



**STATE OF WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER AND WASTE MANAGEMENT
601 57th Street SE
Charleston, WV 25304-2345**

**FACT SHEET, RATIONALE AND INFORMATION FOR
GENERAL NPDES PERMIT FOR CONSTRUCTION STORMWATER**

This fact sheet explains the new Construction Stormwater General Permit WV0115924
issued on January 10, 2019.

1. NAME AND ADDRESS OF APPLICANT

An applicant is any establishment with discharges composed entirely of stormwater associated with industrial activity (construction) agreeing to be regulated under the terms of this General Permit (except as noted herein). Construction activities are defined as land disturbing operations such as clearing, grubbing, grading and excavating operations during site development for residential, commercial, or industrial purposes except for operations that result in the disturbance of less than one acre of total land area which are not part of a larger common plan of development or sale. A common plan of development is a contiguous construction project where multiple separate and distinct construction activities may be taking place at different times on different schedules but under one plan, including most subdivisions.

2. GENERAL WV/NPDES PERMIT NO: WV0115924

3. COUNTY: Any WV county **RECEIVING STREAM:** Any WV stream

4. PUBLIC COMMENT PERIOD FROM September 6, 2018 **TO** October 19, 2018

5. SIC CODE: 17

6. DESCRIPTION OF APPLICANT'S FACILITY OR ACTIVITY:

The activities and facilities will be varied.

7. DESCRIPTION OF DISCHARGES:

Earthmoving and grading projects create conditions where accelerated erosion can cause large quantities of soil to be deposited into the streams and rivers of the state. The lack of vegetation, steepening of slopes, increased runoff, decreased infiltration, and other ill effects of construction can cause a 1,000-fold increase in the rate of erosion over pre-existing conditions. The erosion rates on construction sites can run into the hundreds of tons per acre. By volume, sediment is the number one pollutant in the state's waters and degrades more miles of stream than any other pollutant.

8. BACKGROUND

The 1972 Amendments to the federal Water Pollution Control Act (referred to as the Clean Water Act or CWA), prohibit the discharge of any pollutant to navigable waters from a point source to a water of the United States unless the discharge is authorized by an NPDES permit. Efforts to improve water quality under the NPDES program traditionally and primarily focused on reducing pollutants in discharges of industrial process wastewater and municipal sewage.

However, as pollution control measures were initially developed for these discharges, it became evident that more diffuse sources (occurring over a wide area) of water pollution, such as agricultural and urban runoff are also major causes of water quality problems. Some so-called diffuse sources of water pollution, such as agricultural stormwater discharges and irrigation return flows, are statutorily exempted from the NPDES program.

Since the enactment of the 1972 amendments to the CWA, considering the rise of economic activity and population, significant progress in controlling water pollution has been made, particularly with regard to industrial process wastewater and municipal sewage.

The "National Water Quality Inventory" 1988 report to Congress provided a general assessment of water quality that concluded pollution from diffuse sources is a serious problem. Runoff from agricultural, urban areas, construction sites, land disposal, and resource extraction is cited by the states as the leading cause of water quality impairment.

The states conducted a more comprehensive study of diffuse pollution sources under the sponsorship of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) and the EPA, which indicated that urban runoff is a major cause of beneficial use impairment.

This trend has continued almost unabated. Recent studies (Metropolitan Council of Governments, EPA, states, and others) have shown that urban runoff from all sources severely impacts water quality and limits designated uses of the waters of the United States. Studies by the Watershed Assessment Section of the Division of Water and Waste Management have determined that sediment is the number one source of water quality impairment in West Virginia. Sediment

moderately to heavily impacts approximately 70% of the state's waterways. One of the largest sources of sediment is construction activities.

The Water Quality Act (WQA) of 1987 contained provisions that specifically addressed stormwater discharges. Section (p) was added to the stormwater discharge provision Section 402. Section 402(p)(4)(A) required the EPA to promulgate final regulations governing stormwater permit application requirements for stormwater discharges associated with industrial activity and discharges from large municipal separate stormwater systems. In response to lawsuits filed by the Natural Resource Defense Council (NRDC), the EPA finally published regulations on November 16, 1990. West Virginia's first stormwater general permit was based on this rule. In early 1992, the EPA published additional information that changed some of the standards, particularly in relation to construction. The state's previous construction stormwater general permits closely mirrored the EPA's permit except the federal permit's higher minimum disturbance threshold was lowered to three acres.

The NRDC again sued the EPA on several issues, one germane to this permit. NRDC contended, among other items, that the five-acre limit for construction site disturbance was arbitrary and capricious and should be rethought. The court agreed, telling the EPA to come up with a new and lower disturbance threshold. In 1999, the EPA published the new rule for Phase II of the Stormwater General Permit in the Federal Register, and among other things, lowered the disturbance threshold to one acre, meeting the intent of the court ruling on NRDC's lawsuit.

In 2009, EPA published a new Construction and Development Effluent Limitations Guidelines rule (C&D rule) (40 CFR Part 450) which established numeric and non-numeric effluent limitations for storm water construction discharges. The numeric effluent limitations have been stayed for further study (November 5, 2010), however the non-numeric effluent limitations were in effect in the 2012 WV/NPDES General Permit.

9. GENERAL

The Division of Water and Waste Management, through its permitting system, is responsible for ensuring that wastewaters are identified, receive adequate treatment and are disposed of in accordance with federal and state regulations. Usually this requires an individual permit based on a thorough review of the facility processes and the constituents of its waste stream. The issuance of an individual permit for any facility is a resource intensive and time-consuming process for both the permitting agency and the industry.

All parties recognize the immensity of the problem of issuing individual permits for the large number of anticipated new sites throughout the state; hence, such permitting is currently too resource intensive.

For these reasons, the Division of Water and Waste Management has decided to utilize a general WV/NPDES permit. The Division of Water and Waste Management assumed primacy for the NPDES Program from the EPA in 1982. Under 47 CSR 10-13.6 of the Legislative Rules,

a general permit can be used to regulate either separate storm sewers or a category of point sources other than separate storm sewers if the sources all:

- a) Involve the same or substantially similar types of operations;
- b) Discharge the same types of wastes;
- c) Require the same effluent limitations or operating conditions;
- d) Require the same or similar monitoring; and
- e) In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

About 500 construction sites per year have been permitted over the last 20 years. The general permit process has proven to be a very efficient mechanism to cover construction-related activities. It is proposed to continue the use of a general permit for these facilities.

10. SUMMARY OF SIGNIFICANT CHANGES TO THE GENERAL PERMIT

The draft general permit includes several new or modified requirements and thus differs from the 2012 General Permit. The following list summarizes the significant changes to the General Permit:

I. Major Reorganization

The general permit has gone through a major reorganization. The draft permit puts forward greater emphasis on sediment and erosion controls and provides an easier to read format. A table of contents along with appendices for standard general permit content makes it easier to find specific permit requirements.

II. Enhanced Best Management Practices (BMPs)

The draft permit replaces the practice of one-year construction phase limitations and monitoring for stormwater discharges in areas with established sediment related Total Maximum Daily Loads (TMDLs) or Tier 3 receiving waters with the use of enhanced BMPs. Enhanced BMPs include:

- Project Phasing- Limiting the acres of disturbance at any given time.
- A 100-foot (or greater) buffer zone for waters of the state when a natural vegetated buffer exists in pre-construction conditions.
- Inspection of all erosion and sediment controls within disturbed areas at least once every four calendar days and within 24 hours after any precipitation event greater than 0.25 inches per 24 hours period.
- Repairs or maintenance shall be performed immediately to BMPs.
- Super Silt Fence, Belted Silt Retention Fence, or equivalent shall be used along streams and wetlands and at all stream crossings including staging areas.,
- Use of erosion control blankets for slopes steeper than 3:1 horizontal to vertical
- Sediment traps/basins constructed with baffles and/or skimmers and sediment forebays.

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- Use of approved flocculants
- Soil tackifiers
- Temporary seeding and mulching within 4 days when areas will not be re-disturbed for more than 14 days.
- Permanent seeding and mulching within 4 days of reaching final grade.
- Permanent stabilization within 7 days after construction has been complete.
- Submittal of the Notice of Termination by no later than 15 business days after permanent stabilization of all disturbed areas

DWWM recently public noticed its intent to reissue its two general permits for stormwater discharges related to construction activities. WV0115924 is authorized by the National Pollutant Discharge Elimination System (NPDES) and the other is a state only permit for stormwater related to oil and gas construction activities, Number WV0116815.

Based on comments received from the public, industry, and for the NPDES permit from the EPA, DWWM reviewed each permit in light of its authority for discharge of construction related stormwater into waters of the state.

According to WV 60CSR5, protection shall be applied to all waters of the state.

Tier 1 - Protection applies to all waters, but other Tiers also apply in some cases. Tier 1 protection applies where the level of water quality is not sufficient to support recreation and wildlife and the propagation and maintenance of fish and other aquatic life, or where the water quality meets but does not exceed levels necessary to support recreation and wildlife and the propagation and maintenance of fish and other aquatic life.

Tier 2 - A water segment shall be considered a Tier 2 high quality water where the level of water quality exceeds levels necessary to support recreation and wildlife and the propagation and maintenance of fish and other aquatic life. Degradation for Tier 2 shall be deemed significant if the activity results in a reduction in the water segment's available assimilative capacity (the difference between the baseline water quality and the water quality criteria) of ten percent or more at the appropriate critical flow condition(s) for parameters of concern.

Tier 3 - Protection applies to Outstanding National Resource Waters (ONRW). In order to protect Tier 3 waters, the agency must determine that the proposed activity will be short term in nature and the changes in water quality will be temporary and limited, before the proposed activity may be authorized. Any proposed activity that would result in a permanent new or expanded discharge upstream of an ONRW segment is prohibited except where such source would improve or not degrade the existing water quality of the downstream ONRW segment.

DWWM's approach to construction general permits, whether for NPDES or its state permit follows the same path as EPA's own construction general permit, which relies on BMPs to control the discharge of sediment or sediment-related parameters.

General permits for construction projects are the most effective permitting scheme any state or the EPA has ever conceived.

After carefully reviewing each Tier and confirming general permits are in fact the correct path forward for permitting the largest number of projects, DWWM then considered which BMPs are the most appropriate to protect water quality in each of the Tiers.

To meet anti-degradation, EPA calls for more frequent inspection of BMPs to confirm they're working properly. Also, EPA calls for stabilization of disturbed soils to occur sooner. Increased filtration is the final approach EPA identified for protecting these most sensitive waters.

DWWM follows EPA's approach. Use of these "enhanced BMPs" will allow DWWM to meet its anti-degradation obligations for Tier 2 and Tier 3 waters.

DWWM considered the comments received on both permits regarding compliance with Total Maximum Daily Loads (TMDLs). TMDLs are plans that prescribe reductions to load and wasteload allocations which will result in the attainment of water quality standards. Representation of a wasteload allocation for construction stormwater permits has evolved over time. It is the DWWM's position that all waters subject to TMDLs for sediment or sediment-related pollutants be assured the same protection through the construction stormwater permits as Tier 2 and Tier 3 waters.

Though its state-only permit is not subject to NPDES influence, state regulation 60CSR5 directs DWWM along the path to protecting waterbodies from degradation. WV Code §22-11-2 contained the state's policy on protecting its water and here, in the law, the word "reasonable" is found. "It is declared to be the public policy of the State of West Virginia to maintain reasonable standards of purity and quality of the water of the State consistent with (1) public health and public enjoyment thereof; (2) the propagation and protection of animal, bird, fish, and other aquatic and plant life; and (3) the expansion of employment opportunities, maintenance and expansion of agriculture and the provision of a permanent foundation for healthy industrial development."

DWWM determined that both its permits should use the same *reasonable* approach for anti-degradation of its Tier 2 and Tier 3 waterbodies as well as compliance with TMDLs and that is the use of enhanced BMPs. No other approach is "reasonable".

EPA provides a detailed explanation in their 2017 Construction General Permit (CGP) fact sheet and in the previously issued 2012 CGP fact sheet for using enhanced BMPs.

EPA addresses construction stormwater permitting via a three-pronged approach which includes technology-based effluent limitations, water quality-based effluent limits (WQBELs) and Site Inspection Requirements and frequencies. Although it may sound as if specific limits are assigned to these discharges through technology based limitations or WQBELS, what is addressed in these sections of their permit and explained in the fact sheet are BMP's necessary to stop, minimize, and/or control sediment from leaving the disturbed area and discharging into a stream. These non-numeric effluent limitations are designed to prevent the mobilization and stormwater discharge of sediment or sediment-related parameters, such as metals and nutrients, and prevent or minimize

exposure of stormwater to construction materials, debris, and other sources of pollutants on construction sites. Nationwide, source control through minimization of soil erosion is relied on as a pragmatic and effective way of controlling the discharge of these pollutants from construction activities.

Section 3.1 of the 2017 CGP states that "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".

According to West Virginia's Integration Implementation Procedures, found in 60CSR5, antidegradation involves protecting a stream's designated uses at a Tier I level if the stream is impaired for a particular pollutant of concern, keeping high quality streams better than criteria unless a lowering of water quality is justified based on socioeconomic considerations (Tier 2), and providing for only short term degradation of Outstanding National Resource Waters (Tier 3).

As mentioned above, EPA's approach, in the 2017 CGP, to address discharges to a water impaired for sediment or sediment-related parameters, and/or nutrients, or to a water that is identified by the state, as Tier 2, or Tier 3 for antidegradation purposes is to comply with increased inspection frequencies and stabilization deadlines outlined in the permit. As set forth in the EPA permit, the normal inspection frequencies are either to conduct a site inspection once every seven (7) calendar days or conduct a site inspection once every 14 days and within 24 hours of the occurrence of a storm event of 0.25 inches or greater. For a discharge to sensitive waters, EPA requires that the operator must conduct inspections once every 7 calendar days and within 24 hours of a storm event of 0.25 inches or greater. The operator must keep a record of rainfall measured in both instances.

Stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than seven days after the construction activity in that portion of the site has permanently ceased. It also requires that all erosion controls on the site are inspected at least once every seven calendar days and within 24 hours after any storm event of greater than 0.5 inches of rain per 24-hour period. These standard requirements are more stringent than the standard requirements for the EPA permit and nearly as stringent and protective as the EPA permit requirements to address discharges to waters impaired for sediment or sediment-related parameters, and/or nutrients, or to waters that are identified by the state, as Tier 2, or Tier 3 for antidegradation purposes. The permits would require that additional protective measures be employed at crossings of and in proximity to Tier 3 streams. Additional measures including permanent seeding and mulching must be accomplished within 4 days of reaching final grade; temporary seeding and mulching must be accomplished within 4 days when areas will not be disturbed for more than 14 days; the use of reinforced filtration devices (defined as belted silt retention fence, triple stacked compost filter sock and/or super silt fence) at all downslope perimeters; stream crossings in these areas must be completed within as soon as practicable once the crossing has begun; and disturbance must be limited as much as possible. Additionally, the permit requires all erosion controls in these areas are inspected at least once every seven calendar days and within 24 hours after any storm event of greater than 0.25 inches of rain per 24-hour period.

Since EPA's 2012 CGP fact sheet determined that by imposing on operators that discharge to sensitive waters additional requirements to stabilize exposed areas faster and to conduct more site inspections than other sites does not result in a lowering of water quality, and since the additional requirements to stabilize exposed areas faster and to conduct more site inspections than other sites in the Construction Stormwater General Permit registration in sensitive waters are equal to or more stringent than those used by EPA, it is DWWM's position that following the requirements of the Construction Stormwater General Permit registration will not result in the lowering of water quality. Thus, compliance with the Construction Stormwater General Permit will be sufficient to satisfy Tier 2, and the additional controls outlined in the SWPPP associated with this registration, which exceed EPA required controls to satisfy Tier 3 antidegradation, are sufficient to not result in a lowering of water quality, making individualized Tier 2 or Tier 3 review unnecessary.

Further, specific to West Virginia law pursuant to per Section 3.7 of the Antidegradation Rule 60 CSR 5, a Tier 2 review is not required for general permit registrations. Section 3.7 states that "On or after July 2, 2001, the effective date of these implementation procedures, new and reissued WV/NPDES general permits will be evaluated to consider the potential for significant degradation as a result of the permitted activity. Regulated activities that are granted coverage by a WV/NPDES general permit will not be required to undergo a Tier 2 antidegradation review as part of the permit registration process."

Additionally, as discussed above, the standard requirements in the Construction Stormwater General Permit addressing stabilizing exposed areas and conducting site inspections are nearly as stringent as EPA's additional requirements that are used to meet a Tier 3 review, which allows no degradation. By implementing these controls on all disturbed area under the permit registration coverage, Tier 2 antidegradation is fully addressed and an individual Tier 2 review and its associated baseline water quality is not required.

In waters with approved TMDLs for sediment, applicants will be required to employ the same anti-degradation BMPs. In waters listed as sediment impaired, where TMDLs have not yet been developed, applicants will utilize these same controls.

III. Minor Construction Activities

For projects disturbing 1 to less than 3 acres of land, the one-year grading phase has been removed. This is partly due to the fact that the permit encourages prospective applicants to wait until permit coverage is granted before letting projects go to bid. Though the advice is sound, newly approved permittees found they were not able to squeeze the whole project into one year: letting projects to bid; selecting contractors; and ensuring projects were completed was just too much to accomplish in so short a time. Contractor delays, difficulty in obtaining materials, financing issues, local rules and a myriad of other obstacles plagued the one-year time limit.

DEP's experience with the Notice of Intent (NOI) is that the one-year limitation caused many issues for permittees. Many projects could not be completed within the time frame, which

meant that the permittees were either operating with expired coverage, or, they had to apply for continuing coverage under the Site Registration Application (SRA). Due to the grading phase exceeding one-year, public notice of the SRA was required.

DEP sought a better permitting approach for these projects and determined that the new Minor Construction Project is the right solution. This permitting approach removes the one-year limitation. As mentioned above, public notice is routine for projects with grading phase exceeding one year, but DEP's Electronic Submission System's Public Query function makes ALL applications available to the public for easy viewing. To keep these smaller, longer-term projects from formal Public Notice requirements, DEP opted to require some details about the BMPs chosen by applicants. Where the former NOI approach asked for no details at all, the DEP as well as the public had no assurance appropriate BMPs were selected.

The new approach is intended to give the permittees more time to finish their projects yet give the Agency and the public reassurance that proper BMPs are utilized on these sites.

IV. Construction of Single-Family Homes

Projects for construction of Single Family Homes of 1 to less than 3 acres, including offsite borrow and waste sites, by the homeowner or homeowner's contractor are subject to the registration requirements of this (draft) permit.

The EPA's Permit and Program Quality Review (PQR) noted that construction of Single Family Homes (1 to less than 3 acres) are subject to registration requirements. Because the 2014 permit did not require registration, this item was termed a "Critical Finding", therefore, an application is now required.

. Offsite Waste and Borrow Areas

Offsite waste and borrow areas, one acre or greater, must be included in applications and approved before material may be removed from or accepted at construction sites. Such areas must be included in the application when associated with single family homes, linear projects, or any other construction project.

Offsite waste or borrow sites less than one acre in size that are not contiguous to the construction site or adjacent to another waste and borrow site, must provide sediment and erosion controls and may be included with the application, however, there is no requirement to do so unless otherwise required by the Director.

EPA's approach to the permitting of waste and borrow areas is to consider Larger Common Plan of Development or Sale (LCPD). When waste or borrow site compose less than an acre in size and are not contiguous or adjacent to the construction site, registering the site is not required.

The practice described here is not new, but the previous permit did not clearly describe just how LCPD affects such areas. Confusion about the requirements led some construction projects to shut down while trying to determine the proper steps for disposing of or acquiring material from such

areas. A more practical approach was needed, so the DWWM opted to follow the same permitting requirements EPA uses with these small areas.

VI. Groundwater Protection Plans (GPPs)

Previously, there was no requirement for submittal of GPPs. The draft permit now requires GPPs to be submitted and reviewed as part of the application, due to increased activity in areas with karst terrain and due to concerns for protecting underground sources of drinking water.

VII. SWPPP Preparation and Inspections by Qualified Person

The PQR identified a deficiency in the previous permit as the qualifications weren't specified for the person(s) preparing the SWPPP and conducting inspections. Additionally, the previous permit did not list the items to inspect and did not explain when inspection frequencies may be reduced.

This draft permit corrects the deficiency noted in the PQR and has the goal of providing additional protection for water quality by putting the job of developing plans and the requirements for conducting inspections in the hands of knowledgeable persons.

VIII. Certification of Sediment Control Structures

This section requires those controls to be inspected by the qualified person and construction of certain significant structures to be certified. These structures serve as a major function in the attempt to control sediment and proper construction is vital to protecting waters of the state.

IX. Road or Access Roads

The draft permit significantly changes the approach used for permitting road construction and abandonment. Roads are a major source of sediment and the draft permit intends to get a better description of the nature of the activity (major road/access road/etc.) and requires the proper controls for the activity.

Each road shall be classified as either permanent or temporary and categorized as Construction Activity — New or Improved, Incidental Construction Activity, or Maintenance Only.

- Temporary roads shall be reclaimed as soon as practical after they are no longer needed for operations.
- New or Improved roads shall be designed with the complete specifications along the entire road.
- Incidental Construction Activity necessary to address rills and gullies and other drainage issues, shall be designed with the complete specifications on that specific segment.

- Maintenance Only means there will be no grading. Gravel will be spread on the road surface and no other action will be taken.

X. Notice of Termination (N.O.T.)

The permittee now has the option of including with the N.O.T., a certification by a registered professional engineer or professional surveyor that the site meets stabilization requirements.

The Director has assigned significant resources to the inspection of completed projects, but there are times when inspectors are needed at emergency sites or have extremely heavy workloads. Therefore, the draft permit contains this provision to allow for the orderly process of closing permits in a timely fashion.

XI. Digital Mapping

Historically, the general permit was weak regarding the concept of Larger Common Plan of Development or Sale. Public requests for identification of projects spanning hundreds of acres across multiple watersheds was beyond the ability of the DWWM staff. Determining which projects were to discharge to sensitive waters was sometimes unclear. Digital mapping of the limits of disturbance for proposed project will better position the DWWM to fulfill its obligations to all these scenarios.

Considering the small permit review staff (4 full time employees), the benefit of digital mapping is to reduce review time.

XII. Inspection of E&S Controls and Basins/Traps

The PQR identified a deficiency in the previous permit as the qualifications of the person conducting inspections were not specified. Additionally, the previous permit did not list the items to inspect and did not explain when inspection frequencies may be reduced. These structures serve as a major function in the attempt to control sediment and proper construction is vital to protecting waters of the state.

11. COVERAGE UNDER THE GENERAL PERMIT

The general permit proposes to provide coverage for any discharges composed entirely of stormwater associated with industrial (construction) activity and agreeing to be regulated under the terms of the general permit except for:

1. Operations that result in the disturbance of less than one acre of total land area, which is not part of a larger common plan of development or sale.
2. Stormwater discharges associated with land disturbing activities that may reasonably be expected to be causing or contributing to a violation of a water quality standard as determined by the Director.

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3. Land disturbing activities governed by other NPDES permits issued by the Department of Environmental Protection. This includes Division of Mining and Reclamation permits for coal mining and non-metallic quarries.
4. Landfills, except in the preparation of a new landfill, landfill treatment facilities and/or borrow areas.
5. Other activities exempt from NPDES permitting requirements as set forth in 40 C.F.R. 122.3 and 47 CSR 10.3.2.b.
6. Land disturbing activities related to oil and gas activities as required by the Energy Policy Act of 2005. These activities include construction of drilling sites, waste management pits, and access roads, as well as construction of the transportation and treatment infrastructure, such as pipelines, natural gas treatment plants, natural gas pipeline compressor stations, and crude oil pumping stations. Construction activities that result in a discharge of a reportable quantity release or that contribute pollutants (other than non-contaminated sediments) to a violation of a water quality standard are still subject to permit coverage under WV0115924 or an individual NPDES permit.

Determination of the disturbed area is made by totaling all disturbed area directly related to construction of the entire project. Offsite waste (excluding sales of topsoil to individuals) and borrow sites are included in the total disturbance unless borrow sites are commercial quarries and regulated by the Division of Mining and Reclamation.

For subdivisions, the total disturbed area is calculated by adding up all disturbances related to the installation of utilities, construction of sediment control facilities, building of roads and other infrastructure. Phased projects that disturb less than one acre in each phase but will eventually disturb more than one acre with all phases must register under this permit.

For minor construction activities (one to less than three acres) a simpler program exists. These minor land disturbing activities are required to submit a Minor Construction Activity application prior to commencing construction. This is a simplified application form. A Stormwater Pollution Prevention Plan (SWPPP) needs to be developed, submitted for review, and made available for review by DEP personnel.

Existing registrations (both Notice of Intent and Sight Registration Applications) approved from February 9, 2018 through February 9, 2019 where the project has been completed, and all disturbed lands are permanently stabilized shall submit the Notice of Termination within 90 days of the effective date of the General Permit.

Existing registrations (both Notice of Intent and Sight Registration Applications) approved from February 9, 2018 through February 9, 2019, where the project has disturbed lands that have not been permanently stabilized or where the project has not been completed and which do not discharge to a TMDL water must submit a signed certification of agreement to abide by the terms and conditions of

the reissued General Permit, within 90 days of the effective date of the reissued General Permit. The certification must be submitted through the agency's Electronic Submittal System (ESS).

Additional application fees do not apply to the certification; however, annual permit fees still apply. An updated timeline for major activities and a status map are required to be submitted with the certification. The timeline shall include major activities as outlined in Part II. Section H.1. of the permit. The status map shall show disturbed areas and the Limits of Disturbance (LOD), which is the area approved under the registration for land disturbance. The status map may be in PDF format and is not required to conform to the specifications of Part II. Section H.1.a. of the General Permit. Projects that have not started, and therefore have not disturbed any lands, are not required to provide the status map but must submit the updated timeline with the above described certification.

Projects discharging to Waters of the State with an approved sediment-related Total Maximum Daily Load (TMDL) with registrations that were approved from February 9, 2018 through February 9, 2019 and that have not completed construction and permanently stabilized disturbed areas are required to submit the above described certification. In addition, such projects shall agree to implement Enhanced best management practices (BMP's). Submittal of the certification will remove the 1-year time constraint and the registration will be valid until the expiration of this reissued General Permit unless site stabilization and termination of the registration occur first. Projects required to submit Discharge Monitoring Reports under the 2012 permit with approval dates from February 9, 2018 through February 9, 2019 must submit the above described certification and agree to implement Enhanced BMPs within 90 days of the effective date of this General Permit, which has eliminated monitoring.

All projects approved under the 2012 permit's Site Registration Application or Notice of Intent with an approval date exceeding one year prior to the effective date of this reissued General Permit must submit the Notice of Termination if all disturbed areas are stabilized. All other projects that have not been stabilized shall submit an application for continuing coverage within 90 days of the effective date of this General Permit.

13. WHEN TO APPLY

The application for Large Construction Projects must be submitted at least 60 business days prior to starting construction, except as follows. Projects that discharge to Tier 3 waters, or with 100 or greater acres of disturbance, or Large Construction Projects with a grading construction phase of one year or greater, must be submitted at least 100 business days prior to start of construction to allow time for the public notice procedure.

Minor construction projects (less than three acres) not discharging to a Tier 3 water must submit the Minor Construction Activity application 30 days prior to initiation of construction. Minor construction projects discharging to a Tier 3 water must submit the application at least 60 business days prior to start of construction. Time frames have been expanded from the previous General Permit to allow for additional review and processing time required to determine compliance with Antidegradation Rules and approved Total Maximum Daily Loads (TMDL). The General Permit also allows eligibility for earth-disturbances that occur in response to a public emergency (e.g., a natural disaster, widespread disruption in essential public services). If earth-disturbances require

immediate authorization to avoid imminent endangerment to human health or the environment, or to reestablish essential public services, permit coverage for discharges associated with such earth-disturbances are authorized on the condition that a complete and accurate application is submitted within 30 calendar days after commencing earth-disturbing activities. The applicant must provide documentation in their SWPPP to substantiate the occurrence of a public emergency. Division of Water and Waste Management recognizes that obtaining General Permit coverage following the normal procedures is not feasible in situations requiring emergency-related construction. By providing the operators of these projects with the ability to immediately begin work, and to postpone the application, DEP intends that these projects may proceed without delay.

14. SECTION-BY-SECTION RATIONALE

Part 1. Introduction

Section A. Terms of Permit

Since construction activities are normally short term, sampling is not required unless requested by the Director.

Section B. Schedule of Compliance

Compliance with this General Permit and the approved Stormwater Pollution Prevention Plan (including the sequence of events) and Groundwater Protection Plan is required upon the beginning of the construction project.

Section C. Water Quality

This section was expanded to include a description of receiving water bodies and to add emphasis to the fact that the intent of the permit is to control pollution.

Also listed are the water body designations that call for standard BMPs and those that require enhanced BMPs. For example, discharges to a Tier 1 stream would require standard BMPs while discharges to a Tier 3 stream would require enhanced BMPs.

Section D. Required Reporting

This section was organized so that all paragraphs in the permit that discuss reporting, that might be called "other than routine", were grouped together. "Reportable Quantities" was moved from part G.3 of the 2012 permit and grouped with Reporting Spill and Accidental Discharges, and Immediate Reporting.

Section E. Director's Authority to Require Other Permits

The title of this section was renamed. It was previously Effluent Limitations and Other Requirements. Described is the Director's authority to require any person authorized by this

permit to obtain an individual NPDES permit or an alternative NPDES permit, and the public's right to request either.

Section F. Allowable Discharges

The reorganizational intent of this section is to make it easier to read. No new "allowable" discharges were added. Discharges composed of stormwater only are authorized by this permit.

Section G. Prohibited Discharges

During re-organization of the permit, prohibited discharges was expanded, and moved to this section.

The PQR found the 2012 permit deficient as it did not include language to comply with 40 C.F.R. 450.21(d)&(e) of the C&D Rule to minimize the added discharges. Also see Part **II** Section H.3.b.4., H.3.b.5., and H.3.b.6 of the general permit.

A few examples of prohibited discharges include discharges of fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance, and wastewater from a washout from concrete.

Part II. Pre-Construction Requirements

Organized all the pre-construction requirements into Part **II** and summary for the convenience of potential applicants.

A detailed list explaining to potential applicants the requirements for approval from the Director was added. This includes, but is not limited to, payment of the application fee, and cooperation with the public notice process.

Additionally, more information is listed to help applicants better understand the sequence of events that should occur before beginning land disturbance activities. This includes installing sediment and erosion controls and requiring a qualified person to inspect those controls.

Part II. Section A. Applications

DWWM has devoted significant resources toward transparency in the stormwater permitting program via the Electronic Submission System (ESS). This section was added to explain that applications are to be submitted by using ESS, to emphasize fees must be paid before reviews take place, and to organize application requirements.

Previously, application requirements were found throughout the permit, but are now organized in this Part. Also, the requirements have been expanded to include submittal of the template for the sign, the GPP, Limits of Disturbance, and Receiving Waters on maps. Also, for large projects, design details for structures must be provided, whereas typical design details may be submitted for minor projects.

Part II. Section A.1. Application Requirements

This section explains that all applications are to be submitted using our ESS system, unless approved by the Director. Also, all documents must be signed in accordance with the signatory requirements described in Appendix A.7 of the general permit.

Electronic submissions significantly improve the review process as information is passed/shared more quickly than traditional mail. Electronic submissions also greatly reduce the use of paper.

Part II. Section A.1.a Application Fee

Though the regulation spells out the application fee, the permit was previously silent. The language added to this section explains the application fee is required prior to review of the application.

Often, we get applications submitted, and then must use staff and DWWM resources to track down the applicants to notify them that an application fee must be paid before a review can take place.

Part II. Section A.1.b. Public Notice

This section identifies what projects are required to go to public notice and to inform the applicant that a notarized statement for billing is required.

Part II. Section A.1.c. Large Construction Projects

This section was reorganized so that Large Construction Projects application requirements were together. A few examples of application requirements for Larger Construction Projects (disturbing 3 acres or more), include the application form, detailed site plans, and design details.

Previously, applicants contended that DWWM did not have the right to ask for the GPP to be submitted for review. Part II Section I now discusses GPPs in detail, therefore this bulleted list which merely serves as a checklist mentions GPPs in the application. Also, applicants asserted that the permit did not ask for receiving waters to be named or for LOD. This language corrects the previous omissions.

This section gives permittees more time for construction in TMDL areas, more time for Minor Construction Activities, and in turn, asks for more descriptions of construction activities. This trade-off is good for industry while providing the Director with additional information on which to base decisions concerning approvals.

The requirements that were previously found in parts G.4.b. & G.4.b.5. of the 2012 permit have been moved here and reorganized.

Part II. Section A.1.c. Minor Construction Projects

For Minor Construction Projects (previously NOIs) we removed the one-year time constraint found in the 2012 WV/NPDES general permit. It is not contained in regulation and permittees reported one year is often inadequate for completing a project due to contractor delays, difficulty in obtaining materials, financing issues, and a myriad of other obstacles. Also, because annual fees are assessed for projects that have not reached final stabilization and submitted a Notice of Termination (N.O.T.), some permittees misunderstood the one-year limit, i.e., erroneously thinking of the annual fee as a permit renewal fee.

A few examples of what is now required to be submitted with the application form for Minor Construction Projects include: The SWPPP, GPP, and typical design details.

At the time of the writing of this Rationale, there are 867 active projects of 1 to less than 3 acres in DWWM's records. These projects take considerable DWWM resources and are often the source of uncontrolled erosion and sediment. By easing the time constraints in a tradeoff for better descriptions of the nature of the activity, the DWWM is anticipating better protection of state waters.

Part II. Section A.1.e. Construction of Single Family Homes: 1 to Less than 3 Acres

In light of the PQR findings that disturbance related to single family homes should be permitted, this section tells applicants what is required in the application.

Example requirements for the application include: The application form and an agreement to use DWWM's Individual House Sample Sediment and Erosion Control Plan found in the Erosion and Sediment Control BMP Manual.

Part II. Section A.1.f. Offsite Waste and Borrow Areas

Offsite waste and borrow areas one acre or greater must be included in applications and approved before material may be removed from or accepted at the site.

For organizational purposes, this information was moved from part G.4.e. 1 .D of the 2012 permit. The section was also expanded due to the large number of linear projects that create waste/borrow scenarios. This language is in line with requirements in surrounding states and with the EPA.

Language on contaminated soils was added to this section. The purpose of this permit is to allow construction activities, while providing protection to state waters. This language clarifies that contaminated soils must be brought to the attention of the Director for proper consideration and planning purposes. The goal is to prevent stormwater from carrying contaminated soils to waters of the state.

Part II. Section A.2. Emergency Procedures

Moved for organizational purposes from part G.4.b.7 of the 2012 permit.

Part II Section B. Posting Sign or Notice

In addition to the application, the applicant is required to post a sign to notify the public of pending construction. This section provides seventy-two (72) hours for posting, which is a change from the previous permit, which only provided twenty-four (24) hours. Applicants reported that ordering a sign and posting it within twenty-four (24) hours was often impossible. Section B of this part changed the content of the sign to direct the public to the Electronic Submission System to view applications. The system has been created to provide the public with an easy-to-access method of acquiring application information. Previously, information about the sign was found in part G.4.b.8 of the 2012 permit.

For those applications that must be public noticed, the previous permit did not spell out the requirements for applicants to include the Statement for Billing. This is a form to be signed by the applicant agreeing to pay the newspaper for the publication cost of the Class 1 legal ad. The reissued permit contains the language. A major change in the revised permit removes the public notice requirement for minor projects with a grading phase of one (1) year or longer. Minor projects are no longer restricted to one (1) year.

In the previous permit, there was no clear instruction to new permittees that construction of sediment and erosion controls was required prior to land disturbing activities. The reissued permit contains the language.

Offsite Waste and Borrow Areas were previously the subject of controversy as the permit was unclear about non-contiguous or small sites of less than one (1) acre. DWWM now uses the same permitting approach to these sites as the EPA based on the concept of Larger Common Plan of Development or Sale.

Emergency Procedures was moved from part G.4.b.7 of the 2012 permit to this

Part. Part II. Section C. Incomplete or Incorrect Applications

Since some applications are incomplete or require corrections at the time of submittal, this permit explains the steps to be implemented for getting complete, accurate applications ready for approval.

Also, this section explains the steps the Director follows prior to terminating an incomplete application.

This language will help reduce the backlog of applications that are deemed Administratively Incomplete.

Part G.4.b. 1. of the 2012 permit contained language about incomplete or incorrect applications but has been moved here. The permit was lacking in details of the procedure the Director would follow to terminate applications for which incomplete or inaccurate resubmittals are not made. The reissued permit now contains the language.

Part G.4.b.2. of the 2012 permit was moved to Part II.0 of the draft permit.

Part II. Section C.2.

Moved for organizational purposes from part G.4.b.2 of the 2012 permit.

Part II. Section D. Public Notice of Applications

Previously, public notice requirements were found in parts C.11., G.4.b.5, and G.5 of the 2012 permit. The revised permit clearly tells applicants payment for the Class 1 legal ad is their responsibility as is submittal of the affidavit of publication.

Part II. Section E. Authorization to Discharge

This section explains to applicants that the Director will provide approval to discharge by means of an electronic notification and that the applicant is required to keep the Director informed of contact information. Also, this section notifies applicants to keep a copy of the approval with the SWPPP on-site.

Part II. Section F. Installation of Erosion and Sediment Controls

This section was added to let new permittees know BMPs must be installed in accordance with the approved application.

Part II. Section G. Qualified Person to Inspect Erosion and Sediment Controls

The PQR identified a deficiency in the previous permit as the qualifications of the person conducting inspections was not specified. Additionally, the previous permit did not list the items to inspect, and did not explain when inspection frequencies may be reduced. Also see Part III, Section C. The previous permit did require installation of E&S Controls before starting land disturbing activities. This section requires those controls to be inspected by the qualified person and construction of certain significant structures to be certified. These structures serve a major function in the attempt to control sediment and proper construction is vital to protecting waters of the state.

Inspections were previously addressed in part G.4.e.2.C.v of the 2012 permit.

Part II. Section H. Stormwater Pollution Prevention Plan (SWPPP) Components

The title of part G.4. of the 2012 permit was changed to remove the reference to GPPs. The opening sentences of the section were removed as discussion of GPP is now in another section. The section was modified to state that the SWPPP must be prepared by a qualified person. The PQR cited the Multi-Sector General Permit as deficient because the permit did not contain the qualifications of the preparer of the SWPPP. This section corrects the same deficiency in this permit. This section was also modified by removing indication that the GPP does not have to be submitted to the Director for review.

Part II. Section H.1 Nature of the Activity

For organizational purposes and emphasis, this section goes to the heart of the permit, which is to describe in detail the risks and remedies posed by the construction plans.

Part II. Section H.1.a. Maps

This section lists the items to display on the map as a means of preventing delays to the review. By including these items, the activity is clearer. Also, this section was expanded to include the requirements based on the PQR findings for inspections. By including additional items such as the limits of disturbance and location of access roads, the plan is much easier to review, and the review can be expedited.

Language was added to this section so that the applicant identifies the location of monitoring (if required) based on PQR findings.

Language was added to this section requiring the applicant to mark all areas of disturbance on a map and provide a digital LOD. A clearly marked map and a digital LOD will be instrumental in tracking project information. This information also helps determine location relative to impaired waters, TMDL, trout, and Tier 3 streams.

Part II. Section H.1.c.

The PQR stated that the permit evaluated in 2015 did not identify evaluation points. This reissued permit now contains the requirement for the selection of an evaluation point to be used to compare pre and post-construction discharge.

Part II. Section H.1.d.

Roads are a major source of sediment and the language in this section is intended to have permittees provide a better description of the nature of the activity (major road/access road/etc.) as well as ask for the proper controls for the activity. Language was also added to this sections for identifying ATV trails wanting to be kept by the landowner.

A few examples of road design specifications include: stone access entrance and exit drives, and ditch lines capable of passing the peak discharge of a 10-year, 24-hour precipitation event.

Part II. Section H.1.d.1.

This section contains road abandonment instructions.

Part II. Section H.1.d.2.

This section contains language that allows landowners to retain trails constructed by permittees provided the trails are not the source of erosion.

Part II. Section H.1.e. Impact Reduction

The PQR found that the previous permit did not adequately reduce nutrients in stormwater, so this permit is designed to minimize disturbance in critical areas to address this deficiency.

Part II. Section H.1.e.1.

Part G.4.e.2.A.i. of the 2012 permit was moved to this section. Also, cross sections are required by this section to show descriptive measures to ensure stability of proposed fills.

Part II. Section H.1.e.2

Language was added to this section to describe seedbed preparation requirements and the type and amount of soil amendments necessary to establish a healthy stand of vegetation. This was added to assist permittees with understanding proper final stabilization measures.

Part II. Section H.2.

The parts of the 2012 permit listed below remain in the draft permit but are relocated to the following sections:

- G.4.a was moved to this section; however, references to GPPs were moved to Part II.I
- G.4.b was moved to Part II.A.1.c., except that corrections for applications previously addressed in G.4.b.1 was moved to Part II.C.
- G.4.b.2 was moved to Part II.C.2.
- G.4.b.3 was moved to Part II.A.1.d. However, a change was made which requires a 30-day submittal rather than 15 days prior to construction for review. This is due to the workload of the single employee the DWWM has on staff for these reviews.
- G.4.b.4. was moved to Part II.A.1.d.
- G.4.b.5. was moved to Part II.A.1.e. However, minor projects with a grading phase lasting longer than one (1) year are not required to submit applications 100 days prior to construction for the public notice procedure.
- G.4.b.6. This permit no longer restricts construction to one (1) year for projects discharging to TMDL waters. Part I.C. Water Quality now addresses these discharges, therefore, this section has been removed from the permit.
- G.4.b.7. was moved to Part II.A.2.
- G.4.b.8. was moved to Part II.B.

- G.4.c. was moved to Part M.D.
- G.4.d. is now addressed in Part II.H.4 and Part III.C.2.g., as well as Appendix B. (Operation and Maintenance)

Part II Section 11.3. Potential Pollutants

This section is intended to help the permittee zero in on pollutants that the planned activity might create, including sediment. Once the potential pollutants are identified, controls are to be identified. The section also addresses controls for discharges to sensitive waters.

Part II. Section H.3.b.1.

Language was added to this section requiring a description of the proposed controls and procedures to be used to prevent potential pollutants from entering stormwater runoff.

This language now requires the use of the WV E&S BMP manual.

Part II. Section H.3.b.2.

If enhanced BMPs fail to protect water quality for discharges to sensitive waters and the Director requires monitoring, the language in this section describes the steps the permittee must follow.

Additionally, enhanced BMPs are identified. Some examples include, use of approved flocculants, project phasing, and the use of super silt fence.

Part G.4.b.6. of the 2012 permit previously limited the grading phase to one (1) year or required monitoring for discharges to waters with an approved TMDL. That section was deleted, and the discharges are now addressed in this section.

Please see 10.II above.

Part II. Section H.3.b.3.

Language from Part G.4.e.2.A.ii.k. of the 2012 permit was moved to this section; however, the language was strengthened to emphasize that hay/straw bales may not be used as primary nor secondary filtering devices. Part G.4.e.2.A.ii.j. of the 2012 permit was also moved to this section.

Part II.H.3.b.4., Part II.H.3.b.5., and Part II.H.3.b.6. were added to the draft permit to comply with the PQR finding that the previous CGP did not comply with 40 C.F.R. § 450.21(d) & (e) of the C&D Rule.

Part II. Section H.3.b.4.

Language was added to this section to address the appropriate control of the discharge from the rinsing of mobile drums or truck drums.

This language requires the applicant to describe how the SWPPP will comply with 40 C.F.R. 450.21 (d) & (e) of the C&D Rule (PQR finding).

Part II. Section H.3.b.5.

Language was added to this section that requires the permittee to describe procedures to prevent spillage, leakage, and improper disposal of fuel, oil, grease, solvent, soap, and cleaning plans from entering stormwater.

This language requires the applicant to describe how the SWPPP will comply with 40 C.F.R. 450.21 (d) & (e) of the C&D Rule (PQR finding).

Part II. Section H.3.b.6.

Language was added to this section requiring the permittee to describe how washout and cleanout of stucco, paint, form release oils, curing compounds, bituminous asphalt, and other construction materials will be managed to prevent any pollutants from entering stormwater runoff

This language requires the applicant to describe how the SWPPP will comply with 40 C.F.R. 450.21 (d) & (e) of the C&D Rule (PQR finding).

Part II. Section H.3.b.7.

This section was moved for organizational purposes from part G.4.e.2.C.iv of the 2012 permit.

Part II. Section H.3.b.8.

This section describes the use of vegetative buffers and when they are not required. Vegetative buffers are now required to be a minimum of 50 feet.

This section was moved for organizational purposes from part G.4.e.2.A.i.e of the 2012 permit. Previously, vegetative buffers were allowed as stand-alone BMPs. DWWM has learned stormwater must pass through a filtering device. When running over buffers, stormwater creates rills and gullies without velocity dissipation. This language will remedy this.

Part II. Section H.3.b.9.

This section was moved for organizational purposes from parts G.4.e.2.A.i.d. & G.4.e.2.A.ii.d of the 2012 permit.

Part II. Section H.3.b.10.

This section was moved for organizational purposes from part G.4.e.2.A.ii.a of the 2012 permit. Previously the requirements for spillway design was inadvertently omitted from the permit. Language was included in the draft permit to remedy that omission.

Part II. Section H.3.13.11.

This section was moved for organizational purposes from part G.4.e.2.A.ii.b of the 2012 permit.

Part II. Section H.3.b.12.

This section was moved for organizational purposes from part G.4.e.2.A.ii.e of the 2012 permit.

Part II. Section H.3.b.13

This section was moved for organizational purposes from part G.4.e.2.A.ii.c of the 2012 permit.

Part II. Section H.4. Preventative Maintenance

Part G.4.d. and the portion of G.4.e.2.d. of the 2012 permit that addressed maintenance was moved to this section. Also, parts G.4.e.2.C.i., G.4.e.2.C.ii. and G.4.d.1.C. were moved to this section.

Part II. Section 11.5 Record Keeping

Part G.4.e.2.C.vi. of the 2012 permit was moved to this section; however, the previous permit did not tell the permittees how long to keep their records. The PQR required DWWM to include the length of time so this section addresses that deficiency. Part G.4.f. of the 2012 permit was moved to this section also.

Part II. Section I. Groundwater Protection Plan (GPP)

Language was added to this section to describe to the permittee all the requirements for their GPP.

The previous permit contained little information about the GPP. This permit gives much more guidance to applicants and requires the GPP to be submitted for review with the application.

Part II. Section J. Consistency with Other Plans

This section was moved for organizational purposes from part G.4.d.2 of the 2012 permit.

Part III. Requirements During Construction

This section organizes requirements during construction and asks permittees to provide notice of the intent to start construction. This is to save DWWM resources as inspectors will not travel to sites where construction has not started.

Part III. Section A. Comply with Approved Registration

To comply with the PQR, this section requires a Qualified Person to conduct all inspections. Part G.4.e.2.C.v. of the 2012 permit was replaced by this section and inspection requirements are spelled out in detail.

Part III. Section A.1.

Language was added to this section to require the permittee to have a Qualified Person inspect the erosion and sediment controls and to certify that the SWPPP is maintained onsite.

These measures will help ensure the permittee complies with their approved SWPPP.

Part III. Section A.2.

Language was added to this section requiring the permittee to construct the project as described in their approved plan. Examples include minimizing the exposure of building materials and pesticides on the site to stormwater.

Additionally, language was added to this section to implement spill and leak prevention practices. This language helps protect water quality.

Part III. Section A.3.

Paragraph 1 was moved for organizational purposes from part G.4.e.2.A.i of the 2012 permit.

Paragraph 2 was moved for organizational purposes from part G.4.e.2.A.i.a of the 2012 permit.

Paragraph 3 was moved for organizational purposes from part G.4.e.2.A.i.b of the 2012 permit.

Part III. Section B. Inspections by Qualified Person

Language was added to this section so permittees know what is required by a self-inspection, and when those inspections should be performed. These requirements were added to comply with the PQR findings.

An example is increasing the inspection frequency for sites discharging to sensitive waters.

Part III. Section C. Implement Additional BMPS to Protect Water Quality

This section outlines the follow-up steps needed when an inspection indicates that BMPs are ineffective at protecting waters of the state.

Part III. Section D. Fees

This section relates to fees and is new except for one item from Section J. of the previous permit. However, that item was modified for clarity. It stated that "Sites not stabilized shall continue to have coverage under this permit and shall be assessed an annual permit fee as promulgated by the West Virginia Legislature." The reissued permit explains that coverage continues by actually paying the assessed fee, completing stabilization, and requesting a new final inspection. This change was necessary, as some permittees would pay the fee, which was sometimes considered nominal in comparison to the cost of completing stabilization. The new language provides DWWM with a better tool for requiring permittees to stabilize and close out their permits.

Also, prorating of annual fees has been removed from the permit. Prorating is no longer necessary because the Director now causes final inspections to occur promptly, and/or the permittee may submit a stabilization certification from a professional. These new additions to the permit mean that invoices issued while the permit is active are valid and that there will be less confusion regarding invoices issued around the time of stabilization/termination.

The previous permit did not contain a statement that operating with paying fees equates to operating without a permit. The lack of the statement caused confusion and disagreements, so the reissued permit is now very clear about this matter.

Part IV. Requirements After Construction

This part lists the requirements after construction and emphasizes the deadline (contained in the previous permit) for submitting the N.O.T. This permit recognizes issues may result from delays in permit release by WVDEP, so the permittee may request a stabilization certification to be conducted by a professional. In the event DWWM is not able to inspect in a timely manner, the permit may be released based on the professional's certification.

Language was also added to this section to require that the permittee verify that fees are paid in full. This was added because it is a strain on DWWM resources to pursue fee payment. The responsibility of verifying that fees have been paid rests on the individual permittees.

Section A. Verify All Disturbed Areas Are Stabilized

Parts G.4.e.2.A.ii.g., G.4.e.2.A.ii.h., and G.4.e.2.A.ii.i. of the 2012 permit were moved to this section., Language was also added to this section instructing permittees that only clarified water may be released when dewatering a structure to provide protection to waters of the state.

Section B. Records Inspections

Language was added to this section so that the permittee is required to verify that records required by this permit are assembled and ready for retention.

Section C. Prepare for Termination

This section was added to require the permittee to have a Qualified Person conduct inspections of the stabilized areas before applying for termination. All issues must be addressed, and deficiencies corrected, then the permittee must submit the Notice of Termination, which was addressed in Section J. of the previous permit.

Once disturbed areas are stabilized, most permittees want to terminate permit coverage immediately, but due to the heavy workload of the DWWM field inspectors, it can sometimes take a while for WVDEP to perform the final inspection. The revised permit now contains a timeline for conducting final inspections. The permittee may submit a certification from a professional engineer or surveyor, which will be accepted for termination in lieu of final WVDEP inspections when the timeframe is not met by DWWM staff.

Section D. Termination of Coverage

This section provides information for the NOT and explains final stabilization requirements. It also reminds the permittee that until permit coverage is terminated, the permittee is required to comply with all conditions and effluent limitations (if required) in the permit.

A Final Stabilization Certification from the registered professional engineer or professional surveyor will be accepted for termination of permit coverage in lieu of final WVDEP inspections not conducted within the time frames prescribed herein (30/60 days).

Appendix A

With the exception of C.12, Management Conditions were moved here from Section C of the 2012 permit.

Part G.6. of the 2012 permit was moved to Appendix A of the reissued permit.

Section I. of the 2012 permit was moved to Appendix A 18. Reopener Clause For organizational purposes.

Appendix B

Moved for organizational purposes from Section D of the 2012 permit.

Appendix C

Definitions were previously located in Section E of the 2012 permit. New definitions have been added to provide better clarity to permit language. Replaced "Notice of Intent" and "Site Registration Application (SRA)" with "application" to reduce confusion. Previously, applicants

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argued against SRAs for Minor Construction Activities with a grading phase longer than a year. They merely focused on the smaller acreage concerns which led to the confusion.