on your site; and

(c) Document in the SWPPP the circumstances that prevent you from meeting the deadlines in Part 2.2.14a and the schedule you will follow for initiating and completing stabilization.

iii. **Discharges to a sediment- or nutrient-impaired water or to a water that is identified by your state, tribe, or EPA as Tier 2, Tier 2.5, or Tier 3 for antidegradation purposes.** Complete stabilization as soon as practicable, but no later than seven (7) calendar days after stabilization has been initiated.

c. Final Stabilization Criteria (for any areas not covered by permanent structures):

i. Establish uniform, perennial vegetation (i.e., *evenly distributed, without large bare areas*) that provides 70 percent or more of the cover that is provided by vegetation native to local undisturbed areas; and/or

ii. Implement permanent non-vegetative stabilization measures[38~~35~~] to provide effective cover.

iii. Exceptions:

(a) **Arid, semi-arid, and drought-stricken areas** (as defined in Appendix A). Final stabilization is met if the area has been seeded or planted to establish vegetation that provides 70 percent or more of the cover that is provided by vegetation native to local undisturbed areas within three (3) years and, to the extent necessary to prevent erosion on the seeded or planted area, non-vegetative erosion controls have been applied that provide cover for at least three years without active maintenance.

(b) **Disturbed areas on agricultural land that are restored to their preconstruction agricultural use.** The Part 2.2.14c final stabilization criteria do~~es~~ not apply.

(c) **Areas that need to remain disturbed.** In limited circumstances, stabilization may not be required if the intended function of a specific area of the site necessitates that it remain disturbed, and only the minimum area needed remains disturbed (e.g., *dirt access roads, utility pole pads, areas being used for storage of vehicles, equipment, materials*).

[29~~26~~] EPA may determine, based on an inspection carried out under Part 4.8 and corrective actions required under Part 5.3, that the level of sediment discharge on the site makes it necessary to require a faster schedule for completing stabilization. For instance, if sediment discharges from an area of exposed soil that is required to be stabilized are compromising the performance of existing stormwater controls, EPA may require stabilization to correct this problem.

[30~~27~~] Limiting disturbances to five (5) acres or less at any one time means that at no time during the project do the cumulative earth disturbances exceed five (5) acres. The following examples would qualify as limiting disturbances at any one time to five (5) acres or less:

1. The total area of disturbance for a project is five (5) acres or less.
2. The total area of disturbance for a project will exceed five (5) acres, but the operator ensures that no more than five (5) acres will be disturbed at any one time through implementation of stabilization measures. In this way, site stabilization can be used to "free up" land that can be disturbed without exceeding the five (5)-acre cap to qualify for the 14-day stabilization deadline. For instance, if an operator completes stabilization of two (2) acres of land on a five (5)-acre disturbance, then two (2) additional acres could be disturbed while still qualifying for the longer 14-day stabilization deadline.

[31~~28~~] The following are examples of activities that would constitute the immediate initiation of stabilization:

1. Prepping the soil for vegetative or non-vegetative stabilization as long as seeding, planting, and/or installation of non-vegetative stabilization products takes place as soon as practicable, but no later than one (1) calendar day of completing soil preparation;
2. Applying mulch or other non-vegetative product to the exposed area;
3. Seeding or planting the exposed area;
4. Starting any of the activities in # 1 – 3 on a portion of the entire area that will be stabilized; and
5. Finalizing arrangements to have stabilization product fully installed in compliance with the deadlines for completing stabilization.

[32~~29~~] The requirement to initiate stabilization immediately is triggered as soon as you know that construction work on a portion of the site is temporarily ceased and will not resume for 14 or more days, or as soon as you know that construction work is permanently ceased. In the context of this provision, "immediately" means as soon as practicable, but no later than the end of the next business day, following the day when the construction activities have temporarily or permanently ceased.

[33~~30~~] If vegetative stabilization measures are being implemented, stabilization is considered "installed" when all activities necessary to seed or plant the area are completed. If non-vegetative stabilization measures are being implemented, stabilization is considered "installed" when all such measures are implemented or applied.

[34~~31~~] See footnote 30~~27~~

~~35~~32 See footnote 31~~28~~

~~36~~33 See footnote 32~~29~~

~~37~~34 Examples include problems with the supply of seed stock or with the availability of specialized equipment and unsuitability of soil conditions due to excessive precipitation and/or flooding.

~~38~~35 Examples of permanent non-vegetative stabilization measures include riprap, gravel, gabions, and geotextiles.

Starting with the 2012 CGP, EPA has used a definition for "stabilization" as "the use of vegetative and/or non-vegetative cover to prevent erosion and sediment loss in areas exposed through the construction process." Appendix A defines "temporary stabilization" and "final stabilization" as follows:

> • "Temporary stabilization" means a condition where exposed soils or disturbed areas are provided 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.
>
> • "Final stabilization" means that, on areas not covered by permanent structures, either (1) uniform, perennial vegetation *(e.g., evenly distributed, without large bare areas*) has been established, or for arid or semi-arid areas, will be established, that provides 70 percent or more of the cover that is provided by vegetation common to local undisturbed areas , and/or (2) permanent non-vegetative stabilization measures *(e.g., riprap, gravel, gabions, and geotextiles)* have been implemented to provide effective cover for exposed portions of the site.

In the C&D rule, EPA emphasizes the importance of effective and speedy stabilization of soils exposed throughout the construction process in order to reduce the amount of soil eroded on construction sites and the amount of sediment and other pollutants discharged from the site. EPA indicates in the rule that initiating soil stabilization measures immediately after land has been disturbed and construction activity has ceased is an important non-numeric effluent limitation. EPA also states that it "sees no compelling reason why permittees cannot take action immediately to stabilize disturbed soils on their sites" (see 74 Fed. Reg. 63005, December 1, 2009). EPA also observes that erosion control measures, such as mulch, are readily available and operators need only plan accordingly to have appropriate materials and laborers present when needed. Ibid.

Furthermore, "simply providing some sort of soil cover on these areas can significantly reduce erosion rates, often by an order of magnitude or more. Vegetative stabilization using annual grasses is a common practice used to control erosion. Physical barriers such as geotextiles, straw, rolled erosion control products and mulch and compost are other common methods of controlling erosion. Polymers (such as PAM) and soil tackifiers are also commonly used. These materials and methods are intended to reduce erosion where soil particles can be initially dislodged on a C&D site, either from rainfall, snow melt or up-slope runoff." See 74 Fed. Reg. 63012.

The permit carries forward these important principles and factors by incorporating specific provisions intended to implement the C&D rule's stabilization deadline requirements. The following section provides support for these provisions.

Stabilization Deadlines (Part 2.2.14.a)

- Deadline to Initiate Stabilization

The permit specifies that the operator must initiate the installation of soil stabilization measures immediately in any areas of exposed soil where construction activities have permanently ceased or are temporarily inactive for 14 or more calendar days. EPA explains in the permit that, for the purposes of this provision, the term "immediately," as used to define the deadline for initiating stabilization measures, means as soon as practicable, but no later than the end of the next business day, following the day when the construction activities have temporarily or permanently ceased.

The permit also provides examples of activities that would constitute the immediate initiation of stabilization:

1. Prepping the soil for vegetative or non-vegetative stabilization as long as seeding, planting, and/or installation of non-vegetative stabilization products takes place as soon as practicable, but no later than 1 calendar day of completing soil preparation;
2. Applying mulch or other non-vegetative product to the exposed area;
3. Seeding or planting the exposed area;
4. Starting any of the activities in # 1 – 3 on a portion of the entire area that will be stabilized; and
5. Finalizing arrangements to have stabilization product fully installed in compliance with the deadlines for completing stabilization.

It is important to clarify the C&D rule requirement by specifying what it means to have construction activities temporarily or permanently cease. It is also important for construction operators to understand that stabilization must begin immediately when there is no justification for leaving areas exposed. For example, if 14 days will pass between the time when clearing and grading has been completed and further construction activities will occur, there is no reason why the exposed portions of the site cannot be stabilized temporarily to prevent erosion and sediment discharge during the time of inactivity on any portion of the site. EPA clarifies that the initiation of stabilization means that the operator has taken action to implement the stabilization measures, including, for example, finalizing arrangements to have the stabilization product delivered, scheduling the installation of the product, and/or prepping the soil.

- Deadline to Complete Stabilization

The C&D rule, at 40 CFR 450.21(b), requires that a deadline to complete stabilization be established by each permit authority. As the permit authority for this CGP, EPA has established what it deems to be a reasonable and unambiguous deadline for completing stabilization procedures. The CGP's stabilization deadlines are based on the concept of phasing construction disturbances. The intent of this approach is to provide an incentive to disturb less land at any given period of time by providing longer stabilization timeframes if the disturbance is kept below a threshold level. The approach described below also provides improved protection against erosion, by ensuring that large disturbed areas are stabilized sooner. This approach is also consistent with the C&D rule requirement at 40 CFR 450.21(a)(3) to "minimize the amount of soil exposed during construction activity."

The permit specifies that for sites that disturb a total of five acres or less (≤5.0) at any one time over the course of a project, the operator must complete the installation of stabilization measures as soon as practicable, but no later than 14 calendar days after stabilization has been initiated. This includes sites disturbing more than (>5.0) acres total over the course of a project, but that limit disturbance at any one time to five acres or less (≤5.0). For sites that will disturb more than a total of five acres (>5.0) at any one time over the course of a project, the operator must complete the installation of stabilization measures as soon as practicable, but no later than 7 calendar days after stabilization has been initiated. The deadline for sites discharging to

sensitive waters remains unchanged from the 2012 CGP (within 7 calendar days), and the exceptions for sites in arid, semi-arid, and drought-stricken areas and for operator affected by circumstances beyond their control also remain unchanged from the 2012 CGP.

EPA notes that the Agency may determine, based on an inspection carried out under Part 4.8 and corrective actions required under Part 5.3, that the level of sediment discharge on the site makes it necessary to require a faster schedule for completing stabilization. For instance, if sediment discharges from an area of exposed soil that is required to be stabilized are compromising the performance of existing stormwater controls, EPA may require stabilization to correct this problem.

For the purposes of the stabilization deadline requirements in Part 2.2.14.a, "limiting disturbances to five (5) acres or less at any one time" means that at no time during the project do the cumulative earth disturbances exceed five (5) acres. The permit provides the following examples as limiting disturbances at any one time to five (5) acres or less:

1. The total area of disturbance for a project is five (5) acres or less.
2. The total area of disturbance for a project will exceed five (5) acres, but the operator ensures no more than five (5) acres will be disturbed at any one time through implementation of stabilization measures. In this way, site stabilization can be used to "free up" land that can be disturbed without exceeding the 5-acre cap to qualify for the 14-day stabilization deadline. For instance, if an operator completes stabilization of two (2) acres of land on a five (5)-acre disturbance, then two (2) additional acres could be disturbed while still qualifying for the longer 14-day stabilization deadline.

Furthermore, the stabilization deadline for a site will change if disturbances exceed five (5) acres. The important determiner of which stabilization deadline applies is the total amount of disturbance occurring at any one time during the course of the project. If at any point during the course of the project, total land disturbance exceeds five (5) acres, the deadline to complete stabilization for this portion of the project is within seven (7) calendar days of initiating stabilization. This deadline applies regardless of the fact that a previous phase of construction may have limited disturbance to five (5) acres or less and was able to take advantage of the 14-day deadline for stabilization. For instance, if an operator commences work on a 20-acre project by clearing and grading a five (5)-acre portion of the site, and while that construction is ongoing and prior to stabilization the operator clears and grades another three (3)-acre area, the operator must comply with the seven (7)-day stabilization deadline because the amount of disturbed area on the site at any one time exceeds the five (5)-acre threshold. If total land disturbance at any one time is subsequently reduced to five (5) acres or less, the deadline to complete stabilization will return to within 14 calendar days. Therefore, operators have the flexibility to disturb more land when necessary, but must stabilize faster because more land is unprotected and vulnerable to erosion and sediment transport during storm events. This approach intends to provide the incentive to stabilize enough land to bring total disturbance at any one time back under the five (5)-acre threshold so that the operator can resume receiving the benefit of the longer 14-day stabilization deadline. The approach is also intended to ensure greater protection for larger areas of site disturbance.

EPA incorporates by reference the discussion from the 2017 CGP Fact Sheet[6] in the section entitled "Background on the Development of the Modified Stabilization Deadlines." See pages 43 to 45.

In the four plus years since the adoption of the five-acre threshold for determining stabilization deadlines in the 2017 CGP, EPA has learned from some permitholders that

[6] EPA. 2017 CGP Fact Sheet. Available at: https://www.epa.gov/sites/production/files/2019-05/documents/final_2017_cgpfact_sheet.pdf

construction operators are not generally changing their practices regarding the amount of total land disturbance occurring at one time in response to the 5-acre disturbance threshold. According to those providing feedback to EPA, construction operators frequently do not find it cost-effective to pay for the equipment necessary for clearing and grading large areas more than one time during a project. They also indicated that the five-acre disturbance threshold is too small of an area to incentivize construction companies to alter the amount of land that is disturbed at any one time. While phasing is a straightforward and effective method to limit areas exposed to erosion and sedimentation, the Agency is open to receiving feedback on appropriate ways to incentivize and accomplish this through the requirements of this permit. Therefore, EPA has included the following request for public comment in the proposed permit:

Request for Comment 4: EPA requests feedback on whether construction permittees have found the stabilization requirements that apply to sites disturbing more than 5 acres at a time to be an effective incentive to phase construction disturbances so that they are kept under 5 acres at any one time. If so, please elaborate on how this has changed your operational practices and how you have adapted to this requirement.

If you have not found the requirement to be effective in incentivizing the phasing of your construction projects so that no more than 5 acres are disturbed at any one time, please provide feedback on what, if any, alternative disturbance thresholds (e.g., 10 acres, 20 acres) and what, if any, corresponding permit requirements would be more effective at incentivizing a phased approach to disturbances.

EPA also requests specific comment on the relative merits of incorporating any of the following related state permit requirements as alternatives to the current CGP requirement:

- Require for all operators that no more than 10 acres of land be disturbed at any one time (areas that were disturbed but have been stabilized would not count towards the total);
- Same as previous, but allow for greater disturbances on a case-by-case basis where EPA provides authorization and additional conditions are met, such as requiring:
  - Inspections to be conducted more frequently (e.g., two times per week);
  - Stabilization of disturbed areas immediately where construction activity will cease for 7 days or longer; and/or

Identification and documentation in the SWPPP of the construction phases with a maximum amount of disturbance capped for each phase.

Exceptions to the Deadlines for Initiating and Completing Stabilization (Part 2.2.14.b)

EPA notes that with respect to the exception to the final stabilization criteria for restored agricultural areas, the permit retains the requirement from the 2017 CGP that areas disturbed that were not previously used for agricultural activities, and areas that are not being returned to preconstruction agricultural use, are not covered by the exception in Part 2.2.14.b.iii and must meet the conditions for stabilization.

EPA acknowledges that some portions of some projects are intended to be left unvegetated or unstabilized following construction. An example would be a dirt access road or a utility pole pad where the final plan calls for the area to remain a dirt road or an unstabilized pad. EPA does not expect temporary or permanent stabilization measures to be applied to these areas. EPA notes that for the purposes of this permit, "exposed portions of your site" means areas of exposed soil that are required to be stabilized.

Part 2.2.14.b of the permit includes exceptions to the permit's default stabilization deadlines for arid, semi-arid, and drought-stricken areas. EPA notes that it has included

suggested references for construction operators to use to help determine if they are located in an arid or semi-arid area, and may therefore be eligible for the alternative stabilization timeframes that apply in those areas. These references are included in Appendix A of the proposed permit in the definitions of "arid area" and "semi-arid area."

EPA notes that it has included a definition in Appendix A for what the permit considers to be the "seasonally dry period" for arid, semi-arid, and drought-stricken areas. See detailed discussion in Section VI related to the changes to Part 4.4.2, as well as the seasonally dry period definition in Appendix A.

EPA incorporates by reference the discussion in the 2012 CGP fact sheet concerning the unmodified portion of these requirements. See section VII.2 "Stabilization Requirements (Part 2.2)" on pages 76 through 82 of the 2012 CGP fact sheet, available at https://www.epa.gov/sites/production/files/2017-07/documents/2012_construction_general_permit_factsheet.pdf.

Part 2.3: Pollution Prevention Requirements

Part 2.3 implements the C&D rule requirements in 40 CFR 450.21(d) and (e) for pollution prevention measures and prohibited discharges.

Part 2.3	Permit Requirements
You must implement pollution prevention controls in accordance with the following requirements to minimize the discharge of pollutants in stormwater and to prevent the discharge of pollutants from spilled or leaked materials from construction activities.	

Part 2.3.1: Equipment and Vehicle Fueling and Maintenance Requirements

Part 2.3.1 implements the 40 CFR 450.21(d)(3) requirement to "minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures" and the 40 CFR 450.21(e)(3) requirement prohibiting the discharge of "fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance."

Part 2.3.1	Permit Requirements

a. Provide an effective means of eliminating the discharge of spilled or leaked chemicals, including fuels and oils, from these activities;[40~~37~~]

b. If applicable, comply with the Spill Prevention Control and Countermeasures (SPCC) requirements in 40 CFR part 112 and Section 311 of the CWA;

c. Ensure adequate supplies are available at all times to handle spills, leaks, and disposal of used liquids;

d. Use drip pans and absorbents under or around leaky vehicles;

e. Dispose of or recycle oil and oily wastes in accordance with other federal, state, tribal, or local requirements; and

f. Clean up spills or contaminated surfaces immediately, using dry clean up measures (do not clean contaminated surfaces by hosing the area down), and eliminate the source of the spill to prevent a discharge or a continuation of an ongoing discharge.

[40~~37~~] Examples of effective means include:

- Locating activities away from waters of the U.S. and stormwater inlets or conveyances so that stormwater coming into contact with these activities cannot reach waters of the U.S.;

- Providing secondary containment (e.g., *spill berms, ~~decks~~ dikes, spill containment pallets*) and cover where appropriate; and
- Having a spill kit available on site and ensuring personnel are available to respond expeditiously in the event of a leak or spill.

Examples of effective means of eliminating the discharge of spilled or leaked chemicals include, but are not limited to, locating activities away from waters of the U.S. and stormwater inlets or conveyances so that stormwater coming into contact with these activities cannot reach waters of the U.S.; providing secondary containment (e.g., spill berms, decks, spill containment pallets) and cover where appropriate; and having a spill kit available on site and ensuring personnel are available to respond expeditiously in the event of a leak or spill.

Part 2.3.2: Equipment and Vehicle Washing Requirements

Part 2.3.2 implements the 40 CFR 450.21(d)(1) requirement to "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."

Part 2.3.2	Permit Requirements

a. Provide an effective means of minimizing the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other types of wash waters;[41~~38~~]

b. Ensure there is no discharge of soaps, solvents, or detergents in equipment and vehicle wash water; and

c. For storage of soaps, detergents, or solvents, provide either (1) cover (e.g., plastic sheeting, temporary roofs) to minimize the exposure of these detergents to precipitation and to stormwater, or (2) a similarly effective means designed to minimize the discharge of pollutants from these areas.

[41~~38~~] Examples of effective means include locating activities away from waters of the U.S. and stormwater inlets or conveyances and directing wash waters to a sediment basin or sediment trap, using filtration devices, such as filter bags or sand filters, or using other similarly effective controls.

The requirement that operators must properly manage wash waters reduces the discharge of pollutants, such as sediment and other pollutants, from the site. Examples provided in the permit for providing an effective means of minimizing the discharge of pollutants from the washing of equipment or vehicles include, but are not limited to, locating activities away from surface waters and stormwater inlets or conveyances and directing wash waters to a sediment basin or sediment trap, using filtration devices, such as filter bags or sand filters, or using other similarly effective controls. This requirement also implements the 40 CFR 450.21(e)(4) prohibition against discharging soaps or solvents, and is consistent with the eligibility condition that allows the use of non-stormwater wash waters as long as they do not contain soaps, solvents, or detergents.

Part 2.3.3: Storage, Handling, and Disposal Requirements

Part 2.3.3 requires operators to comply with specific pollution prevention standards for activities that may result in pollutant discharges.

Part 2.3.3	Permit Requirements

a. *For building materials and building products,*[42~~39~~] provide either (1) cover (e.g., *plastic sheeting, temporary roofs*) to minimize the exposure of these products to precipitation and to stormwater, or (2) a similarly effective means designed to minimize the discharge of pollutants from these areas.

Minimization of exposure is not required in cases where the exposure to precipitation and to stormwater will not result in a discharge of pollutants, or where exposure of a specific material or product poses little risk of stormwater contamination (such as final products and materials intended for outdoor use).

b. *For pesticides, herbicides, insecticides, fertilizers, and landscape materials:*

i. In storage areas, provide either (1) cover (e.g., plastic sheeting, temporary roofs) to minimize the exposure of these chemicals to precipitation and to stormwater, or (2) a similarly effective means designed to minimize the discharge of pollutants from these areas; and

ii. Comply with all application and disposal requirements included on the registered pesticide, herbicide, insecticide, and fertilizer label (see also Part 2.3.5).

c. *For diesel fuel, oil, hydraulic fluids, other petroleum products, and other chemicals:*

i. ~~Store chemicals in water-tight containers, and provide either (1) cover (e.g., plastic sheeting, temporary roofs) to minimize the exposure of these containers to precipitation and to stormwater, or (2) a similarly effective means designed to minimize the discharge of pollutants from these areas (e.g., having a spill kit available on site and ensuring personnel are available to respond expeditiously in the event of a leak or spill), or provide secondary containment (e.g., spill berms, decks, spill containment pallets); and~~ If the total volume on site is 55 gallons or less:

(a) Store chemicals in water-tight containers;

(b) If stored outside, use a spill containment pallet or similar device to capture small leaks or spills; and

(c) Have a spill kit available on site that is in good working condition (i.e., not damaged, expired, or used up) and ensure personnel are available to respond expeditiously in the event of a leak or spill.

ii. If the total volume on site is more than 55 gallons:

(a) Store chemicals in water-tight containers;

(b) Store containers a minimum of 50 feet from waters of the U.S., drainage systems, and stormwater inlets;

(c) Provide either (1) cover (e.g., temporary roofs) to minimize the exposure of these containers to precipitation and to stormwater, or (2) secondary containment (e.g., curbing, spill berms, dikes, spill containment pallets); and

(d) Have a spill kit available on site that is in good working condition (i.e., not damaged, expired, or used up) and ensure personnel are available to respond expeditiously in the event of a leak or spill. Additional secondary containment measures are listed at 40 CFR § 112.7(c)(1).

iii. Clean up spills immediately, using dry clean-up methods where possible, and dispose of used materials properly. You are prohibited from hosing the area down to clean surfaces or spills. Eliminate the source of the spill to prevent a discharge or a furtherance of an ongoing discharge.

d. *For hazardous or toxic wastes:*~~43~~40

i. Separate hazardous or toxic waste from construction and domestic waste;

ii. Store waste in sealed containers, which are constructed of suitable materials to prevent leakage and corrosion, and which are labeled in accordance with

applicable Resource Conservation and Recovery Act (RCRA) requirements and all other applicable federal, state, tribal, or local requirements;

iii. Store all outside containers within appropriately-sized secondary containment (e.g., *spill berms, ~~decks~~ dikes, spill containment pallets*) to prevent spills from being discharged, or provide a similarly effective means designed to prevent the discharge of pollutants from these areas (e.g., storing chemicals in a covered area, having a spill kit available on site);

iv. Dispose of hazardous or toxic waste in accordance with the manufacturer's recommended method of disposal and in compliance with federal, state, tribal, and local requirements;

v. Clean up spills immediately, using dry clean-up methods, and dispose of used materials properly. You are prohibited from hosing the area down to clean surfaces or spills. Eliminate the source of the spill to prevent a discharge or a furtherance of an ongoing discharge; and

vi. Follow all other federal, state, tribal, and local requirements regarding hazardous or toxic waste.

e. *For construction and domestic wastes:*~~44~~41

i. Provide waste containers (e.g., *dumpster, trash receptacle*) of sufficient size and number to contain construction and domestic wastes;

ii. For waste containers that have lids, k~~K~~eep waste container lids closed when not in use, and close lids at the end of the business day and during storm events ~~for those containers that are actively used throughout the day~~. For waste containers that do not have lids, provide either (1) cover (e.g., *a tarp, plastic sheeting, temporary roof*) to minimize exposure of wastes to precipitation, or (2) a similarly effective means designed to minimize the discharge of pollutants (e.g., *secondary containment*);

iii. On business days, clean up and dispose of waste in designated waste containers; and

iv. Clean up immediately if containers overflow.

f. *For sanitary waste*, position portable toilets so that they are secure and will not be tipped or knocked over, and so that they are located away from waters of the U.S. and stormwater inlets or conveyances.

~~42~~39 Examples of building materials and building products typically present at construction sites include asphalt sealants, copper flashing, roofing materials, adhesives, concrete admixtures, and gravel and mulch stockpiles.

~~43~~40 Examples of hazardous or toxic waste that may be present at construction sites include paints, caulks, sealants, fluorescent light ballasts, solvents, petroleum-based products, wood preservatives, additives, curing compounds, and acids.

~~44~~41 Examples of construction and domestic wastes include packaging materials, scrap construction materials, masonry products, timber, pipe and electrical cuttings, plastics, styrofoam, concrete, demolition debris; and other trash or building materials.

EPA incorporates by reference the discussion in the 2012 and 2017 CGP fact sheets concerning these requirements. See section VII.3.3 "Pollution Prevention Standards (Part 2.3.3)" on pages 83 through 87 of the 2012 CGP Fact Sheet (available here: https://www.epa.gov/sites/production/files/2017-07/documents/2012_construction_general_permit_factsheet.pdf) and the fact sheet discussion

for the same section on pages 48 through 49 of the 2017 Fact Sheet (available here: https://www.epa.gov/sites/production/files/2019-05/documents/final_2017_cgpfact_sheet.pdf).

EPA is proposing changes to the Part 2.3.3.c pollution prevention requirements for diesel fuel, oil, hydraulic fuels, or other petroleum products, and other chemicals. EPA received feedback from some permittees who suggested that it may make more sense in practice to require controls based on the volume of chemicals being used and stored on the site. According to this input, where there is a relatively small amount of these chemicals on site, the types of pollution prevention practices required should be ones that are more suitable to moving around the site and do not require either a roof structure or secondary containment. By comparison, where a larger amount of chemical is being used and stored on site, the types of practices required should reflect the potential increased risk from a spill of a larger size by requiring a roof or something as effective, or secondary containment. These stakeholders also recommended that any changes should be consistent with the Oil Pollution Prevention regulations at 40 CFR part 112.

EPA agrees that the requirements in this section could be improved by strengthening the linkage between the type of pollution prevention control needed and the volume of the pollutant kept on site. For instance, where smaller amounts of chemicals are kept on site, the controls used to prevent and treat a possible spill and leak should be able to be moved around the project site wherever the materials are being used or stored. Consistent with this principle, the proposed permit establishes control requirements that are appropriate for smaller-sized containers by requiring that the operator use water-tight containers, place them on a spill containment pallet (or similar device) if kept outside, and have available at all times a spill kit in good working condition and personnel available to respond quickly to a spill or leak. These controls will be effective at preventing a discharge from a spill or leak, while also having the added advantage of being able to be maneuvered more easily around the site.

By comparison, where larger amounts of chemicals will be present at the site, the proposed permit includes controls that are more geared to the storage of chemical material in a fixed location and that are effective at preventing pollution from a larger spill or leak that could pose a significantly higher risk to the receiving water. The proposed permit specifically requires the following for larger volumes of chemicals on site:

- Store containers a minimum of 50 feet from waters of the U.S., drainageways, or stormwater inlets;
- Provide either (1) cover (e.g., temporary roofs) to minimize the exposure of these containers to precipitation and to stormwater, or (2) secondary containment (e.g., curbing, spill berms, dikes, spill containment pallets); and
- Have a spill kit available on site that is in good working condition (i.e., not damaged, expired, or used up) and ensure personnel are available to respond expeditiously in the event of a leak or spill. Additional secondary containment measures are listed at 40 CFR § 112.7(c)(1).

Similar to the requirements for small chemical containers, the permit would also require water-tight containers be used.

The proposed requirements themselves are not materially different from those of the 2017 CGP. The main difference is that the requirements are reorganized so that the types of controls for small and large containers are appropriate for their relative risk and the controls needed to prevent and abate a spill or leak. EPA proposes that the threshold for determining which types of controls apply is whether or not the amount of chemicals on site is above or below 55 gallons. EPA chose 55 gallons as a threshold based on the 40 CFR part 112 Oil Pollution Prevention regulations, which uses this same volume for measuring the size of oil containers that require protection. Although the 55-gallon threshold is used in a different context in these regulations,

there is no direct corollary to the type of volume cutoff that EPA was looking to establish for the CGP. In the Oil Pollution Prevention regulatory context, 55 gallons is used to define the oil container size for determining if the site has more than 1,320 gallons of oil, in which case the regulatory requirements apply. Because EPA intends that the proposed cutoff volume in Part 2.3.3.c will be used to help determine whether the amount of oil or other chemical is relatively small or large at a construction site, EPA determined that use of the 55 gallon amount from 40 CFR part 112 offered a reasonable approach. EPA welcomes comments on the choice to propose 55 gallons as the volume threshold in the CGP for determining which types of pollution prevention practices are necessary.

EPA notes that the proposed 2022 CGP requirements do not replace the SPCC requirements if the construction site exceeds the thresholds established by the 40 CFR part 112 regulations.

A minor change is proposed to the pollution prevention measure requirements in Part 2.3.3.e for construction and domestic wastes. EPA learned from its outreach that permittees have been confused about what the precise requirement is for closing the lids of waste containers. To clarify the intent of this provision, EPA proposes to specify that where the waste container has a lid, it must be kept closed at the end of the business day and during storm events.

Relating to this same provision (Part 2.3.3.e), EPA also requests specific comment on a different issue brought to the Agency's attention by stakeholders.

Request for Comment 5: At the request of several stakeholders in the regulated community, EPA is considering additional flexibilities in how the Part 2.3.3e requirement applies to particular types of construction wastes. In response, EPA requests comment on whether there are some types of waste materials that may be stored on site prior to disposal or recycling without being subject to the Part 2.3.3e requirements because their storage outside without cover, secondary containment, or other stormwater controls will not result in the discharge of pollutants. For instance, representatives of the construction industry community have asked whether the same language that applies to building materials and products in Part 2.3.3a ("Minimization of exposure is not required in cases where the exposure to precipitation and to stormwater will not result in a discharge of pollutants, or where exposure of a specific material or product poses little risk of stormwater contamination (such as final products and materials intended for outdoor use)") could be applied to the waste remnant of materials such as wood/lumber, concrete blocks, rebar (reinforced steel), unused nuts and bolts, gravel or rock.

With respect to this request for comment, EPA asks for specific examples of the types of materials that the permit should treat in this way because they will not discharge pollutants and the relevant documentation that supports each commenter's position. If EPA were to modify the permit as requested, EPA asks for suggestions on how the permit should ensure that the storage of these materials at the site is kept separate from other waste materials that are expected to generate pollutants that could be discharged in stormwater.

Part 2.3.4: Applicator and Container Washing Requirements

Part 2.3.4 implements the requirements of 40 CFR 450.21(e)(1) and (e)(2). The requirements apply to the washing of applicators and containers used for stucco, paint, concrete, form release oils, curing compounds, or other materials.

Part 2.3.4	Permit Requirements

a. Direct wash water into a leak-proof container or leak-proof and lined pit designed so that no overflows can occur due to inadequate sizing or precipitation;

b. Handle washout or cleanout wastes as follows:

i. Do not dump liquid wastes in storm sewers or waters of the U.S.;

ii. Dispose of liquid wastes in accordance with applicable requirements in Part 2.3.3; and

iii. Remove and dispose of hardened concrete waste consistent with your handling of other construction wastes in Part 2.3.3; and

c. Locate any washout or cleanout activities as far away as possible from waters of the U.S. and stormwater inlets or conveyances, and, to the extent feasible, designate areas to be used for these activities and conduct such activities only in these areas.

Part 2.3.5: Fertilizer Application Requirements

The fertilizer discharge restrictions in Part 2.3.5 are included to prevent the discharge of nutrients in stormwater and to further implement the C&D rule requirement to "minimize the discharge of pollutants" at 40 CFR 450.21(d).

Part 2.3.5	Permit Requirements

a. Apply at a rate and in amounts consistent with manufacturer's specifications, or document in the SWPPP departures from the manufacturer specifications where appropriate in accordance with Part 7.2.6.b.ix;

b. Apply at the appropriate time of year for your location, and preferably timed to coincide as closely as possible to the period of maximum vegetation uptake and growth;

c. Avoid applying before heavy rains that could cause excess nutrients to be discharged;

d. Never apply to frozen ground;

e. Never apply to stormwater conveyance channels; and

f. Follow all other federal, state, tribal, and local requirements regarding fertilizer application.

EPA includes specific requirements to follow regarding fertilizer application, which are meant to minimize any potential discharge of excess or improperly applied fertilizers.

Part 2.3.6: Emergency Spill Notification

Part 2.3.6 prohibits the discharge of toxic or hazardous substances from a spill or other release and requires operators to comply with federal reporting requirements of 40 CFR Part 110, Part 117, and Part 302 in the event that a leak, spill, or other release contains a toxic or hazardous substance in an amount equal to or in excess of a reportable quantity.

Part 2.3.6	Permit Requirements
Discharges of toxic or hazardous substances from a spill or other release are prohibited, consistent with Part 1.3.5. Where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR part 110, 40 CFR part 117, or 40 CFR part 302 occurs during a 24-hour period, you must notify the National Response Center (NRC) at (800) 424-8802 or, in the Washington, DC metropolitan area, call (202) 267-2675 in accordance with the requirements of 40 CFR part	

110, 40 CFR part 117, and 40 CFR part 302 as soon as you have knowledge of the release. You must also, within seven (7) calendar days of knowledge of the release, provide a description of the release, the circumstances leading to the release, and the date of the release. State, tribal, or local requirements may necessitate additional reporting of spills or discharges to local emergency response, public health, or drinking water supply agencies.

Part 2.4: Construction Dewatering Requirements

Part 2.4 implements the C&D rule requirement that prohibits "discharges from dewatering activities, including discharges from dewatering of trenches and excavations" unless managed by "appropriate controls."

Part 2.4 (2.4.1 – 2.4.8)	Permit Requirements

Comply with the following requirements to minimize the discharge of pollutants in ground water or accumulated stormwater that is removed from excavations, trenches, foundations, vaults, or other similar points of accumulation, in accordance with Part 1.2.2.~~42~~

2.4.1 Route ~~Treat~~ dewatering water through a sediment control (e.g. sediment trap or basin, pumped water filter bag) ~~discharges with controls~~ designed to prevent discharges with visual turbidity ~~to minimize discharges of pollutants~~;[45]~~43~~

2.4.2 Do not discharge visible floating solids or foam;

2.4.3 Use an oil-water separator or suitable filtration device (such as a cartridge filter) that is designed to remove oil, grease, or other products if dewatering water is found to or expected to contain these materials. The discharge must not cause the formation of a visible sheen or visible hydrocarbon deposits on the bottom or shoreline of the receiving water;

2.4.4 To the extent feasible, use well-vegetated (e.g., grassy), upland areas of the site to infiltrate dewatering water before discharge. You are prohibited from using waters of the U.S. as part of the treatment area;

2.4.5 To prevent sediment discharges from causing erosion:

- **a.** Use stable, erosion-resistant surfaces (e.g., well-vegetated grassy areas, clean filter stone, geotextile underlayment) for the discharge from dewatering controls;
- **b.** Do not place dewatering controls, such as pumped water filter bags, on steep slopes (as defined in Appendix A); and
- **c.** At all points where dewatering water is discharged, comply with the velocity dissipation requirements of Part 2.2.11~~.~~. The discharge must not cause re-suspension of sediments upon discharge to the receiving water.

2.4.6 ~~With~~ For backwash water, either haul it away for disposal or return it to the beginning of the treatment process; ~~and~~

2.4.7 Replace and clean the filter media used in dewatering devices when the pressure differential equals or exceeds the manufacturer's specifications~~.~~; and

2.4.8 Comply with dewatering-specific inspection requirements in Part 4.

[45] For the purposes of this permit, visual turbidity refers to a sediment plume or other cloudiness in the water caused by sediment that can be identified by an observer.

The specific restrictions in Part 2.4 provide the permit's interpretation of what is meant by "appropriate controls" in the C&D rule. These specific requirements, in part, also implement the C&D rule requirements to control peak flowrates and total stormwater volume (40 CFR

450.21(a)(2)), to minimize sediment discharges (40 CFR 450.21(a)(5)), and to direct stormwater to vegetated areas (40 CFR 450.21(a)(6)). EPA is proposing updates to the technology-based requirements for construction dewatering activities to further clarify the meaning of "appropriate controls" under this general permit. Additional specificity is provided in terms of the types of pollutants that must be controlled in the discharge, and additional detail is provided on how erosion is to be minimized at the point of discharge. These changes are proposed as part of EPA's broader interest in addressing what it has found to be a lack of compliance at sites with controls that are inadequate or improperly installed and maintained, resulting in significant discharges of sediment and other pollutants to receiving waters.

Background to EPA's Increased Emphasis on Controlling Pollutants in Dewatering Discharges

Before discussing the individual, proposed changes to Part 2.4, this section provides further contextual background on the purpose of dewatering at construction sites, what pollutants are typically found in the water being removed, and the types of controls that construction operators can use to significantly minimize pollutant discharges.

Construction Dewatering Background

Dewatering, as regulated in Part 2.4 of the permit and defined in Appendix A, is the act of draining accumulated stormwater and/or ground water from excavations, foundations, vaults, trenches, and other similar points of accumulation. Short-term construction dewatering activities are typically conducted to remove water from construction sites. The presence of water in areas of construction activities is typically the result of either ground water or surface water intrusion, or stormwater from a precipitation event accumulating in the area and possibly commingling with ground water or surface water. Removal of this water from the construction site is often necessary for construction activities to commence or continue, including for equipment operation and maintaining the integrity of the structure being constructed.

Construction dewatering activities can include:

- In-stream dewatering: cofferdams, drill hole, or pylon development.
- Surface area dewatering: water pumped from disturbed surface areas (e.g., trenches, sumps, excavation pits, or other excavations associated with construction where sediment-laden ground water or surface water/storm inflow must be removed).
- Ground water dewatering: water discharged from well development, well pump tests, or pumping of ground water from a construction area. Common methods of ground water dewatering from a construction area include sumps and wells, generally described as follows:
  - Sumps: lowers ground water levels near the construction area. Dewatering using sumps consists of pumping ground water out of a lower collection point(s) typically gravity-fed by local ground water.
  - Wells: drilled wells, including bored/augured, driven, or jetted, which use vacuum or pumping to lower the ground water at greater depths than sumps. The two most common types of wells used for dewatering ground water are:
    - Wellpoints: small-diameter shallow wells which are connected via a header pipe. A pump creates a vacuum in the header pipe.
    - Deep Wells: larger-diameter holes, drilled relatively deep (typically greater than 10 feet), pumped by submersible electric pumps.

The frequency and duration of construction stormwater discharges can be highly variable and difficult to predict due to the erratic timing of storms and several factors, such as the amount, frequency, intensity, and duration of precipitation. By contrast, operators typically control dewatering discharges and determine when they occur, which can be either continuous or episodic, and are more similar to industrial wastewater discharges. Given the

high rate at which dewatered water may be discharged, if not properly controlled, discharges of sediment from dewatering activities can be elevated and exceed the permissible levels of sediment in stormwater discharges from the site. As discussed further below, the dewatered water can contain and transport pollutants at elevated levels, most notably sediment, into nearby waters and the concentrated flow of the pollutant discharge can erode the land over which the discharge flows if improperly controlled.

Types of Pollutants Present in Untreated Dewatering Water

Untreated water from construction dewatering activities may contain pollutants that, if discharged without being managed by appropriate controls, would likely exceed applicable water quality standards. Dewatering discharges may also contribute to erosion and scour thus leading to higher amounts of sedimentation if discharged without proper controls. The principal pollutant of concern associated with construction dewatering is sediment (e.g., suspended solids and turbidity). These discharges are often exposed to soil, rock, and man-made material that can create the potential for sediment to be present in these discharges. The sediment concentrations and turbidity in construction dewatering effluent can vary greatly depending upon project-specific factors such as soil type, topography, project type, time of year, extent of construction activity, implementation of controls, and location of the activity in relation to receiving waters. See figures 1 and 2, showing sites that are discharging dewatering water without adequate pollutant controls.

Figures 1 and 2. Photos depicting dewatering discharges from construction sites permitted under the 2017 CGP.

Photos courtesy of EPA.

Oil and grease may be present in dewatering discharges from pumping systems used for dewatering or from leaks and spills of fuel or hydraulic fluid from construction equipment. Other pollutants of concern associated with construction dewatering include metals, nutrients (i.e., nitrogen and phosphorus), pH, and total dissolved solids. Although these pollutants may occur naturally in ground water, they may be present at concentrations that exceed the applicable water quality standards. Dewatered ground water from a contaminated site may contain additional pollutants. EPA notes that it is proposing in Part 1.3.6 to prohibit discharges of dewatered ground water from contaminated sites.

Practices Used to Control Dewatering Pollutants Prior to Discharge

In some cases, dewatering discharges can be avoided or minimized by allowing the water to evaporate/infiltrate or by retaining the water and enabling solids to settle out on site for later construction use (e.g., dust control). Where the discharge cannot be avoided, a variety of controls can be used to remove sediment prior to discharge. Common controls to reduce sediment from dewatering discharges include sediment basins or sediment traps, sediment socks, dewatering tanks, tube settlers, weir tanks, filtration systems (e.g., bag or sand filters), passive treatment systems designed to remove sediment, and chemical treatment (e.g., coagulation, flocculation) in accordance with Part 2.2.13. Factors that operators may

consider when selecting the appropriate controls include, but are not limited to, pumping rate, depth and area of dewatering, depth to the ground water table, soil hydraulic conductivity, and soil particle sizes.

Operators may also need to employ additional controls downstream of dewatering controls to minimize erosion. Such controls may include vegetated buffers, check dams, riprap, and grouted riprap at outlets.

Prevalence of Permittee Noncompliance with CGP Dewatering Requirements

EPA has grown increasingly aware of the lack of compliance among construction sites with the 2017 CGP's dewatering discharge requirements. Direct observations during EPA-led inspections as well as complaints received from the public indicate that noncompliance with the Part 2.4 permit requirements is prevalent. Through inspections, EPA has found a number of sites that have failed to correctly install and maintain dewatering controls, or the controls were not designed effectively in the first place or were not appropriate for the particular dewatering discharge in question. The resulting sediment discharge from improperly controlled dewatering discharges has been significant and, in some cases, may have exceeded the level of sediment yield from stormwater discharges over the entire duration of the construction project.

This anecdotal information suggests that EPA revisit its dewatering permit requirements. Where EPA can clarify existing requirements to make sure they are clear to the permittee and specific enough to expect improved compliance, the Agency is of the view that it should take steps to do so. In light of these identified problems, EPA is proposing improvements to the dewatering requirements in the permit that consider the unique ability of the operator to control the rate of discharge and when dewatering starts and stops and to inspect the dewatering operation to identify problems and take immediate action to correct them.

Dewatering Requirements in State-Issued Permits

A growing number of states are including requirements in their CGPs that are more stringent or more specific than EPA's, and several have issued standalone NPDES general permits that are specifically focused on regulating dewatering discharges.

The following is a summary of the state-issued CGPs that include requirements that are different than EPA's:

- Vermont 2020 CGP[7] – Dewatering discharges must be inspected following each rainfall or snowmelt event. The permittee must develop a site-specific dewatering plan.
- Florida 2015 CGP[8] – The SWPPP must include a description of the BMPs used to treat dewatering discharges and documentation that the site is uncontaminated.

[7] State of Vermont Agency of Natural Resources Department of Environmental Conservation. National Pollutant Discharge Elimination System (NPDES) General Permit 3-9020 for Stormwater Runoff From Construction Sites. Available at: https://dec.vermont.gov/watershed/stormwater/permit-information-applications-fees/stormwater-construction-discharge-permits

[8] State of Florida Department of Environmental Protection. NPDES Generic Permit For Stormwater Discharge from Large and Small Construction Activities. Available at: https://floridadep.gov/water/stormwater/content/construction-activity-cgp

- South Dakota 2018 CGP[9] – Dewatering water that meets visual inspection standards and does not contain toxics or chemicals may be discharged. Total suspended solids (TSS) sampling and reporting is required if suspended solids are indicated by visual monitoring. Dewatering activities, including expected volume and a description of BMPs, must be included in the Notice of Intent (NOI).
- Arizona 2020 CGP[10] – Dewatering water that cannot be practicably eliminated may be discharged. Dewatering discharges must be treated with BMPs to manage sediment, chemicals, erosion, and chlorine. A separate dewatering permit is also used in Arizona.
- Nevada 2015 CGP[11] – Dewatered ground water that meets established de minimis standards and is managed with BMPs may be discharged once for up to 30 days. The discharge must be sampled to document compliance with effluent limits. A separate dewatering permit is also used in Nevada.

The following are features of the 12 standalone dewatering permits issued by or for states that are more specific than EPA's CGP requirements:

- EPA Region 1 2015 Dewatering Permit[12] (for Massachusetts and New Hampshire) – The discharge must meet effluent standards and monitoring requirements for flow, suspended solids, oil and grease, pH, chlorine, and toxicity. The permittee must use one or more of the listed BMPs to treat the dewatering discharge.
- New Jersey 2020 Short-Term De Minimis Permit[13] – Short-term discharges of dewatered ground water that meets established de minimis standards are covered. Dewatering discharges must be treated with BMPs to manage sediment, toxics, temperature, pH, erosion, solids, and odor. Discharges must meet effluent standards for volatile compounds, acid compounds, base/neutral compounds, pesticides, and metals. The permittee must conduct monitoring and sampling to document compliance.
- Colorado 2014 Construction Dewatering Permit[14] – The permittee must meet effluent standards for flow, suspended solids, oil and grease, pH, bacteria, and hydrocarbons. The permittee must conduct monitoring and sampling to document compliance and for state data collection.

[9] South Dakota Department of Environment and Natural Resources. General Permit Authorizing Stormwater Discharges Associated with Construction Activities Under the South Dakota Surface Water Discharge System. Available at: https://denr.sd.gov/des/sw/StormWaterandConstruction.aspx

[10] State of Arizona Department of Environmental Quality Water Quality Division. Arizona Pollutant Discharge Elimination System General Permit for Stormwater Discharges Associate with Construction Activity to Surface Waters. Available at: https://azdeq.gov/AZPDES/CGP

[11] State of Nevada Division of Environmental Protection. Permit for Stormwater Discharges Associated with Large Construction Activity, Small Construction Activity and Industrial Activity from Temporary Concrete, Asphalt and Material plants or Operations Dedicated to the Permitted Construction Project. Available at: https://ndep.nv.gov/water/water-pollution-control/permitting/stormwater-discharge-permits/construction-sites-greater-than-1-acre

[12] EPA. National Pollutant Discharge Elimination System (NPDES) General Permits for Dewatering Activity Discharges. Available at: https://www.epa.gov/npdes-permits/dewatering-general-permit-dgp-massachusetts-new-hampshire

[13] New Jersey Department of Environmental Protection. Master General Permit for Short-term De Minimis Discharges. Available at: https://www.nj.gov/dep/dwq/pdf/B7_Final_Permit.pdf

[14] Colorado Department of Public Health and Environment. CDPS Construction Dewatering Discharges to Discharge Under the Colorado Discharge Permit System. Available at: https://cdphe.colorado.gov/dewatering-general-permit-program

- Colorado 2020 Short-Term (<2 Year) Construction Dewatering Permit[15] – Dewatering water may be discharged to surface waters for up to two years. The permittee must meet effluent standards for flow, suspended solids, oil and grease, pH, bacteria, nutrients, and metals. Sampling for other various parameters, including per- and polyfluoroalkyl substances (PFAS), may be required. Requires monitoring and sampling to document compliance.
- Montana 2020 Construction Dewatering Permit[16] – The permittee must meet effluent standards for turbidity based on receiving water type. The permittee must meet effluent standards for oil and grease and chemicals based on discharge type. The permittee must develop a dewatering control plan that includes treatment BMPs and monitoring procedures.
- Utah 2020 Construction Dewatering and Hydrostatic Test Permit[17] – The permittee must meet effluent standards for oil and grease, pH, and suspended solids. The permittee must conduct monitoring for flow, oil and grease, and chlorine.
- Wyoming 2017 Construction Dewatering Permit[18] – Non-contaminated ground water may be discharged for less than twelve months. Dewatering discharges must be treated with BMPs to manage suspended solids, oil and grease, soaps, chemicals, non-biodegradable pollutants, solids, toxics, chlorine, and hydrocarbons. The permittee must meet effluent standards for pH, oil and grease, suspended solids, conductance, and turbidity. The permittee must conduct monitoring and sampling to document compliance.
- Arizona 2016 De Minimis Permit[19] – Subterranean dewatering water, including ground water in excavations, that meet the de minimis standards may be discharged. Permittees must monitor for flow, turbidity, and constituents of concern. A BMP plan, including identification of likely pollutants, a dechlorination plan, and description of BMP controls, is required.
- California Los Angeles Region 2013 Construction Dewatering Permit[20] – The permittee must evaluate the water source for water quality and pollutants. The permittee must meet effluent standards for each type of receiving water.

[15] Colorado Department of Public Health and Environment. Colorado Discharge Permit System (CDPS) General Permit COG0800000 for Discharges from Short-Term Construction Dewatering Activities. Available at: https://www.colorado.gov/pacific/cdphe/dewatering-general-permit-program

[16] Montana Department of Environmental Quality. General Permit for Construction Dewatering. Available at: http://deq.mt.gov/Water/permits/Discharges

[17] State of Utah Department of Environmental Quality Division of Water Quality. Authorization to Discharge Under the Utah Pollutant Discharge Elimination System (UPDES) General Permit for Construction Dewatering and Hydrostatic Testing. Available at: https://deq.utah.gov/water-quality/general-construction-storm-water-updes-permits

[18] Wyoming Department of Environmental Quality, Water Quality Division. General Permit for Temporary Discharge Involving Construction Activities. Available at: http://deq.wyoming.gov/wqd/storm-water-permitting/resources/construction-general-permits/

[19] State of Arizona Department of Environmental Quality Water Quality Division. Arizona Pollutant Discharge Elimination System General Permit for De Minimis Discharges to Waters of the U.S. Available at: https://azdeq.gov/node/686

[20] California Los Angeles Regional Water Quality Control Board. Order No. R4-2013-0095 General NPDES Permit No. CAG994004 for Discharges of Groundwater from Construction and Project Dewatering to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties. Available at: https://www.waterboards.ca.gov/water_issues/programs/npdes/general_permits.html

- Hawaii 2018 Construction Dewatering Permit[21] – The permittee must evaluate the water source for pollutants. The permittee must develop a site-specific dewatering plan that includes a description of equipment and treatment BMPs. The discharge, BMPs, and receiving waters must be inspected. The permittee must meet effluent standards for suspended solids, turbidity, oil and grease, pH, and toxic pollutants.
- Nevada 2012 DeMinimis Permit[22] – Dewatered ground water that meets established de minimis standards may be discharged. Permittees must meet effluent standards for flow, chlorine, methyl tert-butyl ether (MTBE), nutrients, hydrocarbons, pH, and metals.
- Alaska 2019 Excavation Dewatering Permit[23] – Dewatered water may be discharged to surface waters or land areas except in certain parks and reservations. The permittee must develop a BMP Plan, including a description of BMP controls. permittee must comply with procedures and monitoring for land application of discharged water. The permittee must meet effluent standards, visual monitoring, and sampling requirements.

EPA found these permits to offer a significant source of information on existing permit conditions for the Agency to consider. EPA considered the requirements in these existing permits when drafting many of the proposed changes to the technology-based requirements in Part 2.4, as well as the modifications to the inspection requirements in Part 4 and the corrective action requirements in Part 5. EPA specifies in this fact sheet where proposed permit requirements are similar to state permit conditions.

Proposed Modifications to Technology-Based Requirements for Dewatering Discharges

EPA is proposing modifications to the Part 2.4 requirements for dewatering discharges. EPA makes these changes in light of the findings described in the previous section.

The proposed 2022 CGP clarifies the requirements for treating dewatering water to prevent discharges with visual turbidity and prevent the formation of visible oil sheens or deposits. EPA proposes to define "visual turbidity" within the context of dewatering controls as "a sediment plume or other cloudiness in the water caused by sediment that can be identified by an observer." See Part 2.4.1.

The proposed 2022 CGP updates the requirement to comply with velocity dissipating measures at the point of the dewatering discharge to provide clarification of the intended goals (i.e., prevent erosion from sediment discharge and prohibit resuspension of sediments in the receiving water) and additional specificity regarding means and methods. The proposed requirements would require the use of stable, erosion-resistant surfaces at the discharge point and prohibit the placement of dewatering controls on steep slopes.

In developing the proposed changes to Part 2.4, EPA looked to the examples of dewatering requirements in other existing NPDES permits. EPA drew many of the proposed modified or new provisions from state-issued CGPs or standalone NPDES dewatering discharge permits. For instance, the proposed permit requires that "[t]he discharge must not cause the

[21] Hawaii Department of Health Clean Water Branch. NPDES General Permit Authorizing Discharges Associated With Construction Activity Dewatering. Available at: https://health.hawaii.gov/cwb/permitting/general-permits/

[22] State of Nevada Division of Environmental Protection. National Pollutant Discharge Elimination System Permit NVG20100. Available at: https://ndep.nv.gov/water/water-pollution-control/permitting/nevada-deminimis-discharge-program

[23] Alaska Department of Environmental Conservation. Alaska Pollutant Discharge Elimination System General Permit for Excavation Dewatering. Available at: https://dec.alaska.gov/water/wastewater/stormwater/dewater-hydrostatic

formation of visible sheen or visible hydrocarbon deposits on the bottom or shoreline of the receiving water." See Part 2.4.3. A number of permits include substantially similar language to EPA's proposed provision, including those issued by Alaska (Section 3.1.4 of their 2019 General Permit for Excavation Dewatering Permit),[24] Montana (Part II. A of their 2020 Construction Dewatering Permit),[25] Arizona (Part IV.B.6 of the 2016 General Permit for De Minimis Discharges to Waters of the U.S.),[26] Nevada (Section B.2.1.2 of their 2012 DeMinimis General Permit),[27] Wyoming (Section I.B.7.a.(14) of their 2017 General Permit for Temporary Discharge Involving Construction Activities),[28] New Jersey (Part 1.C.2.s of their 2020 Short-Term De Minimis Permit),[29] and South Dakota (Part 3.21.2 of their 2018 CGP).[30] Other state permits include provisions that require the operator to take further action if they observe a visible sheen in their discharge, which EPA further discusses in this fact sheet related to taking corrective actions in Part 5.1.5.

State permitting materials served as a resource for the proposed modifications to the dewatering requirements for erosion. The proposed additional specificity in Part 2.4.5 focuses on using stable, erosion-resistant surfaces and avoiding steep slopes similar to guidelines contained in the Pennsylvania Department of Environmental Protection's *Erosion and Sediment Pollution Control Program Manual*[31] (March 2012). See specifically page 54. Other manuals include similar recommendations, for instance see Idaho's *Dewatering Operations* page of the state's Best Management Practice Manual[32] (recommending placement of dewatering controls stabilized locations of the site to prevent erosion from the flow through water). Additionally, the proposal to further clarify the requirements relating to minimizing the erosive effects of the dewatering discharge (i.e., "The discharge must not cause re-suspension of sediments upon discharge to receiving water.") is similar to requirements in other state permits, such as the 2019 Alaska

[24] Alaska Department of Environmental Conservation. Alaska Pollutant Discharge Elimination System General Permit for Excavation Dewatering. Available at: https://dec.alaska.gov/water/wastewater/stormwater/dewater-hydrostatic

[25] Montana Department of Environmental Quality. General Permit for Construction Dewatering. Available at: http://deq.mt.gov/Water/permits/Discharges

[26] State of Arizona Department of Environmental Quality Water Quality Division. Arizona Pollutant Discharge Elimination System General Permit for De Minimis Discharges to Waters of the U.S. Available at: https://azdeq.gov/node/686

[27] State of Nevada Division of Environmental Protection. National Pollutant Discharge Elimination System Permit NVG20100. Available at: https://ndep.nv.gov/water/water-pollution-control/permitting/nevada-deminimis-discharge-program

[28] Wyoming Department of Environmental Quality, Water Quality Division. General Permit for Temporary Discharge Involving Construction Activities. Available at: http://deq.wyoming.gov/wqd/storm-water-permitting/resources/construction-general-permits/

[29] New Jersey Department of Environmental Protection. Master General Permit for Short-term De Minimis Discharges. Available at: https://www.nj.gov/dep/dwq/pdf/B7_Final_Permit.pdf

[30] South Dakota Department of Environment and Natural Resources. General Permit Authorizing Stormwater Discharges Associated with Construction Activities Under the South Dakota Surface Water Discharge System. Available at: https://denr.sd.gov/des/sw/StormWaterandConstruction.aspx

[31] Pennsylvania Department of Environmental Protection. *Erosion and Sediment Pollution Control Program Manual.* Available at: http://www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=4680

[32] Idaho Transportation Department Environmental Section. *Best Management Practices Manual.* Available at: https://apps.itd.idaho.gov/apps/env/BMP/PDF%20Files%20for%20BMP/Chapter%203/NS-2%20Dewatering%20Operations.pdf

General Permit for Excavation Dewatering Permit[33] (see Part 5.2.1) and the 2018 South Dakota CGP[34] (see Part 3.21.4).

Part 3: Water Quality-Based Effluent Limitations

This CGP includes water quality-based effluent limits (WQBELs) to control discharges as necessary to meet applicable water quality standards. The provisions of Part 3 constitute the WQBELs of the permit and supplement the permit's technology-based effluent limits in Part 2.

Part 3.1: General Effluent Limitation to Meet Applicable Water Quality Standards

Part 3.1 requires that all operators control their stormwater discharges as necessary to meet applicable water quality standards, consistent with 40 CFR 122.44(d)(1).

Part 3.1	Permit Requirements
Discharges must be controlled as necessary to meet applicable water quality standards. Discharges must also comply with any additional state or tribal requirements that are in Part 9. In the absence of information demonstrating otherwise, EPA expects that compliance with the conditions in this permit will result in stormwater discharges being controlled as necessary to meet applicable water quality standards. If at any time you become aware, or EPA determines, that discharges are not being controlled as necessary to meet applicable water quality standards, you must take corrective action as required in Parts 5.1 and 5.2, and document the corrective actions as required in Part 5.4. EPA may insist that you install additional controls (to meet the narrative water quality-based effluent limit above) on a site-specific basis, or require you to obtain coverage under an individual permit, if information in your NOI or from other sources indicates that your discharges are not controlled as necessary to meet applicable water quality standards. This includes situations where additional controls are necessary to comply with a wasteload allocation in an EPA-established or approved TMDL. If during your coverage under a previous permit, you were required to install and maintain stormwater controls specifically to meet the assumptions and requirements of an EPA-approved or established TMDL (for any parameter) or to otherwise control your discharge to meet water quality standards, you must continue to implement such controls as part of your coverage under this permit.	

To support EPA's expectation that compliance with the conditions and effluent limitations in this permit will result in discharges that meet applicable water quality standards, the permit includes additional water quality-based effluent limitations. EPA expects these WQBELs, in combination with the technology-based effluent limits in Part 2 and the rest of the provisions in the CGP, to be as stringent as necessary to control discharges so that they achieve water quality standards. The additional WQBELs apply to discharges from construction sites that would otherwise be more likely to exceed applicable water quality standards, such as when a waterbody is impaired for sediment or nutrients, which are parameters associated with stormwater discharges from construction sites. The fact sheet discusses these additional requirements below for Part 3.2.

[33] Alaska Department of Environmental Conservation. Alaska Pollutant Discharge Elimination System General Permit for Excavation Dewatering. Available at: https://dec.alaska.gov/water/wastewater/stormwater/dewater-hydrostatic

[34] Alaska Department of Environmental Conservation. Alaska Pollutant Discharge Elimination System General Permit for Excavation Dewatering. Available at: https://dec.alaska.gov/water/wastewater/stormwater/dewater-hydrostatic

Part 3.2: Water Quality-Based Conditions for Sites Discharging to Sensitive Waters

Part 3.2 informs operators that the requirements in Parts 4.3 and 2.2.14.a.iii apply if the operator discharges to a water impaired for sediment or a sediment-related parameter, and/or nutrients, or to a water that is identified by the state, tribe, or EPA as Tier 2, Tier 2.5, or Tier 3 for antidegradation purposes.

Part 3.2	Permit Requirements

For any portion of the site that discharges to a sediment or nutrient-impaired water or to a water that is identified by your state, tribe, or EPA as Tier 2, Tier 2.5, or Tier 3 for antidegradation purposes, you must comply with the inspection frequency specified in Part 4.3 and you must comply with the stabilization deadline specified in Part 2.2.14.b~~a~~.iii.(c).[47~~45~~]

If you discharge to a water that is impaired for a parameter other than a sediment-related parameter or nutrients, EPA will inform you if any additional controls are necessary for your discharge to be controlled as necessary to meet water quality standards, including for it to be consistent with the assumptions of any available wasteload allocation in any applicable TMDL, or if coverage under an individual permit is necessary.

In addition, on a case-by-case basis, EPA may notify operators of new sites or operators of existing sites with increased discharges that additional analyses, stormwater controls, and/or other measures are necessary to comply with the applicable antidegradation requirements, or notify you that an individual permit application is necessary.

If you discharge to a water that is impaired for polychlorinated biphenyls (PCBs) and are engaging in demolition of any structure with at least 10,000 square feet of floor space built or renovated before January 1, 1980, you must:

a. Implement controls[48~~46~~] to minimize the exposure of PCB-containing building materials, including paint, caulk, and pre-1980 fluorescent lighting fixtures, to precipitation and to stormwater; and

b. Ensure that disposal of such materials is performed in compliance with applicable state, federal, and local laws.

[47~~45~~] If you qualify for any of the reduced inspection frequencies in Part 4.4, you may conduct inspections in accordance with Part 4.4 for any portion of your site that discharges to a sensitive water.

[48~~46~~] Examples of controls to minimize exposure of PCBs to precipitation and stormwater include separating work areas from non-work areas and selecting appropriate personal protective equipment and tools, constructing a containment area so that all dust or debris generated by the work remains within the protected area, and using tools that minimize dust and heat (<212°F). For additional information, refer to Part 2.3.3 of the CGP Fact Sheet.

Requirements for Discharges to Sensitive Waters

The permit explains what is meant by discharges to "impaired waters" or discharges to Tier 2, 2.5, or 3 waters as follows:

> "Impaired waters" are those waters identified by the state, tribe, or EPA as not meeting an applicable water quality standard and (1) requires development of a TMDL (pursuant to section 303(d) of the CWA; or (2) is addressed by an EPA-approved or established TMDL; or (3) is not in either of the above categories but the waterbody is covered by a pollution control program that meets the requirements of 40 CFR 130.7(b)(1). Your construction site will be considered to discharge to an impaired water if the first water of the U.S. to which you discharge is an impaired water for the pollutants contained in the discharge from your site. For discharges that enter a storm sewer system prior to discharge, the

first water of the U.S. to which you discharge is the waterbody that receives the stormwater discharge from the storm sewer system. For assistance in determining whether your site discharges to impaired waters, EPA has developed a tool that is available both within the electronic NOI form in NeT, and at https://water.epa.gov/polwaste/npdes/stormwater/discharge.cfm.

Tiers 2, 2.5 and 3 refer to waters either identified by the state as high quality waters or Outstanding National Resource Waters under 40 CFR 131.12(a)(2) and (3). For the purposes of this permit, you are considered to discharge to a Tier 2, Tier 2.5, or Tier 3 water if the first water of the U.S. to which you discharge is identified by a state, tribe, or EPA as Tier 2, Tier 2.5, or Tier 3. For discharges that enter a storm sewer system prior to discharge, the water of the U.S. to which you discharge is the first water of the U.S. that receives the stormwater discharge from the storm sewer system. See list of Tier 2, Tier 2.5, and Tier 3 waters in Appendix F.

EPA may determine on a case-by-case basis that a site discharges to a sensitive water.

EPA explained the rationale for the more stringent impaired waters requirements in the 2012 CGP fact sheet, available at https://www.epa.gov/sites/production/files/2015-10/documents/cgp2012_finalfactsheet.pdf, as follows:

Frequency of Site Inspections. … It is EPA's judgment that these modified inspection requirements will enhance the operator's ability to find and correct problems before a discharge of pollutants to the impaired water occurs.

Deadline to Complete Stabilization. … It is EPA judgment that, in waters already degraded for pollutants associated with construction activities, further reducing the amount of time that exposed soil is left in an unstabilized state is especially important for limiting the sediment and/or nutrient load to these waters. The faster stabilization requirement for areas discharging to sediment and nutrient-impaired waters is designed to minimize the erosion and sedimentation that is associated with large, exposed areas.

EPA specifically anticipated that a stricter stabilization timeframe would be within the permitting authority's discretion in implementing the 40 CFR 450.21(b) requirement of the C&D rule. In the preamble to the C&D rule, EPA explained that "the permitting authority may determine it necessary for operators to initiate soil stabilization measures when construction activity has permanently or temporarily ceased and will not resume for a period exceeding 7 calendar days, as opposed to 14 calendar days ….".

EPA explained the rationale for the more stringent requirements for Tier 2, 2.5, and 3-designated waters in the 2012 CGP fact sheet as follows:

As stated in Part 3.1 of the [2012] permit, in the absence of information demonstrating otherwise, EPA expects that compliance with the conditions in this permit will result in stormwater discharges being controlled as necessary to meet applicable water quality standards (which include state antidegradation requirements). More specifically, by imposing on operators that discharge to Tier 2, Tier 2.5, or Tier 3 waters the requirement to comply with the additional requirements, on top of the permit's other effluent limits and conditions, to stabilize exposed areas faster and to conduct more site inspections than other sites, It is EPA's judgment that authorizing these discharges will not result in a lowering of water quality. Thus, EPA has determined that compliance with the CGP generally will be sufficient to satisfy Tier 2 (or 2.5) and Tier 3 antidegradation

requirements because the controls will not result in a lowering of water quality, making individualized Tier 2 or Tier 3 review unnecessary, assuming of course that the discharger is in compliance with any other applicable state or tribal antidegradation conditions that are included in Part 9 of the permit. Furthermore, the controls in the permit are sufficiently stringent that they would generally satisfy the requirement at the heart of Tier 2 review, that the discharge is necessary to accommodate important economic or social development in the area where the discharge is located. Construction is usually important to economic and social development, and the controls already required in Part 2 of this permit have been identified by EPA in its effluent limitations guideline for the construction and development category as the level of pollutant abatement that is the best available technology economically achievable. However, in cases where information submitted with the NOI, or available from other sources, indicates that further Tier 2 or Tier 3 review and/or conditions are necessary either for a new project or an existing project with a significantly increased discharge, EPA will conduct this review and require any appropriate additional controls.

The conclusion that compliance with the CGP will generally meet the Tier 2 and Tier 3 antidegradation requirements depends on several key aspects of the permit. First, all construction sites that will be subject to this permit must meet the stringent general effluent limits set out in Part 2. Through compliance with these limits alone, EPA expects that the discharge of pollutants will be reduced and/or eliminated so that there should not be a lowering of water quality. EPA bases this conclusion in part on the fact that the limits in this permit are based on the nationally-developed effluent limitations guidelines process that defined the BAT/BCT/BPT and NSPS level of control. EPA also is imposing on these sites the requirement to meet even more stringent controls defined in 4.1.3 [of the 2012 CGP] (more frequent inspections) and 2.2.1.3c [of the 2012 CGP] (stricter stabilization deadlines). Furthermore, once installed and implemented, the operator is obligated to maintain these controls and to correct deficiencies where inspection determines that deficiencies exist. Where EPA determines through its oversight activities (e.g., onsite inspection) that a discharger is not meeting its limits, such a deficiency will constitute a violation of the permit and will require follow-up corrective action pursuant to Part 5.2.1.3 [of the 2012 CGP].

Second, there may very well be individual cases where EPA determines that further controls are necessary or that coverage under the CGP is no longer appropriate to protect the Tier 2, 2.5, or 3 status of the receiving water. For this reason, EPA has included the following language in Part 3.3.2 [of the 2012 CGP]: "on a case-by-case basis, EPA may notify operators of such new projects or operators of existing projects with significantly increased discharges that additional analyses, stormwater controls, or other permit conditions are necessary to comply with the applicable antidegradation requirements, or notify you that an individual permit application is necessary in accordance with Part 1.4.5 [of the 2012 CGP]." It is anticipated that if EPA decides to require a Tier 2 or Tier 3 review for a particular new project or an existing project with a significantly increased discharge, EPA may either change the terms of coverage or terminate CGP coverage and require an individual permit.

Part 3.2 also clarifies that operators will be informed if any additional controls are necessary for the discharge to be consistent with the assumptions of any available wasteload allocation in a TMDL. These provisions are intended to implement the requirements of 40 CFR 122.44(d)(1)(vii)(B), which requires that water quality-based effluent limits in permits be "consistent with the assumptions and requirements of any available wasteload allocation for the

discharge" and of 40 CFR 122.4(i), which contains requirements regarding the issuance of permits for new sources.

Part 3.2 also clarifies when discharges from construction sites are discharging to an impaired water. EPA added such clarification due to uncertainty among the regulated community as to how to determine whether a site discharges to an impaired water.

Discharges to PCB-Impaired Waters

Part 3.2 maintains the 2017 CGP requirement for operators discharging to waters impaired for polychlorinated biphenyls (PCBs) to implement controls to minimize the exposure of building materials containing polychlorinated biphenyls-(PCBs) to precipitation and stormwater during demolition of any structure with at least 10,000 square feet of floor space built or renovated before January 1, 1980. Buildings and structures originating or remodeled between the years of 1950-1979 often contain polychlorinated biphenyls (PCBs) in materials such as caulk and paint. Without proper controls, the demolition of such structures can cause PCBs to be released into the environment and discharged into waters of the U.S. during storm events. To address this concern, Part 3.2 requires controls to be implemented to minimize exposure of building materials containing PCBs to precipitation and stormwater, and to ensure that such materials are disposed in compliance with applicable state, federal, and local laws. The requirement is limited to the demolition of buildings or structures with at least 10,000 square feet of floor space built or renovated before January 1, 1980 on sites that discharge to PCB-impaired waters. This requirement helps to ensure that authorized discharges will meet WQS.

The presence of PCBs in certain building components, especially in caulk and fluorescent light bulbs, has been a focus of EPA's research over the past several years. The following is a summary of the findings from EPA studies establishing the presence of PCBs in building materials, particularly in school buildings:

- Caulk put in place between 1950 and 1979 may contain as much as 40 percent PCBs and can emit PCBs into the surrounding air. PCBs from caulk may also contaminate adjacent materials such as masonry or wood.
- Fluorescent lighting fixtures that still contain their original PCB-containing light ballasts have exceeded their designed lifespan, and the chance for rupture and emitting PCBs is significant. Sudden rupture of PCB-containing light ballasts may result in exposure to the occupants and may also result in the addition of significant clean-up costs.
- Some building materials (e.g., paint and masonry walls) and indoor dust can absorb PCB emissions and become potential secondary sources for PCBs. When the primary PCB-emitting sources are removed, the secondary sources often emit PCBs.

See EPA's webpage, *Polychlorinated Biphenyls (PCBs) in Building Materials*, located at https://www.epa.gov/pcbs/polychlorinated-biphenyls-pcbs-building-materials, for more information.

Releases of PCBs into the environment from building materials containing PCBs has also been well studied in certain regions of the country. In Washington State, stormwater was identified as the largest delivery pathway to surface waters for PCBs. Washington's "PCB Chemical Action Plan" identifies PCBs in caulk and paint as the second largest source of PCBs, accounting for 87 metric tons of PCBs in WA, with 160 kg/yr. released to the environment.[35] The Plan states that "Releases from building materials can be greatly accelerated during remodeling

[35] 2015. PCB Chemical Action Plan. Washington State Department of Ecology. https://fortress.wa.gov/ecy/publications/SummaryPages/1507002.html

and demolition. There is an opportunity, through use of best management practices, to prevent releases of PCBs during remodeling and demolition."

Another Washington State Department of Ecology report, focusing on the Puget Sound Basin,[36] estimates 59 metric tons of PCBs are in building sealants in that area with about 110 kg released annually. This is likely an underestimate because the report did not consider all uses in buildings, e.g., windows, uses in residential buildings, or in other structures, such as bridges and sidewalks.

Building materials and caulk were also found to be potential sources of PCBs at both the Lower Duwamish Waterway[37] and Commencement Bay/Nearshore Tideflats Superfund sites in Washington State. The Rainier Commons building, currently a Toxic Substances Control Act (TSCA) cleanup site, was found to contain high concentrations of PCBs in caulk and paint that entered the stormwater system via catch basins on site. This system drains to the Lower Duwamish Waterway cleanup area. Elevated concentrations of PCBs in roadway caulk were found during source tracing by the City of Tacoma in response to the re-contamination of the Thea Foss Waterway in Commencement Bay.[38]

Releases of PCBs into the environment from PCB-containing building materials have also been well studied in the San Francisco Bay region. The San Francisco Bay Regional Water Quality Control Board found that "of the sources to the Bay, stormwater runoff contributes the greatest mass of PCBs."[39] A study of buildings within greater San Francisco Bay region found PCBs in 88% of the caulk samples tested; 40% of the samples contained >50 ppm PCBs, and 20% > 10,000 ppm PCBs.[40] Data suggest a correlation between PCB levels observed in the water with construction activity. Based on these studies, the San Francisco Bay Regional Water Quality Control Board stated that controlling demolition of buildings containing PCBs could significantly reduce the loading of PCBs in their stormwater.

EPA purposefully limits this requirement to apply to sites that discharge to waters with known impairments for PCBs. Over 4,500 water bodies are currently listed in the PCB-polluted category, making this the sixth-highest water pollution cause nationwide.[41] This includes 81,610 miles of rivers and streams, 3,204,534 acres of lakes and ponds, and 400,094 square miles of bays and estuaries that are impaired for PCBs.[42]

EPA added a new question on the 2017 CGP NOI form asking about the prevalence of demolition of a structure with at least 10,000 square feet of floor space that was built or

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[36] 2011. Control of Toxic Chemicals in Puget Sound Phase 3: Primary Sources of Selected Toxic Chemicals and Quantities Released in the Puget Sound Basin. Ecology Publication No. 11-03-024. https://fortress.wa.gov/ecy/publications/documents/1103024.pdf

[37] 2011 Lower Duwamish Waterway Survey of Potential PCB-Containing Building Material Sources. Prepared for Ecology. https://fortress.wa.gov/ecy/gsp/DocViewer.ashx?did=41052

[38] 2015. *Thea Foss and Wheeler-Osgood Waterways 2014 Source Control and Water Year 2014 Stormwater Monitoring Report*, City of Tacoma. Section 2.1.3. http://cms.cityoftacoma.org/enviro/SurfaceWater/SourceControlWYRpt/Report.pdf

[39] 2013. San Francisco Bay Regional Water Quality Control Board. San Francisco Bay PCBs TMDL – Implementation at Cleanup Sites. http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/sfbaypcbs/SF%20Bay%20PCBs%20TMDL%20-%20Considerations%20for%20Cleanup%20Sites%20September%205%202013.pdf

[40] ibid, p. 3.

[41] Summaries of Water Pollution Reporting Categories, ATTAINS parent cause category summaries, adapted from doc. no. EPA841-R-12-104, October 2012.

[42] National Causes of Impairment, Size of Assessed Waters with Listed Causes of Impairment, available at https://ofmpub.epa.gov/waters10/attains_nation_cy.control#causes

renovated before January 1, 1980. Based on an analysis of NOIs submitted following the issuance of the 2017 CGP, there were 1,853 NOIs (out of a total of 22,184 NOIs submitted, or 8.4 percent) that indicated construction would involve demolition of structures that were built or renovated before January 1, 1980, and there were 599 of these NOIs (out of a total of 22,184 NOIs submitted, or 2.7 percent) that indicated the demolition would involve structures with at least 10,000 square feet of floor space. In EPA's view, this number of NOIs that meet the criteria in Part 3.2 for additional requirements is relatively small. At this time, EPA does not see the need to modify the 2017 CGP provision based on the number of projects affected, but continues to view these water quality-based requirements as playing an important role in providing additional protections for water quality.

There are a variety of controls that can be implemented to minimize the potential discharge of PCBs from demolition activities, and can also be effective in controlling the release of other hazardous substances like asbestos and lead-paint. The following examples provide guidance for operators in selecting the site-specific controls to meet this requirement in Part 3.2. These examples are not required or exhaustive. Operators have flexibility in selecting the specific controls they will implement to meet this requirement in Part 3.2, but must ensure that such controls minimize exposure of building materials to precipitation and stormwater, and ensure that such materials are properly disposed. Operators must also document the selected controls in the SWPPP.

- Separate work areas from non-work areas and select appropriate personal protective equipment and tools.
- Construct a containment area so that all dust or debris generated by the work remains within the protected area.
    - Apply plastic sheeting to the floor, ground, or other applicable surfaces to prevent contamination of the building interior or exterior from dust generated by the work.
    - Put all necessary tools and supplies on the protective sheeting in the work area before you begin work to avoid stepping off the protective sheeting before the work is complete.
    - Construct a decontamination area outside of the work area by placing heavy plastic sheeting on the ground. Use this area for removing personal protective equipment and for cleaning equipment used in the enclosure.
        - Every time you leave the plastic sheeting, remove disposable shoe covers, and wipe or vacuum shoes, especially, the soles, before stepping off the plastic sheeting. A large disposable tack pad on the floor can help to clean the soles of shoes.
        - Remove or vacuum off Tyvek suits when exiting the work area so the dust stays inside the work area.
- For locations where a containment area cannot be constructed, consider the following techniques:
    - Cover the ground and plants with heavy plastic sheeting to catch debris. The covering should extend at least ten feet out from the building. Secure the covering to the exterior wall with a wood strip and staples, or tape.
    - Seal off any vents or air exchange systems into the building that are located within the work area.
    - Move or cover any play areas within 20 feet of the work area.
    - To prevent debris from falling beyond the ten-foot covering when working on the second story or above, extend the sheeting farther out from the base of the building and to each side of the area where materials are being disturbed.

  - To prevent the spread of debris when work is close to a sidewalk, street, or property boundary, or the building is more than three stories high, scaffolding sides should be covered in plastic.
  - Avoid working in high winds. Otherwise, take special precautions to keep the work area contained when the wind is strong enough to move dust and debris. For example, a wind screen can be constructed of plastic at the edge of the ground-cover plastic to keep dust and debris from migrating.
- For inside work, consider placing the containment area under negative air pressure and/or using high-efficiency particulate air (HEPA).
- Use tools that minimize dust and heat (<212°F). Detailed information on tools can be found at https://www3.epa.gov/epawaste/hazard/tsd/pcbs/pubs/caulk/guide/guide-appendix.htm.
  - When using electromechanical tools, use HEPA vacuum attachments to contain the dust generated.
  - Use wet sanders and misters to keep down the dust created during sanding, drilling, and cutting.
- Leave the work area clean at the end of every day and at the end of the project.
  - Daily activities include:
    - Pick up as you go. Put trash in heavy-duty plastic bags.
    - Vacuum the work area with a HEPA vacuum cleaner frequently during the day and at the end of the day.
    - Clean tools at the end of the day.
    - Dispose of or clean off personal protective equipment.
    - Properly dispose of wastewater produced during the job.
  - End of project activities include:
    - Make sure all trash and debris, including building components, are disposed of properly.
    - Vacuum any exposed surfaces, including walls and ceilings, with a HEPA vacuum cleaner.
    - Mist dusty sections of the plastic sheeting with water before taking them down to keep dust from becoming airborne again.
    - Remove plastic sheeting carefully, fold it with the dirty side in, tape it shut, and properly dispose of it.
    - Visually inspect the site to ensure that no dust or debris is present and re-clean the area thoroughly if you find dust or debris.

The following are also recommended practices for minimizing PCB exposure to workers, building occupants, and community members during demolition activities:

- Use site security measures to prevent access of unauthorized persons to the work areas until after the final cleanup. Examples of security measures include:
  - Lock fence gates or doors to the work areas during off hours.
  - Place signs, barrier tape and/or cones to keep all non-workers out of the work area. Signs should be in the primary languages of the occupants, and should say "Do Not Enter - Authorized Personnel Only" and "No Eating, Drinking, or Smoking."
  - Establish a system to identify authorized persons and any limitations to their approved activities.

  - Provide a means for approving all visitors to the work area; ensure trained site personnel accompany visitors at all times and provide them with appropriate personal protective equipment.
- Close windows and doors within 20 feet of the work area to keep dust and debris from getting into the building.
- Change out of work clothing before going home, and launder non-disposable protective clothing separately from family laundry.

Part 3.3: Water Quality-Based Conditions for Sites Discharging to Sensitive Waters from Construction Dewatering Activities

EPA is requesting comment on the potential establishment of monitoring requirements for sites discharging dewatering water to a sediment-impaired water or a water designated as a Tier 2, Tier 2.5, or Tier 3 water. Under consideration is a provision that, for affected sites, would require the operator to collect and analyze at least one turbidity sample from the discharge on each day dewatering discharges occur. Turbidity monitoring will provide operators with a baseline and comparable understanding of dewatering discharge quality, potential water quality problems, and dewatering control measure effectiveness. These data would supplement information provided through the daily inspections during dewatering activities proposed in Part 4.3.2 and allow EPA to review the pollutant concentrations in dewatering discharges.

Scope of Monitoring

The proposed monitoring requirements for dewatering, if included in the final permit, would be limited in scope to discharges to sediment-impaired waters and waters classified as Tier 2, 2.5, and 3 for antidegradation purposes.

Sediment is a major cause of impairment of the nation's waters. Excessive sediment can impair waterbody uses such as aquatic life, navigation, recreation, and sources of drinking water. The proposed monitoring requirements for dewatering discharges to sediment-impaired waters would help ensure that such discharges do not further contribute excess pollutants to waters that are impaired for sediment and that existing uses are maintained and protected.

The requirements would also apply to waters designated as a Tier 2, Tier 2.5, or Tier 3 water for antidegradation purposes. The federal antidegradation policy at 40 CFR 131.12 does not allow degradation of these waterbodies unless certain conditions are met. For high quality waters (i.e., Tier 2 and Tier 2.5 waters), degradation may only be allowed where necessary to accommodate important economic or social development purposes. For outstanding national resource waters (i.e., Tier 3 waters), only limited activities that result in temporary and short-term changes in the water quality may be permitted.

Based on an analysis of 2017 CGP NOI data, EPA estimates that 850 sites discharge to sensitive waters per year. See Section III of EPA's *Incremental Cost Analysis for the Proposed 2022 Construction General Permit*. This represents an estimated 28 percent of the projected annual number of permitted projects (3,080) under the 2022 CGP.

Specific Focus on Turbidity Monitoring

The specific parameter that would serve as the target of the dewatering monitoring, if included in the final permit, is turbidity. Turbidity is the measure of the scattering and absorption of light when it enters a water sample. The quantity of suspended particles in water helps to determine turbidity levels as do particle shape, size, and color distributions. Suspended particles can include clay, silt, colloids, finely divided organic and inorganic matter, soluble colored organic compounds, plankton, and other microscopic organisms. Turbidity levels are typically expressed in nephelometric turbidity units (NTUs). Higher NTU levels indicate more turbid water. See Table 2-1: Sediment and Turbidity Terminology, *Environmental Impact and Benefits*

Assessment for Final Effluent Guidelines and Standards for the Construction and Development Category (EPA, November 2009).

EPA is focusing on turbidity as the monitoring parameter from treated dewatering discharges for a number of reasons. First, the simplicity of measuring turbidity offers advantages over other sediment parameters such as total suspended solids and suspended sediment concentration. As EPA explained in its *Development Document for Final Effluent Guidelines and Standards for the Construction & Development Category* (November 2009), "Turbidity is a simple measurement that requires only the use of a turbidimeter and can be conducted in the field. Readings are made in nephelometric turbidity units or NTUs. Turbidity measurement does not require any sample preparation, other than shaking the sample bottle well before analysis. The sample is simply poured into a glass tube and placed inside the calibrated instrument. The result is read directly from the instrument. There are also a variety of digital turbidity probes, which can be coupled with a microprocessor controlled data logger and combination meter/data loggers available that can be used to automatically read and log turbidity values in-situ." Unlike other sediment parameters that require samples to be analyzed at a laboratory, turbidity can be measured and the results generated instantaneously. This offers advantages to the management of a dewatering discharge where elevated turbidity levels are found because the results are available in real time, and the operator will be able to take immediate action if necessary to temporarily shut off the discharge.

Second, turbidity levels in the aquatic environment, as well as sediment in general, have well-studied impacts on water quality and organisms. A variety of organisms, including aquatic plants, invertebrates, amphibians, and fish, are affected by elevated sediment and turbidity levels. High levels of sediment and turbidity affect aquatic ecosystems by reducing photosynthetic activity, reducing food availability, burying habitat, and directly harming organisms. Organisms may relocate, sicken, or die. Organism loss can alter the composition of the aquatic community. See p. 2-11 of *Environmental Impact and Benefits Assessment for Final Effluent Guidelines and Standards for the Construction and Development Category* (EPA, November 2009). For further discussion of the effects of sediment and turbidity on aquatic species and habitat, see generally Section 2.3 of the *Environmental Impact and Benefits Assessment*, cited above. Additionally, according to EPA's Assessment TMDL Tracking and Implementation System (ATTAINS), sediment and turbidity comprise a significant percentage of impaired waters in the United States. See Section 2.6 of the *Environmental Impact and Benefits Assessment*.

Third, turbidity can be an effective indicator of the effectiveness of treatment controls at construction sites. Turbidity is an indirect measurement of the amount of sediment present in water, therefore, reductions in turbidity in the discharge translate into reductions in sediment in the discharge. Dewatering controls can be highly effective in removing soil particles and other contributors to sediment from dewatering activities. If high turbidity levels are present in samples taken of dewatering discharges following treatment by sediment controls, this would be an indicator that the dewatering controls are not effectively controlling sediment in those discharges. Turbidity in discharges could also be an indicator of total organic nitrogen, phosphorus, zinc, iron, and manganese. See Environmental Impact and Benefits Assessment for the C&D Regulation (EPA, November 2009, p. 4-23) available at https://www.epa.gov/sites/production/files/2015-06/documents/cd_envir-benefits-assessment_2009.pdf.

Fourth, EPA found it compelling that five states have NPDES dewatering permits that already include requirements for the measurement of turbidity, while a few of these include turbidity discharge limitations. These states are Alaska, Hawaii, Montana, Nevada, and New Jersey. Each permit takes varying approaches to turbidity monitoring. For instance, Montana establishes different turbidity monitoring requirements based on the type of receiving water (i.e., Category A – Minimal impact, including discharges to ephemeral waterbodies and storm sewer

systems, dry intermittent waterbodies, and large rivers; Category B – discharge turbidity limited to prevent impact (most restrictive protection for any receiving waters including perennial and flowing intermittent rivers, lakes, reservoirs, wetlands); and Category C – Real-time turbidity demonstration (most flexible for longer projects or projects that may occur during periods with more turbid receiving water). Each waterbody category is assigned different turbidity limits and monitoring frequencies. See Part II.A.1 and Tables 1-4 of Montana's 2020 Construction Dewatering Permit. By contrast, Alaska requires its permittees to monitor both the dewatering effluent and downstream in the receiving water before commencing the dewatering operation, and then once per week afterwards. Alaska also establishes different effluent limits depending on whether the waterbody is freshwater or marine, and whether there is a mixing zone. See Table 4-Effluent Limits and Monitoring Requirements for Discharges to Waters of the U.S. of Alaska's 2019 General Permit for Excavation Dewatering Permit. Several other state permits have established monitoring requirements in the form of visual inspections for sediment plumes, which if present are an indicator of high turbidity levels. See, for example, Alaska's 2019 General Permit for Excavation Dewatering Permit (Part 5.1.3), Colorado's 2014 Construction Dewatering Discharges Permit (Part 1.B.2, Table B.1, Note 2) and 2020 Discharges from Short Term (<2 Year) Construction Dewatering Permit (Table B.2, Note 5), Montana's 2020 Construction Dewatering Permit (Part II.A), EPA's New Hampshire and Massachusetts 2015 Dewatering General Permit (Part 1.2.6), South Dakota's 2018 CGP (Section 3.21.3), and Vermont's 2020 CGP.

Request for Comment on Potential Monitoring Options

EPA is requesting comment on two different turbidity monitoring approaches for dewatering discharges. The approaches described in the request for comment include a benchmark monitoring approach and an indicator monitoring approach. See Parts 4.2.1 (indicator monitoring) and 4.2.2 (benchmark monitoring) of EPA's 2021 Multi-Sector General Permit (MSGP) for examples of both types of approaches, available at https://www.epa.gov/npdes/stormwater-discharges-industrial-activities-epas-2021-msgp. EPA requests feedback on the relative merits and concerns of both approaches. See Request for Comment 6 in Part 3.3 of the proposed permit.

For both approaches, EPA anticipates that operators would perform turbidity monitoring at the time of the daily dewatering inspection required under Part 4.3.2. Operators may perform turbidity monitoring in the field using a turbidimeter in accordance with EPA-approved analytical methods under 40 CFR Part 136. The ability to measure and obtain turbidity results in the field will allow operators to more quickly identify when discharges of excessive sediment are occurring and take appropriate corrective actions to address the condition in accordance with Part 5.1.5, including suspending the discharge and taking steps to ensure that the controls in use are operating effectively.

The two different monitoring approaches under consideration are described as follows:

Benchmark Monitoring Approach

Under a benchmark monitoring approach, operators would take turbidity samples on each day of discharge from their dewatering activities and compare the weekly average of the results with an established benchmark turbidity value. After researching possible turbidity benchmarks, EPA proposes using 50 Nephelometric Turbidity Units (NTU) were the Agency to finalize a benchmark monitoring approach. Under the benchmark monitoring approach, where an operator's weekly average turbidity results exceed the benchmark (i.e., 50 NTU), the permit would require the operator to conduct corrective action(s) to determine the source of the problem and to make necessary repairs or upgrades to the dewatering controls to lower the turbidity levels. The operator would be required to document any corrective action taken in its corrective action log in accordance with Part 5.4. The weekly average turbidity data would be reported to EPA once every quarter.

Benchmark monitoring can provide a gauge of the performance of dewatering controls and the potential for water quality standard exceedances. Analytical results from benchmark monitoring are quantitative, and can be used to compare results from discharge to discharge and to quantify any improvement in discharge water quality attributable to the control measures, or to identify a pollutant that is not being adequately controlled. Benchmark thresholds are the pollutant concentrations above which there is a level of concern. The level of concern is a concentration at which a discharge could potentially impair or contribute to impairing water quality. The benchmarks are also set at a level that if below, an operator's discharges pose less potential for a water quality concern. As such, the benchmarks provide an appropriate level to determine whether a facility's control measures are successfully implemented.

Part 4 of the proposed 2022 CGP proposes daily inspection requirements for areas where construction dewatering is taking place, as well as documentation requirements for discharge start and end times; discharge rate; and presence of a sediment plume, visible sheen, or visible hydrocarbon deposits. Visual inspections can indicate the presence of issues from pollutants that are not subject to monitoring. Although the proposed daily inspections and benchmark monitoring would occur at the same frequency, visual inspections result in narrative descriptions of the discharge and may not provide the precision necessary for the operator to identify or address a specific pollutant problem.

Compiling and evaluating information from inspections in a systematic, meaningful way can be more challenging than analyzing quantitative benchmark data, even though the information from the qualitative evaluation of the inspections is of no less importance. Inspections give a general, qualitative indication of discharge quality for a given day. Benchmark monitoring data, on the other hand, provide numerical indicators of control measure effectiveness, what pollutants are being discharged and at what magnitude, which can be addressed in real-time and compared over time.

For clarity, EPA emphasizes that the proposed benchmark threshold for turbidity would not be established as an effluent limit. Therefore, an exceedance of the benchmark threshold would not itself constitute a violation of the permit. Rather, the benchmark threshold would act as a warning sign to the operator that potential changes are needed in the dewatering controls to improve pollutant removal. For this reason, an exceedance of the benchmark would trigger the need for the permittee to take corrective action to lower the turbidity levels in the discharge.

Rationale for Proposing a Turbidity Benchmark of 50 NTU – EPA is proposing and requesting comment on the use of a benchmark threshold for turbidity of 50 NTU. EPA derived the proposed benchmark threshold based on a review of water quality standards for states and certain territories where EPA is the permitting authority, other stormwater general permits, and literature related to the effects of turbidity on aquatic life.

EPA typically establishes benchmarks in stormwater general permits using EPA's current CWA section 304(a) national recommended aquatic life ambient water quality criteria. EPA's recommended criteria for suspended sediment and turbidity is based on EPA's 1986 Quality Criteria for Water (otherwise referred to as the "Gold Book"). The Gold Book's water quality criterion for freshwater aquatic life states, "Settleable and suspended solids should not reduce the depth of the compensation point for photosynthetic activity by more than 10 percent from the seasonally established norm for aquatic life." However, this criterion has not been frequently adopted or used by states (EPA, 2006).

Review of the state water quality standards for states and territories where EPA is the permitting authority demonstrated that most states include narrative criteria and/or

criteria expressed as a percentage or increment above the natural background for turbidity. Only Puerto Rico includes fixed numeric water quality criteria for turbidity (i.e., 10 NTU for Class SB waters[43] and 50 NTU for Class SD waters[44]).

Previous water quality standard reviews by EPA (1980, 2003) revealed similar trends indicating that most states rely on narrative or natural background-based criteria. For states that included fixed numeric water quality criteria for turbidity, EPA (1980) indicated that those criteria generally ranged from 10 to 50 NTUs/JTUs (or "Jackson Turbidity Units"), depending on the applicable designated uses. However, two states had higher criteria (California's standards included criteria for ocean waters ranging from 75 to 225 NTU; New Jersey's standards included an instantaneous maximum criterion of 110 JTUs). EPA (2003) indicated that fixed numeric criteria for turbidity ranged from 2 to 20 NTU in states with the most stringent numeric criteria and 20 to 150 NTU in states with the least stringent fixed numeric criteria. Numeric criteria of 10 NTU and 50 NTU were the most frequently applied fixed numeric criteria, applied in six states and five states, respectively.

Natural background-based criteria are difficult to implement as benchmark thresholds in a general permit given the additional sampling required (effluent as well as upstream receiving water) and the natural variability of turbidity in receiving waters. Implementation of a floating benchmark threshold would effectively constitute a "moving target," making it difficult for operators to design control measures capable of maintaining the turbidity of dewatering discharges below the threshold under all receiving water conditions.

A benchmark threshold of 50 NTU is within the range of fixed numeric turbidity criteria established by other states and territories and was one of the most frequently established fixed numeric criteria (EPA 1980, 2003). Application of the most stringent state criteria (e.g., within the range of 10 to 20 NTU) may be overly stringent, whereas application of the least stringent criteria (e.g., up to 150 NTU) may not be sufficiently protective of water quality for many receiving waters. Selection of a benchmark threshold at the mid-range of the state criteria may be appropriate for implementation in a general permit, striking a balance between costs of compliance for the operator and water quality protection.

A benchmark threshold of 50 NTU is consistent with the turbidity benchmark in the 2021 MSGP, which is based on "Combination of simplified variations on Stormwater Effects Handbook, Burton and Pitt, 2001 and water quality standards in Idaho, in conjunction with review of DMR data." Previous versions of the MSGP included a benchmark of 5 NTU over background turbidity levels; however, EPA revised the benchmark in the 2008 MSGP to a fixed value of 50 NTU to "ease the monitoring burden for permittees, and to better address regional differences." (2008 MSGP Fact Sheet) According to the 2008 MSGP Response to Comments, "The new benchmark of 50 NTUs for this permit requires the permittee to monitor only the outfall. Establishment of a background condition in receiving waters can be complex and require additional monitoring. Rather than incorporate these requirements into the general permit EPA elected to establish an absolute benchmark which is more easily evaluated by permittees' pollution prevention teams."

EPA does not currently have turbidity data from its CGP permittees to compare the quality of treated dewatering effluent with the proposed 50 NTU benchmark. As part of its

[43] Class SB waters are defined as coastal and estuarine waters of high quality or exceptional ecological or recreational value.

[44] Class SD waters are defined as surface waters intended for use as a raw source of public water supply, propagation and maintenance of desirable species, including threatened or endangered species, as well as primary and secondary contact recreation.

research into possible turbidity monitoring approaches, EPA contacted the states (Montana and Hawaii) that require reporting turbidity monitoring as part of their permit coverage. From the turbidity data they shared, it is difficult to draw too many conclusions from the reported levels, owing to the vastly different factors that may be contributing to the results, such as whether the dewatering discharge is from ground water or accumulated stormwater and the soil type. However, similar to what EPA would require, both states require sampling of turbidity levels after treatment at the point of discharge. Acknowledging all of the variables that may prevent EPA from drawing any definitive conclusions from the data, EPA finds it relevant that the average and median turbidity values from the Montana[45] data was 15.9 NTU and 5.7 NTU, respectively, while the average and median values from the Hawaii data[46] was 52.3 NTU and 4.1 NTU, respectively. To EPA, this information suggests at some level that the 50 NTU threshold would be achievable in those states and that the trigger for corrective action would apply in some circumstances. Beyond this limited observation, however, EPA acknowledges that it would need a larger data set from monitoring that is subject to the same or similar requirements to say how many sites have turbidity levels higher or lower than the 50 NTU threshold. If EPA adopts a benchmark monitoring approach in the final permit, and establishes the benchmark for turbidity at 50 NTU, EPA will evaluate the data it receives from reporting permittees during the 5-year permit term to determine whether its assumptions about the 50 NTU benchmark were correct and whether it should be modified to a different threshold.

EPA reiterates that benchmarks are not effluent limitations; rather, they are a numeric measure for assessing whether a facility's controls are effective. EPA notes that the failure to conduct and report benchmark monitoring would be considered a permit violation. A benchmark threshold of 50 NTU, combined with the narrative effluent limitation in Part 3 of the CGP (i.e., "Discharges must be controlled as necessary to meet applicable water quality standards."), any additional state or tribal requirements in Part 9 of the 2021 CGP (i.e., 401 water quality certification conditions), and the remainder of the permit's terms and conditions are expected to result in construction dewatering discharges being controlled as necessary to meet applicable water quality standards for turbidity.

Indicator Monitoring

EPA is also requesting comment on the adoption of an alternative to benchmark monitoring, called the "indicator monitoring approach." Under an indicator monitoring approach, operators would still monitor the dewatering discharge for turbidity, however, no benchmark threshold would be set, nor would corrective action be required based on the turbidity results. The average weekly values would be calculated and reported in the same way as in the benchmark monitoring approach, but the sole intent of the information would be to provide operators, EPA, and the public with a baseline and comparable understanding of dewatering discharge quality, broader water quality problems, and control measure effectiveness at these sites.

The requirement in Part 3.1 for discharges to meet applicable water quality standards would still apply. Operators may find it useful to evaluate and compare indicator monitoring data over time to identify any fluctuating values and why they may be occurring, and further inform any revisions to their SWPPP and/or control measures. If this approach is adopted in the final permit, EPA would encourage operators to proactively use their sampling results to understand where control measures are working if values are low and improve their dewatering controls if values are high, relative to other samples.

[45] The Montana turbidity sample results represent data from 659 samples from 102 individual sites.

[46] The Hawaii turbidity sample results represent data from 27 samples from 5 individual sites.

Based on indicator monitoring data collected and analyzed under the proposed 2022 CGP, which would be made publicly available, EPA could evaluate whether establishment of a benchmark would be warranted in a future permit. For the next proposed CGP, EPA could also evaluate the indicator monitoring data to inform any future changes in this requirement, including applicability and frequency.

EPA emphasizes that indicator monitoring is neither the same as a benchmark monitoring approach, nor would the requirement to conduct such monitoring impose a numeric effluent limitation on the discharge. However, EPA notes that the failure to conduct and report indicator monitoring would be considered a permit violation.

References:

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- EPA. 2008. 2008 CGP – EPA's Response to Comments. Available at https://www.regulations.gov/document/EPA-HQ-OW-2008-0238-0019
- EPA. 2021. Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity. Available at https://www.epa.gov/npdes/stormwater-discharges-industrial-activities-epas-2021-msgp
- Puerto Rico Department of Natural and Environmental Resources. 2019. Puerto Rico Water Quality Standards Regulation. Available at https://www.epa.gov/sites/production/files/2014-12/documents/prwqs.pdf

Specific Requests for Comment on Potential Turbidity Monitoring Requirements

Beyond requesting feedback on the two alternative monitoring approaches, EPA also poses specific questions that it requests feedback on from the public:

- Overall, are you supportive of including turbidity monitoring in the permit? Please include an explanation for your position either way. What are your thoughts related to whether the proposed requirement in Part 4.6.3 to visually check for sediment plumes or other signs of contamination would be just as effective as turbidity monitoring.
- Do you have a preference for which monitoring approach EPA chooses to use as part of the permit? Please provide an explanation for your preference.

- For those who have experience with monitoring for turbidity in compliance with a state dewatering permit, please provide feedback on your experience with these requirements. For instance, EPA is particularly interested in the following:
  - How frequently did you collect turbidity samples?
  - What type of instrument did you use to measure turbidity levels?
  - Did you find the turbidity values to be a reliable indicator of the effectiveness of your controls? If so, did you find that making adjustments to your treatment controls had the effect of lowering turbidity values? If not, what factors may have led to the variability of results? What was the range of turbidity values that you found on your site?
  - Did you report your results to the permitting authority or were you just required to keep records of the data on site?
  - Did you rely on a contractor to conduct turbidity monitoring, or did you use your own staff?
  - How much did it cost you to conduct turbidity monitoring at your site?
- Should the sites that are required to monitor be further refined in any way? For instance, should monitoring be limited to sites discharging to waters with designated uses that are especially susceptible to high turbidity levels (e.g., public water supplies, freshwater fisheries)? Or, should there be some consideration to the amount of dewatering that is required for the site, in terms of the volume or number of days dewatering is necessary?

Part 4: Site Inspection Requirements

Part 4.1: Person(s) Responsible for Inspecting Site

Part 4.1 clarifies that it is the operator who is responsible for ensuring that the person who conducts inspections has the proper training and is qualified. EPA is proposing to further specify what type of training is required for such personnel to be considered qualified to conduct site inspections. Part 4.1 of the 2017 CGP requires that a "qualified person" conduct site inspections, defined in Appendix A and in a footnote as "a person knowledgeable in the principles and practice of erosion and sediment controls and pollution prevention, who possesses the appropriate skills and training to assess conditions at the construction site that could impact stormwater quality, and the appropriate skills and training to assess the effectiveness of any stormwater controls selected and installed to meet the requirements of this permit." The proposed 2022 permit reframes the requirement by establishing minimum training requirements for inspectors that would now be included in the training section of the permit, Part 6, rather than relying on the definition of a qualified person. The term qualified person would be removed from the permit and is now replaced by the specific inspection training requirements in Part 6.3.

Part 4.1	Permit Requirements
The person(s) inspecting your site may be a person on your staff or a third party you hire to conduct such inspections. You are responsible for ensuring that ~~the~~ any person conducting inspections pursuant to this section have received the minimum training required in Part 6.3. ~~who conducts inspections is a "qualified person."~~[47]	

Part 4.2: Frequency of Inspections

Part 4.2 requires the operator to, at a minimum, conduct a site inspection in accordance with one of two schedules, unless they are subject to the Part 4.3 site inspection frequency for discharges to sensitive waters or qualify for a Part 4.4 reduction in the inspection frequency.

Part 4.2	Permit Requirements

At a minimum, you must conduct a site inspection in accordance with one of the two schedules listed below, unless you are subject to the Part 4.3 site inspection frequency for discharges to sensitive waters or qualify for a Part 4.4 reduction in the inspection frequency:

4.2.1 At least once every seven (7) calendar days; or

4.2.2 Once every 14 calendar days and within 24 hours of the occurrence of a storm event of 0.25 inches or greater of rain[50] or within 24 hours of a discharge caused by snowmelt from a 3.25 inches[51] or greater of snow accumulation~~, or the occurrence of runoff from snowmelt sufficient to cause a discharge~~.[49]

a. To determine whether ~~if a storm event of~~ 0.25 inches or greater of rain has occurred ~~on~~ at your site, you must either keep a properly maintained rain gauge on your site, or obtain the storm event information from a weather station that is representative of your location. For any day of rainfall during normal business hours that measures 0.25 inches or greater, you must record the total rainfall measured for that day in accordance with Part 4.7.1d.

b. To determine whether 3.25 inches or greater of snow accumulation has occurred at your site, you must either take measurements of snowfall at your site,[52] or rely on similar information from a local weather forecasting provider.

[50]~~[49]~~ "Within 24 hours of the occurrence of a storm event" means that you must conduct an inspection within 24 hours once a storm event has produced 0.25 inches within a 24-hour period, even if the storm event is still continuing. ~~Thus, i~~If you have elected to inspect bi-weekly in accordance with Part 4.2.2 and there is a storm event at your site that continues for multiple days, and each day of the storm produces 0.25 inches or more of rain, you must conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm. For example, if 0.30 inches of rain falls on Day 1, 0.25 inches of rain falls on Day 2, and 0.10 inches of rain fall on Day 3, you would be required to conduct a first inspection within 24 hours of the Day 1 rainfall and a second inspection within 24 hours of the Day 2 rainfall, but a third inspection would not be required within 24 hours of the Day 3 rainfall.

[51] This is the amount of snow that is equivalent to 0.25 inches of rain, based on information from the National Oceanic and Atmospheric Administration (NOAA) indicating that 13 inches of snow is, on average, equivalent to 1 inch of rain. See https://www.nssl.noaa.gov/education/svrwx101/winter/faq/.

[52] For snowfall measurements, EPA suggests use of NOAA's National Weather Service guidelines at https://www.weather.gov/jkl/snow_measurement. These guidelines recommend use of a "snowboard" (a piece of wood about 16 inches by 16 inches) that is placed in an unobstructed part of the site on a hard surface

Part 4.2 provides the operator with a choice between the weekly inspection and bi-weekly inspection frequency. Operators must conduct their inspection within 24 hours once a storm event has produced 0.25 inches within a 24-hour period, even if the storm event is still continuing. Thus, if the operator has elected to inspect bi-weekly and there is a storm event at the site that continues for multiple days, and each day of the storm produces 0.25 inches or more of rain, the operator must conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm (inspections are only required during the sites normal working hours). In EPA's judgment, it is important for inspections to be conducted within a day of the occurrence of a qualifying rainfall event so that the operator can catch any potential problems on the site and correct such problems before a prolonged discharge of pollutants occurs. Requiring inspections to be conducted within 24 hours of the occurrence of a

qualifying storm event provides assurance that, during multiple days of discharge from a single storm event, problems with the control of pollutants will be identified sooner and corrected in accordance with the corrective action timeframes specified in Part 5 of the permit. For the 2017 CGP, EPA modified the requirement in option (2) to add "or the occurrence of runoff from snowmelt sufficient to cause a discharge" to when inspections must be conducted, in order to clarify that snowmelt runoff is also a stormwater discharge, and also triggers the inspection requirement.

Complying with the bi-weekly inspection frequency: EPA intends that sites electing to inspect once every 14 days and within 24 hours of a 0.25 inch storm or the occurrence of runoff from snowmelt sufficient to cause a discharge will conduct at a minimum one inspection every 14 days and additional inspections as is warranted depending on whether a 0.25 inch storm event or snowmelt discharge occurs during normal working hours. To comply with this requirement, operators should ensure that no more than 14 days pass after each inspection before the next inspection is conducted. This could be accomplished by choosing a regular day during the two-week period on which inspections will be conducted in the absence of precipitation events. However, where a rain event produces 0.25 inches or more during the two-week period or snowmelt runoff occurs, an inspection must be performed within 24 hours of the occurrence of the event. Following the event-related inspection (or final event related inspection in cases of multi-day events), the operator must conduct the next inspection within no more than 14 calendar days.

Multiple day storms: The permit clarifies that if the site experiences a storm event that continues for multiple days, and each day of the storm produces 0.25 inches or more of rain, the operator must conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm. EPA understands from feedback received from stakeholders that there is some confusion about when inspections are required in different multiple day storm event circumstances. To help illustrate the intent of the requirement, the proposed permit now includes the following example in the permit: if 0.30 inches of rain falls on Day 1, 0.25 inches of rain falls on Day 2, and 0.10 inches of rain fall on Day 3, you would be required to conduct a first inspection within 24 hours of the Day 1 rainfall and a second inspection within 24 hours of the Day 2 rainfall, but a third inspection would not be required within 24 hours of the Day 3 rainfall.

The 0.25-inch rain event threshold: EPA incorporates by reference the discussion in 2012 CGP fact sheet (Section IX.1.2) in which EPA presented data that supported the 0.25 inch threshold for inspections. EPA found that a 0.25-inch threshold would cover an estimated 47 percent of storms in New Hampshire, 10 percent of storms in Idaho, and 27 percent of storms in New Mexico. Inspection immediately after such events (or during such events in the case of multi-day storms) is important to meet the purposes of adopting a storm-based inspection schedule. See section IX.1.2 "Frequency of Inspections (Part 4.1.2)" on pages 94 through 96 of the 2012 CGP fact sheet, available at https://www.epa.gov/sites/production/files/2017-07/documents/2012_construction_general_permit_factsheet.pdf.

Snowmelt threshold: The permit proposes to add a numeric threshold for snowfall amount that is equivalent to the 0.25 inch rain event. This change would clarify that where there is a discharge from snowmelt caused by an accumulation of 3.25 inches or greater of snow, an inspection would be required. This change was requested by permittees who conveyed to EPA that without a numeric threshold for snowfall, it is difficult for operators to know which snow events may trigger the need to inspect the site during the winter season. EPA agrees that including a snowfall equivalent to the 0.25 inch rain event would improve the clarity of the bi-weekly inspection frequency provision.

EPA relied on information from the National Oceanic and Atmospheric Administration (NOAA) to derive a numeric equivalent for snowfall to the 0.25 inch rain event. Information on NOAA's National Severe Storms Laboratory website indicates that the amount of snow that is

equivalent to 0.25 inches of rain would be 3.25 inches, based on published data indicating that in general 13 inches of snow is equivalent to 1 inch of rain. See https://www.nssl.noaa.gov/education/svrwx101/winter/faq/. For this reason, EPA proposes to use 3.25 inches as the snowfall equivalent to the 0.25 inch rainfall trigger for inspecting the site using the bi-weekly inspection frequency in Part 4.2.2. EPA reminds operators that they would be required to conduct an inspection after a 3.25-inch snow accumulation only once there is sufficient snowmelt to cause a discharge.

EPA also includes in the proposed revisions to Part 4.2.2 language specifying how operators should determine when 3.25 inches of snow has accumulated on their site. The proposal would specify that the operator may either take an actual measurement of the snowfall at the site, or rely on similar information from a local weather forecasting provider. EPA also suggests that operators use the NOAA National Weather Service's guidelines for measuring snowfall at the site. See https://www.weather.gov/jkl/snow_measurement.

Part 4.3: Increase in Inspection Frequency for Certain Sites

Part 4.3 requires modified inspection frequencies for the portion of any sites discharging to a sediment or nutrient-impaired water or to a water identified by a state, tribe, or EPA as Tier 2, Tier 2.5, or Tier 3 for antidegradation purposes.

Part 4.3	Permit Requirements

The increased inspection frequencies established in this Part take the place of the Part 4.2 inspection frequencies for the portion of the site affected.

4.3.1 For any portion of the site that discharges to a sediment or nutrient-impaired water or to a water that is identified by your state, tribe, or EPA as Tier 2, Tier 2.5, or Tier 3 for antidegradation purposes (see Part 3.2), ~~instead of the inspection frequency specified in Part 4.2,~~ you must conduct an inspection~~s in accordance with the following inspection frequencies:O~~ nce every seven (7) calendar days *and* within 24 hours of the occurrence of a storm event of 0.25 inches or greater, or when the occurrence of ~~runoff~~ flow from snowmelt is sufficient to cause a discharge.

To determine if a storm event of 0.25 inches or greater has occurred on your site, you must either keep a properly maintained rain gauge on your site, or obtain the storm event information from a weather station that is representative of your location. For any day of rainfall, during normal business hours, that measures 0.25 inches or greater, you must record the total rainfall measured for that day in accordance with Part 4.7.1d.

4.3.2 For sites discharging dewatering water, you must conduct an inspection once per day on which the discharge occurs. The Part 4.2 inspection frequency still applies to all other portions of the site, unless the site is affected by either the increased frequency in Part 4.3.1 or the reduced frequency in Part 4.4.

As noted in the fact sheet section on Part 3.2, it is EPA's judgment that these inspection requirements will enhance the operator's ability to find and correct problems before a discharge of pollutants occurs. EPA expects that compliance with the water quality-based effluent limits in the permit, in combination with the general effluent limits in Part 2 and the remainder of the terms and conditions of the permit, will result in discharges that meet applicable water quality standards. EPA clarifies that the more frequent site inspections are required only for those portions of the site that are discharging to the sensitive water. For example, for a highway construction project spanning many miles over multiple watersheds, the increase in inspection frequency would only be required in areas of the site that discharge to or within one mile upstream of the sensitive water. EPA also notes that if the operator qualifies for any of the reduced inspection frequencies specified in Part 4.4, they may comply with those

reduced frequencies despite the fact that they discharge to a sensitive water. This is because the reduced frequencies in Part 4.4 apply only to situations where the reduced inspection frequency is justified by circumstances that ensure protection of all waters, including sensitive waters.

Note that, similar to the requirements for conducting bi-weekly site inspections under Part 4.2.2, the permit clarifies that if the site experiences a storm event that continues for multiple days, and each day of the storm produces 0.25 inches or more of rain, the operator must conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm. The operator must conduct an inspection upon the occurrence of runoff from snowmelt sufficient to cause a discharge.

Related to strengthening controls for dewatering discharges discussed in the request for comment in Part 3.3, EPA also proposes to increase the inspection frequency for sites while they are dewatering. EPA has found from its inspections of permitted sites that neither the default inspection frequency in Part 4.2.2 (either weekly or biweekly and within 24 hours of a 0.25 inch storm) nor the increased inspection frequency for discharges to sensitive waters in Part 4.3.1 is likely frequent or targeted enough to catch and respond to problems associated with dewatering that are occurring at a particular time. Dewatering activities causing significant pollutant discharges may occur on a non-inspection day in which case the discharge may continue unabated until the next inspection day. Due to the high rate of flow from dewatering activities and the potential for significant pollutant discharge if the controls are not working effectively or designed properly, increased inspections give operators the opportunity to discover problems closer to the time they are occurring and to respond in an expeditious manner. Requiring increased oversight over the dewatering discharge and pollutant controls will be especially effective given the operator's significant control over the discharge, including the ability to immediately shut off the discharge if necessary to evaluate and fix a problem on the site.

For these reasons, EPA proposes to require inspections on a daily basis when construction dewatering is taking place. See Part 4.3.2. The Part 4.2 inspection frequency still applies to all other portions of the site, unless the site is subject to the increased frequency in Part 4.3.1 or eligible for the reduced frequency in Part 4.4. EPA notes that other states also require or recommend daily inspections of the dewatering discharge. For instance, Hawaii requires inspections of their dewatering permittees once per day. See Part 6.b.2 of the state's 2018 General Permit Authorizing Discharges Associated with Construction Activity Dewatering. Alaska's 2019 General Permit for Excavation Dewatering Permit (Part 5.2.14.11) requires permittees to visually monitor the discharge for visual signs of turbidity and any film a minimum of once daily. Additionally, a number of state best management practice manuals recommend that dewatering controls be inspected daily. See, for example, the recommendations for daily inspections where pumped water filter bags are used at constructions sites in the Pennsylvania Department of Environmental Protection's *Erosion and Sediment Pollution Control Program Manual* (p. 55) and the recommended daily inspections of the dewatering site in the Michigan Department of Environmental Quality's dewatering fact sheet.

Part 4.4: Reductions in Inspection Frequency

Part 4.4 identifies three different situations in which a reduction in the frequency of inspections is permitted. Each of these represent situations of comparatively lower risk for discharges to surface waters.

Part 4.4.1: For Stabilized Areas

Part 4.4.1 provides the opportunity for operators to reduce their inspection frequencies in any areas of the site that have achieved temporary or final stabilization as required in Part 2.2.14.

Part 4.4.1	Permit Requirements

a. You may reduce the frequency of inspections to twice per month for the first month, no more than 14 calendar days apart, then once per month in any area of your site where the stabilization steps in 2.2.14a have been completed. If construction activity resumes in this portion of the site at a later date, the inspection frequency immediately increases to that required in Parts 4.2 and 4.3, as applicable. You must document the beginning and ending dates of this period in your SWPPP.

b. **Exception.** For "linear construction sites" (as defined in Appendix A) where disturbed portions have undergone final stabilization at the same time active construction continues on others, you may reduce the frequency of inspections to twice per month for the first month, no more than 14 calendar days apart, in any area of your site where the stabilization steps in 2.2.14a have been completed. After the first month, inspect once more within 24 hours of the occurrence of a storm event of 0.25 inches or greater. If there are no issues or evidence of stabilization problems, you may suspend further inspections. If "wash-out" of stabilization materials and/or sediment is observed, following re-stabilization, inspections must resume at the inspection frequency required in Part 4.4.1.a. Inspections must continue until final stabilization is visually confirmed following a storm event of 0.25 inches or greater.

Areas of the site that have achieved temporary or final stabilization present a significantly lower risk of producing unacceptable discharges of pollutants in stormwater to surface waters. EPA further expects that, especially for larger projects, where construction activities may take place in different phases in separate locations of the site, reducing site inspection frequency where areas have been stabilized will encourage stabilization to take place closer to the time that active disturbances have ended. It is EPA's judgment that the reduction in inspection frequency will provide a benefit in reduced administrative burden to the operator.

This provision requires inspections to be conducted twice per month for the first month, with no more than 14 calendar days between the two inspections, after stabilization has been completed before reducing the inspection frequency to once per month. This is intended to ensure that operators catch any potential problems with stabilization measures early on and correct such problems before failure of stabilization measures and a prolonged discharge of pollutants occurs. The exception in (b) above for linear construction sites acknowledges that long linear projects may feature portions of the site that are completed and stabilized months before the final portion of the project is stabilized. The exception provides flexibility for linear construction sites by allowing these operators to suspend further inspections on portions of their site that have met the final stabilization requirements following two inspections in the first month, no more than 14 calendar days apart, and no observed "wash-out" following one more inspection within 24 hours of a storm event of 0.25 inches or greater.

Part 4.4.2: For Arid, Semi-Arid, or Drought-Stricken Areas

Part 4.4.2 allows operators whose construction projects occur in areas considered arid or semi-arid to reduce the frequency of inspection to account for the comparatively lower amounts of rainfall.

Part 4.4.2	Permit Requirements

If it is the seasonally dry period (as defined in Appendix A) or a period in which drought is occurring, you may reduce the frequency of inspections to once per month and within 24 hours of the occurrence of a storm event of 0.25 inches or greater. You must document that you are using this reduced schedule and the beginning and ending dates of the seasonally dry period in your SWPPP. To determine if a storm event of 0.25 inches or greater has occurred

on your site, you must either keep a properly maintained rain gauge on your site, or obtain the storm event information from a weather station that is representative of your location. For any day of rainfall during normal business hours that measures 0.25 inches or greater, you must record the total rainfall measured for that day in accordance with Part 4.7.1d.

Part 4.4.2 of the permit includes exceptions to the permit's default inspection frequency for arid, semi-arid, and drought-stricken areas. EPA notes that it has included suggested references for construction operators to use to help determine if they are located in an arid or semi-arid area, and may therefore be eligible for the alternative stabilization timeframes that apply in those areas. These references are included in Appendix A of the proposed permit in the definitions of "arid area" and "semi-arid area."

The proposed permit also clarifies what EPA means when it refers to the "seasonally dry period" for arid, semi-arid, and drought-stricken areas. The phrase "seasonally dry period" is used in the CGP to restrict when operators can make use of the reduced inspection frequency in Part 4.4.2. The lack of a definition for seasonally dry period in either the 2017 CGP or the 2012 CGP before it has led to a number of questions from operators as to when this period begins and ends in different parts of the country. To establish a consistent approach for the 2022 CGP, and to assist operators by making the permit terms clearer, EPA proposes to define the phrase "seasonally dry period" based on the Agency's research into available climate information. EPA also provides operators with resources and guidance to assist them in determining whether they will be engaged in active construction during the seasonally dry period in an arid, semi-arid, or drought-stricken areas. The following provides a more detailed discussion of the new definition.

Supporting Rationale for the 0.5-inch Threshold

EPA proposes to define "seasonally dry period" in Appendix A of the permit as a month in which the long-term average total precipitation is less than or equal to 0.5 inches. The purpose of defining seasonally dry periods is to identify times and locations where: (1) the risk of a discharge-producing storm event is below average, and (2) the ability to utilize vegetative stabilization measures on a site may be reduced due to lack of precipitation to sustain plant life. EPA proposes to establish the threshold for the seasonally dry period as 0.5 inches of total precipitation per month, as measured by long-term climate data, because: (1) it is consistent with a below average monthly rainfall total for arid and semi-arid areas, and (2) it reflects a manageable risk of occurrence of storm events capable of producing stormwater discharges during the dry period.

Appendix A defines "arid areas" as those with an annual rainfall of 0 to 10 inches (or an average of 0 to 0.83 inches/month), and "semi-arid areas" as those with annual rainfall of 10 to 20 inches (or an average of 0.83 – 1.67 inches/month). A long-term average 0.5-inch threshold is below the monthly average for arid areas and reflects a month wherein rainfall totals are below average (i.e., drier than average).

Throughout the permit, EPA utilizes a 0.25-inch storm event as an indicator that a rainfall event of sufficient magnitude to generate a discharge may have occurred. A threshold of 0.5 inches is consistent with a risk of anywhere from one to two rainfall-discharge producing events occurring during a seasonally dry month, which EPA finds to be an acceptable and limited risk as applied to the permit conditions (Parts 2.2.14.b, Part 4.4.2, and Part 7.2.6.b.v.c) triggered by the seasonally dry period.

Locations and times meeting the seasonally dry period definition were identified using 30-year (1981-2010) climate normal maps derived from the Parameter-elevation Regressions on Independent Slopes Model (PRISM). For each month in the climate normals dataset, locations meeting the seasonally dry period definition were identified.

Proposed Guidance to Permittees on How to Use the Seasonally Dry Period Definition at Individual Sites – For a project to qualify for adjusted stabilization timeframes (see Part 2.2.14) or modified inspection frequencies (see Part 4.4.2), the project site must be located in an area that meets specific climate definitions. These definitions include: arid conditions, semi-arid conditions, drought-stricken area, and the seasonally dry period. The steps for determining if a project site qualifies for the for the permit flexibilities listed above are:

1. Determine if a site is in an arid or semi-arid location using any of the following:
    a. The NOAA National Mapping webpage (https://www.ncdc.noaa.gov/cag/national/mapping),
    b. The PRISM Climate Group's Time Series Values for individual locations (https://prism.oregonstate.edu/explorer/), or
    c. EPA's US EPA EnviroAtlas (https://www.epa.gov/enviroatlas).

    If the annual total precipitation is less than 10 inches, the site has arid conditions. If the annual total precipitation is greater than 10 inches but less than 20 inches, the site has semi-arid conditions. If the annual total precipitation is greater than 20 inches, the site does not meet the definitions for arid or semi-arid conditions.

    If the site does not meet the definitions for arid or semi-arid, proceed to Step 2 to determine if the site has drought-stricken conditions. If the site has arid or semi-arid conditions, proceed to Step 3 to determine the seasonally dry period for the project location.

2. Determine if a site is in a drought-stricken area using the NOAA U.S. Seasonal Drought Outlook (https://www.cpc.ncep.noaa.gov/products/expert_assessment/sdo_summary.php), and identifying if the project site is located in an area which is marked: (1) Drought persists, (2) Drought remains but improves, (3) Drought removal likely, or (4) Drought development likely. If the site is in a drought-stricken area, proceed to Step 3 to determine the seasonally dry period for the project location.

3. Determine if it is the seasonally dry period for the site for the purposes of this permit using the EPA-developed CGP Climate Lookup Tool. Note: the CGP Climate Lookup Tool can be found prior to the final permit in the proposed permit docket. The CGP Climate Lookup Tool allows permittees to determine if their construction project site is in an arid or semi-arid area, and if any months out of the year are considered seasonally dry. Classifications are based on long-term (1981-2010) climate data obtained from the PRISM Climate Group. Maps of arid and semi-arid areas, as well as seasonally dry areas by month, can be found on EPA's Construction General Permit website. If the project is operating during those months that are considered seasonally dry, the project qualifies for adjusted stabilization timeframes (see Part 2.2.14) or modified inspection frequencies (see Part 4.4.2).

The reduced inspection frequency for arid, semi-arid, and drought-stricken areas still allows operators to identify potential problems that could result in a discharge of pollutants in the unlikely event that a storm event does occur.

Note that, similar to the requirements for conducting bi-weekly site inspections under Part 4.2.2, the permit clarifies that if the site experiences a storm event that continues for multiple days, and each day of the storm produces 0.25 inches or more of rain, the operator must conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the

end of the storm. See Part 4.2 of the permit for an example of how inspections should be conducted for multiple day storm events.

Part 4.4.3: For Frozen Conditions

Part 4.4.3 enables operators that experience frozen conditions on their site to reduce their inspection frequency to account for the fact that a discharge will not be likely during this period of time.

Part 4.4.3	Permit Requirements

a. If you are suspending construction activities due to frozen conditions, you may temporarily suspend inspections on your site until thawing conditions (as defined in Appendix A) begin to occur if:

i. ~~Runoff is~~ Discharges are unlikely due to continuous frozen conditions that are likely to continue at your site for at least three (3) months based on historic seasonal averages. If unexpected weather conditions (such as above freezing temperatures or rain events) make discharges likely, you must immediately resume your regular inspection frequency as described in Parts 4.2 and 4.3, as applicable;

ii. Land disturbances have been suspended; and

iii. All disturbed areas of the site have been stabilized in accordance with Part 2.2.14a.

b. If you are still conducting construction activities during frozen conditions, you may reduce your inspection frequency to once per month if:

i. ~~Runoff is~~ Discharges are unlikely due to continuous frozen conditions that are likely to continue at your site for at least three (3) months based on historic seasonal averages. If unexpected weather conditions (such as above freezing temperatures or rain events) make discharges likely, you must immediately resume your regular inspection frequency as described in Parts 4.2 and 4.3, as applicable; and

ii. Except for areas in which you are actively conducting construction activities, disturbed areas of the site have been stabilized in accordance with Part 2.2.14a.

You must document the beginning and ending dates of this period in your SWPPP.

The permit retains the waiver approach for projects that suspend all construction work during frozen conditions. This permit also allows operators to reduce inspection frequencies to once per month if the ground is frozen and they will still be conducting earth-disturbing activities. For both scenarios under which a reduction is possible, this permit includes the requirement that the disturbed areas be stabilized either vegetatively or non-vegetatively. This requirement also provides further assurance that in the case of an unexpected thaw or rain on snow event, the discharge of pollutants from all areas has been minimized.

Part 4.5: Areas That Must Be Inspected

Part 4.5 describes the areas on the site that must be inspected.

Part 4.5 (4.5.1 – 4.5.6)	Permit Requirements

During your site inspection, you must at a minimum inspect the following areas of your site:

4.5.1 All areas that have been cleared, graded, or excavated and that have not yet completed stabilization consistent with Part 2.2.14a;

4.5.2 All stormwater controls~~(~~, including pollution prevention controls~~)~~ installed at the site to comply with this permit;[53]~~50~~

4.5.3 Material, waste, borrow, and equipment storage and maintenance areas that are covered by this permit;

4.5.4 All areas where stormwater typically flows within the site, including drainageways designed to divert, convey, and/or treat stormwater;

4.5.5 All areas where construction dewatering is taking place, including stormwater controls to treat the dewatering discharge and any channelized flow of water to and from those controls;

4.5.6 All points of discharge from the site; and

4.5.7 All locations where stabilization measures have been implemented.

You are not required to inspect areas that, at the time of the inspection, are considered unsafe to your inspection personnel.

~~53~~50 This includes the requirement to inspect for sediment that has been tracked out from the site onto paved roads, sidewalks, or other paved areas consistent with Part 2.2.4.

EPA proposes to include among the areas that must be evaluated during an inspection are areas where construction dewatering is taking place, including stormwater controls to treat the dewatering discharge and any channelized flow of water to and from those controls. This specification is reasonable to highlight the importance of inspecting these areas given the added focus on dewatering discharges in the proposal, and to ensure that controls are in place and operating properly to prevent erosion and discharges of sediment. See proposed modifications to related dewatering requirements in Parts 2.4, 4.6.1., 4.7.1, and 5.1.5.

Part 4.6: Requirements for Inspections

Part 4.6 includes specific requirements regarding the focus of the inspection.

Part 4.6 (4.6.1 – 4.6.4)	Permit Requirements

4.6.1 During each ~~your~~ site inspection, you must at a minimum:

- **a.** Check whether all stormwater controls (i.e., *erosion and sediment controls and pollution prevention controls*) are properly installed, appear to be operational, and are working as intended to minimize pollutant discharges.
- **b.** Check for the presence of conditions that could lead to spills, leaks, or other accumulations of pollutants on the site.
- **c.** Identify any locations where new or modified stormwater controls are necessary to meet the requirements of Parts 2 and/or 3.
- **d.** Check for signs of visible erosion and sedimentation (i.e., *sediment deposits*) that have occurred and are attributable to your discharge at points of discharge and, if applicable, on the banks of any waters of the U.S. flowing within or immediately adjacent to the site~~;~~. Check also for signs of sedimentation (e.g., sand bars with no vegetation growing on top) at points downstream from the point of discharge that could be attributable to your discharge.
- **e.** Identify any incidents of noncompliance observed.

4.6.2 If a discharge is occurring during your inspection:

- **a.** Identify all discharge points at the site; and
- **b.** Observe and document the visual quality of the discharge, and take note of the characteristics of the stormwater discharge, including color; odor; floating, settled, or suspended solids; foam; oil sheen; and other indicators of stormwater pollutants.

4.6.3 For dewatering inspections conducted pursuant to Part 4.5.5, record the following:

- **a.** Approximate times that the dewatering discharge began and ended on the day of inspection;
- **b.** Estimates of the rate (in gallons per day) of discharge on the day of inspection;
- **c.** Whether or not a sediment plume, or a visible sheen or visible hydrocarbon deposits on the bottom or shoreline of the receiving water, was observed (note: if either are observed, corrective action is required pursuant to Part 5.1.5); and
- **d.** Photographs of (1) dewatering water prior to treatment by a stormwater control(s) and the final discharge after treatment; (2) the stormwater control; and (3) the point of discharge to any waters of the U.S. flowing through or immediately adjacent to the site.

4.6.4 Based on the results of your inspection:

- **a.** ~~, c~~ Complete any necessary maintenance repairs or replacements under Part 2.1.4 ~~and~~ or ~~corrective action~~ under Part 5, whichever applies; and
- **b.** Modify your SWPPP site map in accordance with Part 7.4.1. to reflect changes to your stormwater controls that are no longer accurately reflected on the current site map.

EPA specifies in a proposed modification to Part 4.6.1.d that during the inspection, the operators must also check for and document signs of sedimentation (e.g., sand bars with no vegetation growing on top) at points downstream from the point of discharge that could be attributable to the discharge. This change is intended to address a frequent problem observed during EPA's compliance inspections that the permittee does not document obvious signs of sedimentation in the receiving water that are caused by its discharge. The intent of this proposed addition is to emphasize that an inspection is an ideal time to examine whether there are any obvious signs of sedimentation attributable to the site's discharge, document them if there are, and take appropriate corrective action. EPA does not specify in the permit a specific distance downstream of the site that operators much check for sedimentation that could be attributable to the discharge, given variable site-specific conditions. Instead, EPA expects that operators will account for the amount of sediment leaving the site in determining this distance.

EPA proposes to add new requirements for inspections that are required during construction dewatering operations. EPA discussed previously the proposed new requirement for daily inspections when dewatering is occurring (see Part 4.3.2), and that the scope of the inspection would be uniquely targeted at the dewatering operation and controls used to treat the discharge (see Part 4.5.5). For these dewatering inspections, EPA proposes to require the operator to record certain minimum details about the dewatering discharge. Under the proposed new requirements, operators would be required to record the following as part of their dewatering inspection:

- Approximate times that the dewatering discharge began and ended on the day of inspection, and estimates of the rate (in gallons per day) of discharge on the day of inspection;
- Whether a sediment plume sheen, or hydrocarbon deposit on the bottom or shoreline of the receiving water was observed; and
- Photographs of (1) dewatering water prior to treatment by a stormwater control(s) and the final discharge after treatment; (2) the stormwater control; and (3) the point of discharge to any waters of the U.S. flowing through or immediately adjacent to the site.

The purpose of requiring that the times of the dewatering discharge and the approximate discharge rate be reported is to keep documentation that will enable EPA, if necessary, and the operator, to better understand how often the discharge takes place and the total rate and volume of the discharge. Collecting this information could also assist the operator in adjusting controls where necessary to improve their effectiveness in preventing turbid discharges. Similar requirements to this proposed provision are found in several state construction and dewatering general permits, namely Arizona's 2016 General Permit for De Minimis Discharges to Waters of the U.S. [47] (Appendix A), Alaska's 2019 General Permit for Excavation Dewatering Permit[48] (Part 5.1), Colorado's 2014 Construction Dewatering Discharges Permit,[49] and South Dakota's 2018 CGP[50] (Appendix A, Section IX). Other permits establish strict limits on the flow rate from construction dewatering discharges or assign different requirements to sites based on the flow rate, such as Nevada's 2012 DeMinimis General Permit[51] (Part A.3.4), Utah's 2020 Construction Dewatering and Hydrostatic Test Permit[52] (Part I.D.6 6), and Colorado's 2020 Discharges from Short Term (<2 Year) Construction Dewatering Permit[53] (Part 1.B.3).

For the proposed Part 4.6.3.b requirement to estimate the approximate discharge rate on the day of dewatering inspection, one relatively straightforward approach that operators may rely on is to use the manufacturer's design pump rating for the pump model in use. For example, a pump rated at 164 gpm (gallons per minute) by the manufacturer can be assumed to be discharging at 164 gpm in most cases. To convert to gallons per day, multiply the rate in gpm by the ratio of minutes in one-day (1,440 minutes per day), resulting in a discharge rate of 236,160 gallons per day. In cases where the dewatering discharge is being pumped over long distances or a substantial distance uphill, which will result in a reduced pump rate relative to manufacturer's specification, the operator may improve the accuracy of the estimate by estimating the time required to fill a container of a known volume. For example, if it takes 60 seconds to fill an empty 55-gallon barrel, the estimated discharge rate is 55 gpm, or 79,200 gallons per day.

[47] State of Arizona Department of Environmental Quality Water Quality Division. Arizona Pollutant Discharge Elimination System General Permit for De Minimis Discharges to Waters of the U.S. Available at: https://azdeq.gov/node/686

[48] Alaska Department of Environmental Conservation. Alaska Pollutant Discharge Elimination System General Permit for Excavation Dewatering. Available at: https://dec.alaska.gov/water/wastewater/stormwater/dewater-hydrostatic

[49] Colorado Department of Public Health and Environment. CDPS Construction Dewatering Discharges to Discharge Under the Colorado Discharge Permit System. Available at: https://cdphe.colorado.gov/dewatering-general-permit-program

[50] South Dakota Department of Environment and Natural Resources. General Permit Authorizing Stormwater Discharges Associated with Construction Activities Under the South Dakota Surface Water Discharge System. Available at: https://denr.sd.gov/des/sw/StormWaterandConstruction.aspx

[51] State of Nevada Division of Environmental Protection. National Pollutant Discharge Elimination System Permit NVG20100. Available at: https://ndep.nv.gov/water/water-pollution-control/permitting/nevada-deminimis-discharge-program

[52] State of Utah Department of Environmental Quality Division of Water Quality. Authorization to Discharge Under the Utah Pollutant Discharge Elimination System (UPDES) General Permit for Construction Dewatering and Hydrostatic Testing. Available at: https://deq.utah.gov/water-quality/general-construction-storm-water-updes-permits

[53] Colorado Department of Public Health and Environment. Colorado Discharge Permit System (CDPS) General Permit COG0800000 for Discharges from Short-Term Construction Dewatering Activities. Available at: https://www.colorado.gov/pacific/cdphe/dewatering-general-permit-program

The proposed requirement to check during the inspection whether there are any signs of a sediment plume, sheen, or oily deposit from the dewatering discharge is intended to provide the operator with a straightforward way of looking for any pollution problems that can be corrected expeditiously. If a sediment plume is visible to the observer, then it is likely that turbidity levels are excessive. A visible plume is also a sign that the discharge may be exceeding the applicable water quality criteria for turbidity or other sediment-related criteria. Where such obvious signs of pollution are visible during an inspection, the permit would then require that the operator initiate immediate steps to correct the problem pursuant to Parts 5.2 or 5.3. The requirement to check for visual signs of pollution is reflected in several state construction and dewatering permits such as Alaska's 2019 General Permit for Excavation Dewatering Permit[54] (Part 5.1.3), Colorado's 2014 Construction Dewatering Discharges Permit[55] (Part 1.B.2, Table B.1, Note 2) and 2020 Discharges from Short Term (<2 Year) Construction Dewatering Permit[56] (Table B.2, Note 5), Montana's 2020 Construction Dewatering Permit[57] (Part II.A), EPA's New Hampshire and Massachusetts 2015 Dewatering General Permit[58] (Part 1.2.6), South Dakota's 2018 CGP[59] (Section 3.21.3), and Vermont's 2020 CGP.[60]

The proposed requirement to take photographs of the dewatering practices in operation would provide another visual way to document the discharge and how effectively the controls are working. The photographs can be taken in any form as long as they fairly represent the conditions of the dewatering operation and discharge on the day of the inspection. If the operator chooses to use digital photos, these should be kept with the inspection records in such a way that they can be viewed by EPA, if necessary, on the date of the inspection. EPA notes that Nevada's 2012 DeMinimus General Permit[61] similarly requires permittees to include photographic documentation as part of their permit coverage. Part B.5.1 of this permit specifies that "[d]ischarges conducted under the terms and conditions of this General Permit shall also be monitored by means of photographic documentation to verify performance of the water

[54] Alaska Department of Environmental Conservation. Alaska Pollutant Discharge Elimination System General Permit for Excavation Dewatering. Available at: https://dec.alaska.gov/water/wastewater/stormwater/dewater-hydrostatic

[55] Colorado Department of Public Health and Environment. CDPS Construction Dewatering Discharges to Discharge Under the Colorado Discharge Permit System. Available at: https://cdphe.colorado.gov/dewatering-general-permit-program

[56] Colorado Department of Public Health and Environment. Colorado Discharge Permit System (CDPS) General Permit COG0800000 for Discharges from Short-Term Construction Dewatering Activities. Available at: https://www.colorado.gov/pacific/cdphe/dewatering-general-permit-program

[57] Montana Department of Environmental Quality. General Permit for Construction Dewatering. Available at: http://deq.mt.gov/Water/permits/Discharges

[58] EPA. National Pollutant Discharge Elimination System (NPDES) General permits for Dewatering Activity Discharges. Available at: https://www.epa.gov/npdes-permits/dewatering-general-permit-dgp-massachusetts-new-hampshire

[59] South Dakota Department of Environment and Natural Resources. General Permit Authorizing Stormwater Discharges Associated with Construction Activities Under the South Dakota Surface Water Discharge System. Available at: https://denr.sd.gov/des/sw/StormWaterandConstruction.aspx

[60] State of Vermont Agency of Natural Resources Department of Environmental Conservation. National Pollutant Discharge Elimination System (NPDES) General Permit 3-9020 for Stormwater Runoff From Construction Sites. Available at: https://dec.vermont.gov/watershed/stormwater/permit-information-applications-fees/stormwater-construction-discharge-permits

[61] State of Nevada Division of Environmental Protection. National Pollutant Discharge Elimination System Permit NVG20100. Available at: https://ndep.nv.gov/water/water-pollution-control/permitting/nevada-deminimis-discharge-program

management BMPs and the discharge point BMPs. ... Photographs shall be taken from established photograph points, and shall depict representative views of the discharge activities on site, as well as the scope of operations with project sites, monitoring location(s), discharge point(s), and any relevant activity related to the discharge."

EPA also proposes to add a clarification to Part 6.4 explaining that as part of the inspection, the operator must modify the SWPPP site map if the site's stormwater controls are no longer accurately reflected on the current site map. These updates were already required as part of the current permit at Part 7.4.1. The proposed clarification would serve as a reminder in the permit that if changes are observed during an inspection from what was depicted on the site map, this would be the appropriate time to update the map.

Part 4.7: Inspection Report

Part 4.7.1: Requirement to Complete Inspection Report

Part 4.7.1 provides a consistent means of documenting the results of each inspection.

Part 4.7.1	Permit Requirements
4.7.1	You must complete an inspection report within 24 hours of completing any site inspection. Each inspection report must include the following: **a.** The inspection date; **b.** Names and titles of personnel making the inspection; **c.** A summary of your inspection findings, covering at a minimum the observations you made in accordance with Part 4.6, including any necessary routine maintenance pursuant to Part 2.1.4b or corrective action pursuant to Part 5.1~~s~~; **d.** If you are inspecting your site at the frequency specified in Part 4.2.2, Part 4.3, or Part 4.4.1b, and you conducted an inspection because of rainfall measuring 0.25 inches or greater, you must include the applicable rain gauge or weather station readings that triggered the inspection; and **e.** If you determined that it is unsafe to inspect a portion of your site, you must describe the reason you found it to be unsafe and specify the locations to which this condition applies.

Part 4.1.7 requires, similar to the concept of a log book, that an inspection report be completed for each inspection. It is EPA's judgment that requiring an inspection report to be kept will improve the organization of the inspection-related records, and make it easier for operators to keep track of their findings from inspection to inspection.

Part 4.7.2: Signature Requirements

Part 4.7.2 requires that inspection reports, whether in paper or electronic format, provide accountable documentation of compliance with the inspection requirements in this permit. Appendix I provides signature requirements for both paper and electronic reports.

Part 4.7.2	Permit Requirements
Each inspection report must be signed in accordance with Appendix I, Part I.11 of this permit.	

Part 4.7.3: Recordkeeping Requirements

Part 4.7.3 requires inspection reports be kept at the site and available to EPA inspectors.

Part 4.7.3	Permit Requirements

You must keep a copy of all inspection reports at the site or at an easily accessible location, so that it can be made immediately available at the time of an on-site inspection or upon request by EPA.[54]

[54] Inspection reports may be prepared, signed, and kept electronically, rather than in paper form, if the records are: (a) in a format that can be read in a similar manner as a paper record; (b) legally dependable with no less evidentiary value than their paper equivalent; and (c) immediately accessible to the inspector during an inspection to the same extent as a paper copy stored at the site would be, if the records were stored in paper form. For additional guidance on the proper practices to follow for the electronic retention of inspection report records, refer to the Fact Sheet discussion related to Part 4.7.3.

EPA proposes to include a clarifying footnote in Part 4.7.3 to specify that inspection reports may be prepared, signed, and kept electronically, rather than in paper form, if that is preferred by the operator. To make sure that the electronic reports can be accessed and read in the same way as paper, the permit requires that the records be: (a) in a format that can be read in a similar manner as a paper record; (b) legally dependable with no less evidentiary value than their paper equivalent; and (c) immediately accessible to the inspector during an inspection to the same extent as a paper copy stored at the site would be, if the records were stored in paper form. This is consistent with EPA's intent as explained on the Agency's 2017 CGP Frequently Asked Questions webpage at https://www.epa.gov/npdes/construction-general-permit-cgp-frequent-questions. See answer to the question, "Can I electronically prepare and sign the SWPPP, inspection reports, corrective action reports, and any other compliance documents and maintain them as electronic records?"

EPA provides further guidance to operators on specific attributes of an electronic system that need to be present to adequately meet the requirements stated above as follows:

Readability/Legal Dependability

EPA expects that an electronic recordkeeping system used in compliance with Part 4.7 (inspection reports); Part 5.4 (corrective action log); and Parts 7.3 (SWPPPs) of the 2012 CGP will generally ensure that records created and/or maintained are readable and legally dependable with no less evidentiary value than their paper equivalent. The following are attributes of an electronic recordkeeping system that will ensure readability and legal dependability:

a. From any other point of access to the electronic recordkeeping system, electronic records, including signatures, certifications, and alterations, can be: (i) displayed to EPA, including its authorized representatives, in a format that can be read in a manner similar to a paper record and that associates data with field names or other labels that give the data contained in the record meaning and context (not solely in a computer code or data string), (ii) easily copied for EPA, including its authorized representatives, to review and access at EPA staff computers using non-proprietary software, and (iii) can easily be printed to paper form;
b. Associated metadata in their native format is preserved and available upon request;
c. Electronic records cannot be modified without detection and are preserved in a manner that cannot be altered once created. For example, any changes to an electronic record are automatically and indelibly recorded in a logically associated (i.e., cryptographically bound) audit trail that records each change made without obscuring the data to which the modification is made or its antecedents. If audit trail technology is not feasible, iterative copies of electronic documents may be kept. Having a system to detect document modifications is

important for final versions of documents kept for compliance purposes and does not have to include "draft" documents that are still undergoing changes;

d. The electronic recordkeeping system identifies any person who creates, certifies, or modifies an electronic record;
e. Originals of any electronic record are immediately and automatically transferred to and held at a single location by a custodian of records who is not an author, certifier, or modifier of the electronic records. The original electronic record is secured in a fashion that protects it from tampering or destruction;
f. The electronic recordkeeping system identifies: (i) the name, address, telephone number and email address for the custodian of records described in "d" above; and (ii) the address and owner of the location where the original electronic record is located. The electronic records and their associated metadata remain available and the operator can demonstrate that the records have not been changed in any modification of the recordkeeping system or migration to a successor recordkeeping system;
g. Clear instructions guide users of the electronic recordkeeping system in proper use of the system and unambiguously communicate the legal significance of using an electronic signature device; and Computer systems (including hardware and software), controls, and attendant documentation that are part of the electronic recordkeeping system are readily available for, and subject to, agency inspection.

Accessibility

EPA will generally consider electronic records to be accessible enough to be considered to be stored at the site when the operator is able to, immediately, upon request, provide to government officials or authorized representatives:

a. Paper or electronic copies of requested records required to be kept pursuant to Part 4.7 (inspection reports); Part 5.4 (corrective action log); and Parts 7.3 (SWPPPs); and
b. Electronic access, using hardware and software available at the site, to required permit records via electronic storage at the site, or via direct access to an electronic system of records stored elsewhere, including legacy systems that have been migrated to a current system, provided that the location of the original record is within the United States.

Part 4.7.4: Record Retention

The requirement in Part 4.7.4 to retain all reports a minimum of three years comes from the standard permit condition requirements at 40 CFR 122.41(j)(2).

Part 4.7.4	Permit Requirements
You must retain all inspection reports completed for this Part for at least three (3) years from the date that your permit coverage expires or is terminated.	

Part 4.8: Inspections by EPA

The requirements in Part 4.8 are to inform the operator of its obligations with respect to providing access to EPA (or its authorized representatives) in order to conduct site inspections of its own for the purposes of determining compliance with this permit.

Part 4.8 (4.8.1 – 4.8.4)	Permit Requirements
You must allow EPA, or an authorized representative of EPA, to conduct the following activities at reasonable times. To the extent that you are utilizing shared controls that are not on site to	

comply with this permit, you must make arrangements for EPA to have access at all reasonable times to those areas where the shared controls are located.

4.8.1 Enter onto all areas of the site, including any construction support activity areas covered by this permit, any off-site areas where shared controls are utilized to comply with this permit, discharge locations, adjoining waterbodies, and locations where records are kept under the conditions of this permit;

4.8.2 Access and copy any records that must be kept under the conditions of this permit;

4.8.3 Inspect your construction site, including any construction support activity areas covered by this permit (see Part 1.2.1.c), any stormwater controls installed and maintained at the site, and any off-site shared controls utilized to comply with this permit; and

4.8.4 Sample or monitor for the purpose of ensuring compliance.

This same authority is included in Appendix I, Part 9 of the 2012 CGP as a standard permit condition based on 40 CFR 122.41(i). This authority is based on section 308 of the CWA. It is EPA's judgment that it is appropriate to place this same language in the inspection part of the permit so that it is more visible to the operator.

Part 5: Corrective Actions

Part 5.1: Conditions Triggering Corrective Action

Part 5.1 explains when an operator is expected to take corrective action.

Part 5.1 (5.1.1 – 5.1.5)	Permit Requirements

You must take corrective action to address any of the following conditions identified at your site:

5.1.1 A stormwater control needs repair or replacement (~~beyond routine maintenance required under Part 2.1.4)~~ that will take more than 24 hours to complete. Pursuant to Part 2.1.4c, however, where you find it necessary to repeatedly (i.e., 3 or more times) conduct the same routine maintenance fixes (repairs or replacements that take less than 24 hours) to the same control, or you find that the control was not installed or designed correctly in accordance with Part 2.1, you are also required to take corrective action in accordance with this Part; or

5.1.2 A stormwater control necessary to comply with the requirements of this permit was never installed, or was installed incorrectly; or

5.1.3 Your discharges are not meeting ~~causing an exceedance of~~ applicable water quality standards; ~~or~~

5.1.4 A prohibited discharge has occurred (see Part 1.3)~~.~~; or

5.1.5 You observe a sediment plume or a visible sheen or visible hydrocarbon deposits on the bottom or shoreline of the receiving water during discharge from site dewatering activities (see Part 4.6.3d), or you are informed by EPA, state, or local authorities of such conditions. Note that where you observe any of these conditions you are required to take immediate action to address the condition consistent with Part 5.2.1(in addition to taking other steps required in Part 5.2 to correct the problem), including immediately suspending the discharge and taking steps to ensure that the controls being used are operating effectively.

EPA proposes a clarification to Part 5.1.1 to specify that corrective action is also triggered when the operator repeatedly conducts the same routine maintenance pursuant to Part 2.1.4 to the same control, or that a control was not designed or installed correctly consistent with Part 2.1. This change is necessary to conform with the modifications made to Part 2.1.4.

EPA also proposes to add a new corrective action trigger to reflect the added inspection requirements for dewatering operations in Part 4.6.3.d where the operator observes a sediment plume, sheen, or hydrocarbon deposit on the bottom or shoreline of the receiving water. Corrective action would also be required if the operator is notified by EPA, or by a state or local authority, that these same conditions were observed and are attributable to the site's dewatering discharge. See related discussion in Sections 3.3, Part 4.3, and Part 4.6 of this fact sheet. EPA also notes in Part 5.1.5 that where the permittee observes any of these conditions, it must take immediate action to address the condition consistent with Part 5.2.1, including immediately suspending the discharge and taking steps to ensure that the controls being used are operating effectively.

The new triggers for taking corrective action in response to visible signs of pollution from the dewatering discharge are comparable to provisions found in state permits. EPA has referenced the permits that require the operator to examine the discharge for signs of a visible sediment plume or oily sheen in the discussion related to Part 4.6.3.c. Several permits also detail the corrective action steps that are necessary if such visible signs are observed. For instance, Part 5.1.4 of Alaska's 2019 General Permit for Excavation Dewatering Permit[62] requires that "[i]f a visual sheen is observed in the discharge, all discharging shall cease until [Department of Environmental Conservation] approval is granted ... and necessary corrective actions taken to prevent a sheen discharge, which may include but not be limited to: additional monitoring requirements and flowing the discharge through a temporary lined impoundment where skimmers, booms, absorbent pads, etc. could be used to remove any visual sheen." Similar requirements also appear in Colorado's 2014 Construction Dewatering Discharges Permit[63] (Part 1.B.2, Table B.1 Note 2) and 2020 Discharges from Short Term (<2 Year) Construction Dewatering Permit[64] (Part 1.B.2, Table B.2 Note 5), Montana's 2020 Construction Dewatering Permit[65] (Part II.A), and EPA's 2015 Dewatering Permit[66] (Part 1.2.6).

Part 5.2: Corrective Action Deadlines

Part 5.2 establishes deadlines for initiating and completing work to correct the conditions identified at the site in accordance with Part 5.1. Corrective action is distinguished from routine

[62] Alaska Department of Environmental Conservation. Alaska Pollutant Discharge Elimination System General Permit for Excavation Dewatering. Available at: https://dec.alaska.gov/water/wastewater/stormwater/dewater-hydrostatic

[63] Colorado Department of Public Health and Environment. CDPS Construction Dewatering Discharges to Discharge Under the Colorado Discharge Permit System. Available at: https://cdphe.colorado.gov/dewatering-general-permit-program

[64] Colorado Department of Public Health and Environment. Colorado Discharge Permit System (CDPS) General Permit COG0800000 for Discharges from Short-Term Construction Dewatering Activities. Available at: https://www.colorado.gov/pacific/cdphe/dewatering-general-permit-program

[65] Montana Department of Environmental Quality. General Permit for Construction Dewatering. Available at: http://deq.mt.gov/Water/permits/Discharges

[66] EPA. National Pollutant Discharge Elimination System (NPDES) General permits for Dewatering Activity Discharges. Available at: https://www.epa.gov/npdes-permits/dewatering-general-permit-dgp-massachusetts-new-hampshire

maintenance of stormwater controls and pollution prevention measures required in Parts 2.1.4 and 2.3.

Part 5.2	Permit Requirements
For any corrective action triggering conditions in Part 5.1, you must:	

EPA notes that if the condition identified in this Part constitutes a permit violation, correcting it does not eliminate the original violation. However, enforcement authorities will consider the promptness and effectiveness of any corrective action taken in determining an appropriate response. Additionally, failing to take corrective action in accordance with this Part will be an additional permit violation.

Part 5.2.1 requires the operator to immediately take reasonable steps to address any conditions at the site triggering corrective action to minimize pollutant discharges from the site.

Part 5.2.1	Permit Requirements
Immediately take all reasonable steps to address the condition, including cleaning up any contaminated surfaces so the material will not discharge in subsequent storm events;	

EPA notes that in the context of Part 5.2.1 the term "immediately" requires operators to, on the same day that a condition requiring corrective action is found, take steps to minimize or prevent the discharge of pollutants unless a new or replacement control or significant repair is required.

Part 5.2.2 establishes a specific timeframe for completing corrective actions that do not require a new or replacement control or significant repair.

Part 5.2.2	Permit Requirements
When the problem does not require a new or replacement control or significant repair, the corrective action must be completed by the close of the next business day;	

Examples of corrective actions that do not require significant repair or replacement include sweeping up tracked-out sediment, cleaning up spilled materials, and minor repairs such as fixing a hole in a silt fence. EPA notes that if the problem is identified at a time in the work day when it is too late to initiative corrective action, the initiation of corrective action must begin on the following work day.

Part 5.2.3 establishes a specific timeframe for completing corrective actions that require a new or replacement control or significant repair.

Part 5.2.3	Permit Requirements
When the problem requires a new or replacement control or significant repair, install the new or modified control and make it operational, or complete the repair, by no later than seven (7) calendar days from the time of discovery. If it is infeasible to complete the installation or repair within seven (7) calendar days, you must document in your records why it is infeasible to complete the installation or repair within the 7-day timeframe and document your schedule for installing the stormwater control(s) and making it operational as soon as feasible after the 7-day timeframe. Where these actions result in changes to any of the stormwater controls or procedures documented in your SWPPP, you must modify your SWPPP accordingly within seven (7) calendar days of completing this work.	

Examples of corrective actions that require significant repair or replacement include extensive removal and replacement of an existing control or controls, or repairing a sophisticated treatment control, such as a chemical treatment system.

Part 5.2.3 will also ensure that the SWPPP adequately reflects the stormwater controls being implemented on the site. Where a new control is installed and made operational, or a modification is made to an existing control, the SWPPP must be updated to reflect these site changes. Note that this is true for all such modifications, including those made to implement corrective actions.

Part 5.3: Corrective Action Required by EPA

Part 5.3 clarifies that, in addition to corrective actions that may result from the operator's own inspections, EPA may also require corrective actions to address permit violations found during the Agency's inspections.

Part 5.3	Permit Requirements
You must comply with any corrective actions required by EPA as a result of permit violations found during an inspection carried out under Part 4.8.	

Part 5.4: Corrective Action Log

Part 5.4 establishes requirements for proper documentation of all corrective actions that must be taken under this part of the permit.

Part 5.4	Permit Requirements
You must comply with any corrective actions required by EPA as a result of permit violations found during an inspection carried out under Part 4.8.	

This provision requires the operator to document problems found on the site and the corresponding corrective actions taken and applicable implementation dates.

EPA received feedback during its discussions with stakeholders that operators frequently find it confusing to have two different types of reports under the CGP, an inspection report and a corrective action report. Some operators have also apparently been mistakenly treating problems found on the site that should be treated as corrective actions, which necessitate the completion of a corrective action report, as routine maintenance fixes instead. As previously described, EPA has attempted to clarify the difference between the types of fixes that are rightly considered "routine maintenance" from those that are considered corrective actions by defining routine maintenance in the permit. See Part 2.1.4. EPA can appreciate how the difference between the inspection report and corrective action report, in practice, could be confusing. The scope of both reports is similar in that they both require documentation of problems found and of what the operator is doing to fix or correct them. For example, the inspection report requires the operator to include any observations made during the inspection that require corrective action, while the corrective action report similarly requires the operator to record the condition and actions taken to correct the problem.

To make the distinction between the two more clear and to improve compliance, EPA is proposing to streamline the documentation required for corrective actions. EPA proposes to change the previous requirement to complete a corrective action report to instead require that the same information as was required in the report instead be included as an entry into a "corrective action log." EPA also specifies that the log entries need only be signed by a person meeting the requirements of Appendix I, Part I.11.2, which includes signatories that are duly authorized representatives of the operator. This makes it clear that it is unnecessary for the most senior corporate official required to sign the NOI, as identified in Appendix I, Part I.11.1, to sign the corrective action log entries. EPA hopes that by specifically clarifying that a duly authorized representative may sign the log entry that the process for completing this documentation will be easier to complete.

Part 5.4.1 requires the operator to document the completion of the corrective action within 24 hours, whether the correction action was completed in 3 days, 7 days, or later (after the operator documents that it is infeasible to complete the repair within 7 days and sets a schedule for completing the repair in accordance with Part 5.2.3).

Part 5.4.1	**Permit Requirements**

For each corrective action taken in accordance with this Part, you must ~~complete a report in accordance with~~ record the following in a corrective action log:

a. Within 24 hours of identifying the corrective action condition, document the specific condition and the date and time it was identified.

b. Within 24 hours of completing the corrective action (in accordance with the deadlines in Part 5.2), document the actions taken to address the condition, including whether any SWPPP modifications are required.

Part 5.4.2 establishes requirements for accountable documentation of compliance with the corrective action requirements in this permit. Appendix I provides signature requirements for reports.

Part 5.4.2	**Permit Requirements**

Each entry to the corrective action log ~~Each corrective action report~~ must be signed in accordance with Appendix I, Part I.11.2 of this permit.

The requirement in 5.4.3 is intended to ensure that EPA officials have immediate access to such records during an on-site inspection.

Part 5.4.3	**Permit Requirements**

You must keep a copy of ~~all~~ the corrective action ~~reports~~ log at the site or at an easily accessible location, so that it can be made immediately available at the time of an on-site inspection or upon request by EPA.[55]

[55] The corrective action log may be prepared, signed, and kept electronically, rather than in paper form, if the records are: (a) in a format that can be read in a similar manner as a paper record; (b) legally dependable with no less evidentiary value than their paper equivalent; and (c) immediately accessible to the inspector during an inspection to the same extent as a paper copy stored at the site would be, if the records were stored in paper form. For additional guidance on the proper practices to follow for the electronic retention of corrective action log records, refer to the Fact Sheet discussion related to Part 4.7.3.

EPA proposes to include a clarifying footnote in Part 4.7.3 to specify that inspection reports may be prepared, signed, and kept electronically, rather than in paper form, if that is preferred by the operator. To make sure that the electronic reports can be accessed and read in the same way as paper, the permit requires that the records be: (a) in a format that can be read in a similar manner as a paper record; (b) legally dependable with no less evidentiary value than their paper equivalent; and (c) immediately accessible to the inspector during an inspection to the same extent as a paper copy stored at the site would be, if the records were stored in paper form. This is consistent with EPA's intent as explained on the Agency's 2017 CGP Frequently Asked Questions webpage at https://www.epa.gov/npdes/construction-general-permit-cgp-frequent-questions. See answer to the question, **"Can I electronically prepare and sign the SWPPP, inspection reports, corrective action reports, and any other compliance documents and maintain them as electronic records?"** See additional guidance provided to operators in the Fact Sheet section discussing this same issue related to Part 4.7.3.

The requirement in Part 5.4.4 to retain all reports a minimum of 3 years comes from the standard permit condition requirements at 40 CFR 122.41(j)(2).

Part 5.4.4	Permit Requirements
You must retain ~~all~~ the corrective action ~~reports~~ log ~~completed for this Part~~ for at least three (3) years from the date that your permit coverage expires or is terminated.	

Part 6: Stormwater Team Formation / Staff Training Requirements

The staff training requirements in Part 6 are to ensure that each member of the stormwater team understands the requirements of the permit and his or her particular responsibilities relating to complying with those requirements.

Part 6	Permit Requirements

6.1 STORMWATER TEAM

Each operator, or group of multiple operators, must assemble a "stormwater team" that will be responsible for ~~to~~ carrying out ~~compliance~~ activities ~~associated with the~~ necessary to comply with ~~requirements in~~ this permit. The stormwater team must include the following people:

a. Personnel who are responsible for the design, installation, maintenance, and/or repair of stormwater controls (including pollution prevention controls);

b. Personnel responsible for the application and storage of treatment chemicals (if applicable);

c. Personnel who are responsible for conducting inspections as required in Part 4.1; and

d. Personnel who are responsible for taking corrective actions as required in Part 5.

Members of the stormwater team must be identified in the SWPPP pursuant to Part 7.2.2.

6.2 GENERAL TRAINING REQUIREMENTS FOR STORMWATER TEAM MEMBERS

Prior to the commencement of construction activities, you must ensure that ~~the following personnel~~ all persons[5651] ~~on~~ assigned to the stormwater team understand the requirements of this permit and their specific responsibilities with respect to those requirements, including the following related to the scope of their job duties:

a. The permit deadlines associated with installation, maintenance, removal of stormwater controls and stabilization;

b. The location of all stormwater controls on the site required by this permit and how they are to be maintained;

c. The proper procedures to follow with respect to the permit's pollution prevention requirements; and

d. When and how to conduct inspections, record applicable findings, and take corrective actions. Specific training requirements for persons conducting site inspections are included in Part 6.3.

~~**a.** Personnel who are responsible for the design, installation, maintenance, and/or repair of stormwater controls (including pollution prevention controls);~~

~~**b.** Personnel responsible for the application and storage of treatment chemicals (if applicable);~~

~~**c.** Personnel who are responsible for conducting inspections as required in Part 4.1; and~~

~~**d.** Personnel who are responsible for taking corrective actions as required in Part 5.~~

You are responsible for ensuring that all activities on the site comply with the requirements of this permit. You are not required to provide or document formal training for subcontractors or other outside service providers (unless the subcontractors or outside service providers are responsible for conducting the inspections required in Part 4, in which case you must provide such documentation consistent with Part 7.2.2), but you must ensure that such personnel understand any requirements of this permit that may be affected by the work they are subcontracted to perform.

6.3 TRAINING REQUIREMENTS FOR PERSONS CONDUCTING INSPECTIONS

Any personnel conducting site inspections pursuant to Part 4 on your site must, at a minimum, either:

a. Have completed the EPA construction inspection course developed for this permit and have passed the exam; or

b. Hold a current valid construction inspection certification or license from a program that must, at a minimum, cover the following:

i. Principles and practices of erosion and sediment control and pollution prevention practices at construction sites;

ii. Proper design, installation, and maintenance of erosion and sediment controls and pollution prevention practices used at construction sites; and

iii. Performance of inspections, including the proper completion of required reports and documentation, consistent with the requirements of Part 4.

A member of the stormwater team may also conduct inspections if they are working under the supervision of a person who has the qualifications described above.

~~At a minimum, members of the stormwater team must be trained to understand the following if related to the scope of their job duties (e.g., only personnel responsible for conducting inspections need to understand how to conduct inspections):~~

~~**c.** The permit deadlines associated with installation, maintenance, and removal of stormwater controls and with stabilization;~~

~~**d.** The location of all stormwater controls on the site required by this permit and how they are to be maintained;~~

~~**e.** The proper procedures to follow with respect to the permit's pollution prevention requirements; and~~

~~**f.** When and how to conduct inspections, record applicable findings, and take corrective actions.~~

6.4 STORMWATER TEAM'S ACCESS TO PERMIT DOCUMENTS

Each member of the stormwater team must have easy access to an electronic or paper copy of applicable portions of this permit, the most updated copy of your SWPPP, and other relevant documents or information that must be kept with the SWPPP.

~~56~~51 If the person requiring training is a new employee who starts after you commence construction activities, you must ensure that this person has the proper understanding as required above prior to assuming particular responsibilities related to compliance with this permit. For emergency-related projects, the requirement to train personnel prior to commencement of construction activities does not apply, however, such personnel must have the required training prior to NOI submission.

Non-Substantive Changes to Part 6

EPA proposes several changes to Part 6 that are primarily focused on organization and formatting, and do not make substantive changes to the underlying provisions. The following summarizes these changes:

- Modify Part 6 title to reflect focus on stormwater team – Includes "Stormwater Team Formation" in title to reflect the fact that this Part addresses both the formation of the stormwater team and training requirements for team members.
- Reorganize description of stormwater team – This change moves the list of people that are required to be trained to the new Part 6.1, which describes the personnel who must be included in the stormwater team. It has always been EPA's intent that the stormwater team be comprised of the same people who must be trained, therefore this change simply better aligns this intent with the flow of Part 6.
- Move general training requirements to new section – This change relocates the same training requirements to Part 6.2, which is the section describing the general training requirements for members of the stormwater team.
- Add subpart titles for organizational purposes – To better distinguish between the different subparts of Part 6, EPA adds titles where there were none previously in the 2017 CGP.
- Clarify documentation of compliance with inspector training requirements – Related to the modified inspection training requirements in Part 6.3, EPA clarifies the documentation that is required for the SWPPP with respect to completion of this training. See Part 7.2.2.

Clarifications and Other Changes to Part 6

The 2017 CGP currently states that while the operator is required to ensure "that all activities on the site comply with the requirements of this permit," it is not required to document training for subcontractors or other outside service providers. See Part 6.2. EPA proposes an exception to this approach for subcontractors or other outside service providers who are responsible for carrying out inspections under Part 4. As will be discussed further in this section, EPA is modifying the training requirements for site inspectors in the proposal. It would undermine these new requirements if the permit also enabled operators to hire outside firms to conduct inspections who were not also subject to the same training requirements. EPA does not expect that this change will significantly affect permittees since it is the Agency's understanding that operators typically ensure that the subcontractors hired to carry out inspections already possess the type of specialty training that is expected for this permit. The effect of the proposed change in Part 6.2 is that operators will now be required to include as part of the SWPPP documentation (see Part 7.2.2) showing that any firms hired to conduct inspections comply with the training requirements of Part 6.3.

EPA also proposes to add a new subpart that specifically focuses on the training requirements for personnel conducting site inspections. The new Part 6.3 ("Training Requirements for Persons Conducting Inspections") would specify that anyone carrying out inspections must either (1) complete the EPA construction inspection course developed for this permit and pass the exam, or (2) hold a current valid certification or license from a non-EPA training program that

covers essentially the same principles. The proposed requirements would specify that the non-EPA training program must cover, at a minimum, the following:

1. Principles and practices of erosion and sediment control and pollution prevention practices at construction sites;
2. Proper design, installation, and maintenance of erosion and sediment controls and pollution prevention practices used at construction sites; and
3. Performance of inspections, including the proper completion of required reports and documentation, consistent with the requirements of Part 4.

The proposal also includes an exception to the new training requirements for members of the stormwater team if they are working under the supervision of a person who has the qualifications described above.

Related to these proposed changes, EPA is in the process of developing a construction inspection training program that will be made available as an option at no cost to CGP permittees along with an accompanying exam that, if passed satisfactorily, will provide the person with documentation showing that they have successfully completed the EPA course. EPA plans to have the training program ready for use by the issuance of the final 2022 CGP, or to delay the implementation of the requirement until the EPA training is available.

EPA is proposing these modifications to address what the Agency has found in multiple inspections conducted of permitted construction sites over the past several years to be significant evidence of ineffective inspections and inferior quality documentation. EPA has found in practice that the quality of inspections and inspection reports falls below what is required in the permit. While some permittees are properly following the permit's requirements for qualified inspectors, it is apparent from the quality of inspection documentation kept by a larger number of sites that those conducting the inspection do not understand what is required and/or the importance of the requirements in protecting water quality. EPA has determined that an appropriate way to address this problem is by making sure that the training received by individuals is adequate to assure the Agency that those charged with inspecting the site on behalf of the permittee are competent to do so.

These new requirements are essentially an extension of what the 2017 CGP (and 2012 CGP) already required for the "qualified person" to conduct inspections previously. The qualified person requirements were identified in a footnote as "a person knowledgeable in the principles and practice of erosion and sediment controls and pollution prevention, who possesses the appropriate skills and training to assess conditions at the construction site that could impact stormwater quality, and the appropriate skills and training to assess the effectiveness of any stormwater controls selected and installed to meet the requirements of this permit." In many ways, the new requirements in Part 6.3 are just a different way of establishing the same core training requirements. The key difference would now be that the permit more specifically describes the mechanism by which the site inspector should obtain the necessary training, either through the EPA training or a third party or state training program.

EPA evaluated a few options for how to modify the training requirements for persons conducting inspections before landing on the current proposal. The Agency considered requiring inspectors to obtain either a state or third party-offered training certification. The problem with this approach is that EPA did not find training programs offered by the states where this permit is in effect, except for the state of Florida. This would then effectively require that operators obtain their inspection certifications from commercially available programs, which the Agency was not prepared to do at this time. EPA was primarily concerned that by limiting the options of permittees to only commercially available training programs, it would increase the costs of permit compliance to a degree that EPA was not comfortable with. At the

same time, EPA recognizes that a significant number of operators are already having people pursue training programs offered by third parties, and the Agency fully expects that more and more operators will continue to do so. These programs provide a valuable service to construction sites that are serious about permit compliance. What EPA adopted for the proposal instead was an approach that would enable permittees to choose between pursuing training through either a state or third party, or to obtain training that EPA will develop and make available to its operators at no cost that will focus exclusively on what is necessary to comply with the Agency's CGP.

Another factor influencing how EPA developed this proposed training requirement was whether to apply it to all sites, or to allow for an exception for some sites based on size or other types of criteria. EPA ultimately decided that the requirement should apply to all sites because conducting inspections correctly and documenting the findings accurately is too important to effective stormwater management on site to allow some projects that are, for example, smaller in scale to be excused from the requirement. By applying the training requirement to all sites, this meant that cost would need to be a consideration for the estimated 15,400 sites covered by the CGP. Avoiding a mandated cost for permittees to purchase training, which they may not otherwise obtain, made the prospect of developing and offering an EPA training program appealing. While operators should continue to consider having their inspectors trained through a commercially available third party, making an EPA-developed option available for free should help to offset the costs to those that would rather not take on this expense.

EPA also decided it was important to allow construction staff to be able to conduct inspections if they do not personally have the required training proposed in Part 6.3, but they are working under the supervision of an individual who has the necessary training. This provision appears in some state construction stormwater permits that include specific inspection training requirements. See specifically the 2020 New York construction stormwater general permit[67] (Appendix A definition of "qualified inspector"), 2021 Alabama CGP[68] (Section V definition of "A qualified person under the direct supervision of a QCP"), and 2021 South Carolina construction stormwater general permit[69] (Section 4.2.E inspector qualifications). This provision provides site-specific flexibility while ensuring that the inspection work is overseen by someone with the right training to determine whether the inspection and required reporting are done correctly.

EPA notes that as part of the research it conducted to support the proposed training provisions, it compiled examples from other state construction stormwater permits related to the minimum training requirements for inspectors. This research provided a point of comparison for EPA to evaluate differing approaches and how they compared to the provisions of the 2017 CGP. The compilation of these permit examples is available in the docket for the proposed permit at http://www.regulations.gov.

EPA also requests comment on several aspects related to the proposed modified training requirements in Part 6.3.

[67] New York State Department of Environmental Conservation. SPDES General Permit for Stormwater Discharges from Construction Activity. Available at: https://www.dec.ny.gov/chemical/43133.html

[68] Alabama Department of Environmental Management. National Pollutant Discharge Elimination System General Permit Discharges from Construction Activities that Result in a Total Land Disturbance of One Acre or Greater and Sites Less than One Acre but are Part of a Common Plan of Development or Sale. Available at: http://216.226.179.150/programs/water/waterforms/ALR21CGP.pdf

[69] South Carolina Department of Health and Environmental Control. NPDES General Permit for Stormwater Discharges from Construction Activities. Available at: https://scdhec.gov/bow/stormwater/stormwater-construction-activities

Request for Comment 7: EPA requests comment on the proposed modifications to the training required for personnel conducting inspections on behalf of the permittee. In particular, EPA asks for any specific recommendations on how the Agency can design its own inspection training program so that it covers the material site inspectors will find most useful to comply with the permit's inspection requirements. EPA also requests feedback on the proposed alternative to pursue a training certification from a third-party training program, including the proposed criteria that such training programs must cover in order to meet the requirement.

Part 7: Stormwater Pollution Prevention Plan (SWPPP)

Part 7 describes the requirements for developing and maintaining a SWPPP.

Part 7.1: General Requirements

Part 7.1 establishes the overall requirement that operators develop SWPPPs prior to submitting their NOIs. The SWPPP must be in place prior to discharging so that the appropriate erosion and sediment controls are selected and to ensure that the eligibility and other requirements under the permit will be met.

Part 7.1	Permit Requirements
All operators associated with a construction site under this permit must develop a SWPPP consistent with the requirements in Part 7 prior to their submittal of the NOI. ~~52, 53~~57,58, 59 The SWPPP must be kept up-to-date throughout coverage under this permit. If a SWPPP was prepared under a previous version of this permit, the operator must review and update the SWPPP to ensure that this permit's requirements are addressed prior to submitting an NOI for coverage under this permit. ~~57~~52 The SWPPP does not establish the effluent limits and/or other permit terms and conditions that apply to your site's discharges; these limits, terms, and conditions are established in this permit. ~~58~~53 Where there are multiple operators associated with the same site, they may develop a group SWPPP instead of multiple individual SWPPPs. Regardless of whether there is a group SWPPP or multiple individual SWPPPs, each operator is responsible for compliance with the permit's terms and conditions. In other words, if Operator A relies on Operator B to satisfy its permit obligations, Operator A does not have to duplicate those permit-related functions if Operator B is implementing them for both operators to be in compliance with the permit. However, Operator A remains responsible for permit compliance if Operator B fails to implement any measures necessary for Operator A to comply with the permit. In addition, all operators must ensure, either directly or through coordination with other operators, that their activities do not compromise any other operators' controls and/or any shared controls. 59 There are a number of commercially available products to assist operators in developing the SWPPP, as well as companies that can be hired to help develop a site-specific SWPPP. The permit does not state which are recommended, nor does EPA endorse any specific products or vendors. Where operators choose to rely on these products or services, the choice of which ones to use to comply with the requirements of this part is up to the operator.

The SWPPP is intended to serve as a road map for how the construction operator will comply with the effluent limits and other conditions of this permit. The language in footnote 52 clarifies that the SWPPP does not establish the effluent limits that apply to the construction site's discharges; these limits are established in the permit. EPA emphasizes that while the requirement to develop a SWPPP, to keep it updated, and to include in it all of the required minimum contents consistent with Part 7.2 are enforceable permit requirements, the site-specific details of these SWPPPs do not establish separately enforceable limits, terms, or conditions of the permit. The fact that the SWPPP is an external tool and not considered to include effluent limits enables

the operator to be able to modify and retool its approach during the course of the permit term in order to continually improve how it complies with the permit.

The language in footnote 52 provides that where there are multiple operators associated with the same site, they may develop a group SWPPP instead of multiple individual SWPPPs. For instance, if both the owner and the general contractor of the construction site meet the definition of an operator and must obtain NPDES permit coverage, either party could develop a group SWPPP that applies to both parties, as long as the SWPPP addresses both parties' permit-related functions. Another example is where there are multiple operators associated with the same site through a common plan of development or sale (such as a housing development) at which a shared control exists. In this scenario, the operators may develop a group SWPPP instead of multiple individual SWPPPs, and divide amongst themselves various permit-related functions provided that each SWPPP, or a group SWPPP, documents which operator will perform each permit-related function, including those related to the installation and maintenance of the shared control. Regardless of whether there is a group SWPPP or multiple individual SWPPPs, all operators are legally responsible for compliance with the permit. In other words, if Operator A relies on Operator B to satisfy its permit obligations, Operator A does not have to duplicate those permit-related functions if Operator B is implementing them for both operators to be in compliance with the permit. However, Operator A remains responsible for permit compliance if Operator B fails to implement any measures necessary for Operator A to comply with the permit.

In addition, all operators must ensure, either directly or through coordination with other operators, that their activities do not compromise any other operators' controls and/or any shared controls.

The proposed permit includes a clarifying footnote (see footnote 59) that addresses a problem brought to EPA's attention by permittees involving private vendors marketing their stormwater control products as being endorsed or approved by EPA. The footnote clarification reminds the public that "[t]here are a number of commercially available products to assist operators in developing the SWPPP, as well as companies that can be hired to help develop a site-specific SWPPP," but that EPA does not endorse specific products or vendors. The proposed footnote therefore states, "The permit does not state which are recommended, nor does EPA endorse any specific products or vendors. Where operators choose to rely on these products or services, the choice of which ones to use to comply with the requirements of this part is up to the operator."

Part 7.2: SWPPP Contents

Part 7.2 includes the minimum requirements that must be included in the SWPPP, as follows.

Part 7.2.1: All Site Operators

Part 7.2.1 provides information about other operators engaged in activities covered under the permit.

Part 7.2.1	Permit Requirements
Include a list of all other operators who will be engaged in construction activities at the site, and the areas of the site over which each operator has control.	

Part 7.2.4 of the 2012 CGP required the SWPPP to include a list of all other operators who will be engaged in construction activities at the site. Part 7.2.1 restates this requirement to clarify in the SWPPP which operators the SWPPP covers, and the areas of the site over which each operator has control. For construction sites with only one operator, this provision does not apply.

Part 7.2.2: Stormwater Team

The requirement in Part 7.2.2 to provide information about the Stormwater Team in the SWPPP provides assurance that specific staff members are identified as responsible for overseeing the development of the SWPPP and are responsible for ensuring compliance with the permit requirements. Identification of staff members on the stormwater team in the SWPPP provides notice and clarification to facility staff and management (e.g., those responsible for signing and certifying the plan) of the responsibilities of certain key staff for following through on compliance with the permit's conditions and limits.

Part 7.2.2	Permit Requirements
Identify the personnel (by name and position) that you have made ~~are~~ part of the stormwater team pursuant to Part 6.1, as well as their individual responsibilities, including which members are responsible for conducting inspections. Include documentation that each member of the stormwater team has received the training required by Part 6. If personnel on your team elect to complete the EPA inspector training program pursuant to Part 6.3a, you must include copies of the certificate showing that the relevant personnel have completed the training and passed the exam.	

The proposed permit specifies that the SWPPP must include documentation showing that each member of the stormwater team identified in Part 6.1 has received the required training pursuant to Part 6. This same requirement appears in Part 7.2.8 of the 2017 CGP. The proposed permit would simply move the provision up to Part 7.2.2, where other requirements related to the stormwater team appear.

Part 7.2.3: Nature of Construction Activities

The provision in Part 7.2.3 requiring a description of the nature of the construction activities taking place on the construction site provides general information about the construction project, which can be readily understood by an EPA inspector or other third party who may be unfamiliar with the purpose and general layout of the projects.

Part 7.2.3	Permit Requirements
Include the following: **a.** A description of the nature of your construction activities, including the age or dates of past renovations for structures that are undergoing demolition; **b.** The size of the property (in acres or length in miles if a linear construction site); **c.** The total area expected to be disturbed by the construction activities (to the nearest quarter acre or nearest quarter mile if a linear construction site); **d.** A description of any on-site and off-site construction support activity areas covered by this permit (see Part 1.2.1c); **e.** The maximum area expected to be disturbed at any one time, including on-site and off-site construction support activity areas; **f.** A description and projected schedule for the following: **i.** Commencement of construction activities in each portion of the site, including clearing and grubbing, mass grading, demolition activities, site preparation (i.e., *excavating, cutting and filling*), final grading, and creation of soil and vegetation stockpiles requiring stabilization;	

ii. Temporary or permanent cessation of construction activities in each portion of the site;

iii. Temporary or final stabilization of exposed areas for each portion of the site; and

iv. Removal of temporary stormwater controls and construction equipment or vehicles, and the cessation of construction-related pollutant-generating activities.

g. A list and description of all pollutant-generating activities[6155] on the site. For each pollutant-generating activity, include an inventory of pollutants or pollutant constituents (e.g., *sediment, fertilizers, pesticides, paints, caulks, sealants, fluorescent light ballasts, contaminated substrates, solvents, fuels*) associated with that activity, which could be discharged in stormwater from your construction site. You must take into account where potential spills and leaks could occur that contribute pollutants to stormwater discharges, and any known hazardous or toxic substances, such as PCBs and asbestos, that will be disturbed or removed during construction;

h. Business days and hours for the project;

i. If you are conducting construction activities in response to a public emergency (see Part 1.4), a description of the cause of the public emergency (e.g., *mud slides, earthquake, extreme flooding conditions, widespread disruption in essential public services*), information substantiating its occurrence (e.g., *state disaster declaration or similar state or local declaration*), and a description of the construction necessary to reestablish affected public services.

[6155] Examples of pollutant-generating activities include paving operations; concrete, paint, and stucco washout and waste disposal; solid waste storage and disposal; and dewatering operations.

Identification of the size of the property, total area expected to be disturbed by construction activities, description of construction support activities, and the area expected to be disturbed provides the operator, among other things, with information about properly designing and installing stormwater control measures to minimize the discharge of pollutants, as well as information about the placement and type of stabilization practices that should be implemented to minimize the discharge of pollutants in stormwater.

This Part also requires the schedule for activities such as commencement of construction, temporary or permanent cessation of construction, temporary or final stabilization, and removal of controls. Operators are encouraged to consider developing a site phasing plan as part of the schedule for activities. The purpose of requiring documentation of the sequencing of construction activities is to assist operators with planning their construction activity sequencing in conjunction with the control measures they intend to use to meet the effluent limitations in this permit. Proper construction site planning limits the amount of land disturbed at one time and limits the exposure of unprotected soils through rapid stabilization, which in turn reduces the amount of sediment that gets discharged from the construction site. This requirement provides operators a better understanding of the site's characteristics throughout all phases of construction activity, which will help them to plan for the types of stormwater control measures necessary to meet effluent limitations. It is EPA's judgment that documenting this schedule of activities will help operators to minimize earth disturbances to the extent necessary for the construction activity, which will also minimize pollutants discharged in stormwater. If plans change due to unforeseen circumstances or for other reasons, the requirement to describe the sequence and estimated dates of construction activities is not meant to "lock in" the operator to meeting these dates. When departures from initial projections are necessary, this should be documented in the SWPPP itself, or in associated records, as appropriate.

The permittee is also required to list any known hazardous or toxic substances, such as PCBs and asbestos, which will be disturbed or removed during construction, in the description of

each pollutant-generating activity. Operators must also now document the business days and hours for the project so that EPA, or any authorized representative of EPA, can be informed of normal operating hours in the instance of an inspection in accordance with Part 4.8 of the permit.

Part 7.2.4: Site Map

Part 7.2.4 requires that the SWPPP contain a legible site map, or series of maps. In the permit, EPA kept a similar format from the 2012 CGP that divided the Site Map requirements into sub-categories to provide greater clarity for the various site map requirements. The requirements in Part 7.2.4.a and 7.2.4.b provide a visual depiction of where construction activities are occurring in relation to the boundaries of the property.

Part 7.2.4.a - b	Permit Requirements
a. Boundaries of the property; **b.** Locations where construction activities will occur, including: **i.** Locations where earth-disturbing activities will occur (note any phasing), including any demolition activities; **ii.** Approximate slopes before and after major grading activities (note any steep slopes (as defined in Appendix A)); **iii.** Locations where sediment, soil, or other construction materials will be stockpiled; **iv.** Any water of the U.S. crossings; **v.** Designated points where vehicles will exit onto paved roads; **vi.** Locations of structures and other impervious surfaces upon completion of construction; and **vii.** Locations of on-site and off-site construction support activity areas covered by this permit (see Part 1.2.1c).	

EPA proposes a clarification to the site map requirement in Part 7.2.4.d to identify areas of federally listed critical habitat within the site and/or at discharge locations. The modification would recognize the existing definition of "action area" in Appendix A that specifically includes upstream and/or downstream from the stormwater discharge point into a stream or water body segment that may be affected by these discharges.

Part 7.2.4.c	Permit Requirements
Locations of ~~all~~ any waters of the U.S. within the site and all waters of the U.S. located within one mile downstream of the site's discharge point(s). Also identify if any are listed as impaired~~,~~ or are identified as a Tier 2, Tier 2.5, or Tier 3 water;	

Requiring a visual showing these waters will provide operators with information necessary to comply with the requirements for impaired waters (Parts 3.1), and Tier 2, 2.5, and 3-protected waters (Part 3.2). Identifying the location of these waters on the site map will also help operators comply with the Erosion and Sediment Control requirements (Part 2.2), particularly those related to buffers (Part 2.2.1), and Pollution Prevention Standards (Part 2.3).

Part 7.2.4.d requires documentation on the site map of areas of threatened or endangered species critical habitat. This requirement is consistent with Part 7.2.6.4 from the 2012 CGP.

Part 7.2.4.d	Permit Requirements
Any a~~A~~reas of federally listed critical habitat within the site and~~/or~~ upstream and/or downstream from the stormwater discharge point into a stream segment that may be affected by these discharges ~~at discharge locations~~;	

The requirement in Part 7.2.4.e to map pre-construction cover on the site will assist operators in understanding how stormwater moves onto, through, and from the property prior to construction, and how any changes in this cover due to construction activities may affect stormwater discharges from the site.

Part 7.2.4.e	Permit Requirements
Type and extent of pre-construction cover on the site (e.g., *vegetative cover, forest, pasture, pavement, structures*);	

The requirement in 7.2.4.f to map the flow of stormwater on the site will provide valuable information to assist with planning, designing, and installing the appropriate stormwater control measures necessary to meet the permit's requirements regarding erosion and sediment controls, pollution prevention, and stabilization. Specifically, it will also assist the operator with complying with the requirements in Part 2.2.2 to "Direct stormwater to vegetated areas."

Part 7.2.4.f	Permit Requirements
Drainage patterns of stormwater and authorized non-stormwater before and after major grading activities;	

The requirements in Part 7.2.4.g informs the operator and, for EPA's purposes, documents where stormwater discharges will occur.

Part 7.2.4.g	Permit Requirements
Stormwater and authorized non-stormwater discharge locations, including: **i.** Locations where stormwater and/or authorized non-stormwater will be discharged to storm drain inlets;~~[62]~~[56] and **ii.** Locations where stormwater or authorized non-stormwater will be discharged directly to waters of the U.S. (i.e., not via a storm drain inlet). ~~[62]~~[56] The requirement to show storm drain inlets in the immediate vicinity of the site on your site map only applies to those inlets that are easily identifiable from your site or from a publicly accessible area immediately adjacent to your site.	

There are multiple uses for the information required in Part 7.2.4.g, among which include: (1) learning where sewer inlet protections will need to be installed prior to commencing construction disturbances; and (2) helping to plan stormwater controls that will reduce the erosive force of the discharge. The permit notes that the requirement to show storm drain inlets in the immediate vicinity of the site only applies to those inlets that are easily identifiable from the site or from a publicly accessible area immediately adjacent to the site.

The requirement in Part 7.2.4.h to identify the locations of all pollutant-generating activities on the site map will provide operators with an understanding of how the location of their various pollutant-generating activities will correspond to the areas of disturbance at the site, the potential impacts of where these activities are located on the discharge pollutants, and the ideal locations for stormwater control measures to reduce or eliminate such discharges. This information will be used to comply with the pollution prevention requirements in Part 2.3.

Part 7.2.4.h	Permit Requirements
Locations of all potential pollutant-generating activities identified in Part 7.2.3g;	

The requirement in Part 7.2.4.i to show on the site map the location of stormwater control measures is intended to provide a spatial correlation between pollutant sources on the site, the flow of stormwater through and from the site, and the location of waters of the U.S.

Part 7.2.4.i	Permit Requirements
Locations of stormwater controls, including natural buffer areas and any shared controls utilized to comply with this permit; and	

It is EPA's judgment that by requiring such information on the site map, the operator will be better able to locate stormwater control measures strategically so as to comply with the permit's requirements for erosion and sediment and pollution prevention in Parts 2.2 and 2.3. The requirement to show on the site map where areas of exposed soil will be stabilized, or have already been stabilized, provides operators with a visual aid that will help them to comply with the temporary and final stabilization requirements in Part 2.2.14. The requirement document natural buffer areas is included to help operators implement Part 2.2.1 to "Provide and maintain natural buffers."

The requirement in Part 7.2.4.j to show where chemicals will be applied on the site, and where they will be stored, is included to help operators implement Part 2.2.13 (treatment chemicals) and Part 2.3.3 (storage, handling and disposal of building products, materials, and waste). This requirement encourages the operator to think strategically about where the chemicals are applied and stored to minimize the risk of accidental release.

Part 7.2.4.j	Permit Requirements
Locations where polymers, flocculants, or other treatment chemicals will be used and stored.	

Part 7.2.5: Non-Stormwater Discharges

Part 7.2.5 requires operators to create a comprehensive list of all non-stormwater discharges expected to occur from the site. Documentation in the SWPPP of all non-stormwater discharges from the site provides operators with information that will help them to minimize non-stormwater associated pollutant discharges, and to ensure that only authorized non-stormwater discharges occur.

Part 7.2.5	Permit Requirements
Identify all authorized non-stormwater discharges in Part 1.2.2 that will or may occur.	

Part 7.2.6: Description of Stormwater Controls

Part 7.2.6 requires operators to include in the SWPPP a description of stormwater controls that will be implemented. Although this Part requires the SWPPP to include details on stormwater controls that will be implemented, departing from the individual design details on the site is not considered a permit violation.

Part 7.2.6.a	Permit Requirements
a. For each of the Part 2.2 erosion and sediment control effluent limits, Part 2.3 pollution prevention effluent limits, and Part 2.4 construction dewatering effluent limits, as applicable to your site, you must include the following: **i.** A description of the specific control(s) to be implemented to meet the effluent limit;	

ii. Any applicable stormwater control design specifications (including references to any manufacturer specifications and/or erosion and sediment control manuals/ordinances relied upon); [6357]

iii. Routine stormwater control maintenance specifications; and

iv. The projected schedule for stormwater control installation/implementation.

[6357] Design specifications may be found in manufacturer specifications and/or in applicable erosion and sediment control manuals or ordinances. Any departures from such specifications must reflect good engineering practice and must be explained in the SWPPP.

The requirements in Part 7.2.6.a have been reorganized to follow the organization of the requirements in Part 2. The permit notes that design specifications may be found in manufacturer specifications and/or in applicable erosion and sediment control manuals or ordinances. Any departures from such specifications must reflect good engineering practice and must be explained in the SWPPP.

Part 7.2.6.b requires operators to also include the following additional information in the SWPPP, as applicable.

i. Natural buffers and/or equivalent sediment controls (see Part 2.2.1 and Appendix G).

Part 7.2.6.b.i requires operators to document their compliance with respect to the buffer requirements in Part 2.2.1 and Appendix G of the permit.

Part 7.2.6.b.i	Permit Requirements

You must include the following:

(a) The compliance alternative to be implemented;

(b) If complying with alternative 2, the width of natural buffer retained;

(c) If complying with alternative 2 or 3, the erosion and sediment control(s) you will use to achieve an equivalent sediment reduction, and any information you relied upon to demonstrate the equivalency;

(d) If complying with alternative 3, a description of why it is infeasible for you to provide and maintain an undisturbed natural buffer of any size;

(e) For "linear construction sites" where it is infeasible to implement compliance alternative 1, 2, or 3, a rationale for this determination, and a description of any buffer width retained and/or supplemental erosion and sediment controls installed; and

(b) A description of any disturbances that are exempt under Part 2.2.1 that occur within 50 feet of a water of the U.S.

Such documentation will provide inspectors with verification that the operator has complied with the permit's buffer and/or equivalent sediment controls compliance alternatives.

ii. Perimeter controls for a "linear construction site" (see Part 2.2.3d).

Part 7.2.6.b.ii requires operators to document their compliance the linear construction site exception for perimeter controls.

Part 7.2.6.b.ii	Permit Requirements

For areas where perimeter controls are not feasible, include documentation to support this determination and a description of the other practices that will be implemented to minimize discharges of pollutants in stormwater associated with construction activities.

Note: Routine maintenance specifications for perimeter controls documented in the SWPPP must include the Part 2.2.3a requirement that sediment be removed before it has accumulated to one-half of the above-ground height of any perimeter control.

This requirement corresponds to Part 7.2.10.1.d from the 2012 CGP (stormwater control measures to be used during construction activity) and also documents in the SWPPP the maintenance requirement from Part 2.1.2.2.b from the 2012 CGP for removing sediment before it has accumulated to one-half of the above-ground height of any perimeter control.

iii. Sediment track-out controls (See Parts 2.2.4.b and 2.2.4.c).

The requirement in Part 7.2.6.b.iii ensures proper documentation regarding the controls that will be implemented to remove sediment prior to vehicle exist and demonstrate the operator's ability to comply with the Part 2.2.4.b and 2.2.4.c requirements.

Part 7.2.6.b.iii	**Permit Requirements**
Document the specific stabilization techniques and/or controls that will be implemented to remove sediment prior to vehicle exit.	

This requirement corresponds to Part 7.2.10.1.d from the 2012 CGP (stormwater control measures to be used during construction activity).

iv. Sediment basins (See Part 2.2.12).

The requirement in Part 7.2.6.b.iv ensures documentation when it is infeasible to utilize outlet structures required in Part 2.2.12 for withdrawing water from sediment basins.

Part 7.2.6.b.iv	**Permit Requirements**
In circumstances where it is infeasible to utilize outlet structures that withdraw water from the surface, include documentation to support this determination, including the specific conditions or time periods when this exception will apply.	

This requirement corresponds to Part 2.1.3.2 from the 2012 CGP (sediment basin design requirements), and requires SWPPP documentation for when this requirement is infeasible.

v. Treatment chemicals (see Part 2.2.13).

The requirements in Part 7.2.6.b.v ensure proper documentation regarding the use of chemicals at permitted sites, and a demonstration of the operator's ability to comply with the Part 2.2.13 requirements.

Part 7.2.6.b.v	**Permit Requirements**
you must include the following: (a) A listing of the soil types that are expected to be exposed during construction in areas of the project that will drain to chemical treatment systems. Also include a listing of soil types expected to be found in fill material to be used in these same areas, to the extent you have this information prior to construction; (b) A listing of all treatment chemicals to be used at the site and why the selection of these chemicals is suited to the soil characteristics of your site; (c) If the applicable EPA Regional Office authorized you to use cationic treatment chemicals for sediment control, include the specific controls and implementation procedures designed to ensure that your use of cationic treatment chemicals will not lead to a discharge that does not meet ~~an exceedance of~~ water quality standards;	

(d) The dosage of all treatment chemicals to be used at the site or the methodology to be used to determine dosage;

(e) Information from any applicable Safety Data Sheet (SDS);

(f) Schematic drawings of any chemically enhanced stormwater controls or chemical treatment systems to be used for application of the treatment chemicals;

(g) A description of how chemicals will be stored consistent with Part 2.2.13c;

(h) References to applicable state or local requirements affecting the use of treatment chemicals, and copies of applicable manufacturer's specifications regarding the use of your specific treatment chemicals and/or chemical treatment systems; and

(i) A description of the training that personnel who handle and apply chemicals have received prior to permit coverage, or will receive prior to use of the treatment chemicals at your site.

For Part 7.2.6.b.v above, information on soils may be obtained at http://websoilsurvey.nrcs.usda.gov/app/. This requirement corresponds to Part 7.2.10.2 from the 2012 CGP (stabilization practices).

vi. Stabilization measures (See Part 2.2.14).

The requirements in Part 7.2.6.b.vi provide greater specificity regarding the use of vegetative and/or non-vegetated controls, and the use of such controls for both temporary and final stabilization.

Part 7.2.6.b.vi	Permit Requirements

You must include the following:

(a) The specific vegetative and/or non-vegetative practices that will be used;

(b) The stabilization deadline that will be met in accordance with Part 2.2.14a.i-ii;

(c) If complying with the deadlines for sites in arid, semi-arid, or drought-stricken areas, the beginning and ending dates of the seasonally dry period (as defined in Appendix A) and the schedule you will follow for initiating and completing vegetative stabilization; and

(d) If complying with deadlines for sites affected by unforeseen circumstances that delay the initiation and/or completion of vegetative stabilization, document the circumstances and the schedule for initiating and completing stabilization.

EPA includes such specificity so that documentation in the SWPPP corresponds to the permit requirements for stabilization in Part 2.2.14 of the CGP. The requirements in Part 7.2.6.b.vi will provide the operator the opportunity to support its compliance with the stabilization requirements in Part 2.2.14 of the CGP in the SWPPP. Such documentation will also provide inspectors with verification that the operator has complied with the permit's stabilization requirements. This requirement corresponds to Part 7.2.10.3 from the 2012 CGP (stabilization practices).

EPA notes that it has included a definition in Appendix A for what the permit considers to be the "seasonally dry period" for arid, semi-arid, and drought-stricken areas. See detailed discussion in Section VI related to the changes to Part 4.4.2, as well as the seasonally dry period definition in Appendix A.

vii. Spill prevention and response procedures (See Part 1.3.5 and Part 2.3).

The requirements in Part 7.2.6.b.vii provide the operator an opportunity to develop a response plan for preventing spills from occurring and, if they do occur, a plan for responding to them in order to minimize the potential discharge of any pollutants from the site. The documentation in the SWPPP of spill prevention and response procedures also will demonstrate to inspectors the operator's compliance with the spill prevention and response requirements of the Pollution Prevention procedures in Part 2.3 of the permit.

Part 7.2.6.b.vii	Permit Requirements

You must include the following:

(a) Procedures for expeditiously stopping, containing, and cleaning up spills, leaks, and other releases. Identify the name or position of the employee(s) responsible for detection and response of spills or leaks; and

(b) Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity consistent with Part 2.3.6 and established under either 40 CFR § 110, 40 CFR § 117, or 40 CFR § 302, occurs during a 24-hour period. Contact information must be in locations that are readily accessible and available to all employees.

You may also reference the existence of Spill Prevention Control and Countermeasure (SPCC) plans developed for the construction activity under ~~Section~~ Part 311 of the CWA, or spill control programs otherwise required by an NPDES permit for the construction activity, provided that you keep a copy of that other plan on site.[64~~58~~]

[64~~58~~] Even if you already have an SPCC or other spill prevention plan in existence, your plans will only be considered adequate if they meet all of the requirements of this Part, either as part of your existing plan or supplemented as part of the SWPPP.

This requirement corresponds to Part 7.2.11.1 from the 2012 CGP (spill prevention and response procedures).

viii. Waste management procedures (See Part 2.3.3).

The requirement in Part 7.2.6.b.viii will allow operators the opportunity to develop procedures for waste management, and provide documentation to inspectors demonstrating compliance with the pollution prevention requirements relating to the management of construction wastes.

Part 7.2.6.b.viii	Permit Requirements

Describe the procedures you will follow for handling, storing, and disposing of all wastes generated at your site consistent with all applicable federal, state, tribal, and local requirements, including clearing and demolition debris, sediment removed from the site, construction and domestic waste, hazardous or toxic waste, and sanitary waste.

ix. Application of fertilizers (See Part 2.3.5).

The requirement in Part 7.2.6.b.ix ensures documentation in the SWPPP when the operator applies fertilizers at a rate, in an amount, at a time or in another manner that is a departure from the manufacturer specifications. This may be necessary in some limited circumstances, and Part 7.2.6.b.ix requires the operator to document these departures from manufacturer specifications.

Part 7.2.6.b.ix	Permit Requirements
Document any departures from the manufacturer specifications where appropriate.	

Part 7.2.7: Procedures for Inspection, Maintenance, Corrective Action

Part 7.2.7 requires SWPPP documentation of the procedures that will be employed to meet the permit's inspection, maintenance, and corrective action requirements.

Part 7.2.7	Permit Requirements

Describe the procedures you will follow for maintaining your stormwater controls, conducting site inspections, and, where necessary, taking corrective actions, in accordance with Part 2.1.4, Part 3.3~~4~~, and Part 5 of this permit. Also include:

a. The inspection schedule you will follow, which is based on whether your site is subject to Part 4.2 or Part 4.3, or whether your site qualifies for any of the reduced inspection frequencies in Part 4.4;

b. If you will be conducting inspections in accordance with the inspection schedule in Part 4.2.2, Part 4.3, or Part 4.4.1b, the location of the rain gauge or the address of the weather station you will be using to obtain rainfall data;

c. If you will be reducing your inspection frequency in accordance with Part 4.4.1b, the beginning and ending dates of the seasonally defined arid period for your area or the valid period of drought;

d. If you will be reducing your inspection frequency in accordance with Part 4.4.3, the beginning and ending dates of frozen conditions on your site; and

e. Any maintenance or inspection checklists or other forms that will be used.

~~**Staff Training.** Include documentation that the required personnel were, or will be, trained in accordance with Part 6.~~

The requirements in Part 7.2.7 will allow operators the opportunity to develop and document their procedures for inspections, maintenance activities, and corrective actions, and allow operators to demonstrate their compliance with the permit requirements corresponding to this documentation.

Part 7.2.8: Documentation of Compliance with Other Requirements

Part 7.2.9 requires operators to provide in the SWPPP documentation for compliance with the following other requirements:

a. Threatened and Endangered Species Protection.

Part 7.2.9.a specifies what Endangered Species Act documentation must be kept with the SWPPP.

Part 7.2.8.a	Permit Requirements
Include documentation required in Appendix D supporting your eligibility with regard to the protection of threatened and endangered species and designated critical habitat.	

The permit requires documentation with regard to endangered species in Part 7.2.9.a to document the operator's compliance with Appendix D of the permit, and to provide anyone who inspects the SWPPP the opportunity to review such compliance.

b. Historic Properties.

Part 7.2.9.b specifies what historic property documentation must be kept with the SWPPP.

Part 7.2.8.b	Permit Requirements
Include documentation required in Appendix E supporting your eligibility with regard to the protection of historic properties.	

The permit requires documentation with regard to historic properties in Part 7.2.9.b to document the operator's compliance with the screening process in Appendix E.

c. Safe Drinking Water Act Underground Injection Control (UIC) Requirements for Certain Subsurface Stormwater Controls.

Part 7.2.9.c specifies what UIC documentation must be kept with the SWPPP.

Part 7.2.8.c	Permit Requirements

If you are using any of the following stormwater controls at your site, document any contact you have had with the applicable state agency[6559] or EPA Regional Office responsible for implementing the requirements for underground injection wells in the Safe Drinking Water Act and EPA's implementing regulations at 40 CFR § 144 -147. Such controls would generally be considered Class V UIC wells:

i. Infiltration trenches (if stormwater is directed to any bored, drilled, driven shaft or dug hole that is deeper than its widest surface dimension, or has a subsurface fluid distribution system);

ii. Commercially manufactured pre-cast or pre-built proprietary subsurface detention vaults, chambers, or other devices designed to capture and infiltrate stormwater flow; and

iii. Drywells, seepage pits, or improved sinkholes (if stormwater is directed to any bored, drilled, driven shaft or dug hole that is deeper than its widest surface dimension, or has a subsurface fluid distribution system).

[6559] For state UIC program contacts, refer to the following EPA website: https://www.epa.gov/uic.

The permit requires documentation with regard to underground injection wells in Part 7.2.9.c to make operators aware of and to provide operators the opportunity to document their compliance with the Safe Drinking Water Act requirements for underground injection wells. For state UIC program contacts, refer to the following EPA website: https://www.epa.gov/uic.

Part 7.2.9: SWPPP Certification

Part 7.2.10 establishes the certification requirements for the SWPPP.

Part 7.2.9	Permit Requirements
You must sign and date your SWPPP in accordance with Appendix I, Part I.11.	

This requirement is consistent with standard NPDES permit conditions described in 40 CFR 122.22 and is intended to ensure that the operator understands their responsibility to create and maintain a complete and accurate SWPPP. Operators must appoint an authorized representative consistent with the regulations. Therefore, if a facility feels it is more appropriate for a member of the stormwater team to sign the documentation, that option is available under the permit. The signature requirement includes an acknowledgment that there are significant penalties for submitting false information.

Part 7.2.10: Post-Authorization Additions to SWPPP

Part 7.2.11 specifies the documents that must be included in the SWPPP following authorization to discharge.

Part 7.2.10	Permit Requirements

Once you are authorized for coverage under this permit, you must include the following documents as part of your SWPPP:

a. A copy of your NOI submitted to EPA along with any correspondence exchanged between you and EPA related to coverage under this permit;

b. A copy of the acknowledgment letter you receive from NeT assigning your NPDES ID (i.e., permit tracking number);

c. A copy of this permit (an electronic copy easily available to the stormwater team is also acceptable).

Part 7.2.11 will assist facility personnel and EPA (and other agency) inspectors in determining that the construction site has been authorized for permit coverage.

Part 7.3: On-Site Availability of the SWPPP

Part 7.3 instructs the operator on the requirements for retaining the SWPPP on-site.

Part 7.3	Permit Requirements

You must keep a current copy of your SWPPP at the site or at an easily accessible location so that it can be made available at the time of an on-site inspection or upon request by EPA; a state, tribal, or local agency approving stormwater management plans; the operator of a storm sewer system receiving discharges from the site; or representatives of the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS).[66]

EPA may provide access to portions of your SWPPP to a member of the public upon request. Confidential Business Information (CBI) will be withheld from the public, but may not be withheld from EPA, USFWS, or NMFS.[6760]

If an on-site location is unavailable to keep the SWPPP when no personnel are present, notice of the plan's location must be posted near the main entrance of your construction site.

[66] The SWPPP may be prepared, signed, and kept electronically, rather than in paper form, if the records are: (a) in a format that can be read in a similar manner as a paper record; (b) legally dependable with no less evidentiary value than their paper equivalent; and (c) immediately accessible to the inspector during an inspection to the same extent as a paper copy stored at the site would be, if the records were stored in paper form. For additional guidance on the proper practices to follow for the electronic retention of the SWPPP, refer to the Fact Sheet discussion related to Part 4.7.3.

[6760] Information covered by a claim of confidentiality will be disclosed by EPA only to the extent of, and by means of, the procedures set forth in 40 CFR Part 2, Subpart B. In general, submitted information protected by a business confidentiality claim may be disclosed to other employees, officers, or authorized representatives of the United States concerned with implementing the CWA. The authorized representatives, including employees of other executive branch agencies, may review CBI during the course of reviewing draft regulations.

Part 7.3 requires operators to retain copies of their SWPPP on site, and to make the document available to EPA or the Services immediately upon request. If a member of the public wishes to have access to the non-CBI portions of the operator's SWPPP, they must first contact EPA. EPA may require that a copy be sent to the Agency so that it can be provided to the requestor. The mechanism for providing EPA with a copy of the SWPPP is at the discretion of the operator (e.g., web-based, hard copy), though EPA strongly encourages that SWPPPs be provided electronically.

EPA proposes to include a clarifying footnote in 7.3 to specify that the SWPPP may be prepared, signed, and kept electronically, rather than in paper form, if that is preferred by the operator. To make sure that the SWPPP can be accessed and read in the same way as paper,

the permit requires that the SWPPP be: (a) in a format that can be read in a similar manner as a paper record; (b) legally dependable with no less evidentiary value than their paper equivalent; and (c) immediately accessible to the inspector during an inspection to the same extent as a paper copy stored at the site would be, if the records were stored in paper form. This is consistent with EPA's intent as explained on the Agency's 2017 CGP Frequently Questions webpage at https://www.epa.gov/npdes/construction-general-permit-cgp-frequent-questions. See answer to the question, **"Can I electronically prepare and sign the SWPPP, inspection reports, corrective action reports, and any other compliance documents and maintain them as electronic records?"** See additional guidance provided to operators in the Fact Sheet section discussing this same issue related to Part 4.7.3.

Part 7.4: Required SWPPP Modifications

Part 7.4.1: List of Conditions Requiring SWPPP Modification

Part 7.4.1 sets out the conditions requiring the SWPPP to be modified.

Part 7.4.1	Permit Requirements

7.4.1 You must modify your SWPPP, including the site map(s), within seven (7) days of any of the following conditions:

a. Whenever new operators become active in construction activities on your site, or you make changes to your construction plans, stormwater controls, or other activities at your site that are no longer accurately reflected in your SWPPP. This includes changes made in response to corrective actions triggered under Part 5. You do not need to modify your SWPPP if the estimated dates in Part 7.2.3f change during the course of construction;

b. To reflect areas on your site map where operational control has been transferred (and the date of transfer) since initiating permit coverage;

c. If inspections or investigations by EPA or its authorized representatives determine that SWPPP modifications are necessary for compliance with this permit;

d. Where EPA determines it is necessary to install and/or implement additional controls at your site in order to meet the requirements of this permit, the following must be included in your SWPPP:

i. A copy of any correspondence describing such measures and requirements; and

ii. A description of the controls that will be used to meet such requirements.

e. To reflect any revisions to applicable federal, state, tribal, or local requirements that affect the stormwater controls implemented at the site; and

f. If applicable, if a change in chemical treatment systems or chemically enhanced stormwater control is made, including use of a different treatment chemical, different dosage rate, or different area of application.

The requirement in Part 7.4.1 to maintain a modified SWPPP under any of the conditions listed above provides assurance that the SWPPP will be updated to accurately reflect the conditions on the construction site. It is important that the SWPPP be accurate in terms of changes to construction plans, stormwater controls, changes in operational control, and other important changes on the site, so that the facility personnel have access to a SWPPP that is current, and so that inspectors are provided with accurate site information for compliance purposes.

The requirement that any SWPPP revisions be completed within 7 days will ensure that any necessary revisions made to the SWPPP are incorporated in a timely manner so that the SWPPP is kept up to date.

Part 7.4.2: SWPPP Modification Records

Part 7.4.2 requires the operator to maintain a record of all SWPPP modifications.

Part 7.4.2	Permit Requirements
You must maintain records showing the dates of all SWPPP modifications. The records must include the name of the person authorizing each change (see Part 7.2.9~~7.2.10~~ above) and a brief summary of all changes.	

The requirement to maintain a record of all SWPPP modifications is to ensure that a record of all of the changes to the SWPPP is kept. Keeping a record of such changes will help facility personnel to stay current with the changes that have been made to the SWPPP, and will allow inspectors to determine if appropriate modifications were made to the SWPPP.

Part 7.4.3: Certification Requirements

Part 7.4.3 establishes the certification requirement for SWPPP modifications, as follows:

Part 7.4.3	Permit Requirements
All modifications made to the SWPPP consistent with Part 7.4 must be authorized by a person identified in Appendix I, Part I.11.b.	

The requirement that the SWPPP and all modifications be authorized by a person identified in Appendix I, Part I.11.b is consistent with standard NPDES permit conditions described in 40 CFR 122.22 and is intended to ensure that the operator certifies any SWPPP modifications. As described in the fact sheet for Part 7.2.10, operators are allowed to appoint an authorized representative consistent with the regulations. Therefore, if an operator thinks it is more appropriate for a member of the stormwater team to sign the documentation, that option is available under the permit. The signature requirement includes an acknowledgment that there are significant penalties for submitting false information.

Part 7.4.4: Required Notice to Other Operators

Part 7.4.4 specifies the notice requirement for other operators when the SWPPP is modified.

Part 7.4.4	Permit Requirements
Upon determining that a modification to your SWPPP is required, if there are multiple operators covered under this permit, you must immediately notify any operators who may be impacted by the change to the SWPPP.	

The requirement in Part 7.4.4 ensures that any other operators covered under the permit are kept up to date on the SWPPP so that they can act consistently with the modifications to the pollution prevention plan and ultimately comply with the permit.

Part 8: How to Terminate Coverage

Part 8 details the requirements that must be met before an operator of a construction project may be authorized to terminate coverage under the permit. Part 8 reminds the operator that until permit coverage is terminated, the operator must comply with all conditions and effluent limitations in the permit. Permit coverage is not terminated until EPA has received a complete and accurate NOT, certifying that the requirements for termination in Part 8 are met.

Part 8.1: Minimum Information Required in NOT

Part 8.1 lists the minimum information that must be provided in the NOT.

Part 8.1 (8.1.1 – 8.1.5)	Permit Requirements
8.1.1	NPDES ID (i.e., permit tracking number) provided by EPA when you received coverage under this permit;
8.1.2	Basis for submission of the NOT (see Part 8.2);
8.1.3	Operator contact information;
8.1.4	Name of site and address (or a description of location if no street address is available); and
8.1.5	NOT certification.

The requirements in Part 8.1 inform operators of the information that must be included in their NOT. The required information facilitates prompt processing of NOTs and provides assurance that operators have a valid basis for terminating.

EPA notes that the NPDES ID number is not the same number that was reported on the NOI form. The NOI contains the "NPDES permit number" as identified in the CGP (e.g., NHR100000) while the "NPDES ID" is that number provided by EPA's NPDES eReporting Tool (NeT) acknowledging receipt of a complete NOI. The NPDES IDs are assigned sequentially as NOIs are received by the NeT (e.g., NHR1000001, NHR1000002, NHR1000003, etc.).

Part 8.2: Conditions for Terminating Permit Coverage

Part 8.2 describes the triggering conditions for terminating permit coverage. These conditions are as follows:

Part 8.2 (8.2.1 – 8.2.3)	Permit Requirements
You ~~must~~ may terminate CGP coverage only if one or more of the ~~following~~ conditions in Parts 8.2.1, 8.2.2, or 8.2.3 has occurred. Until your termination is effective consistent with Part 8.5, you must continue to comply with the conditions of this permit.~~:~~	
8.2.1	You have completed all construction activities at your site and, if applicable, construction support activities covered by this permit (see Part 1.2.1c), and you have met all of the following requirements: **a.** For any areas that (1) were disturbed during construction, (2) are not covered over by permanent structures, and (3) over which you had control during the construction activities, you have met the requirements for final vegetative or non-vegetative stabilization in Part 2.2.14c~~b~~. To document that you have met these stabilization requirements, you must take photographs that clearly show your compliance with the Part 2.2.14 stabilization requirements and that are representative of the stabilized areas of your site, and submit them with your NOT; **b.** You have removed and properly disposed of all construction materials, waste and waste handling devices, and have removed all equipment and vehicles that were used during construction, unless intended for long-term use following your termination of permit coverage; **c.** You have removed all stormwater controls that were installed and maintained during construction, except those that are intended for long-term use following your termination of permit coverage or those that are biodegradable; and **d.** You have removed all potential pollutants and pollutant-generating activities associated with construction, unless needed for long-term use following your termination of permit coverage; or

8.2.2	You have transferred control of all areas of the site for which you are responsible under this permit to another operator, and that operator has submitted an NOI and obtained coverage under this permit; or
8.2.3	Coverage under an individual or alternative general NPDES permit has been obtained.

The requirements in Part 8.2 provide operators a list of all of the conditions for terminating permit coverage. These conditions must be satisfied before an NOT can be filed and permit coverage terminated. EPA notes that the conditions for terminating permit coverage in Part 8.2 are the same as in Part 8.2 of the 2017 CGP.

The proposed permit adds a new requirement in Part 8.2.1.a requiring operators to take and submit photographs showing the stabilized areas of the site as part of the NOT. EPA proposes this requirement primarily as an additional level of reassurance that permittees are complying with the stabilization requirements prior to terminating coverage. EPA is aware of a significant number of instances when operators prematurely terminate coverage before the site is properly stabilized. Given the importance of stabilization to preventing continuing erosion and sedimentation, EPA views the additional, proposed photo documentation to be a relatively easy way for the permittee to show the Agency that it has complied with the permit's final stabilization requirements.

EPA recognizes that a requirement to take photos and submit them electronically through NeT-CGP may raise a number of questions about the type of photos, their quality, and size, as well as other logistical issues. For this reason, EPA includes a specific request for comment in the permit asking the public for feedback on some of these issues.

Request for Comment 8: EPA is interested in receiving feedback on the proposed requirement in Part 8.2.1a to take photographs of the stabilized areas of the site and submit them with the NOT. EPA is particularly interested in whether any additional criteria should be established to ensure that the photos accurately depict the stabilized site, are representative of the area stabilized, and are of good quality, and what those criteria should be?

EPA proposes to clarify in Part 8.2 that until the termination of permit coverage is effective consistent with Part 8.5, the operator must continue to comply with the conditions of this permit.

Part 8.3: How to Submit Your NOT

Part 8.3 describes the process for submitting an NOT. This section also provides information about EPA's NPDES eReporting Tool, or "NeT."

Part 8.3	Permit Requirements
You must use EPA's NPDES eReporting Tool (NeT) to electronically prepare and submit ~~your~~ an NOT for the ~~2017~~ 2022 CGP. To access NeT, go to https://cdx.epa.gov/cdx. Waivers from electronic reporting may be granted as specified in Part 1.4.2~~1.4.1~~. If the EPA Regional Office grants you approval to use a paper NOT, and you elect to use it, you must complete the form in Appendix K.	

In Part 8.3, EPA requires that operators file an electronic NOT to notify EPA that it has met the conditions for terminating permit coverage under Part 8.2. EPA has made use of an electronic reporting system for the past four CGPs. Due to the expansion in internet availability, greater efficiency in administrative processing, and reductions in cost to manage the system as compared to paper NOTs, it is required that the NeT system be the primary mechanism by which operators of construction projects obtain permit coverage and submit an NOT. If the operator

requests a waiver from electronic reporting as specified in Part 1.4.1 and the EPA Regional Office grants approval to use of a paper NOT in Appendix K, then operators may submit a paper NOT to the Regional Office.

Part 8.4: Deadline for Submitting NOTs

Part 8.4 provides the operator with a deadline for when the NOT must be submitted following the occurrence of any of the triggering conditions in 8.2. The deadline is as follows:

Part 8.4	Permit Requirements
You must submit ~~your~~ an NOT within 30 calendar days after any one of the conditions in Part 8.2 occurs.	

The purpose of requiring a deadline for filing an NOT is to ensure that operators do not remain covered under the CGP for a long period of time after reaching and satisfying the conditions for permit termination.

Part 8.5: Effective Date of Termination of Coverage

Part 8.5 specifies to operators when their permit termination will become effective and therefore when they will no longer responsible for complying with the permit.

Part 8.5	Permit Requirements
Your authorization to discharge under this permit terminates at midnight of the calendar day that a complete NOT is submitted to EPA.	

If EPA determines that the NOT is incomplete or the operator has not satisfied one or more of the conditions in Part 8.2 for being able to submit a NOT, then the NOT will not be valid, and the operator must continue to comply with the conditions of the permit.

Part 9: Permit Conditions Applicable to Specific States, Indian Country Lands, or Territories

Section 401 of the CWA (See also 40 CFR §122.44(d)(3) and §124.53(a)) provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the State/Tribe in which the discharge originates certifies that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA. The states, Indian Country lands, and U.S. territories will document the completion of their Section 401 certifications for this permit in this section.

VII. Appendices

Appendix A: Definitions and Acronyms

Appendix A of the permit includes definitions of terms and a list of acronyms used throughout the permit. Appendix A provides a reference tool for terms and acronyms used throughout the permit.

The following terms are defined in the 2017 CGP:

1. "Action Area"
2. "Agricultural Land"
3. "Antidegradation Policy" or "Antidegradation Requirements"
4. "Arid Areas"
5. "Bank"

6. "Bluff"
7. "Borrow Areas"
8. "Business Day"
9. "Bypass"
10. "Cationic Treatment Chemical"
11. "Commencement of Construction Activities"
12. "Common Plan of Development or Sale"
13. "Construction Activities"
14. "Construction and Development Effluent Limitations and New Source Performance Standards"
15. "Construction Site" or "Site"
16. "Construction Support Activity"
17. "Construction Waste"
18. "Conveyance Channel"
19. "Critical Habitat"
20. "CWA"
21. "Dewatering"
22. "Discharge"
23. "Discharge of a Pollutant"
24. "Discharge Point"
25. "Discharge-Related Activity"
26. "Discharge to an Impaired Water"
27. "Domestic Waste"
28. "Drainageway"
29. "Drought-Stricken Area"
30. "Earth-Disturbing Activity"
31. "Earth-Disturbing Activities Conducted Prior to Active Mining Activities"
32. "Effective Operating Condition"
33. "Effluent Limitations"
34. "Effluent Limitations Guideline" (ELG)
35. "Eligible"
36. "Emergency-Related Project"
37. "Endangered Species"
38. "Excursion"
39. "Existing Site"
40. "Exit Points"

41. "Exposed Soils"
42. "Federal Operator"
43. "Final Stabilization"
44. "General Contractor"
45. "Hazardous Substances" or "Hazardous or Toxic Waste"
46. "Historic Property"
47. "Impaired Water"
48. "Impervious Surface"
49. "Indian Country" or "Indian Country Lands"
50. "Infeasible"
51. "Install" or "Installation"
52. "Intermittent (or Seasonal) Stream"
53. "Jar test"
54. "Landward"
55. "Large Construction Activity"
56. "Linear Construction Site"
57. "Minimize"
58. "Mining Activity"
59. "Mining Operations"
60. "Municipal Separate Storm Sewer System" or "MS4"
61. "National Pollutant Discharge Elimination System" (NPDES)
62. "Native Topsoil"
63. "Natural Buffer"
64. "Natural Vegetation"
65. "New Operator of a Permitted Site"
66. "New Site"
67. "New Source"
68. "New Source Performance Standards" (NSPS)
69. "Non-Stormwater Discharges"
70. "Non-Turbid"
71. "Notice of Intent" (NOI)
72. "Notice of Termination" (NOT)
73. "NPDES eReporting Tool" (NeT)
74. "Operational"
75. "Operator"

76. "Ordinary High Water Mark" "Permitting Authority"
77. "Point(s) of Discharge"
78. "Point Source"
79. "Pollutant"
80. "Pollution Prevention Controls"
81. "Polymers"
82. "Prohibited Discharges"
83. "Provisionally Covered Under this Permit"
84. "Qualified Person"
85. "Receiving Water"
86. "Run-On"
87. "Seasonally Dry Period"
88. "Semi-Arid Areas"
89. "Shared Control"
90. "Small Construction Activity"
91. "Small Residential Lot"
92. "Snowmelt"
93. "Spill"
94. "Stabilization"
95. "Steep Slopes"
96. "Storm Sewer System"
97. "Stormwater"
98. "Stormwater Control"
99. "Stormwater Discharge Associated with Construction Activity"
100. "Stormwater Inlet"
101. "Stormwater Team"
102. "Storm Event"
103. "Storm Sewer"
104. "Subcontractor"
105. "SWPPP"
106. "Temporary Stabilization"
107. "Thawing Conditions"
108. "Threatened Species"
109. "Tier 2 Waters"
110. "Tier 2.5 Waters"

111. "Tier 3 Waters"
112. "Total Maximum Daily Load" or "TMDL"
113. "Toxic Waste"
114. "Treatment Chemicals"
115. "Turbidity"
116. "Uncontaminated Discharge"
117. "Upland"
118. "Upset"
119. "Water-Dependent Structures"
120. "Water Quality Standards"
121. "Waters of the United States"
122. "Wetland"
123. "Work Day"

One acronym was added to the list that appears in the 2017 CGP for "NTU" or nephelometric turbidity units.

EPA proposes to add definitions for "seasonally dry period," and modifications to the definitions for "arid areas," "commencement of construction activities," "dewatering," "earth-disturbing activity," "earth-disturbing activities conducted prior to active mining activities," "non-turbidity," "semi-arid areas," "stormwater discharges associated with construction activity," and "uncontaminated discharge."

Appendix B: Permit Areas Eligible for Coverage and EPA Regional Addresses

Appendix B specifies in what areas of the country the permit would apply and EPA Regional Office addresses, and includes specific corresponding permit numbers. EPA notes that for the 2022 CGP, the Agency will no longer be the permitting authority for Idaho (except for sites located in Indian country lands) and for oil and gas activities in Texas, since those states will by the time of issuance be authorized to implement the NPDES program for these areas. Appendix B has been modified to reflect this change.

Appendix C: Small Construction Waivers and Instructions

Appendix C provides information to construction operators on the availability of permit waivers for rainfall erosivity (App. C, Sec. A), TMDLs (App. C, Sec. B), and equivalent analysis (App. C, Sec. C).

Appendix D: Eligibility Procedures Relating to Threatened and Endangered Species Protection

Appendix D specifies the eligibility criteria related to the protection of endangered and threatened species and critical habitat. Each operator must certify that they have met one of the 6 eligibility criteria.

Operators who cannot certify to one of the endangered species eligibility criteria are not eligible to submit an NOI to gain coverage under the CGP; instead they must apply to EPA for an individual NPDES permit. As appropriate, EPA will conduct ESA section 7 consultations when issuing individual permits. If there are concerns that CGP coverage for a particular facility may result in adverse effects to listed species or critical habitat, EPA may hold up discharge authorization until such concerns are adequately addressed. Regardless of an operator's

eligibility certification under one of the six criteria, EPA may require an application for an individual permit on the basis of adverse effects to species or habitat.

Background to Threatened and Endangered Species Requirements

Consistent with Section 7(a)(2) of the Endangered Species Act (ESA), EPA is in consultation with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), collectively known as the "Services," regarding the 2022 CGP and ESA eligibility criteria. See 50 CFR Part 402. Appendix D provides the eligibility language for determining which criterion operators may meet to ensure eligibility under the ESA-related provisions of the permit. As a result of consultation with FWS and NMFS, EPA made clarifying edits to the ESA eligibility criteria. The changes to the wording of the criteria do not change the content of the criteria or ask for new information but are intended to improve operators' understanding of the meaning of each criteria and also provide guidance on the appropriate documentation that would support the basis statement for each criteria.

The FWS and NMFS are responsible for developing and maintaining the list of protected species and critical habitat. Once listed as endangered or threatened, a species is afforded the full range of protections available under the ESA, including prohibitions on killing, harming or otherwise taking a species. In certain instances, the FWS or NMFS may establish a critical habitat for a threatened or endangered species as a means to further protect those species. Critical habitat is an area determined to be essential for the conservation of a species and need not be in an area currently occupied by the species. Some, but not all, listed species have designated critical habitat. Exact locations of such designated critical habitat are provided in the Services regulations at 50 CFR Parts 17 and 226.

Operators have an independent ESA obligation to ensure that any of their activities do not result in prohibited "take" of listed species. Section 9 of the ESA prohibits any person from "taking" a listed species, e.g., harassing or harming it, with limited exceptions. See ESA Sec 9; 16 U.S.C. §1538. This prohibition generally applies to "any person," including private individuals, businesses and government entities. Many of the requirements and procedures in the CGP to protect species may also assist operators in ensuring that their construction activities do not result in a prohibited take of species in violation of section 9 of the ESA. Operators who intend to undertake construction activities in areas that harbor endangered and threatened species may seek protection from potential "take" liability under ESA section 9 either by obtaining an ESA section 10 permit or by requesting coverage under an individual permit and participating in the section 7 consultation process with the appropriate FWS or NMFS office. Operators unsure of what is needed for such liability protection should confer with the appropriate Services.

Note that operators are required to comply with other applicable federal laws, including the Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act.

Proposed Updates to Appendix D

EPA is proposing some revisions to Appendix D. EPA updated the informational weblinks to the FWS and NMFS websites to help evaluate for the presence of ESA-listed species and critical habitat and evaluate the potential effects of construction activities. The proposed permit includes additional text related to the "action area" to provide further information. EPA also revised the steps outlined in Appendix D to provide clarity for operators to confirm that statements are valid when determining eligibility under the criteria. EPA proposed to include a suggestion that for operators selecting Criterion C, it would be helpful to the Services to include the following additional items with the NOI: 1) the species list with the action area used to obtain the list; 2) aerial image(s) of the site; and 3) a copy of the SWPPP. The proposed permit also includes updates to Criterion E (ESA Section 7 consultation has successfully concluded) to add a reference to a conference opinion in addition to the previously referenced biological opinion. In addition, EPA clarified the supporting documents that must be included in the NOI and SWPPP.

Previous references to a "PCTS number" have been updated to "ECO number" to match the terminology used by the Services. EPA also revised the steps to obtain the species list in the FWS' on-line mapping tool – Information, Planning, and Consultation System (IPaC)) to reflect updates to the electronic system.

Appendix E: Historic Property Screening Process

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to take into account the effects of Federal "undertakings" on historic properties that are listed on, or eligible for listing on, the National Register of Historic Places. The term Federal "undertaking" is defined in the NHPA regulations to include a project, activity, or program under the direct or indirect jurisdiction of a Federal agency including those requiring a Federal permit, license or approval. See 36 CFR 800.16(y). Historic properties are defined in the NHPA regulations to include prehistoric or historic districts, sites, buildings, structures, or objects that are included in, or are eligible for inclusion in, the National Register of Historic Places. See 36 CFR 800.16(l).

EPA's issuance of the permit is a Federal undertaking within the meaning of the NHPA. To address any issues relating to historic properties in connection with issuance of the final permit, EPA has included a screening process in Appendix E for all prospective dischargers to follow to ensure that potential impacts of their covered activities on historic properties have been appropriately considered and addressed. Although individual applications for coverage under the general permit do not constitute separate Federal undertakings, the screening process and related NOI questions provide an appropriate site-specific means of addressing historic property issues in connection with EPA's issuance of the final permit.

Under the NHPA regulations, a determination that a Federal undertaking has no potential to cause effects on historic properties fulfills an agency's obligations under section 106 of the NHPA. See 36 CFR 800.3(a)(1). EPA has reason to believe that the vast majority of activities that will be authorized under the CGP will have no potential to cause effects on historic properties. EPA does not anticipate effects on historic properties from the pollutants in stormwater and allowable non-stormwater discharges from construction activities that will be covered under the permit. Thus, to the extent EPA's issuance of the general permit will authorize discharges of such constituents, confined to existing stormwater channels or natural drainage areas, the final permitting action does not have the potential to cause effects on historic properties. Additionally, where the site will not be installing stormwater controls that cause subsurface earth disturbance (see Step 1 of Appendix E for examples of these controls), EPA similarly finds that the issuance of the permit does not have the potential to cause effects on historic properties.

It is EPA's judgment that the permit may have some potential to cause effects on historic properties where the permit authorizes or requires the construction and/or installation of stormwater controls that involve subsurface disturbance. Where the operator has to disturb the land through the construction and/or installation of such controls, there is a possibility that artifacts, records, or remains associated with historic properties could be impacted. Therefore, if the operator is installing new stormwater controls to manage its stormwater that will involve subsurface ground disturbance, the operator must consider the potential for effects to historic properties and may need to contact the applicable State Historic Preservation Officer (SHPO), Tribal Historic Preservation Office (THPO), or other tribal representative, to determine the likelihood that these controls will impact historic properties. Refer to Appendix E, Steps 2 through 5.

Appendix F: List of Tier 3, Tier 2, and Tier 2.5 Waters

Appendix F provides a list of Tier 3, Tier 2, and Tier 2.5 waters to assist construction operators in determining eligibility for coverage under Parts 1.1, and in complying with any applicable antidegradation requirements in Part 3.2.

Appendix G: Buffer Requirements

Appendix G includes requirements and additional guidance for operators on how to establish the 50-foot buffer or satisfy one of the two other compliance alternatives described in Part 2.2.1.a, as well as how to qualify for and comply with the exceptions in Part 2.2.1.b.

Appendix G provides information to assist operators in complying with Part 2.2.1. This appendix was developed for the permit to help implement the C&D rule requirement at 40 CFR 450.21(a)(6) to "provide and maintain natural buffers around waters of the United States … unless infeasible." In an effort to streamline the permit, much of the language on the buffer requirements from Part 2.1.2.1 of the 2012 CGP was moved to Appendix G for the 2017 permit.

Appendix H: 2-Year, 24-Hour Storm Frequencies

Appendix H provides a guide to operators to determine the volume of precipitation associated with their local 2-year, 24-hour storm event for operators who elect to provide storage for the calculated volume of discharge from a 2-year, 24-hour storm.

Appendix I: Standard Permit Conditions

Appendix I includes the standard NPDES permit conditions consistent with 40 CFR 122.41. No significant changes were made to the standard permit conditions.

As required by the 2015 amendments to the Federal Civil Monetary Penalties Inflation Adjustment Act ("2015 Act"), EPA issued the latest Penalty Inflation Rule on July 1, 2016 to adjust penalties for inflation that has accrued since the date the original penalty amount was enacted by Congress. Beginning January 15, 2017 and annually thereafter, the 2015 Act requires federal agencies to issue a new penalty inflation rule to reflect the amount of inflation that has occurred over the preceding year. Due to the annual changes that will be made to the statutory maximum penalties, EPA removed references to civil and administrative monetary penalties in Part I.1.2.2 and I.1.2.3 of Appendix I.

Appendix I contains a requirement that any person signing documents in accordance with Subsections I.11.1 or I.11.2 in accordance with the permit must include the certification statement available in Part I.11.4. This certification statement includes an additional sentence that, prior to the Vessel General Permit issued in December 2008, had not been included in previous EPA issued NPDES general permits. The sentence reads: "I have no personal knowledge that the information submitted is other than true, accurate, and complete." EPA believes this additional certification language is necessitated by the decision in *U.S. v. Robison*, 505 F.3d 1208 (11th Cir. 2007). In *Robison*, the Court of Appeals struck down the defendant's conviction for a false statement on the grounds that the certification language did not require him to have personal knowledge regarding the truth or falsity of the information submitted to EPA. Rather, the court reasoned that EPA's certification required the defendant to certify, in part, that he made an inquiry of the persons who prepared and submitted the information and based on that inquiry, the information was accurate to the best of his knowledge. The court further reasoned that there is no requirement in the certification that the person attest to his personal knowledge regarding the information submitted. The government had argued at trial that the defendant had personal knowledge that the facility had committed violations. As a result, EPA thinks it is necessary to include language that clarifies that the signatory is certifying that he or she has no personal knowledge that the information submitted is other than true, accurate, and complete.

EPA includes a minor change to Appendix I, Part I.11.2 to specifically reference the corrective action log as being subject to this particular signatory requirement. This change reflects the proposed modifications to Part 5.4 that shift the requirement to complete corrective action reports to instead require the maintenance of a corrective action log.

Appendix J: NOI Form and Instructions

Part 1.4.1 requires operators to use EPA's NPDES eReporting Tool (NeT) to prepare and submit NOIs. However, where an operator requests and receives approval from his/her EPA Regional Office, the operator will likely be authorized use the paper NOI form included in Appendix J.

EPA proposes to add some new questions to the NOI form that will be used by construction operators to obtain coverage under the 2022 CGP. One question asks operators if they will be discharging dewatering water during the course of their permit coverage. While EPA suspects that a majority of CGP-covered projects discharge dewatering water during construction, it would be useful to the Agency to know what the prevalence of this practice is at its permitted sites. This question will provide a straightforward way of compiling information broadly about the permittees, and enable EPA to know which permittees will be affected by the permit's new dewatering requirements.

Another question asks the operator completing the NOI whether there are other operators who are also covered by the CGP at the same site and, if so, what their NPDES ID numbers are. Because information from the current NOI does not query the operator whether there are multiple operators permitted for the same site, EPA is often unable to determine who all of the permitted entities are at larger projects.

The NOI form will also include a proposed new item that requires the operator to confirm that any personnel conducting inspections at the site will meet the modified training requirements in Part 6 of the permit.

EPA also proposes clarifying edits to better explain the types of documentation that are needed for several of the eligibility criteria and updated available mapping tools to assist operators in evaluating whether any listed or threatened species are known to occur in the vicinity of their project.

Appendix K: NOT Form and Instructions

Part 8.3 requires the operator to use EPA's NPDES eReporting Tool (NeT) to prepare and submit the NOT when any of the conditions in 8.2 have been met. However, where the EPA Regional Office specifically authorizes the operator to use a paper NOT form, that operator must complete and submit the paper form included in Appendix K.

Appendix K also provides potential operators with an idea of what types of questions to anticipate when completing the NOT. The NOT form includes modified reasons for termination. These modifications were considered reasonably necessary to reflect the changes made to the conditions for terminating permit coverage in Part 8.2.

Related to the proposed new requirement in Part 8.2.1.a, EPA is adding a check box to the NOT form to confirm that the operator has attached photographs that document compliance with the permit's final stabilization requirements.

Appendix L: Suggested Format for Request for Chemical Treatment

Part 1.1.9 requires operators to notify the applicable EPA Regional Office in advance of submitting an NOI If the operator plans to add "cationic treatment chemicals" (as defined in Appendix A) to stormwater and/or authorized non-stormwater prior to discharge. The EPA Regional Office will likely authorize coverage under the permit after the operator has included appropriate controls and implementation procedures designed to ensure that its use of cationic treatment chemicals will not lead to an exceedance of water quality standards.

Appendix L provides a suggested format for notifying the operator's applicable EPA Regional Office about its intended use of cationic treatment chemicals. The addition of Appendix L to the permit is to help operators in providing the required information to their Regional Office in order to become eligible for permit coverage under Part 1.1.9.