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Finance Docket No. 36369

ASSOCIATION OF AMERICAN RAILROADS—
PETITION FOR DECLARATORY ORDER

Comments of BNSF Railway Company in Support of AAR's Petition for Declaratory Order

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Dated: April 24, 2020

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BNSF Railway Company ("BNSF") submits these comments in support of the Association of American Railroads' ("AAR") Petition for a Declaratory Order. The Petition asks the Surface Transportation Board ("STB" or "Board") to declare that the Interstate Commerce Commission Termination Act ("ICCTA"), 49 U.S.C. § 10101 *et seq.*, preempts the application of the Clean Water Act's ("CWA"), 33 U.S.C. § 1251 *et seq.*, discharge prohibition and the National Pollutant Discharge Elimination System ("NPDES") permitting regime to rail cars in transit. BNSF submits these comments to describe its experience in managing coal losses from railcars in transit and explain why it is of critical importance that the Board issue the requested declaratory order.

BNSF possesses unique experience that will benefit the Board in its consideration of the Petition. In response to concerns about coal dust losses during the transportation of coal, BNSF researched and developed measures to minimize the loss of coal from moving trains. These measures, which included changes to how coal is loaded into trains and the use of topper agents to reduce dust emissions, reflect the state of the art in the United States in managing this type of freight loss. Implementation of these controls has resulted in meaningful benefits to stakeholders in the coal commodity chain and to the environment.

Despite BNSF's efforts to control incidental coal losses in transit, the railroad has faced litigation that illustrates why it is critical that the Board grant the Petition. BNSF was the defendant in litigation brought in Washington State under the CWA in which environmental groups claimed, for the first time, that a rail carrier had violated the CWA in the course of providing transportation services that are required and regulated by the Board under ICCTA. As part of its defense, BNSF asked the court to hold that ICCTA preempted the relief sought by the Plaintiffs under the CWA, but the court deferred a ruling on ICCTA preemption until after trial. The case then settled before the court could address preemption. The scope of the allegations and remedies at issue in the case illustrate the extent to which application of the CWA to rail cars in transit could impact the ability of rail carriers to comply with their common carrier obligations.

Prior to the CWA litigation, BNSF litigated extensively before the Board in defense of its coal loading rules, which required shippers and their agents to implement the measures that BNSF developed to reduce coal dust losses. BNSF's experience in these proceedings demonstrates the Board's central role in overseeing the relationship between railroads, shippers and other participants in rail transportation to implement and advance the Rail Transportation Policy ("RTP").

Application of the CWA to rail cars during transit would subvert the Board's exclusive authority over the regulation of rail transportation. Under the CWA, private litigants and federal, state, local, and tribal regulators would be able to regulate rail transportation by imposing and enforcing discharge prohibitions and permit requirements on the movement of freight. The Board established important principles in the coal dust proceedings to govern the relationship

among the parties involved in rail transportation that would be turned on their head if the CWA discharge prohibition and the NPDES permitting regime were imposed upon rail cars in transit.

Given the characteristics of available rail equipment and the fact that rail cars move across numerous state borders and cross numerous local and tribal jurisdictions, railroads would have to first get permission from a suite of federal, state, local and tribal authorities in order to perform their statutory obligations under ICCTA if the CWA were to cover rail cars during transit. Each of these regulatory authorities could impose varying and potentially conflicting requirements that would make efficient interstate rail movements impossible. Imposition of the CWA on rail cars in transit would also remove the Board's exclusive jurisdiction over regulation of rail transportation and over the economic relationships among entities involved in rail transportation, contrary to Congress's clear instruction, and prevent the Board from advancing Congress's Rail Transportation Policy.

BNSF urges the Board to issue the declaratory order requested by AAR.

I. The *Sierra Club* Litigation

BNSF has experienced first-hand some of the consequences of applying the CWA to rail cars in transit. The railroad defended a first-of-its kind lawsuit in which environmental groups claimed that losses of coal dust from BNSF trains violated the CWA's prohibition on unpermitted discharges. BNSF's experience illustrates both how the CWA might be enforced to regulate rail transportation and the breadth of remedies that the statute makes available both to government enforcers and to private citizens' groups. The litigation ultimately shows the many ways in which rail transportation could be severely burdened if the Board does not grant the relief that AAR requests.

A. Parties Sued and Procedural Background

In 2013, the Sierra Club, Natural Resources Defense Council, and five regional environmental groups (collectively "Plaintiffs")[1] sued BNSF in federal court in the Western District of Washington, along with five additional defendants. The additional defendants included mines and other energy companies, some of whom were alleged to own rail cars used to ship coal through Washington State.[2] Later in 2013, Plaintiffs voluntarily dismissed all defendants except BNSF and amended their complaint to pursue their lawsuit against BNSF alone.[3]

In 2015, Plaintiffs again amended their complaint to add CIT Group, Inc. ("CIT") as a defendant, alleging that CIT was "the owner or operator of at least six percent of the rail cars carrying coal or petcoke through the State of Washington since February 2010."[4] CIT moved to dismiss the complaint because, among other grounds, CIT did not own, lease, or operate rail cars.[5] In August 2015, Plaintiffs voluntarily dismissed CIT and again proceeded to prosecute their case against BNSF alone.[6]

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[1] The five regional environmental groups were Puget Soundkeeper Alliance, RE Sources for Sustainable Communities, Columbia Riverkeeper, Friends of the Columbia River Gorge, Inc., and Spokane Riverkeeper. *Sierra Club,* et al*. v. BNSF Railway Company,* et al., Civ. No. 13-cv-00967-JCC (W.D. Wa.) (hereinafter, "*Sierra Club*") (ECF No. 1) (June 4, 2013) (Complaint); (ECF No. 32) (July 29, 2013) (First Amended Complaint). These plaintiffs also sued BNSF in the U. S. District Court for the Eastern District of Washington, and the two cases were consolidated in the U. S. District Court for the Western District of Washington in May 2014. *Sierra Club,* et al*. v. BNSF Railway Company*, Civ. No. 13-cv-00272-LRS (E.D. Wa.) (ECF No. 1) (July 24, 2013) (Complaint); *Sierra Club* (ECF No. 54) (May 8, 2014) (Order Consolidating Cases). For the convenience of the Board, copies of the cited court materials are included in the attached Appendix.

[2] The other defendants were Cloud Peak Energy, Inc., Peabody Energy Corporation, Global Mining Holding Co., LLC, FirstEnergy Corp., and Ambre Energy North America, Inc. *Sierra Club* (ECF No. 1) (June 4, 2013) (Complaint).

[3] *Sierra Club* (ECF No. 31) (July 29, 2013) (Notice of Voluntary Dismissal); (ECF No. 32) (July 29, 2013) (First Amended Complaint).

[4] *Sierra Club* (ECF No. 113 at ¶ 36) (May 6, 2015) (Third Amended Complaint).

[5] *Sierra Club* (ECF No. 128) (July 10, 2015) (CIT Group Motion to Dismiss).

[6] *Sierra Club* (ECF No. 132) (Aug. 10, 2015) (Stipulation of Voluntary Dismissal).

Although BNSF was ultimately the sole defendant in the lawsuit, the wide net that Plaintiffs cast at the outset of the case highlights the breadth of entities within and related to the rail industry potentially subject to regulation through citizen enforcement of the Clean Water Act's discharge prohibition against rail cars in transit.

In 2015 and 2016, BNSF and the Plaintiffs undertook extensive fact and expert discovery and pretrial briefing. The parties subsequently filed cross-motions for summary judgment, and in an October 25, 2016 order disposing of the motions, the Court declined to find BNSF liable for any CWA violations.[7] The Court held, however, that BNSF was "potentially liable for point source discharges of coal that went directly into the water and point source discharges of coal dust that came from trains passing directly above or adjacent to navigable waters."[8] As discussed below, the parties also addressed in summary judgment motions the question whether ICCTA preempted Plaintiffs' claims and requests for relief, but the Court declined to rule on the preemption issue at the summary judgment stage.

The case went to trial in November 2016. After a week of trial, the parties reached a settlement in principle. The parties ultimately finalized the settlement in a Consent Decree that the Court entered in May 2017.[9]

B. Specific Allegations of CWA Violations

Plaintiffs alleged that "each and every one of [BNSF's] trains and rail cars" carrying coal or petroleum coke ("petcoke") discharged coal or petcoke into every one of approximately seventy-five waterbodies each train traveled near, or "onto land adjacent and in proximity to each waterbody where those pollutants [we]re added to water by forces such as . . . gravity, wave

[7] *Sierra Club* (ECF No. 337 at 19) (Oct. 25, 2016) (Order Denying Plaintiffs' and Defendant's Motions for Summary Judgment).

[8] *Id.*

[9] *Sierra Club* (ECF No. 384) (May 2, 2017) (Consent Decree).

wash, fluctuation of water levels, vibration, wind, and precipitation," as each train traversed the State of Washington.[10] Plaintiffs alleged that these discharges emanated through holes in the bottoms and sides of the rail cars or were spilled or ejected from the open tops of the rail cars and trains.[11] These alleged discharges "[we]re especially frequent or severe when the coal trains pass over rough rail tracks, track changes, bridges, and switches; during transportation of coal over bumpy terrain, in windy conditions, at high operating speed, during steep descents and ascents and through sag-areas spanning steep ascent and descent reaches of track (or vice versa); during and after precipitation events; at moments of high crosswinds; and during derailments."[12]

Plaintiffs alleged that these releases of coal and petcoke were "discharges"—actionable under the CWA—because BNSF's trains and rail cars were "point sources," the coal and petcoke discharged were "pollutants,"[13] and the discharges were to navigable waters.[14] Plaintiffs further alleged that these "discharges occur despite the use of topping agents, surfactants or suppressants, and these topping agents, surfactants and suppressants themselves are pollutants."[15] Consequently, Plaintiffs alleged, discharges from rail cars containing coal or petcoke, regardless of whether they were treated with substances intended to reduce coal dust emissions, were prohibited by Clean Water Act section 301(a), 33 U.S.C. § 1311(a), because they were not authorized by a National Pollutant Discharge Elimination System ("NPDES") permit.[16] Plaintiffs also argued, however, that federal law does not allow these discharges to be

[10] *Sierra Club* (ECF No. 113 at ¶¶ 47-49, 59) (May 6, 2015) (Third Amended Complaint).
[11] *Id.* at ¶ 51.
[12] *Id.* at ¶ 53.
[13] The Clean Water Act's broad definition of "pollutant," 33 U.S.C. § 1352(6), covers a wide variety of substances, including items as innocuous as fish and river water that is being treated to be used as drinking water. *U.S. Pub. Interest Research Group v. Atl. Salmon of Me., LLC*, 215 F. Supp. 2d 239, 247 (D. Me. 2002); *Hudson R. Fishermen's Ass'n v. City of N.Y.*, 751 F. Supp. 1088, 1101-02 (S.D.N.Y. 1990).
[14] *Id.* at ¶¶ 45, 53.
[15] *Id*. at ¶ 54.
[16] *Id.* at ¶¶ 4, 60.

permitted because railroads could eliminate them (*e.g.*, through the use of covers and modifications railcars to eliminate all weep holes or other openings).[17]

C. Remedies Sought

Plaintiffs sought declaratory relief regarding BNSF's liability, civil penalties for millions of alleged Clean Water Act violations, where "statutory maximum potential civil penalties could reach in the neighborhood of *four trillion dollars*,"[18] recovery of attorneys and expert fees, and injunctive relief, including an order enjoining:

- BNSF from operating rail cars and trains in such a manner as would result in further violation of the CWA;
- BNSF's use of uncovered rail cars for any transport of coal or petcoke; and
- BNSF's use of rail cars that, through design or imperfection – including holes or openings in their sides or bottoms—allow coal to be discharged into waters of the United States,[19] which would effectively require BNSF and its coal shippers to replace their entire fleets of rail cars used to carry coal in interstate commerce with sealed, covered cars, because the open-top rail cars used to transport coal and other commodities are designed with "weep holes" to allow for drainage.[20]

D. Preemption Arguments

Citing 49 U.S.C. § 10501(b), BNSF argued in its motion for summary judgment that ICCTA preempts or precludes Plaintiffs' requested relief because it fell squarely within STB's jurisdiction to regulate rail transportation, and ICCTA's remedies are exclusive with respect to regulation of rail transportation.[21] BNSF also explained that Plaintiffs' requested injunctive

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[17] *See id.* at ¶ 60.

[18] *Sierra Club* (ECF No. 182) (Aug. 5, 2016) (Plaintiffs' Response to BNSF's Motion for Leave to File Over-length Motion in Limine) (identifying statutory maximum and noting that "the district court should begin its penalty calculation by determining the maximum civil penalty and then apply the penalty factors identified in 33 U.S.C. § 1319(d)").

[19] *Sierra Club* (ECF No. 113 at Relief Requested ¶¶ A-M) (May 6, 2015) (Third Amended Complaint).

[20] *Sierra Club* (ECF No. 200 at 40 & footnotes 41, 42) (Aug. 19, 2016) (Defendant BNSF Railway Company's Motion for Summary Judgment).

[21] *Sierra Club* (ECF No. 200 at 33-47) (Aug. 19, 2016) (Defendant BNSF Railway Company's Motion for Summary Judgment).

relief and civil penalties would subject railroads to new and conflicting regulatory obligations that would likely vary as a train travels across different jurisdictions. AAR filed an amicus brief supporting BNSF's ICCTA defense.[22]

BNSF argued that Plaintiffs were seeking to use the CWA to directly regulate rail transportation and to impose operating and equipment requirements on rail carriers. BNSF also argued that Plaintiffs' requested injunctive relief and demand for expansive civil penalties would undermine the STB's authority over rail transportation and the policies Congress intended ICCTA to promote.[23] BNSF explained that Plaintiffs' claims, if given effect, would conflict with the Board's decision in the *Coal Dust* proceeding on the efficacy of BNSF's required coal dust suppression methods, their cost effectiveness, and the appropriateness of imposing the cost of compliance on shippers.[24] BNSF also emphasized that Plaintiffs' requested injunctive remedies would have impacts beyond Washington State and on a large number of entities not parties to the litigation and would impose compliance costs on not only BNSF but also BNSF's customers, PRB mines, and the nation's rail network as a whole.[25]

In an Order denying the parties' cross motions for summary judgment, Judge Coughenour postponed his decision on the ICCTA preemption issue until after a possible finding of liability at trial.[26] Because the litigation subsequently settled, the court left the ICCTA preemption issue unresolved.

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[22] *Sierra Club* (ECF No. 277) (Sept. 14, 2016) (The Association of American Railroads' *Amicus Curiae* Brief).

[23] *See generally Sierra Club* (ECF No. 200 at 33-47) (Aug. 19, 2016) (Defendant BNSF Railway Company's Motion for Summary Judgment).

[24] *Sierra Club* (ECF No. 200 at 43-45) (Aug. 19, 2016) (Defendant BNSF Railway Company's Motion for Summary Judgment).

[25] *Id*.

[26] *Sierra Club* (ECF No. 337 at 21) (Oct. 25, 2016) (Order Denying Plaintiffs' and Defendant's Motions for Summary Judgment).

II. Coal Dust Proceedings at the Board

Prior to the CWA litigation, BNSF was engaged in extensive litigation before the STB between 2009 and 2015 regarding the reasonableness of BNSF's coal loading rules, which were designed to reduce coal dust losses. BNSF's experience in the *Coal Dust* proceedings also illustrates the importance and urgency of addressing the preemption issue raised by AAR's Petition. The Board's rulings in the *Coal Dust* proceedings established a number of principles and standards governing attempts to control the loss of freight in transit. As discussed in the next section of these comments, application of the CWA to rail cars in transit could turn these principles on their head and remove from the Board an important oversight responsibility that Congress expressly created in ICCTA and exclusively delegated to the Board.

A. Procedural Overview

The *Coal Dust* proceedings arose out of two significant derailments of coal trains in May 2005 that occurred on the Joint Line, a 102 mile-long rail line jointly owned and operated by BNSF and Union Pacific Railroad Company ("UP") located in the Powder River Basin ("PRB"). The Joint Line, along with other BNSF and UP independently-owned rail lines in the PRB, is a high-density line used to transport coal from PRB coal mines to various destinations around the country. BNSF determined that the May 2005 derailments were caused by a combination of heavy rains and coal dust deposits from open-top coal cars that accumulated on the railroad right of way and track ballast.[27] These coal dust deposits, when mixed with heavy rainfall, acted as a lubricant that made the ballast unstable.[28]

[27] *See Ark. Elec. Coop. Corp.—Petition for Declaratory Order*, FD 35305 ("*Coal Dust I*"), BNSF Ry. Co.'s Reply to Ark. Elec. Coop. Corp.'s Petition for a Declaratory Order at 4-5 (filed Oct. 21, 2009) ("*Coal Dust I* BNSF Reply").

[28] *Coal Dust I*, BNSF Ry. Co.'s Opening Evidence & Argument (filed March 16, 2010) ("*Coal Dust I* BNSF Opening Evidence"), Erol Tutumluer V.S. at 10.

After the May 2005 derailments, BNSF extensively studied the problem of coal dust deposits and feasible methods for limiting coal dust losses from rail cars.[29] BNSF conducted many of these studies in conjunction with its shippers, particularly members of the National Coal Transportation Association ("NCTA"). BNSF hired outside experts who spent several years monitoring coal dust losses from loaded coal cars and studying alternative means of reducing these losses from rail cars in transit. BNSF ultimately concluded that coal dust losses could be significantly reduced by changing the way coal is loaded into rail cars, in particular by properly grooming coal loads to create a more aerodynamic load profile and applying surfactants, or topper agents, that would bind to the surface of the coal in a car.[30]

Based on these extensive studies, BNSF developed and established a loading rule to reduce coal dust losses on rail lines used to transport PRB coal.[31] The coal loading rule required shippers and the coal mines performing car loading to use a modified loading chute and to profile the loaded coal in a specific way that minimizes the impact of wind on loaded coal, reducing coal dust losses in transit.[32] However, BNSF's studies demonstrated that even with load profiling, substantial losses still occurred.[33] Therefore, the coal loading rule also included a coal dust loss reduction requirement. To assess compliance with the loss reduction requirement, BNSF set up track side monitors that could measure coal dust losses from a passing train. Under the tariff, trains would be required to achieve about an 85% reduction in losses compared to historical levels at that location.[34] The loading rule did not specify required measures to achieve the coal dust loss reductions. Rather, the rule gave the shippers and their mine agents discretion to adopt

[29] *Coal Dust I* BNSF Reply at 5.
[30] *Id.* at 5, Ex. A at 11.
[31] *Id.* at 5-6.
[32] *Coal Dust I* BNSF Opening Evidence at 13-14.
[33] *Id.* at 14.
[34] *Id.* at 14-15.

what they determined to be the most appropriate approach to achieve the required reduction in coal losses.[35]

BNSF's loading rule was challenged as an unreasonable practice under 49 U.S.C. § 10702. Due to the significance of the issue, the Board sought public comment and participation in the proceeding. A wide range of parties—including shippers, shipper associations, associations of electric power generators, other railroads, and the U.S. Department of Transportation ("DOT")—participated in the proceeding. The filed comments covered a broad range of legal questions, factual issues, and policy concerns ranging from the feasibility of reducing coal losses,[36] track maintenance practices,[37] responsibility for remediating coal losses,[38] and the Board's reasonableness analysis.[39] After the comment period, the Board held a public hearing in which several commenting parties participated.

B. The STB's 3/3/11 Decision Set Out Standards for Evaluating a Carrier's Measures to Address Freight Losses in Transit.

After considering the extensive evidence and arguments presented by the parties, the Board issued a decision setting out three primary findings. First, the Board concluded that the loss of freight in transit was a serious problem that the Board needed to address. Given the risk to the integrity of the rail network from coal losses in transit, the Board concluded that it was appropriate to take measures to reduce the loss of coal in transit rather that to mitigate coal losses after the fact through maintenance alone.[40] The primary focus of the commenting parties' concern about coal losses in transit was the impact on rail ballast and therefore the chance of

[35] *Coal Dust I* BNSF Reply at 6.
[36] *E.g.*, *Coal Dust I*, Opening Evidence of Ameren Energy Fuels & Servs. Co. at 10 (filed Mar. 16, 2010).
[37] *E.g.*, *Coal Dust I*, Opening Statement of Tuco, Inc. at 4-5 (filed Mar. 16, 2010).
[38] *Coal Dust I*, Reply Comments of the U.S. Dep't of Transp, (filed April 30, 2010).
[39] *See Coal Dust I*, Opening Comments of Norfolk S. Ry. Co. (filed Mar. 16, 2010).
[40] *See Coal Dust I*, slip op. at 9 (STB served March 3, 2011) ("*Coal Dust I 3/3/11 Decision*").

derailments. But the Board specifically considered and addressed environmental concerns in reaching this conclusion, explaining,

> [T]o the extent that coal dust poses a risk of harm to the environment, containment is the only way to protect the environment and communities along the right of way. Maintenance only addresses the harm to the ballast and does nothing to address the harms to neighboring streams, people, and communities. Furthermore, some coal dust removed in the rail bed maintenance process may also find its way back into the environment, either nearby or at disposal sites.[41]

Second, the Board determined how responsibility could be allocated for reducing coal losses in transit, agreeing with BNSF that shippers could be required to take measures in loading freight cars that would reduce coal dust losses in transit, as long as the requirements are reasonable.[42] After summarizing the arguments by several parties regarding the proper allocation of responsibility for freight losses in transit, the Board expressly stated that "[w]e conclude that BNSF and other coal carriers have the right to establish coal loading requirements" that are intended to prevent freight losses.[43] The fact that BNSF had never imposed coal dust suppression requirements in the past did not matter. Railroads can "change their rules in response to changing circumstances" such as with coal dust, where increasing traffic caused the problem to become apparent.[44] Furthermore, the Board noted that rail carriers regularly require shippers to meet specific loading standards for various commodities.[45]

Third, the Board articulated the legal standard and principles it would apply to determine whether a railroad's rules for addressing freight losses in transit were reasonable. The Board explained that its reasonableness approach would involve a fact-intensive, case-specific

[41] *Id.* at 9-10.
[42] *Id.* at 10-11.
[43] *Id*. at 11.
[44] *Id.*
[45] *Id.*

inquiry.[46] To assess reasonableness, the Board analyzes "what [the Board] views as the most appropriate factors."[47] While a formal cost-benefit analysis is not always required as part of a reasonableness analysis because that could "unnecessarily limit the Board's discretion," a "tariff provision must be reasonably commensurate economically with the problem it addresses."[48] The Board explained that its approach involved an assessment of "cost-effectiveness." In a cost-effectiveness analysis, "once a determination has been made that a problem exists for which a solution is required, the focus is on whether the solution is effective in relation to its costs."[49]

The Board then applied its reasonableness standard to the challenged BNSF tariff provisions and found them not to be reasonable.[50] The Board's primary concern was that the coal loading rule was performance-based—shippers were being asked to comply with coal loss requirements that could only be measured based on a train's performance in transit. The tariff provisions set a numerical coal dust loss reduction requirement without specifying the conduct that would meet that requirement. While the shippers had control over loading practices, they would not know whether their loading methods achieved compliance until after the loading process was complete and the rail cars were in transit. This lack of certainty for shippers and their mine agents regarding how to comply and whether they had achieved compliance when the cars were still under their control caused the Board to find that BNSF's tariff was unreasonable.[51]

However, the Board indicated that changes to the tariff could make it acceptable. In particular, the Board suggested that an "activity-based safe harbor" specifying particular actions

[46] *Id.* at 5.
[47] *Id.*
[48] *Id.* at 6.
[49] *Id.* at 5 n.14.
[50] *Id.* at 10-14.
[51] *Id.* at 12-14.

for shippers and their mine agents to take at the loading site could be an acceptable way for railroads to reduce coal dust losses in transit.[52] The Board explained, "A cost effective safe harbor could go a long way to address our concern that the current tariff does not provide shippers with a certain method of compliance that does not depend on the monitoring system."[53]

C. A Subsequent STB Decision on 12/13/13 Allowed BNSF's Modified Coal Dust Tariff to Go into Effect.

Following *Coal Dust I*, BNSF heeded the Board's instructions and developed a new tariff that incorporated a safe harbor.[54] This new tariff was based on extensive field testing that BNSF conducted, known as the Super Trial, while *Coal Dust I* was pending. BNSF and its technical consultants, along with shippers and mines, tested the effectiveness of topper agents and other potential coal dust mitigation measures, such as applying a "body treatment" to the loaded coal and compacting loaded coal.[55] More than 36 million tons of coal were committed for testing in the Super Trial.[56] The results of this massive testing effort confirmed that coal load grooming, together with applying a topper agent, successfully reduced coal losses in transit.[57] Three of the topper agents tested in the Super Trial effectively reduced coal dust losses by 85 percent or more.[58]

Based on the Super Trial results, BNSF developed the safe harbor provision in a revised tariff that identified specific measures shippers and their mine agents could take to ensure a major reduction in coal dust losses from rail cars in transit. The safe harbor required shippers or

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[52] *Id.* at 12.
[53] *Id.*
[54] *See Reasonableness of BNSF Ry. Co. Coal Dust Mitigation Tariff Provisions*, FD 35557 ("*Coal Dust II*"), slip op. at 2 (STB served Dec. 13, 2013, *corrected on* Dec. 17, 2013) ("*Coal Dust II 12/13/13 Decision*").
[55] *Coal Dust II*, BNSF Ry. Co.'s Opening Evidence & Argument at 8-9 (filed Oct. 1, 2012) ("*Coal Dust II* BNSF Opening Evidence").
[56] *Id.*, VanHook V.S. at 8.
[57] *Id.* at 9.
[58] *Id.* at 12.

their mine agents to take two basic actions: (1) groom loaded coal to a specific load profile, and (2) apply an approved topper agent to the loaded coal.[59] The safe harbor allowed shippers to choose among a total of five approved chemical topper agents—the three that were proven in the Super Trial to reduce coal dust loss by at least 85 percent, and an additional two agents that were proven to achieve similar results in subsequent tests.[60] If a shipper followed the safe harbor provisions, the shipper would be in compliance with the tariff.[61]

BNSF's tariff was again challenged. A wide range of parties again participated in the resulting proceeding, including shippers, shipper associations, DOT, the NCTA, and other railroads. This time, the Board rejected the challenges to BNSF's tariff (with the exception of a challenge to a minor insurance-related provision, which the Board found to be overly broad).

First, the Board reiterated its view that the control of freight losses in transit should be based on conduct, not performance, and therefore remediation measures should specify a safe harbor for shippers to follow. The Board then evaluated the revised tariff's safe harbor provisions and concluded that they provided shippers the certainty that BNSF's original coal loading rule lacked.[62] The Board reasoned that BNSF provided sufficient evidence, through the Super Trial results, that its dual safe harbor requirements of grooming plus topper agent application achieved an 85 percent reduction in coal dust losses.[63] The Board explained, "if mine agents take the specified loading steps—profiling and application of an approved topper agent—shippers will have reasonable assurance of compliance."[64]

[59] *Id.* at 14.
[60] *Id.* at 12.
[61] *See Coal Dust II 12/13/13 Decision* at 2-3.
[62] *See id.* at 16.
[63] *See id.* at 9-15.
[64] *Id.* at 16.

Second, the Board reiterated its conclusion that BNSF's proposed remediation measures should be assessed based on a "reasonableness" standard that looked at "cost effectiveness." The Board found that shippers had failed to show that the revised tariff provisions did not meet this standard, concluding instead that BNSF's proposed approach was effective in relation to its costs.[65] The Board explained that the evidence showed that "application of topper agents is the most effective measure" of controlling coal dust losses from open-top rail cars, and there was no evidence "that topper agents are cost prohibitive, particularly in relation to the delivered cost of PRB coal."[66]

Third, some parties challenged the Board's prior conclusions about the allocation of responsibility for freight losses in transit, arguing that shippers should not bear responsibility for freight losses, or at least that shippers should not be required to bear the cost of remediation measures. The Board reaffirmed that the rail carrier could "place[] responsibility for compliance costs on the affected shippers."[67]

Finally, the Board addressed a new issue that was raised by several parties, namely that the enforcement of freight loss remediation measures might unreasonably burden rail transportation. Several shippers complained that BNSF's revised tariff did not contain specific enforcement provisions and therefore it was unclear how BNSF would enforce its loading requirements. In particular, shippers expressed concern that if a shipper failed to meet the tariff's requirements, BNSF might "refuse service or impose extreme financial penalties."[68] The Board acknowledged these concerns, but found them to be premature. The Board noted that BNSF had committed to giving shippers at least 60 days' notice before taking enforcement

[65] *Id.* at 17-20.
[66] *Id.* at 19.
[67] *Id.* at 27.
[68] *Id.* at 23.

action, and the Board reasoned that this notice would give shippers the opportunity to file a complaint with the Board before BNSF took any enforcement action.[69] In other words, the Board recognized that it would have an opportunity to address any concerns about enforcement of the remediation measures so it could address enforcement issues when or if they arose in the future.

III. Application of the CWA to Rail Cars in Transit Would Subvert Principles Established by the Board to Govern the Relationship Among Participants in Rail Transportation.

Courts and the Board have recognized that the Board's core responsibility under ICCTA is to oversee the economic relationship between rail carriers and shippers to advance the RTP.[70] The Board exercised that responsibility in the *Coal Dust* proceedings and established a number of principles and standards that should govern efforts by industry participants to prevent the loss of freight from open top rail cars in transit. In establishing those principles and standards, the Board was guided by the RTP and by the substantial body of case law under the ICCTA and its predecessor statute, the Interstate Commerce Act, governing commercial dealings among railroads, shippers and other parties involved in rail transportation.

If the CWA discharge prohibition and the NPDES permitting regime were imposed upon rail cars in transit, the management of this economic relationship would be taken out of the Board's hands. A vast range of federal, state, local and tribal officials would have the power to determine the measures that would have to be undertaken by various participants in the rail transportation supply chain to address losses of freight, who would be responsible to implement the measures, against whom the measures could be taken, and the enforcement of freight loss

[69] *Id.* at 17, 25.

[70] *See Fayus Enters. v. BNSF Ry, Co.*, 602 F.3d 444, 451 (D.C. Cir. 2010) ("[T]he core of ICCTA preemption is 'economic regulation,' which we take to refer to regulation of the relationship before us here, that of shippers and carriers.").

control measures—in short, the entire range of issues that the Board carefully reviewed and addressed in the *Coal Dust* proceedings.

The mere delegation of these regulatory powers to a multitude of state, local and tribal officials would create precisely the patchwork of regulation that Congress intended to prevent by enacting ICCTA and the preemption provision of ICCTA.[71] The exercise of these powers under the CWA would also inevitably conflict with the principles and standards that the Board already adopted in the *Coal Dust* proceeding. Put simply, the mechanics of the CWA, including implementation of the statute's performance-based requirements, conflict with the Board's authority and jurisdiction under ICCTA. Some examples of these conflicts are described below.

A. The CWA's Performance-Based Requirements Are Contrary to the Requirements Established by the Board in the *Coal Dust* Proceedings.

Although the *Coal Dust* proceedings focused on coal losses, the Board established principles in those proceedings that would apply equally to any type of freight transported in open-top rail cars. For example, a central ruling in both of the *Coal Dust* decisions was that freight losses from rail cars should not be subject to a general prohibition or limitation on discharge because it is not possible to know that such discharges will occur before the trains are operated. The Board recognized in the *Coal Dust* proceedings that it is impossible to know the location and magnitude of freight losses prior to transportation because they occur unpredictably.[72] This concern informed the Board's determination that the Coal Loading Rule's reasonableness turned on its provision of a safe harbor to shippers; loading agents and their shippers could know in advance of a trip what actions they needed to take in order to comply.

[71] 49 U.S.C. §10501(b).
[72] *Coal Dust I* at 13-14.

The CWA provides no similar assurances. Indeed, the CWA's structure and requirements resist the prescription of specific actions that one may take prior to a train's departure to ensure compliance during transit. One cannot know with reasonable certainty before a train departs whether it will release any freight and whether a release would occur in a manner that would violate the CWA. A "discharge" triggers the obligation to obtain a NPDES permit or else face potential civil or criminal liability, and a discharge only occurs at the point that a pollutant is actually "add[ed] . . . to navigable waters," not at some prior time.[73] Therefore, railroads, shippers, and other stakeholders will only know whether a CWA violation occurred after a train has left its point of origin—if and when freight lost from a rail car in transit actually enters "navigable waters." This fundamental aspect of the CWA—that compliance with its requirements can only be determined after the fact—was precisely the feature of BNSF's first coal loading rule that the Board found to be unreasonable under ICCTA.

As discussed above, the NPDES permitting regime is a critical component of regulation under the CWA, which prohibits discharges not in compliance with a NPDES permit.[74] NPDES permits demand compliance with performance standards that would apply during transit, rather than implementation of specific measures at the point of origin. The NPDES program requires compliance with restrictions "on quantities, rates, and concentrations of . . . constituents which *are discharged* . . . ."[75] NPDES permits ordinarily express these limits as restrictions on the amount of a substance that may leave a source.[76] Assuming that it would even be possible to

[73] 33 U.S.C. § 1362(12)(A); *see Waterkeeper Alliance, Inc. v. EPA*, 399 F.3d 486, 505 (2d Cir. 2005) (application of the CWA requires "an actual addition of any pollutant to navigable waters" (emphasis added)).

[74] 33 U.S.C. § 1311(a).

[75] 33 U.S.C. §§ 1311, 1362(11) (emphasis added).

[76] *See, e.g.*, EPA Region 10, *Sorrento Lactalis, Inc. NPDES Permit*, No. ID0028037, at Part 7, Table 0 (Feb. 22, 2018), *available at* https://www.epa.gov/sites/production/files/2018-03/documents/r10-npdes-sorrento-id0028037-final-permit-2018.pdf (prohibiting discharges of total suspended solids (TSS) in excess of 25 mg/L or 140 lbs/day). Copies of the cited permits are included in the Appendix.

assess whether a train complies with such a numerical limit, that determination would necessarily have to occur during transit.

EPA and states[77] can write NPDES permits to require implementation of best management practices ("BMPs"). Even if the various permitting authorities required compliance with specified BMPs, however, permits would also include performance-based standards that would apply after a train departs.[78] If these CWA principles were imposed upon trains, the result would be requirements that apply throughout transit, rather than prior to departure. It would only be possible to determine compliance after-the-fact, based on an assessment of the quantity of freight discharged from the train to a particular receiving water, assuming this could be determined.[79] As a result, even if an NPDES permit prescribed BMPs, this would not, and could not, function to provide assurances of compliance like the Coal Loading Rule's safe harbor.

B. The Board Would Lose Its Authority Under ICCTA to Establish Responsibility for Preventing Freight Losses.

One of the most contentious issues in the *Coal Dust* proceedings was the determination of who could be held responsible for taking measures to prevent freight from escaping rail cars during transit. The Board concluded that since shippers are responsible for loading freight into rail cars, railroads could require that shippers take measures to avoid freight losses in transit so

[77] The CWA treats tribes as states. Tribes may apply to EPA for authorization to administer certain CWA programs, including CWA sections 303 (setting water quality standards), section 401 (water quality standards certification), and 402 (NPDES permit issuance) pursuant to CWA section 518(e), 33 U.S.C. § 1377(e). When a tribe applies for authorization to administer CWA programs under section 518(e), a tribe is seeking authorization to be treated as a state for purposes of those CWA programs. 33 U.S.C. § 1377(e). Consequently, the analysis applicable to state-administered CWA programs applies with equal force to CWA programs administered by tribes.

[78] *E.g.*, Federal MSGP § 2.2.1 ("Your discharge must be controlled as necessary to meet applicable water quality standards of all affected states . . . ."); Wash. Dep't of Ecology, *Industrial Stormwater General Permit* § S10.A. (2020), *available at* https://fortress.wa.gov/ecy/ezshare/wq/permits/ISGP_PermitFINAL.pdf ("Discharges shall not cause or contribute to a violation of Surface Water Quality Standards . . . ."). Water quality standards are state- and tribe-established standards for desired water quality that are approved by EPA and made federally enforceable under the CWA. *See generally* 33 U.S.C. § 1313.

[79] *See, e.g.*, *Ohio Valley Envtl. Coalition v. Elk Run Coal Co.*, 24 F. Supp. 3d 532 (S.D.W.V. 2014) (finding after the fact that mine's discharges had increased in-stream conductivity to an extent that the mine violated narrative water quality standards).

long as those measures were reasonable. The Board also rejected claims that railroads should bear the economic responsibility for those measures. These determinations were based on long-standing precedent in the law governing regulation of railroads and the relationship between railroads and shippers. But under the CWA, the allocation of responsibility would be determined under a completely different and often conflicting set of legal principles, exacerbated by the large number of regulatory agencies that would be applying the relevant CWA law and regulations. The Board would lose its ability to regulate the economic relationship between railroads and other participants in rail transportation to advance Congress's RTP.

1. The CWA Does Not Clearly Specify Who Must Obtain and Comply with a Permit.

Under the CWA, there is a lack of clarity and uniformity regarding the persons required to hold and comply with an NPDES permit. Applying the CWA to trains during transit would therefore introduce confusion over which stakeholders in rail transportation bear responsibility for preventing freight losses. EPA, states, and courts have all sought to define who must obtain and abide by a permit's terms, but the standards set by each of these authorities involved in implementing and enforcing the CWA are neither clear nor uniform. As a result, multiple entities—not just shippers—could be responsible for complying with a NPDES permit's terms and could be held liable for noncompliant discharges.

The CWA itself does not specify who precisely must obtain and comply with a NPDES permit. In implementing the CWA, EPA requires that an "operator" apply for a permit and comply with its terms, but neither the CWA nor EPA's regulations define this term.[80] Instead, EPA has defined this term only in general permits, not in promulgated rules or regulations. General permit definitions of "operator" sweep broadly, covering any entity with "operational

[80] 40 C.F.R. § 122.21(b).

control" over a discharging activity or anyone with control over activities "necessary to ensure compliance with the permit."[81] And the CWA also allows states implementing the NPDES program to develop their own criteria for what constitutes an operator, which allows for state-to-state variation in who must hold a permit.

In addition to EPA and states, courts have set their own open-ended standard for who must obtain an NPDES permit. In enforcement cases, courts have held that a party having some unspecified level of "control" over a discharging activity must hold a NPDES permit and comply with its terms.[82] Application of this standard has led, for instance, to a court holding that a port's owner and management company were both liable under the CWA for discharges caused by third parties operating at the port.[83] The court reached this conclusion by wading into the parties' contractual relationships to assess their obligations and ability to exercise control over environmental compliance and activities that could cause discharges.[84]

Under these various standards, multiple parties involved in rail transportation could be required under the CWA to hold NPDES permits and attempt to comply with their terms. The experience in the Board's *Coal Dust* proceeding illustrates how multiple entities—railroads, shippers, and mines or other sources of freight transported in open-top rail cars—conduct activities that affect the potential for freight losses. If the CWA were applied to rail cars in transit, EPA, states, and courts would all scrutinize these relationships to determine which parties would be required to hold a permit. EPA, states, and courts may all reach different conclusions

[81] Federal MSGP at A-6.

[82] *E.g.*, *Puget Soundkeeper Alliance v. Cruise Terminals of Am., Inc.*, 216 F. Supp. 3d 1198, 1223 (W.D. Wash. 2015) (a party must hold and comply with a permit if it "possesses sufficient control over the facility and knowledge of the alleged violations"); *Assateague Coastkeeper v. Alan & Kristin Hudson Farm*, 727 F. Supp. 2d 433, 442 (D. Md. 2010) ("'the CWA imposes liability on the party . . . with responsibility for or control over performance of the work.'" (quoting *United States v. Lambert*, 915 F. Supp. 797, 802 (S.D.W. Va. 1996))).

[83] *Puget Soundkeeper*, 216 F. Supp. 3d at 1223-25.

[84] *See id.*

about which entities are obligated to comply, creating a patchwork that would make it difficult for any railroad, shipper, or other entity to determine the scope of its obligation to prevent freight losses and take other actions to comply with the CWA.

2. NPDES Permits Would Not Clearly Allocate Responsibility and Liability Among Multiple Entities.

NPDES permit holders, such as shippers, railroads, and other entities, would also confront confusion over the extent of their liability in the event of a permit violation because NPDES permits do not clearly allocate legal responsibility among multiple operators who are co-permittees. The way EPA and states have addressed the allocation of responsibility for permit compliance at airports provides an illustration of the confusion and disruption that would result from application of the CWA to rail cars in transit. At the relevant airport facilities, multiple entities—the airport authority, airlines, fuel companies, and deicing contractors—all conduct activities that contribute to discharges of stormwater and must be co-permittees.

The agencies have allowed these airport co-permittees to divide *practical* responsibility for pollution control tasks in their stormwater pollution prevention plans (SWPPPs). This arrangement allows, for example, a SWPPP to provide that a deicing company will be responsible for control measures associated with deicing activities. Similarly, that same SWPPP would provide that the fuel company must implement controls to prevent stormwater pollution from fueling activities.

Despite allowing this division of labor, regulators have refused to allocate *legal* responsibility for compliance. Both federal and state regulators have steadfastly maintained that "each individual operator remains responsible for ensuring all requirements of its own [permit] coverage are met regardless" of how a SWPPP practically allocates responsibility for

compliance.[85] As a result, assignment to one co-permittee of an obligation "to implement [a permit] requirement on behalf of the other operators does not negate the other operators' ultimate liability."[86] In other words, co-permittees are jointly and severally liable for one another's failures to comply.

Application of this rule to the multiple entities involved in interstate rail transportation, combined with the CWA's authorization of states to implement the NPDES program, could create liability that would be difficult for any one entity to foresee. For instance, a mine operator in Montana might fail to load coal consistent with permit requirements, resulting in a discharge in excess of a permit limit in Georgia while the train is traveling to a shipper's facility in Florida. The State of Georgia or EPA would be able to bring an enforcement action not only against the mine, but potentially against the railroad and the shipper as well. The shipper and railroad could be liable even though the violation was not foreseeable and they had no ability to prevent it.

This potential outcome conflicts with the Board's *Coal Dust* rulings, which required freight loss rules to set clear expectations and divisions of responsibility. EPA, states, and courts may try to develop new approaches to allocating responsibility for complying with the CWA, but they would be developed without the benefit of the transportation law and policy considerations that were the foundation of the Board's conclusions in the *Coal Dust* proceedings. Since the underlying legal standards are different, the various decision-makers would inevitably reach a set of different, conflicting conclusions about how to assign responsibility for compliance that would create unforeseen burdens for the numerous entities involved in the rail transportation supply chain.

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[85] *E.g.,* Federal MSGP § 8.S.3.4.; Alaska Dep't of Envtl. Conservation, *Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity* (Alaska MSGP) § 11.S.3.4 (2020), *available at* https://dec.alaska.gov/media/19833/akr060000-f-pmt-20200220.pdf (same requirement as Federal MSGP).

[86] *E.g.,* Federal MSGP § 8.S.3.4.; Alaska MSGP § 11.S.3.4.

C. The CWA's Application to Rail Cars in Transit Would Eliminate the Board's Control Over Enforcement of Freight Loss Control Measures.

Finally, the Board would have no ability to ensure that the enforcement of the CWA's requirements by a variety of entities under a variety of enforcement procedures and standards would not unreasonably burden rail transportation. During the *Coal Dust* proceedings, several commenters raised the concern that the absence of specific enforcement provisions in the Coal Loading Rule might allow unreasonable enforcement of an otherwise reasonable rule. The Board found these concerns to be premature, while also making clear that the Board would be available to ensure that enforcement of the Rule would not be unreasonable. The Board's rejection of challenges to the Coal Loading Rule thus rested, at least to some degree, on the Board's ability to review the reasonableness of enforcement measures.

The CWA affords the Board no such role, and instead places enforcement in the hands of EPA, states, citizens acting as private attorneys general, and courts. The CWA gives EPA and states discretion to bring administrative enforcement actions, in which these agencies possess discretion to impose monetary penalties and to require corrective measures.[87] EPA, states, and private citizens may also bring civil enforcement actions, in which they can seek monetary penalties and require a violator to take measures to come into compliance.[88] In these actions, courts have discretion to determine the appropriate penalties and compliance measures.[89] The

[87] *See* 33 U.S.C. § 1319(a), (g) (authorizing EPA to issue administrative compliance orders and seek administrative penalties for violations); *id.* § 1342(b)(7) (state NPDES programs must include authority "[t]o abate violations of the permit or the permit program, including civil or criminal penalties and other ways and means of enforcement").

[88] 33 U.S.C. § 1319(b), (d) (authorizing EPA to bring civil actions for penalties and obtain injunctions); 40 C.F.R. § 123.27(a) (NPDES-authorized states must have the ability to seek civil penalties, criminal remedies, and injunctive relief in enforcement actions). The CWA also provides criminal penalties for certain violations. 33 U.S.C. § 1319(c).

[89] *See* 33 U.S.C. § 1319(b) (courts may issue orders "to restrain . . . violation[s] and to require compliance"); *id.* § 1319(d) (specifying that courts determine amounts of civil penalties).

CWA charges none of these entities with upholding the RTP or otherwise ensuring that remedies do not conflict with the Board's transportation policies and objectives.

Indeed, the consequences of failing to comply with the CWA's discharge prohibition, a numeric effluent limitation, or water quality standard have the potential to be severe. The CWA demands strict compliance with these requirements, and it imposes liability even if compliance requires halting rail transportation or otherwise altering rail transportation patterns to prevent noncompliant discharges.[90] Enforcement of compliance with CWA requirements could therefore impose widespread and extreme burdens on the interstate rail network.

In short, regulation of rail transportation through the imposition of the CWA's discharge prohibition upon rail cars in transit would cause the Board to cede its control over enforcement of freight loss measures to decision-makers that are not charged with upholding reasonableness under the RTP. For instance, the Board would have no formal role to ensure the reasonableness of a penalty imposed for a freight loss incident that causes a NPDES permit violation. Instead, the Board would have to avail itself of participation procedures available to interested members of the public, either through intervention in civil cases or by submitting comments in administrative enforcement actions.[91] These processes, however, would only give the Board the ability to be heard; its positions would not bind EPA, a state agency, or a court to ensure that the relief that they order does not unreasonably burden rail transportation or otherwise undermine national rail transportation policy.

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[90] *See* 40 C.F.R. § 122.41(c) ("It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance . . . ."); *Am. Canoe Ass'n v. Murphy Farms*, 412 F.3d 536, 540 (4th Cir. 2005) (good-faith, but unsuccessful, efforts to remediate violations do not preclude liability "because the CWA creates a regime of strict liability for violations of its standards."); *United States v. CPS Chem. Co.*, 779 F. Supp. 437, 442 (E.D. Ark. 1991) ("Compliance with the Act is a matter of strict liability and a permittee's intention to comply or a good faith attempt to do so does not excuse a violation.").

[91] *See, e.g.,* Fed. R. Civ. P. 24 (establishing rules for intervention in federal district courts); 33 U.S.C. § 1319(g)(4) (establishing public comment procedure for administrative penalty orders)

IV. Conclusion

BNSF urges the Board to issue the requested declaratory order. The claims made in the *Sierra Club* litigation and the court's decision not to address the preemption issue on summary judgment have created tremendous uncertainty for BNSF and the rail transportation industry. It would not be in the interest of any of the Board's stakeholders to wait for new lawsuits to address a preemption issue that has already been squarely raised in litigation and that has the potential to severely disrupt rail operations.

Moreover, the scope of the requested declaratory order is modest. AAR's petition does not seek to change the way EPA or states have regulated railroads under the CWA since its enactment in 1972. There are circumstances where compliance with the CWA does not interfere with the railroads' ability to carry out their transportation obligations under ICCTA. Those circumstances are not at issue in this proceeding.

AAR's petition is focused narrowly on a novel interpretation of the CWA—that the CWA's discharge prohibition and the NPDES permitting regime should be imposed on the incidental discharges of commodities from rail cars in transit. In fact, EPA and states have not previously prohibited or permitted such incidental discharges under the CWA. Issuing the requested declaratory order would preserve the historical status quo. It would also prevent a massive expansion of CWA regulation of rail transportation in ways that cannot be reconciled with ICCTA and that would be detrimental to the national RTP. Allowing CWA regulation of rail cars in transit could bring extensive disruptions to the transportation of some commodities

and could impose enormous costs and inefficiencies on all rail transportation. Congress adopted a strong preemption provision in ICCTA precisely to avoid this result.

Respectfully submitted,



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Dated: April 24, 2020

CERTIFICATE OF SERVICE

I certify that I have, on April 24, 2020, served copies of these Comments of BNSF Railway Company on all parties of record in this proceeding.



_____

Sarah B. Nural
Attorney for BNSF Railway Company

Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36369

ASSOCIATION OF AMERICAN RAILROADS—
PETITION FOR DECLARATORY ORDER

Appendix to Comments of BNSF Railway Company in Support of AAR's Petition for Declaratory Order

APPENDIX INDEX

Litigation Documents

Sierra Club, et al. *v. BNSF Railway Company*, Civ. No. 13-272-LRS (E.D. Wa.)

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U. S. Environmental Protection Agency Region 10, *Sorrento Lactalis, Inc. NPDES Permit, No. ID0028037 (2018)* A-921

Wash. Dep't of Ecology, *Industrial Stormwater General Permit (2020)*..... A-948

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CV-13-272-LRS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

SIERRA CLUB, a California nonprofit corporation; PUGET SOUNDKEEPER ALLIANCE, a Washington nonprofit corporation; RE SOURCES FOR SUSTAINABLE COMMUNITIES, a Washington nonprofit corporation; COLUMBIA RIVERKEEPER, a Washington nonprofit corporation; FRIENDS OF THE COLUMBIA GORGE, INC., dba FRIENDS OF THE COLUMBIA GORGE, an Oregon nonprofit corporation; SPOKANE RIVERKEEPER; NATURAL RESOURCES DEFENSE COUNCIL, a New York nonprofit corporation,

Plaintiffs,

v.

BNSF RAILWAY COMPANY, a Delaware corporation,

Defendant.

CIVIL No. _____

COMPLAINT

INTRODUCTION

1. This is a civil suit for declaratory and injunctive relief against Defendant Burlington Northern Santa Fe Railway Company ("BNSF"), for violations of the Federal Water Pollution Control Act (commonly known as the Clean Water Act and hereinafter referred to as the CWA), 33 U.S.C. §§1251 *et seq*.

2. This action is brought pursuant to Section 505 of the CWA (Citizen Suits), 33 U.S.C. §1365.

3. As detailed below, Plaintiffs allege that BNSF has discharged coal, coal chunks, coal dust, metabolites or related byproducts of coal, and other substances or materials added to the coal including, but not limited to, surfactants and suppressants, and petroleum coke ("petcoke") and its byproducts (collectively, hereinafter, "coal pollutants") into waters of the United States, including the Columbia River, its tributaries and other waterbodies in and around Eastern Washington, as well as throughout the State of Washington.

4. These discharges have not been permitted under the CWA, so that each discharge violates §301(a) of the CWA, 33 U.S.C. §1311(a).

5. In addition, BNSF is likely to continue to violate the CWA by discharging, from a point source, coal pollutants into the waters of the United States.

6. Plaintiffs seek a declaratory judgment, injunctive relief, remedial relief, the imposition of civil penalties, and the award of costs, including attorney and expert witness fees.

JURISDICTION

7. This Court has subject matter jurisdiction over the claims specified in this Complaint pursuant to 33 U.S.C. §1365(a) and 28 U.S.C. §1331. The relief requested is authorized pursuant to 33 U.S.C. §§1319 and 1365(a), and 28 U.S.C. §§ 2201 and 2202.

8. In compliance with 33 U.S.C. §1365(b)(1)(A), on April 2, 2013, plaintiffs gave notice of the violations specified in this complaint and of their intent to file suit to the defendants, to the Administrator of the United States Environmental Protection Agency (EPA), to the Regional Administrator of the EPA, and to the State of Washington. On May 9, 2013, plaintiffs supplemented their Notice of Intent to Sue by adding Spokane Riverkeeper and Natural Resources Defense Council as Notifiers. A copy of the notice letters are attached hereto as Exhibits A & B, respectively, and all details and allegations in the notice letters are incorporated by reference.

9. Sixty days have passed since the notice was served, and the violations complained of in the notice letter are continuing at this time, or are reasonably likely to continue. Defendants remain in violation of the CWA. Neither the EPA

nor the Washington Department of Ecology (WADOE) has commenced or is diligently prosecuting a civil or criminal action to redress the violations.

VENUE

10. Venue is appropriate pursuant to Section 505(c)(1) of the CWA, 33 U.S.C. §1365(c)(1), because the sources of the violations complained of have occurred in the District.

PARTIES

Plaintiffs

11. Plaintiffs are seven not-for-profit organizations comprised, in part, of members who live, work, and recreate in the state of Washington. Plaintiffs share similar interests in the protection and preservation of regional water bodies and wild spaces.

Sierra Club

12. Plaintiff Sierra Club is a nonprofit corporation incorporated and headquartered in California, with a regional office located in Seattle and members throughout the State of Washington. Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the Earth; to practicing and promoting the responsible use of the Earth's resources and ecosystems; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Sierra

Club's concerns encompass the protection and restoration of the water quality of the waters of the U.S. within the state of Washington, including the Columbia River and Puget Sound, and all life connected to these waterbodies, from their headwaters to the Pacific Ocean. Sierra Club has more than 600,000 members nationwide, including over 21,000 in Washington, and brings this action on behalf of itself and its affected members. Sierra Club members reside, work, travel and recreate next to and in the general vicinity of BNSF's railroad tracks in Washington and the waterways into which defendants discharge pollutants. The environmental, health, aesthetic, and recreational interests of Sierra Club members have been, are being, and will be adversely affected by defendants' illegal coal and petroleum coke pollutant discharges into waters of the United States. Members of Sierra Club use and enjoy the waters and lands into and onto which defendants' railcars discharge, including waters in the immediate vicinity of, and downstream from, defendants' discharges into waters of the United States.

13. Sierra Club's members live within the impacted watersheds; recreate by fishing, rafting, hiking, plant gathering, walking, windsurfing, sailing, photographing, and boating in and around the impacted waters; observe and enjoy wildlife in the watershed around defendants' discharges; and retain an aesthetic and health interest in the health and restoration of the impacted waters in the vicinity of defendants' railroad tracks and railcars.

Puget Soundkeeper

14. Puget Soundkeeper 's mission is to protect and preserve the water of Puget Sound by monitoring, cleaning up and preventing pollutants from entering its waters. Puget Soundkeeper is headquartered in Washington with offices in Seattle. Puget Soundkeeper's approximately 1,400 members reside, among other places, throughout the State of Washington, particularly next to and in the general vicinity of BNSF's railroad tracks and the waterways into which defendants discharge pollutants.

15. The environmental, health, aesthetic, and recreational interests of Puget Soundkeeper members have been, are being, and will be adversely affected by defendants' illegal coal pollutant discharges into waters of the United States. Members of Puget Soundkeeper use and enjoy the waters and lands into and onto which defendants' railcars discharge, including waters in the immediate vicinity of, and downstream from, defendants' discharges into waters of the United States.

16. Puget Soundkeeper's members live within the impacted watersheds; recreate, or would recreate, by fishing, rafting, hiking, plant gathering, walking, sailing, windsurfing, photographing and boating in and around the impacted waters; observe and enjoy wildlife in the watershed around defendants' discharges; and retain an aesthetic and health interest in the health and restoration of the impacted waters in the vicinity of defendants' railroad tracks and railcars.

RE Sources for Sustainable Communities

17. RE Sources for Sustainable Communities promotes sustainable communities through recycling, education, advocacy, and conservation of natural resources. RE Sources is based in Washington with offices in Bellingham. RE Sources for Sustainable Communities' approximately 5,200 members reside, among other places, throughout the State of Washington next to and in the general vicinity of BNSF's railroad tracks and the waterways into which defendants discharge pollutants.

18. The environmental, health, aesthetic, and recreational interests of RE Sources for Sustainable Communities members have been, are being, and will be adversely affected by defendants' illegal coal pollutant discharges into waters of the United States. Members of RE Sources for Sustainable Communities use and enjoy the waters and lands into and onto which defendants' railcars discharge, including waters in the immediate vicinity of, and downstream from, defendants' discharges into waters of the United States.

19. RE Sources for Sustainable Communities' members live within the impacted watersheds; recreate, or would recreate, by fishing, rafting, hiking, plant gathering, walking, windsurfing, sailing, photographing and boating in and around the impacted waters; observe and enjoy wildlife in the watershed around defendants' discharges; and retain an aesthetic and health interest in the health and

restoration of the impacted waters in the vicinity of defendants' railroad tracks and railcars.

Columbia Riverkeeper

20. Columbia Riverkeeper's mission is to restore and protect the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. To achieve these objectives, Riverkeeper operates scientific, educational, and legal programs aimed at protecting water, quality, air quality, and habitat in the Columbia River Basin. Columbia Riverkeeper's over 3000 members reside, among other places, throughout the State of Washington next to and in the general vicinity of BNSF's railroad tracks and the waterways into which defendants discharge pollutants.

21. The environmental, health, aesthetic, and recreational interests of Columbia Riverkeeper's members have been, are being, and will be adversely affected by defendants' illegal coal pollutant discharges into waters of the United States. Members of Columbia Riverkeeper use and enjoy the waters and lands into and onto which defendants' railcars discharge, including waters in the immediate vicinity of, and downstream from, defendants' discharges into waters of the United States.

22. Columbia Riverkeeper's members live within the impacted watersheds; recreate, or would recreate, by fishing, rafting, hiking, plant gathering, walking,

windsurfing, photographing and boating in and around the impacted waters; observe and enjoy wildlife in the watershed around defendants' discharges; and retain an aesthetic and health interest in the health and restoration of the impacted waters in the vicinity of defendants' railroad tracks and railcars.

Friends of the Columbia Gorge

23. Friends of the Columbia Gorge seeks to vigorously protect the scenic, natural, cultural, and recreational resources of the Columbia River Gorge. Friends of the Columbia Gorge's approximately 5,000 members reside, among other places, throughout the State of Washington next to and in the general vicinity of BNSF's railroad tracks and the waterways into which defendants discharge pollutants.

24. The environmental, health, aesthetic, and recreational interests of Friends of the Columbia Gorge members have been, are being, and will be adversely affected by defendants' illegal coal pollutant discharges into waters of the United States. Members of Friends of the Columbia Gorge use and enjoy the waters and lands into and onto which defendants' railcars discharge, including waters in the immediate vicinity of, and downstream from, defendants' discharges into waters of the United States.

Friends of the Columbia Gorge's members live within the impacted watersheds; recreate, or would recreate, by fishing, rafting, hiking, plant gathering,

walking, windsurfing, photographing and boating in and around the impacted waters; observe and enjoy wildlife in the watershed around defendants' discharges; and retain an aesthetic and health interest in the health and restoration of the impacted waters in the vicinity of defendants' railroad tracks and railcars.

Spokane Riverkeeper

25. Spokane Riverkeeper is a program of the Center for Justice, which is a Spokane-based, for-impact legal advocacy organization. Spokane Riverkeeper's mission is to protect and restore the health of the Spokane River watershed. Spokane Riverkeeper seeks to accomplish its mission through collaboration, education, and, where necessary, litigation. Spokane Riverkeeper's first priority is to defend the Spokane River against pollution and polluters.

26. Spokane Riverkeeper's approximately 1200 members reside, among other places, throughout the State of Washington next to and in the general vicinity of BNSF's railroad tracks and the waterways into which defendants discharge pollutants.

27. The environmental, health, aesthetic, and recreational interests of Spokane Riverkeeper members have been, are being, and will be adversely affected by defendants' illegal coal pollutant discharges into waters of the United States. Members of Spokane Riverkeeper use and enjoy the waters and lands into and onto which defendants' railcars discharge, including waters in the immediate vicinity of,

and downstream from, defendants' discharges into waters of the United States.

28. Spokane Riverkeeper's members live within the impacted watersheds; recreate, or would recreate, by fishing, rafting, hiking, plant gathering, walking, windsurfing, photographing and boating in and around the impacted waters; observe and enjoy wildlife in the watershed around defendants' discharges; and retain an aesthetic and health interest in the health and restoration of the impacted waters in the vicinity of defendants' railroad tracks and railcars.

Natural Resources Defense Council

29. Natural Resources Defense Council (NRDC) is a national, not-for-profit membership corporation that is dedicated to the preservation, protection, and defense of the environment, public health, and natural resources. NRDC has long been active in working to protect water quality and specifically, enforcement of the Clean Water Act.

30. NRDC has more than 363,700 members nationwide, including approximately 14,600 members who reside throughout the State of Washington next to and in the general vicinity of BNSF's railroad tracks and the waterways into which defendants discharge pollutants.

31. The environmental, health, aesthetic, and recreational interests of NRDC members have been, are being, and will be adversely affected by defendants' illegal coal pollutant discharges into waters of the United States. Members of NRDC use

and enjoy the waters and lands into and onto which defendants' railcars discharge, including waters in the immediate vicinity of, and downstream from, defendants' discharges into waters of the United States.

32. NRDC 's members live within the impacted watersheds; recreate, or would recreate, by fishing, rafting, hiking, plant gathering, walking, windsurfing, photographing and boating in and around the impacted waters; observe and enjoy wildlife in the watershed around defendants' discharges; and retain an aesthetic and health interest in the health and restoration of the impacted waters in the vicinity of defendants' railroad tracks and railcars.

Defendants

Burlington Northern Santa Fe Railway Company ("BNSF")

33. BNSF Railway has a rail network of 32,500 route miles in 28 states and two Canadian provinces. BNSF owns and operates rail lines throughout the state of Washington and along the Columbia River along the Washington/Oregon border. In 2012, BNSF hauled 2.2 million coal shipments. In 2012, BNSF reported that its coal business unit was responsible for nearly one-quarter--$4.8 billion--of the company's $20 billion total freight revenue, and that more than 90% of the coal hauled by BNSF comes from the Powder River Basin.

34. BNSF transports coal from, *inter alia*, the Powder River Basin across waterways via routes in the center and south of Washington to locations

throughout Washington and sometimes continuing into Canada. The coal transport trains travel along, among other waterways, the Columbia River and the Puget Sound.

STATUTORY AND REGULATORY FRAMEWORK

35. Under the CWA, the United States has committed itself "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," including establishing a "national goal that the discharge of pollutants into the navigable waters be eliminated." CWA § 101, 33 U.S.C. §1251.

36. Pursuant to the CWA, a discharge of a pollutant means "any addition of any pollutant to navigable waters from any point source," and "any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft." CWA § 502(12), 33 U.S.C. § 1362(12). *See also* CWA § 502(7), 33 U.S.C. § 1362(7) (definition of "navigable waters"); 40 CFR § 122.2 (definition of "waters of the U.S.").

37. The CWA specifies a number of materials and wastes that, if discharged into water, render them pollutants, including, but not limited to, solid waste, chemical wastes, industrial waste, biological materials, sand, and rock. CWA § 502(6), 33 U.S.C. § 1362(6).

38. Under the Clean Water Act, the term "point source" means "any discernible, confined and discrete conveyance, including but not limited to any . . . container

[or] rolling stock. . .from which pollutants are or may be discharged." CWA § 502(14), 33 U.S.C. § 1362(14).

49. To advance its goals, Congress established in the CWA that all discharges of pollutants are prohibited "except in compliance" with specified provisions of the CWA including, most importantly, the National Pollutant Discharge Elimination System (NPDES) permitting program. CWA § 301(a), 33 U.S.C. §1311(a); CWA § 402(a), 33 U.S.C. §1342(a); 40 CFR §§122.1 *et seq*.

50. The NPDES program requires a potential discharger to first obtain a NPDES permit that limits the type and quantity of pollutants to be released so as to maintain water quality standards, among other objectives. CWA § 402(a), 33 U.S.C. §1342(a); 40 CFR §122.1. No NPDES permit may be issued where discharges pursuant to it would cause receiving water-bodies to fail to meet water quality standards. *Id*. and 40 CFR §122.4 (prohibitions on permit issuance). Unless done pursuant to a NPDES permit, any coal pollutant discharge from a rail car or train into navigable waters of the U.S. is prohibited under the CWA.

FACTS

Pollutants Being Discharged

51. Defendants, by their ownership, operation, lease of, participation in, contract for, or receipt of material from, trains and rail cars transporting coal, petcoke, and their byproducts (hereinafter, “coal”), have discharged, are discharging, and will

continue to discharge coal pollutants to waters of the U.S. within the State of Washington.

52. Such coal pollutants include, but are not limited to, coal, coal chunks, coal dust, coal contaminated water, metabolites or related by-products of coal, surfactants applied to the coal, coal chunks and coal dust, petcoke, petcoke chunks, petcoke dust, petcoke contaminated water, and suppressants.

Discharge Events

53. Defendants have discharged, are discharging, and will continue to discharge coal pollutants into waters of the U.S. by each and every one of the defendants' trains and rail cars that carry coal.

54. Each and every train and each and every rail car discharges coal pollutants to waters of the United States when traveling adjacent to, over, and in proximity to waters of the United States.

55. Defendants discharge coal pollutants into waters of the U.S. in the State of Washington through holes in the bottoms and sides of the rail cars and by spillage or ejection from the open tops of the rail cars and trains.

56. Defendants discharge coal pollutants during the transportation of the coal in both normal and abnormal operating conditions, and upon loading and unloading coal.

57. Defendants' discharges of coal pollutants from the container or rolling stock

point sources are especially frequent or severe when their coal trains pass over rough rail tracks, track changes, bridges, and switches; during transportation of coal over bumpy terrain, in windy conditions, at high operating speed, during steep descents and ascents and through sag-areas spanning steep ascent and descent reaches of track (or vice versa); during and after precipitation events; at moments of high crosswinds; and during derailments.

58. Defendants' coal pollutant discharges occur despite the use of topping agents, surfactants or suppressants, and these topping agents, surfactants and suppressants themselves are pollutants discharged by defendants.

59. The specific dates, times, amounts, and exact or approximate locations, along with, for example, the rail conditions, rail car conditions, design and performance of rail cars, weather conditions, passing trains, loading and unloading practices employed, and incline or decline of railways in specific locations of the discharges during each of the years 2008 through the present are, or should be, in the possession of the defendants.

Waters Affected

60. Waters of the U.S. are located in, in proximity to, or run through the State of Washington and receive defendants' coal pollutant discharges where defendant BSNF-operated rail lines and rail cars pass by, cross, or are in proximity to such waters.

61. Defendants have discharged, are discharging, and will continue to discharge pollutants from point sources into waters of the United States, including, but not limited to, rivers, streams, lakes, ponds, coulees, estuaries, bays, sounds, canals, shipping canals, fresh water and tidal wetlands, and coastal waters of the Pacific Ocean. These waters derive water from, are tributaries to, forks of, and/or exchange water with many of the waters in the State of Washington, many of which are navigable waters and all of which eventually discharge into the Pacific Ocean.

62. Waters impacted by defendants' coal pollutant discharges include, but are not limited to, the Columbia River, Alder Creek, Ashes Lake, Bass Lake, Beckie River, Beckler River, Chamberlain Lake, Chiwawa River, Chuckanut Bay, Coal Creek, Cow Creek, Cowlitz River, Coweeman Confluence, Crab Creek, Crah Creek, Dakota Creek, Dead Canyon, Deschutes River, Drano Lake, East Low Canal, Elliott Bay, Esquatzel Coulee, Franz Lake, Glade Creek, Green River, Grant Lake, Hangman Creek (also known as Latah Creek), Hewett Lake, Horsethief Lake, Howard Hanson Reservoir, Kalama River, Klickitat River, Lake Union, Lewis River, Little White Salmon River, Little Spearfish Lake, Look Lake, Locke Lake, Newaukum River, Nisqually River, Nooksack River, North Fork – Skykomish River, Pilchuk Creek, Pilchuk River, Possession Sound, Puget Sound, Quilceda Creek, Rock Cove, Rowland Lake, Salmon Creek, Samish River,

Shilshole Bay, Skagit River, Skookumchuck River, Skykomish River, Snake River, Snohomish River, South Fork – Skykomish River, Spokane River, Status Creek, Steamboat Slough, Stillaguamish River, Stuck River, Sultan River, Teanaway River, Toppenish Creek, Toutle River, Union Slough, Wallace River, Washougal River, Wenatchee River, West Canal, White Salmon River, Wind River, Yakima River and their tributaries.[1]

Discharges Unpermitted Under the CWA

63. Defendants have never obtained a NPDES permit allowing their discharges of coal pollutants into State of Washington waterbodies from rail cars and trains. Moreover, the types of discharges that have occurred, are occurring and that are likely to continue to occur are not permitted under federal law.

64. Defendants intend to continue loading and transporting coal and petcoke and related coal pollutants by rail to and through the State of Washington.

[1] Plaintiffs note that this list is inclusive of some waterways in the Eastern District of Washington, some in the Western District of Washington, and some that flow through both the Western and Eastern Districts of Washington. Plaintiffs have filed a similar action in the Western District of Washington and intend to move for consolidation, but, recognizing that some of the waterways overlap Districts, include a fuller list of impacted waterways here for reference.

ALLEGATIONS

65. Plaintiffs hereby incorporate by reference all preceding paragraphs.

66. Section 301(a) of the CWA, 33 U.S.C. §1311(a), prohibits the discharge of pollutants from a point source into navigable waters of the United States, unless pursuant to the terms of a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. §1342.

67. Defendants have discharged coal pollutants in contravention of CWA §301, as described herein, during rail transport of coal, since at least April 2008, and such discharges are presently ongoing and likely to continue.

COUNT 1

Discharge of Pollutants Without NPDES Permit into Waters of United States

68. All waterways named herein are waters of the United States protected by the CWA.

69. Defendants did not have and do not retain a NPDES Permit authorizing their discharges of coal pollutants into such waterways.

70. Defendants have discharged coal pollutants from the operation of rail cars and trains into, at least, the listed waterways from April 2008 (and for many years prior to 2008) to present. Such operations and discharges are continuing and are likely to continue into the future.

71. Each such coal discharge from each rail car and train into each separate waterway on each separate day constitutes a separate violation of the CWA.

RELIEF REQUESTED

WHEREFORE, plaintiffs respectfully request that this Court grant plaintiffs the following relief:

A. Issue a declaratory judgment that defendants have violated and continue to violate the CWA;

B. Issue a declaratory judgment that each rail car container constitutes a separate point source;

C. Issue a declaratory judgment that each separate discharge into each waterway constitutes a separate violation;

C. Enjoin defendants from operating rail cars and trains in such a manner as will result in further violation of the CWA;

D. Enjoin defendants' use of uncovered rail cars for any transport of coal;

E. Enjoin defendants' use of rail cars that, through design or imperfection – including holes or openings in their sides or bottoms—allow coal pollutants to be discharged into waters of the U.S;

F. Order defendants to remove coal pollutants that are in-place or otherwise recoverable from receiving water-bodies;

G. Order defendants to pay civil penalties of up to $37,500 per day for each violation of the CWA, pursuant to Sections 309(d) and 505(a) of the CWA, 33 U.S.C. §§1319(d) and 1365(a), and 40 C.F.R. § 19 *et seq.*, including those identified in plaintiff's notice letters, violations identified during discovery, and violations committed subsequent to those identified in this Complaint;

H. Order defendants to monitor and report their coal pollutant discharges to the federal Environmental Protection Agency and the State of Washington Department of Ecology;

I. Order defendants to provide plaintiff, for a period beginning on the date of the Court's order and running for five years after defendants achieve compliance with the CWA with a copy of all reports and other documents which defendants submit to EPA, to the Regional Administrator of the EPA, or to the State of Washington regarding defendants' coal pollutant discharges at the time these documents are submitted to these authorities;

J. Issue a remedial injunction ordering defendants to pay the cost of any environmental restoration or remediation deemed necessary and proper by the Court to comply with the Clean Water Act and ameliorate the water degradation caused by defendants' violations;

K. Award plaintiffs their costs, including reasonable attorney and expert

witness fees, as authorized by 33 U.S.C. §1365(d) and 28 U.S.C. §2412(d); and

L. Award such other relief as this Court deems appropriate.

Respectfully submitted this 24th day of July,

/s/ Charles M. Tebbutt
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EXHIBIT A

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April 2, 2013

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

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724 Columbia Street NW, Ste. 320
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Re: Notice of Intent to Sue under §505 of the Federal Water Pollution Control Act

Dear Sirs and Madams:

This letter is to provide you with notice that the Sierra Club, Inc., Puget Soundkeeper Alliance, Columbia Riverkeeper, Friends of the Columbia Gorge, and RE Sources for Sustainable Communities ("Notifiers") intend to file a citizen lawsuit against Burlington Northern Santa Fe Railroad Company ("BNSF"), and Peabody Energy, Arch Coal, Ambre Energy, Cloud Peak Energy, Transalta and First Energy ("Coal Companies") (BNSF and Coal Companies are hereafter collectively called "Dischargers"), who discharge coal, coal chunks, coal dust, metabolites or related byproducts of coal, and other substances or materials added to the coal including, but not limited to, surfactants and suppressants, and petroleum coke ("petcoke") and its byproducts (collectively hereafter "pollutants") into waters of the United

States throughout the State of Washington. Waters of the U.S. are under or in proximity to the rail lines and rail cars such that pollutants discharge into them from the rail cars. This lawsuit will be brought pursuant to Section 505(a)(1)(A) of the Federal Water Pollution Control Act (commonly known as the "Clean Water Act" (CWA)), 33 U.S.C. §1365(a)(1)(A). Upon the expiration of the sixty (60) day statutory waiting period, Notifiers intend to file a civil action or actions in federal district court.

VIOLATIONS OF FEDERAL LAW

This lawsuit will allege that the Dischargers have violated, are violating, and will continue to violate the Clean Water Act as the discharge of pollutants is unpermitted, and potentially unpermittable, under the Clean Water Act ("CWA"). The discharges also constitute fill material, some of which remains present and visible in areas within the vicinity of the train tracks running on or near wetlands, streams, rivers and other areas subject to CWA jurisdiction. Coal Companies own the coal, and the resultant pollutants, that are transported via rail lines through and within the State of Washington. BNSF operates rail lines in the State of Washington, which rail lines the Coal Companies use for coal transport, and are also used for transporting petroleum coke. Coal Companies, as owners, and BNSF as operator, are persons subject to the requirements of the Clean Water Act. Rail trains and rail cars ("rolling stock") are considered point sources under the Clean Water Act. 33 U.S.C. §1362(14). The point sources include, but are not limited to, each and every train and rail car transporting coal.

The Dischargers have discharged, are discharging, and will continue to discharge pollutants from point sources into waters of the United States, including, but not limited to, rivers, streams, lakes, ponds, coulees, estuaries, bays, sounds, canals, shipping canals, fresh water and tidal wetlands, and coastal waters of the Pacific Ocean. The list of waters of the United States into which the pollutants are discharged is extensive, spanning much of the State of Washington and are named in part below. These waters derive water from, are tributaries to, forks of, and/or exchange water with many of the waters in the State of Washington, many of which are navigable waters and all of which eventually discharge into the Pacific Ocean. The Dischargers have violated, are violating, and will continue to violate the Clean Water Act by illegally discharging pollutants into waters of the United States.

POLLUTANTS BEING DISCHARGED

The pollutants that the Dischargers have discharged, are discharging, and will continue to discharge include, but are not limited to, coal, coal chunks, coal dust, metabolites or related by-products of coal, surfactants applied to the coal, coal chunks and coal dust, petcoke, petcoke chunks, petcoke dust, and suppressants. All pollutants being discharged not set forth specifically in this letter are violations that are or should be known to the Dischargers and may be included in any future legal actions by Notifiers. Such pollutants may only be known to Dischargers and eyewitnesses who are yet to be determined because such discharges have not been reported by Dischargers.

DISCHARGE EVENTS

The Dischargers have discharged, are discharging, and will continue to discharge pollutants to waters of the U.S. by each and every one of the Dischargers' trains, and each and every one of the Dischargers' rail cars. Each and every train and each and every rail car discharges pollutants to waters of the United States when travelling adjacent to, over, and in proximity to waters of the United States. The information concerning the specific dates, amounts, and exact or approximate locations, along with, for example, the rail conditions, rail car conditions, design and performance of rail cars, weather conditions, passing trains, loading practices employed, and incline or decline of railways in specific locations of the discharges during each of the years 2008 through the present are, or should be, in the possession of the Dischargers. Since the Dischargers' entire files are not available to the Notifiers, this information remains exclusively within the control of the Dischargers and, consequently, Notifiers cannot be expected to provide all details of discharge times, locations, or amounts.

By Dischargers' own testimony before the Surface Transportation Board (STB), which testimony is publicly available, each rail car loses between 250 and 700 pounds of coal and coal dust[1] on each trip for an average loss of 500 pounds of coal lost from each car per trip.[2] For trains with 120 cars—the typical length of a coal train—over 30 tons of coal is lost each trip.[3] In other studies, again according to BNSF, as much as three percent of the coal in each car (around 3,600 lbs. per car) can be lost in the form of dust.[4] Furthermore, BNSF's own testimony indicates that in 2008, a limited "cleanup" was attempted near certain streams and waterways, and over 300 rail cars of coal deposits were removed.[5] Evidence indicates that the coal obtained from the Powder River Basin is generally sub-bituminous coal, and can produce a finer dust than other sources of U.S. coal;[6] thus, the behavior of the Powder River Basin coal may exceed the average coal dust loss per transport.

The Notifiers believe in good faith that numerous factors contribute to the discharge of coal, coal chunks, coal dust, metabolites or related byproducts of coal, surfactants, and other substances or materials added to the coal and petcoke into waters of the U.S. First, rail cars used for transporting coal and petcoke are open-top, that is to say that they are not covered or enclosed, but are open to the air. Passing over rough rail tracks, track changes, bridges, and switches causes rail cars to vibrate and chunks of coal, coal dust and petcoke are shaken out of rail cars.[7] Loading coal above the top of a rail car, and transporting coal over windy and bumpy

[1] Hearing Transcript and Recording, July 29, 2010, *Arkansas Electric Cooperative Association – Petition for Declaratory Order*, Surface Transportation Board, Docket No. FD 35305, tape 1 at Transcript (Tr.) at 102:9-103:7.
[2] Id. at tape 1 at 37:07, 1h:42; Tr. at 42:5-13, 102:9-103:7 (BNSF Testimony).
[3] Id. An average of 500 lbs./car x 120 cars/train=60,000 lbs. or 30 tons.
[4] Burlington Northern Santa Fe Railway, "Coal Dust FAQ," March 2011. Available at http://www.coaltrainfacts.org/docs/BNSF-Coal-Dust-FAQs1.pdf.
[5] Id. at Tape 1 at 40:30. Tr. at 45: 13-19 (Testimony of Gregory Fox, Vice President of Transportation for BNSF) "In 2008, BNSF did a very limited clean up of coal dust around waterways and we removed over 300 rail cars of coal dust; 1.58 million tons as shown on the chart would equate to 14,000 rail cars of coal dust that needs to be removed from the joint line, obviously, an extreme condition.". Fox continued: "oftentimes we'll load in rail cars and take it to a disposal site. Other times, frankly, we will put it on to the right of way roads well away from the track structure." Tape 1h:54; Tr. at 114:16-115:8..
[6] Id. at Tape 1 at 10:46, Tr. 17:1-16.
[7] *See, e.g.*, Id. at Tape 2, 4:10; Tr. at 161:13-164: 9.

terrain leads to further coal loss.[8] When combined with high operating speeds, which are known to occur, the chances of coal falling out increases.[9] Second, the discharge of pollutants is pervasive regardless of the terrain, but discharges are even more pronounced on the descending side of an incline. Such descents occur, among other places, in the Cascade Mountains. Coal loss accumulations are higher in pronounced descents and pronounced ascents, and places where a rail line crosses perpendicular to a valley.[10] The same topographic features which cause coal and petcoke to fall out of rail cars also put the rail cars in proximity to waterways when discharges occur.[11] Third, bridges are frequently located at the bottom of "big sags" or pronounced descents, and Dischargers have identified these locations as having high accumulations of coal and petcoke discharges, due in part to the slack action shock waves throughout the train caused by braking on descent and then accelerating to ascend.[12] This shock wave redistributes coal and petcoke in the open-top rail car and causes chunks of coal and petcoke to fall out.[13] Fourth, by design, performance, age, or other factors, rail cars have holes in the sides, bottoms and other places. Rail cars are not watertight, which results in the discharge of pollutants. Discharges from holes in the rail cars are exacerbated in precipitation-related events, which are frequent and regular occurrences for much of the year, particularly west of the Cascade Mountains. Fifth, when there are crosswinds, or winds created from passing trains, more pollutants are discharged. Finally, the use of topping agents such as surfactants is not required. Further, even if topping agents are applied, it is not effective to fully prevent coal and petcoke discharge into waterways.[14] Surfactants themselves are also pollutants and, if applied, would be discharged from the rail cars.

Coal dust has also been shown to be a cause of rail bed instability and derailments, which can pose a significant public safety hazard, as discussed in a recent proceeding before the Surface Transportation Board (STB), which found coal dust to be "a pernicious ballast foulant."[15] "Coal dust, even in small amounts, poses a real threat to the integrity of the ballast section and track stability."[16] Coal train derailments pose a threat to human health and safety and constitute Clean Water Act violations when they spill coal into waterways. Derailments occur on an intermittent, but expected, basis and will likely continue to occur. All discharges resulting from derailments are subject to anticipated action by Notifiers.

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[8] Id. at Tape 1, 2h:18.; Tr. at 141:4-142:14.
[9] Id. at Tape 2, 9:00; Tr. at 165:10-166:122.
[10] *See, e.g.*, Id. at Tape 2, 4:10; Tr. at 161:13-164:9
[11] Id., Tape 2 at 8:00; 164:22-165:9.
[12] Id., Tape 2 at 9:00.; Tr. at165:10-166: 22.
[13] Id.
[14] While BNSF has a voluntary mandate encouraging the use of surfactants, the Surface Transportation Board (STB) proceedings evaluating that practice are ongoing. In the absence of binding regulation, over 70% of coal shippers are electing not to apply any sort of topping agent or surfactant. *See Some shippers not complying with BNSF coal dust tariff,* Platts Energy Week, November 3, 2011, accessed http://www.wusa9.com/news/local/story.aspx?storyid=173329
[15] *See* Surface Transportation Board Decision, *Re: Ark Arkansas Electric Cooperative Corporation - Petition for Declaratory Order*, Docket No. FD 35305 (Mar. 3, 2011) (available at http://www.stb.dot.gov/decisions/readingroom.nsf/WebDecisionID/40436?OpenDocument).
[16] *See* Testimony of Gregory Fox Vice President of Transportation for BNSF, Surface Transportation Board Hearing Transcript ("STB Hearing Transcript"), *Re: Arkansas Electric Cooperative Corporation – Petition for Declaratory Order*, Docket No. FD 35305 (July 29, 2010), Tape 42:06; Tr. 46:18-20.

WATERS AFFECTED

The waters of the U.S. that are located in, in proximity to, or which run through the State of Washington at issue in this notice and which pollutants reach are numerous. BNSF's northern route for transportation of coal runs from Spokane through Odessa, Ephrata, Wenatchee, to Everett and down to Seattle. BNSF's southern route for transportation of coal runs from Spokane, through Pasco and then west to Vancouver, Washington. BSNF may also transport coal from the Seattle – Everett area north to Vancouver, British Columbia. All throughout the State of Washington, where the rail lines and rail cars pass by, cross, or are in proximity to waters of the United States, pollutants are discharged and remain present in the waters. At a minimum, these waters include, but are in no way limited to, the Columbia River, Puget Sound, Alder Creek, Ashes Lake, Bass Lake, Beckie River, Beckler River, Chamberlain Lake, Chiwawa River, Chuckanut Bay, Coal Creek, Cow Creek, Cowlitz River, Coweeman Confluence, Crab Creek, Crah Creek, Dakota Creek, Dead Canyon, Deschutes River, Drano Lake, East Low Canal, Elliott Bay, Esquatzel Coulee, Franz Lake, Glade Creek, Green River, Grant Lake, Hangman Creek, Hewett Lake, Horsethief Lake, Howard Hanson Reservoir, Kalama River, Klickitat River, Lake Union, Lewis River, Little White Salmon River, Little Spearfish Lake, Look Lake, Locke Lake, Newaukum River, Nisqually River, Nooksack River, North Fork – Skykomish River, Pilchuk Creek, Pilchuk River, Possession Sound, Quilceda Creek, Rock Cove, Rowland Lake, Salmon Creek, Samish River, Shilshole Bay, Skagit River, Skookumchuck River, Skykomish River, Snake River, Snohomish River, South Fork – Skykomish River, Spokane River, Status Creek, Steamboat Slough, Stillaguamish River, Stuck River, Sultan River, Teanaway River, Toppenish Creek, Toutle River, Union Slough, Wallace River, Washougal River, Wenatchee River, West Canal, White Salmon River, Wind River, Yakima River and their tributaries. See Appendix A for dates of examples of violations and photographic representations of violations.

DISCHARGES UNLAWFUL

Section 301 of the Clean Water Act, 33 U.S.C. §1311(a), prohibits the discharge of any pollutant from a point source into waters of the United States unless such discharge is authorized pursuant to a National Pollutant Discharge Elimination System ("NDPES") permit issued pursuant to Section 402 of the Act and/or a dredge and fill permit issued pursuant to Section 404 of the Act. The Dischargers have never obtained a NPDES permit or dredge and fill permit for such discharges. The types of discharges that have occurred, are occurring and that are likely to continue to occur are not permitted under federal law. As Dischargers plan to continue loading and transporting coal and petcoke in the current methods and manners, the Dischargers are continuing, and will continue, to illegally discharge pollutants into waters of the United States without a NPDES permit or a dredge and fill permit.

HISTORY OF VIOLATIONS

Notifiers believe and allege that a history of violations has continued from at least April 2008 (and for many years prior to 2008) and that violations are presently ongoing and continuous. These violations have occurred, are occurring, and will continue to occur on a regular basis (daily, or multiple times per week or per month), during transportation of each coal or petcoke shipment, at virtually all locations where waters of the U.S. are present, along the rail

transportation routes in the State of Washington (as well as other areas along the rail lines). All violations not set forth specifically in this letter, including specific dates and locations of such discharges, are violations that are or should be known to the Dischargers and may be included in any future legal actions by Notifiers. All specific discharges discovered subsequent to the sending of this notice, of similar type and nature, whether occurring prior or subsequent to this notice, shall be included in the action in this case without the need for further notice under 33 U.S.C. §1365(b). Such discharges may only be known to the Dischargers and eyewitnesses who are yet to be determined because such discharges have not been, and are not, reported by Dischargers.

ACTIONS TO BE TAKEN

Absent cessation of the discharges by the Dischargers, Notifiers intend, at the close of the sixty (60) day notice period to file a citizen lawsuit under Section 505 of the Clean Water Act against Dischargers, both individually and collectively, seeking injunctive relief, remedial relief, declaratory relief, and civil penalties for each day of each violation for each U.S. water body over the past five (5) years and sixty (60) days from the date of this notice relating to the illegal discharges through the date of this letter and all violations of Section 301 of the Clean Water Act which occur subsequent to the date of this letter, plus costs, attorney and expert witness fees, and such other relief as may be appropriate. Notifiers will also seek removal of the pollutants from waterways as such discharges constitute illegal fill material in violation of Sections 301 and 404 of the Clean Water Act and the Rivers and Harbors Act of 1899, 33 U.S.C § 403, et seq.

CIVIL PENALTIES

Notifiers intend, at the close of the sixty (60) day notice period, to file a citizen suit under §505 of the Clean Water Act, 33 U.S.C. §1365, against the Dischargers for the applicable statutory maximum for each violation, presently $37,500 per day for each violation. 33 U.S.C. §1319(d) and 40 C.F.R. §19 and §19.4 Table 1 (or as otherwise provided by federal regulations). Civil penalties are mandatory once violations are found. 33 U.S.C. §1319(c); *Leslie Salt Co. v. United States*, 55 F.3d 1388, 1396 (9th Cir. 1995) (civil penalties under Clean Water Act are mandatory, not discretionary). Dischargers are on notice that each day of a discharge into each waterway by each rail car, as well as each train, constitutes a distinct and separate violation subject to civil penalties. Thus, each rail car discharging pollutants into a different waterway constitutes a separate violation. Furthermore, the pollutants that remain in the waterways constitute continuing violations of the Act which are also subject to daily penalties until removed.

The name, address and phone number of the persons giving Notice of Intent to File a Citizen Lawsuit under the Clean Water Act are:

Sierra Club
85 Second Street, 2nd Floor
San Francisco, CA 94105
Tel: (415) 977-5500

Puget Soundkeeper Alliance
5305 Shilshole Avenue NW - #150
Seattle, WA 98115
Tel: (206) 297-7002

Columbia Riverkeeper
111 Third Street
Hood River, OR 97031
Tel: (503) 348-2436

Friends of the Columbia Gorge
522 SW 5th Ave., Ste. 720
Portland, OR 97204
Tel: (503) 241-3762

RE Sources for Sustainable Communities
2309 Meridian Street
Bellingham, WA 98225
Tel: (360) 733-8307

The names, addresses and phone numbers of the counsel for the Notifiers are:

Charles M. Tebbutt, Esq.
Law Offices of Charles M. Tebbutt, P.C.
941 Lawrence St.
Eugene, OR 97401
Tel: (541) 344-3505

Andrea K. Rodgers Harris
Mattson Rodgers, PLLC
2907 S. Adams Street
Seattle, WA 98108
Tel: (206) 696-2851

During the sixty (60) day notice period, we will be available to discuss effective remedies and actions which will assure the Dischargers' future compliance with the Clean Water Act and all applicable state water pollution control laws. In addition, we welcome discussion about whatever facts you believe are relevant which are not itemized in this notice letter. If you wish to avail yourself of this opportunity, please contact the undersigned. The Notifiers request that any person receiving this notice direct all inquiries to the undersigned legal counsel.

Sincerely,



Charles M. Tebbutt
Law Offices of Charles M. Tebbutt, P.C.

cc: Bob Perciasepe, Acting Administrator, U.S. EPA (certified U.S. Mail)
Dennis J. McLerran, Administrator, Region 10, U.S. EPA (via U.S. Mail)
C T Corporation System, Registered Agent for Burlington Northern Sante Fe Railroad and for TransAlta USA Inc. (via U.S. Mail)
Corporation Service Company, Registered Agent for Cloud Peak Energy Logistics, LLC (via U.S. Mail)
Maia Bellon, Director, Washington State Department of Ecology (via U.S. Mail)

APPENDIX A

Locations of Dischargers' violations include, but are not limited to, those listed in the "Waters Affected" section of Notifiers' letter during each and every transport of coal and petcoke. The photographs below, which are also identified by date in the next paragraph, are examples of the types of discharges occurring to some of the affected waters.

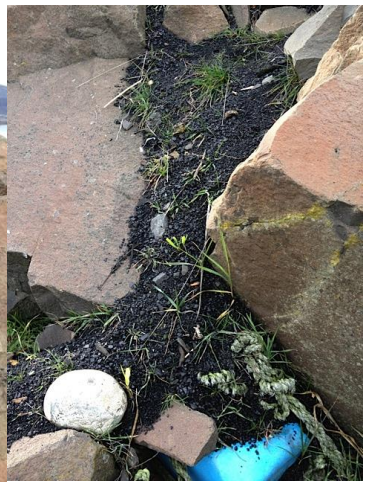
Coal was discharged into the water on or before the following dates and locations, including but not limited to: June 28, 2011 (Lake Washington Ship Canal BNSF Rail Bridge, Puget Sound, Shilshole Bay); November 6, 2011 (Colony Creek near the intersection under Chuckanut Drive/SR-11); November 10, 2011 (Skagit River Bridge); November 17, 2011 (Lake Washington Ship Canal BNSF Rail Bridge, Puget Sound, Shilshole Bay); May 16, 2012 (Columbia River at White Salmon River); June 12, 2012; (Snohomish River south of Marysville, WA); July 14, 2012 (Columbia River near Horsethief Lake); November 11, 2012 (Columbia River at White Salmon River); January 9, 2013 (Columbia River near Drano Lake; Columbia River at the mouth of Rock Creek, Stevenson, WA; Columbia River at White Salmon River; Columbia River at Wind River); January 26, 2013 (Columbia River near Horsethief Lake); February 12, 2013 (Cowlitz River; Coweeman River under the railroad bridge just south of the Hwy 432 bridge; Kalama River; Lewis River; Toutle River); February 21, 2013 (Horsethief Lake); February 26, 2013 (Ballard Locks of Puget Sound); February 27, 2013 (Picnic Point Beach, Edmonds, Puget Sound); March 1, 2013 (Marina Beach Park, Edmonds, Puget Sound); March 5, 2013 (Howarth Park, Everett, Puget Sound, Union Slough, Snohomish River); March 8, 2013 (Skagit River Rail Trestle near E Whitmarsh Road and South Burlington Blvd, North of Mt Vernon; Creek flowing into Puget Sound at Golden Gardens Park, Puget Sound); March 18, 2013 (Carkeek Park, Puget Sound; Creek flowing into Puget Sound at Golden Gardens Park, Puget Sound); March 21, 2013 (Creek flowing into Puget Sound at Golden Gardens Park, Puget Sound); March 24, 2013 (Lake Washington Ship Canal BNSF Rail Bridge, Puget Sound, Shilshole Bay); March 26, 2013 (Lake Washington Ship Canal BNSF Rail Bridge, Puget Sound, Shilshole Bay); March 27, 2013 (Columbia River near Horsethief Lake); and March 28, 2013 (Columbia River near Horsethief Lake; Lake Washington Ship Canal BNSF Rail Bridge, Puget Sound, Shilshole Bay).

Coal was observed in the water on these dates. The coal may have been discharged prior to this date.

Location: Columbia River near Horsethief Lake

Date: January 26, 2013





Location: Coweeman River under the railroad bridge just south of the Hwy 432 bridge

Date: February 12, 2013



Location: Columbia River near Horsethief Lake

Date: July 14, 2012



Location: Rock Creek Delta near Stevenson, WA

Date: January 9, 2013



Location: Columbia River near Horsethief Lake

Date: February 20, 2013



Location: Hiram M. Chittenden Locks, Lake Washington Ship Canal at Salmon Bay, Puget Sound ("Ballard Locks")

Date: November 17, 2011



EXHIBIT B

Law Offices of Charles M. Tebbutt, P.C.
941 Lawrence Street
Eugene, OR 97401
Ph: 541-344-3505 Fax: 541-344-3516

May 9, 2013

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Matthew K. Rose, Chairman & CEO
BNSF Railway Company, *a division of*
Burlington Northern Santa Fe, LLC
2650 Lou Menk Drive
Fort Worth, TX 76131-2830

Colin Marshall, President & CEO
Cloud Peak Energy
385 Interlocken Crescent, Suite 400
Broomfield, CO 80021

Gregory H. Boyce, Chairman & CEO
Peabody Energy
Peabody Plaza
701 Market St.
St. Louis, MO 63101-1826

Global Mining Holding Co., LLC
Reg. Agent: Corporation Service Company
2711 Centerville Rd, Ste. 400
Wilmington, DE 19808

John W. Eaves, President & CEO
Arch Coal, Inc.
One City Place Drive, Ste. 300
St. Louis, MO 63141

Anthony J. Alexander, President & CEO
FirstEnergy Corp.
76 South Main Street
Akron, OH 44308

Everett King, President & CEO
Ambre Energy North America, Inc.
170 South Main Street, Ste. 700
Salt Lake City, UT 84101

Paul Taylor, President
TransAlta USA Inc.
724 Columbia Street NW, Ste. 320
Olympia, WA 98501

Re: Supplemental Notice of Intent to Sue under §505 of the Federal Water Pollution Control Act

Dear Sirs and Madams:

This notice supplements the Notice of Intent to Sue sent to you on April 2, 2013, by adding the groups Spokane Riverkeeper, a program of the Center for Justice, and the Natural Resources Defense Council as Notifiers. This notice fully incorporates the factual and legal assertions of the April 2, 2013 letter (restated below with additional Notifiers).

Notifiers, now including the Spokane Riverkeeper, and the Natural Resources Defense Council, intend to file a citizen lawsuit against Burlington Northern Santa Fe Railroad Company ("BNSF"), and Peabody Energy, Arch Coal, Ambre Energy, Cloud Peak Energy, Transalta and

First Energy ("Coal Companies") (BNSF and Coal Companies are hereafter collectively called "Dischargers"), who discharge coal, coal chunks, coal dust, metabolites or related byproducts of coal, and other substances or materials added to the coal including, but not limited to, surfactants and suppressants, and petroleum coke ("petcoke") and its byproducts (collectively hereafter "pollutants") into waters of the United States throughout the State of Washington. Waters of the U.S. are under or in proximity to the rail lines and rail cars such that pollutants discharge into them from the rail cars. This lawsuit will be brought pursuant to Section 505(a)(1)(A) of the Federal Water Pollution Control Act (commonly known as the "Clean Water Act" (CWA)), 33 U.S.C. §1365(a)(1)(A). Upon the expiration of the sixty (60) day statutory waiting period, Notifiers intend to file a civil action or actions in federal district court.

VIOLATIONS OF FEDERAL LAW

This lawsuit will allege that the Dischargers have violated, are violating, and will continue to violate the Clean Water Act as the discharge of pollutants is unpermitted, and potentially unpermittable, under the Clean Water Act ("CWA"). The discharges also constitute fill material, some of which remains present and visible in areas within the vicinity of the train tracks running on or near wetlands, streams, rivers and other areas subject to CWA jurisdiction. Coal Companies own the coal, and the resultant pollutants, that are transported via rail lines through and within the State of Washington. BNSF operates rail lines in the State of Washington, which rail lines the Coal Companies use for coal transport, and are also used for transporting petroleum coke. Coal Companies, as owners, and BNSF as operator, are persons subject to the requirements of the Clean Water Act. Rail trains and rail cars ("rolling stock") are considered point sources under the Clean Water Act. 33 U.S.C. §1362(14). The point sources include, but are not limited to, each and every train and rail car transporting coal.

The Dischargers have discharged, are discharging, and will continue to discharge pollutants from point sources into waters of the United States, including, but not limited to, rivers, streams, lakes, ponds, coulees, estuaries, bays, sounds, canals, shipping canals, fresh water and tidal wetlands, and coastal waters of the Pacific Ocean. The list of waters of the United States into which the pollutants are discharged is extensive, spanning much of the State of Washington and are named in part below. These waters derive water from, are tributaries to, forks of, and/or exchange water with many of the waters in the State of Washington, many of which are navigable waters and all of which eventually discharge into the Pacific Ocean. The Dischargers have violated, are violating, and will continue to violate the Clean Water Act by illegally discharging pollutants into waters of the United States.

POLLUTANTS BEING DISCHARGED

The pollutants that the Dischargers have discharged, are discharging, and will continue to discharge include, but are not limited to, coal, coal chunks, coal dust, metabolites or related by-products of coal, surfactants applied to the coal, coal chunks and coal dust, petcoke, petcoke chunks, petcoke dust, and suppressants. All pollutants being discharged not set forth specifically in this letter are violations that are or should be known to the Dischargers and may be included in any future legal actions by Notifiers. Such pollutants may only be known to

Dischargers and eyewitnesses who are yet to be determined because such discharges have not been reported by Dischargers.

DISCHARGE EVENTS

The Dischargers have discharged, are discharging, and will continue to discharge pollutants to waters of the U.S. by each and every one of the Dischargers' trains, and each and every one of the Dischargers' rail cars. Each and every train and each and every rail car discharges pollutants to waters of the United States when travelling adjacent to, over, and in proximity to waters of the United States. The information concerning the specific dates, amounts, and exact or approximate locations, along with, for example, the rail conditions, rail car conditions, design and performance of rail cars, weather conditions, passing trains, loading practices employed, and incline or decline of railways in specific locations of the discharges during each of the years 2008 through the present are, or should be, in the possession of the Dischargers. Since the Dischargers' entire files are not available to the Notifiers, this information remains exclusively within the control of the Dischargers and, consequently, Notifiers cannot be expected to provide all details of discharge times, locations, or amounts.

By Dischargers' own testimony before the Surface Transportation Board (STB), which testimony is publicly available, each rail car loses between 250 and 700 pounds of coal and coal dust[1] on each trip for an average loss of 500 pounds of coal lost from each car per trip.[2] For trains with 120 cars—the typical length of a coal train—over 30 tons of coal is lost each trip.[3] In other studies, again according to BNSF, as much as three percent of the coal in each car (around 3,600 lbs. per car) can be lost in the form of dust.[4] Furthermore, BNSF's own testimony indicates that in 2008, a limited "cleanup" was attempted near certain streams and waterways, and over 300 rail cars of coal deposits were removed.[5] Evidence indicates that the coal obtained from the Powder River Basin is generally sub-bituminous coal, and can produce a finer dust than other sources of U.S. coal;[6] thus, the behavior of the Powder River Basin coal may exceed the average coal dust loss per transport.

The Notifiers believe in good faith that numerous factors contribute to the discharge of coal, coal chunks, coal dust, metabolites or related byproducts of coal, surfactants, and other substances or materials added to the coal and petcoke into waters of the U.S. First, rail cars used for transporting coal and petcoke are open-top, that is to say that they are not covered or enclosed, but are open to the air. Passing over rough rail tracks, track changes, bridges, and

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[1] Hearing Transcript and Recording, July 29, 2010, *Arkansas Electric Cooperative Association – Petition for Declaratory Order*, Surface Transportation Board, Docket No. FD 35305, tape 1 at Transcript (Tr.) at 102:9-103:7.
[2] Id. at tape 1 at 37:07, 1h:42; Tr. at 42:5-13, 102:9-103:7 (BNSF Testimony).
[3] Id. An average of 500 lbs./car x 120 cars/train=60,000 lbs. or 30 tons.
[4] Burlington Northern Santa Fe Railway, "Coal Dust FAQ," March 2011. Available at http://www.coaltrainfacts.org/docs/BNSF-Coal-Dust-FAQs1.pdf.
[5] Id. at Tape 1 at 40:30. Tr. at 45: 13-19 (Testimony of Gregory Fox, Vice President of Transportation for BNSF) "In 2008, BNSF did a very limited clean up of coal dust around waterways and we removed over 300 rail cars of coal dust; 1.58 million tons as shown on the chart would equate to 14,000 rail cars of coal dust that needs to be removed from the joint line, obviously, an extreme condition.". Fox continued: "oftentimes we'll load in rail cars and take it to a disposal site. Other times, frankly, we will put it on to the right of way roads well away from the track structure." Tape 1h:54; Tr. at 114:16-115:8..
[6] Id. at Tape 1 at 10:46, Tr. 17:1-16.

switches causes rail cars to vibrate and chunks of coal, coal dust and petcoke are shaken out of rail cars.[7] Loading coal above the top of a rail car, and transporting coal over windy and bumpy terrain leads to further coal loss.[8] When combined with high operating speeds, which are known to occur, the chances of coal falling out increases.[9] Second, the discharge of pollutants is pervasive regardless of the terrain, but discharges are even more pronounced on the descending side of an incline. Such descents occur, among other places, in the Cascade Mountains. Coal loss accumulations are higher in pronounced descents and pronounced ascents, and places where a rail line crosses perpendicular to a valley.[10] The same topographic features which cause coal and petcoke to fall out of rail cars also put the rail cars in proximity to waterways when discharges occur.[11] Third, bridges are frequently located at the bottom of "big sags" or pronounced descents, and Dischargers have identified these locations as having high accumulations of coal and petcoke discharges, due in part to the slack action shock waves throughout the train caused by braking on descent and then accelerating to ascend.[12] This shock wave redistributes coal and petcoke in the open-top rail car and causes chunks of coal and petcoke to fall out.[13] Fourth, by design, performance, age, or other factors, rail cars have holes in the sides, bottoms and other places. Rail cars are not watertight, which results in the discharge of pollutants. Discharges from holes in the rail cars are exacerbated in precipitation-related events, which are frequent and regular occurrences for much of the year, particularly west of the Cascade Mountains. Fifth, when there are crosswinds, or winds created from passing trains, more pollutants are discharged. Finally, the use of topping agents such as surfactants is not required. Further, even if topping agents are applied, it is not effective to fully prevent coal and petcoke discharge into waterways.[14] Surfactants themselves are also pollutants and, if applied, would be discharged from the rail cars.

Coal dust has also been shown to be a cause of rail bed instability and derailments, which can pose a significant public safety hazard, as discussed in a recent proceeding before the Surface Transportation Board (STB), which found coal dust to be "a pernicious ballast foulant."[15] "Coal dust, even in small amounts, poses a real threat to the integrity of the ballast section and track stability."[16] Coal train derailments pose a threat to human health and safety and constitute Clean Water Act violations when they spill coal into waterways. Derailments

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[7] *See, e.g.*, Id. at Tape 2, 4:10; Tr. at 161:13-164: 9.
[8] Id. at Tape 1, 2h:18.; Tr. at 141:4-142:14.
[9] Id. at Tape 2, 9:00; Tr. at 165:10-166:122.
[10] *See, e.g.*, Id. at Tape 2, 4:10; Tr. at 161:13-164:9
[11] Id., Tape 2 at 8:00; 164:22-165:9.
[12] Id., Tape 2 at 9:00.; Tr. at165:10-166: 22.
[13] Id.
[14] While BNSF has a voluntary mandate encouraging the use of surfactants, the Surface Transportation Board (STB) proceedings evaluating that practice are ongoing. In the absence of binding regulation, over 70% of coal shippers are electing not to apply any sort of topping agent or surfactant. *See Some shippers not complying with BNSF coal dust tariff,* Platts Energy Week, November 3, 2011, accessed http://www.wusa9.com/news/local/story.aspx?storyid=173329
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occur on an intermittent, but expected, basis and will likely continue to occur. All discharges resulting from derailments are subject to anticipated action by Notifiers.

WATERS AFFECTED

The waters of the U.S. that are located in, in proximity to, or which run through the State of Washington at issue in this notice and which pollutants reach are numerous. BNSF's northern route for transportation of coal runs from Spokane through Odessa, Ephrata, Wenatchee, to Everett and down to Seattle. BNSF's southern route for transportation of coal runs from Spokane, through Pasco and then west to Vancouver, Washington. BSNF may also transport coal from the Seattle – Everett area north to Vancouver, British Columbia. All throughout the State of Washington, where the rail lines and rail cars pass by, cross, or are in proximity to waters of the United States, pollutants are discharged and remain present in the waters. At a minimum, these waters include, but are in no way limited to, the Columbia River, Puget Sound, Alder Creek, Ashes Lake, Bass Lake, Beckie River, Beckler River, Chamberlain Lake, Chiwawa River, Chuckanut Bay, Coal Creek, Cow Creek, Cowlitz River, Coweeman Confluence, Crab Creek, Crah Creek, Dakota Creek, Dead Canyon, Deschutes River, Drano Lake, East Low Canal, Elliott Bay, Esquatzel Coulee, Franz Lake, Glade Creek, Green River, Grant Lake, Hangman Creek (also known as Latah Creek), Hewett Lake, Horsethief Lake, Howard Hanson Reservoir, Kalama River, Klickitat River, Lake Union, Lewis River, Little White Salmon River, Little Spearfish Lake, Look Lake, Locke Lake, Newaukum River, Nisqually River, Nooksack River, North Fork – Skykomish River, Pilchuk Creek, Pilchuk River, Possession Sound, Quilceda Creek, Rock Cove, Rowland Lake, Salmon Creek, Samish River, Shilshole Bay, Skagit River, Skookumchuck River, Skykomish River, Snake River, Snohomish River, South Fork – Skykomish River, Spokane River, Status Creek, Steamboat Slough, Stillaguamish River, Stuck River, Sultan River, Teanaway River, Toppenish Creek, Toutle River, Union Slough, Wallace River, Washougal River, Wenatchee River, West Canal, White Salmon River, Wind River, Yakima River and their tributaries. See Appendix A for dates of examples of violations and photographic representations of violations.

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HISTORY OF VIOLATIONS

Notifiers believe and allege that a history of violations has continued from at least April 2008 (and for many years prior to 2008) and that violations are presently ongoing and continuous. These violations have occurred, are occurring, and will continue to occur on a regular basis (daily, or multiple times per week or per month), during transportation of each coal or petcoke shipment, at virtually all locations where waters of the U.S. are present, along the rail transportation routes in the State of Washington (as well as other areas along the rail lines). All violations not set forth specifically in this letter, including specific dates and locations of such discharges, are violations that are or should be known to the Dischargers and may be included in any future legal actions by Notifiers. All specific discharges discovered subsequent to the sending of this notice, of similar type and nature, whether occurring prior or subsequent to this notice, shall be included in the action in this case without the need for further notice under 33 U.S.C. §1365(b). Such discharges may only be known to the Dischargers and eyewitnesses who are yet to be determined because such discharges have not been, and are not, reported by Dischargers.

ACTIONS TO BE TAKEN

Absent cessation of the discharges by the Dischargers, Notifiers intend, at the close of the sixty (60) day notice period to file a citizen lawsuit under Section 505 of the Clean Water Act against Dischargers, both individually and collectively, seeking injunctive relief, remedial relief, declaratory relief, and civil penalties for each day of each violation for each U.S. water body over the past five (5) years and sixty (60) days from the date of this notice relating to the illegal discharges through the date of this letter and all violations of Section 301 of the Clean Water Act which occur subsequent to the date of this letter, plus costs, attorney and expert witness fees, and such other relief as may be appropriate. Notifiers will also seek removal of the pollutants from waterways as such discharges constitute illegal fill material in violation of Sections 301 and 404 of the Clean Water Act and the Rivers and Harbors Act of 1899, 33 U.S.C § 403, et seq.

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Notifiers intend, at the close of the sixty (60) day notice period, to file a citizen suit under §505 of the Clean Water Act, 33 U.S.C. §1365, against the Dischargers for the applicable statutory maximum for each violation, presently $37,500 per day for each violation. 33 U.S.C. §1319(d) and 40 C.F.R. §19 and §19.4 Table 1 (or as otherwise provided by federal regulations). Civil penalties are mandatory once violations are found. 33 U.S.C. §1319(c); *Leslie Salt Co. v. United States*, 55 F.3d 1388, 1396 (9th Cir. 1995) (civil penalties under Clean Water Act are mandatory, not discretionary). Dischargers are on notice that each day of a discharge into each waterway by each rail car, as well as each train, constitutes a distinct and separate violation subject to civil penalties. Thus, each rail car discharging pollutants into a different waterway constitutes a separate violation. Furthermore, the pollutants that remain in the waterways constitute continuing violations of the Act which are also subject to daily penalties until removed.

The name, address and phone number of the additional persons giving Notice of Intent to File a Citizen Lawsuit under the Clean Water Act are:

Natural Resources Defense Council
1314 Second Street
Santa Monica, CA 90401
Tel: (310) 434-2300

Spokane Riverkeeper, A Program of the
Center for Justice
35 W. Main Avenue, Ste. 300
Spokane, WA 99201
Tel: (509) 835-5211

The names, addresses and phone numbers of the counsel for the Notifiers are:

Charles M. Tebbutt, Esq.
Law Offices of Charles M. Tebbutt, P.C.
941 Lawrence St.
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Tel: (541) 344-3505

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Counsel for Notifiers

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Counsel for Natural Resources Defense Council

During the sixty (60) day notice period, we will be available to discuss effective remedies and actions which will assure the Dischargers' future compliance with the Clean Water Act and all applicable state water pollution control laws. In addition, we welcome discussion about whatever facts you believe are relevant which are not itemized in this notice letter. If you wish to avail yourself of this opportunity, please contact the undersigned. The Notifiers request that any person receiving this notice direct all inquiries to the undersigned legal counsel.

Sincerely,

Charles M. Tebbutt
Law Offices of Charles M. Tebbutt, P.C.

cc: Bob Perciasepe, Acting Administrator, U.S. EPA (certified U.S. Mail)
Dennis J. McLerran, Administrator, Region 10, U.S. EPA (via U.S. Mail)

C T Corporation System, Registered Agent for Burlington Northern Sante Fe Railroad and for TransAlta USA Inc. (via U.S. Mail)
Corporation Service Company, Registered Agent for Cloud Peak Energy Logistics, LLC (via U.S. Mail)
Maia Bellon, Director, Washington State Department of Ecology (via U.S. Mail)

APPENDIX A

Locations of Dischargers' violations include, but are not limited to, those listed in the "Waters Affected" section of Notifiers' letter during each and every transport of coal and petcoke. The photographs below, which are also identified by date in the next paragraph, are examples of the types of discharges occurring to some of the affected waters.

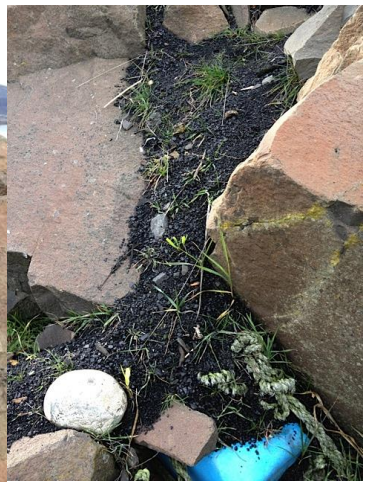
Coal was discharged into the water on or before the following dates and locations, including but not limited to: June 28, 2011 (Lake Washington Ship Canal BNSF Rail Bridge, Puget Sound, Shilshole Bay); November 6, 2011 (Colony Creek near the intersection under Chuckanut Drive/SR-11); November 10, 2011 (Skagit River Bridge); November 17, 2011 (Lake Washington Ship Canal BNSF Rail Bridge, Puget Sound, Shilshole Bay); May 16, 2012 (Columbia River at White Salmon River); June 12, 2012; (Snohomish River south of Marysville, WA); July 14, 2012 (Columbia River near Horsethief Lake); November 11, 2012 (Columbia River at White Salmon River); January 9, 2013 (Columbia River near Drano Lake; Columbia River at the mouth of Rock Creek, Stevenson, WA; Columbia River at White Salmon River; Columbia River at Wind River); January 26, 2013 (Columbia River near Horsethief Lake); February 12, 2013 (Cowlitz River; Coweeman River under the railroad bridge just south of the Hwy 432 bridge; Kalama River; Lewis River; Toutle River); February 21, 2013 (Horsethief Lake); February 26, 2013 (Ballard Locks of Puget Sound); February 27, 2013 (Picnic Point Beach, Edmonds, Puget Sound); March 1, 2013 (Marina Beach Park, Edmonds, Puget Sound); March 5, 2013 (Howarth Park, Everett, Puget Sound, Union Slough, Snohomish River); March 8, 2013 (Skagit River Rail Trestle near E Whitmarsh Road and South Burlington Blvd, North of Mt Vernon; Creek flowing into Puget Sound at Golden Gardens Park, Puget Sound); March 18, 2013 (Carkeek Park, Puget Sound; Creek flowing into Puget Sound at Golden Gardens Park, Puget Sound); March 21, 2013 (Creek flowing into Puget Sound at Golden Gardens Park, Puget Sound); March 24, 2013 (Lake Washington Ship Canal BNSF Rail Bridge, Puget Sound, Shilshole Bay); March 26, 2013 (Lake Washington Ship Canal BNSF Rail Bridge, Puget Sound, Shilshole Bay); March 27, 2013 (Columbia River near Horsethief Lake); and March 28, 2013 (Columbia River near Horsethief Lake; Lake Washington Ship Canal BNSF Rail Bridge, Puget Sound, Shilshole Bay).

Coal was observed in the water on these dates. The coal may have been discharged prior to this date.

Location: Columbia River near Horsethief Lake

Date: January 26, 2013





Location: Coweeman River under the railroad bridge just south of the Hwy 432 bridge

Date: February 12, 2013



Location: Columbia River near Horsethief Lake

Date: July 14, 2012



Location: Rock Creek Delta near Stevenson, WA

Date: January 9, 2013



Location: Columbia River near Horsethief Lake

Date: February 20, 2013



Location: Hiram M. Chittenden Locks, Lake Washington Ship Canal at Salmon Bay, Puget Sound ("Ballard Locks")

Date: November 17, 2011



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

SIERRA CLUB, a California nonprofit corporation; PUGET SOUNDKEEPER ALLIANCE, a Washington nonprofit corporation; RE SOURCES FOR SUSTAINABLE COMMUNITIES, a Washington nonprofit corporation; COLUMBIA RIVERKEEPER, a Washington nonprofit corporation; FRIENDS OF THE COLUMBIA GORGE, INC., dba FRIENDS OF THE COLUMBIA GORGE, an Oregon nonprofit corporation;

Plaintiffs,

v.

BNSF RAILWAY COMPANY, a Delaware corporation; CLOUD PEAK ENERGY, Inc., a Delaware corporation; PEABODY ENERGY CORPORATION; a Delaware corporation; GLOBAL MINING HOLDING CO., LLC, a Delaware limited liability company; FIRSTENERGY CORP., an Ohio corporation; AMBRE ENERGY NORTH AMERICA, INC., a Delaware corporation,

Defendants.

CIVIL No. _____

COMPLAINT

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INTRODUCTION

1. This is a civil suit for declaratory and injunctive relief against Defendants Burlington Northern Santa Fe Railway Company ("BNSF"), Peabody Energy, Inc., Global Mining Holding Co., LLC, Ambre Energy North America, Inc., Cloud Peak Energy, Inc., and FirstEnergy Corp. ("Coal Companies") (BNSF and Coal Companies are hereafter collectively called "Dischargers") for violations of the Federal Water Pollution Control Act (commonly known as the Clean Water Act and hereinafter referred to as the CWA), 33 U.S.C. §§1251 *et seq*.

2. This action is brought pursuant to Section 505 of the CWA (Citizen Suits), 33 U.S.C. §1365.

3. As detailed below, Plaintiffs allege that Dischargers have discharged coal, coal chunks, coal dust, metabolites or related byproducts of coal, and other substances or materials added to the coal including, but not limited to, surfactants and suppressants, and petroleum coke ("petcoke") and its byproducts (collectively, hereinafter, "coal pollutants") into waters of the United States into the Puget Sound and other waterbodies in and around the Seattle area as well as throughout the State of Washington.

4. These discharges have not been permitted under the CWA, so that each discharge violates §301(a) of the CWA, 33 U.S.C. §1311(a).

5. In addition, dischargers are likely to continue to violate the CWA by discharging, from a point source, coal pollutants into the waters of the United States.

6. Plaintiffs seek a declaratory judgment, injunctive relief, remedial relief, the imposition of civil penalties, and the award of costs, including attorney and expert witness fees.

JURISDICTION

7. This Court has subject matter jurisdiction over the claims specified in this Complaint

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pursuant to 33 U.S.C. §1365(a) and 28 U.S.C. §1331. The relief requested is authorized pursuant to 33 U.S.C. §§1319 and 1365(a), and 28 U.S.C. §§ 2201 and 2202.

8. In compliance with 33 U.S.C. §1365(b)(1)(A), on April 2, 2013, plaintiffs gave notice of the violations specified in this complaint and of their intent to file suit to the defendants, to the Administrator of the United States Environmental Protection Agency (EPA), to the Regional Administrator of the EPA, and to the State of Washington. A copy of the notice letter is attached hereto as Exhibit A and is incorporated by reference.

9. Sixty days have passed since the notice was served, and the violations complained of in the notice letter are continuing at this time, or are reasonably likely to continue. Defendants remain in violation of the CWA. Neither the EPA nor the Washington Department of Ecology (WADOE) has commenced or is diligently prosecuting a civil or criminal action to redress the violations.

VENUE

10. Venue is appropriate pursuant to Section 505(c)(1) of the CWA, 33 U.S.C. §1365(c)(1), because the sources of the violations complained of have occurred in the District.

PARTIES

Plaintiffs

11. Plaintiffs are five citizen organizations comprised, in part, of members who live, work, and recreate in the state of Washington. Plaintiffs share similar interests in the protection and preservation of regional water bodies and wild spaces.

Sierra Club

12. Plaintiff Sierra Club is a nonprofit corporation incorporated and headquartered in California, with a regional office located in Seattle. Sierra Club is dedicated to exploring,

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enjoying, and protecting the wild places of the Earth; to practicing and promoting the responsible use of the Earth's resources and ecosystems; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Sierra Club's concerns encompass the protection and restoration of the water quality of the waters of the U.S. within the state of Washington, including the Puget Sound, the Columbia River, and all life connected to it, from their headwaters to the Pacific Ocean. Sierra Club has more than 600,000 members nationwide, including over 21,000 in Washington, and brings this action on behalf of itself and its affected members. Sierra Club members reside, work, travel and recreate next to and in the general vicinity of BNSF's railroad tracks in Washington and the waterways into which defendants discharge pollutants. The environmental, health, aesthetic, and recreational interests of Sierra Club members have been, are being, and will be adversely affected by defendants' illegal coal and petroleum coke pollutant discharges into waters of the United States. Members of Sierra Club use and enjoy the waters and lands into and onto which defendants' railcars discharge, including waters in the immediate vicinity of, and downstream from, defendants' discharges into waters of the United States.

13. Sierra Club's members live within the impacted watersheds; recreate by fishing, rafting, hiking, plant gathering, walking, windsurfing, sailing, photographing, and boating in and around the impacted waters; observe and enjoy wildlife in the watershed around defendants' discharges; and retain an aesthetic and health interest in the health and restoration of the impacted waters in the vicinity of defendants' railroad tracks and railcars.

Puget Soundkeeper

14. Puget Soundkeeper 's mission is to protect and preserve the water of Puget Sound by monitoring, cleaning up and preventing pollutants from entering its waters. Puget Soundkeeper

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is headquartered in Washington with offices in Seattle. Puget Soundkeeper's approximately 1,400 members reside, among other places, throughout counties in Washington, particularly around the Puget Sound, next to and in the general vicinity of BNSF's railroad tracks and the waterways into which defendants discharge pollutants.

15. The environmental, health, aesthetic, and recreational interests of Puget Soundkeeper members have been, are being, and will be adversely affected by defendants' illegal coal pollutant discharges into waters of the United States. Members of Puget Soundkeeper use and enjoy the waters and lands into and onto which defendants' railcars discharge, including waters in the immediate vicinity of, and downstream from, defendants' discharges into waters of the United States.

16. Puget Soundkeeper's members live within the impacted watersheds; recreate, or would recreate, by fishing, rafting, hiking, plant gathering, walking, sailing, windsurfing, photographing and boating in and around the impacted waters; observe and enjoy wildlife in the watershed around defendants' discharges; and retain an aesthetic and health interest in the health and restoration of the impacted waters in the vicinity of defendants' railroad tracks and railcars.

RE Sources for Sustainable Communities

17. RE Sources for Sustainable Communities promotes sustainable communities through recycling, education, advocacy, and conservation of natural resources. RE Sources is based in Washington with offices in Bellingham. RE Sources for Sustainable Communities' approximately 5,200 members reside, among other places, throughout counties in northwest Washington next to and in the general vicinity of BNSF's railroad tracks and the waterways into which defendants discharge pollutants.

18. The environmental, health, aesthetic, and recreational interests of RE Sources for

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Sustainable Communities members have been, are being, and will be adversely affected by defendants' illegal coal pollutant discharges into waters of the United States. Members of RE Sources for Sustainable Communities use and enjoy the waters and lands into and onto which defendants' railcars discharge, including waters in the immediate vicinity of, and downstream from, defendants' discharges into waters of the United States.

19. RE Sources for Sustainable Communities' members live within the impacted watersheds; recreate, or would recreate, by fishing, rafting, hiking, plant gathering, walking, windsurfing, sailing, photographing and boating in and around the impacted waters; observe and enjoy wildlife in the watershed around defendants' discharges; and retain an aesthetic and health interest in the health and restoration of the impacted waters in the vicinity of defendants' railroad tracks and railcars.

Columbia Riverkeeper

20. Columbia Riverkeeper's mission is to restore and protect the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. To achieve these objectives, Riverkeeper operates scientific, educational, and legal programs aimed at protecting water, quality, air quality, and habitat in the Columbia River Basin. Columbia Riverkeeper's over 3000 members reside, among other places, throughout counties in Washington next to and in the general vicinity of BNSF's railroad tracks and the waterways into which defendants discharge pollutants.

21. The environmental, health, aesthetic, and recreational interests of Columbia Riverkeeper's members have been, are being, and will be adversely affected by defendants' illegal coal pollutant discharges into waters of the United States. Members of Columbia Riverkeeper use and enjoy the waters and lands into and onto which defendants' railcars

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discharge, including waters in the immediate vicinity of, and downstream from, defendants' discharges into waters of the United States.

22. Columbia Riverkeeper's members live within the impacted watersheds; recreate, or would recreate, by fishing, rafting, hiking, plant gathering, walking, windsurfing, photographing and boating in and around the impacted waters; observe and enjoy wildlife in the watershed around defendants' discharges; and retain an aesthetic and health interest in the health and restoration of the impacted waters in the vicinity of defendants' railroad tracks and railcars.

Friends of the Columbia Gorge

23. Friends of the Columbia Gorge seeks to vigorously protect the scenic, natural, cultural, and recreational resources of the Columbia River Gorge. Friends of the Columbia Gorge's approximately 5,000 members reside, among other places, throughout counties in Washington next to and in the general vicinity of BNSF's railroad tracks and the waterways into which defendants discharge pollutants.

24. The environmental, health, aesthetic, and recreational interests of Friends of the Columbia Gorge members have been, are being, and will be adversely affected by defendants' illegal coal pollutant discharges into waters of the United States. Members of Friends of the Columbia Gorge use and enjoy the waters and lands into and onto which defendants' railcars discharge, including waters in the immediate vicinity of, and downstream from, defendants' discharges into waters of the United States.

25. Friends of the Columbia Gorge's members live within the impacted watersheds; recreate, or would recreate, by fishing, rafting, hiking, plant gathering, walking, windsurfing, photographing and boating in and around the impacted waters; observe and enjoy wildlife in the watershed around defendants' discharges; and retain an aesthetic and health interest in the health

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and restoration of the impacted waters in the vicinity of defendants' railroad tracks and railcars.

Defendants

Burlington Northern Santa Fe Railway Company ("BNSF")

26. BNSF Railway has a rail network of 32,500 route miles in 28 states and two Canadian provinces. BNSF owns and operates rail lines throughout the state of Washington and along the Columbia River along the Washington/Oregon border. In 2012, BNSF hauled 2.2 million coal shipments. In 2012, BNSF reported that its coal business unit was responsible for nearly one-quarter--$4.8 billion--of the company's $20 billion total freight revenue, and that more than 90% of the coal hauled by BNSF comes from the Powder River Basin.

27. BNSF transports coal from, *inter alia*, the Powder River Basin across waterways via routes in the center and south of Washington to locations throughout Washington and sometimes continuing into Canada. The coal transport trains travel along, among other waterways, the Puget Sound and the Columbia River.

Peabody Energy

28. Peabody Energy Corp. ("Peabody") is the world's largest private-sector coal company and has approximately 9 billion tons of proven coal reserves. It owns, through subsidiaries, majority interests in 28 coal operations located throughout the United States and Australia, including coal operations in the Powder River Basin.

29. Peabody Energy Corp. is the owner and ultimate parent company of Peabody Caballo Mining, LLC, which operates the Rawhide mine. The Rawhide mine has supplied coal to the TransAlta coal-fired power plant from 2008 through the present.

30. Peabody, at a minimum, operates, directs and controls the loading of coal from the Rawhide mine into the rail cars, which constitute containers and/or rolling stock. Peabody has

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the ability to determine how coal in the rail cars is transported by BNSF.

31. Peabody ships and intends to continue to ship coal to Washington.

Ambre Energy North America, Inc.

32. Ambre Energy North America, Inc., is a wholly owned subsidiary of Ambre Energy, an Australian coal and oil shale company.

33. Ambre Energy owns 50% of the Black Butte Coal Mine and the Leucite Hill Mine, which supplies coal to the TransAlta power plant.

34. Ambre Energy is the owner/operator of some of the rail cars, which constitute point source containers and/or rolling stock**.** Ambre Energy, at a minimum, operates, directs and controls the loading of coal into the rail cars. Ambre Energy has the ability to determine how coal in the rail cars is transported by BNSF.

35. Ambre Energy has also secured port facilities and sites for potential coal export infrastructure in the Pacific Northwest. Ambre Energy owns a 62% share of the Millenium Bulk Terminal in Longview, WA, and 100% share of the Coyote Island Terminal project in Morrow, OR. Ambre Energy intends to continue coal shipments to and through Washington by rail now and in the future.

Cloud Peak Energy

36. Cloud Peak Energy is one of the largest coal producers in the United States. Cloud Peak owns and operates three surface coal mines in the Powder River Basin, one of the nation's major coal producing regions. Cloud Peak Energy Inc. owns Cloud Peak Energy Resources, which owns Spring Creek Coal LLC, the operator of the Spring Creek Coal mine. Spring Creek has supplied TransAlta with coal from 2008-present. Cloud Peak also ships over 4 million tons of coal per year from its Spring Creek Mine to the Westshore Terminal at Robert's Bank in

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Vancouver, Canada via Washington state for export.

37. Cloud Peak Energy is the owner/operator of some of the rail cars, which constitute point source containers and/or rolling stock**.** Cloud Peak Energy, at a minimum, operates, directs and controls the loading of the rail cars. Cloud Peak has the ability to determine how coal in the rail cars is transported by BNSF. Cloud Peak intends to continue coal shipments to and through Washington by rail now and in the future.

Global Mining Holding Co., LLC

38. Global Mining Holding Co., LLC owns a 2/3 share in Signal Peak Energy LLC which operates the Signal Peak coal mine near Roundup, Montana. Signal Peak (also known as the Bull Mountain mine) is one of the highest-producing underground mines in the United States.

39. Coal from Signal Peak is shipped to Europe, Latin America, and Asia on BNSF rail lines through Washington state to the Westshore Terminal at Robert's Bank in Vancouver, Canada.

40. Global Mining Holding is the owner/operator of some rail cars, which constitute point source containers and/or rolling stock**.** Global Mining Holding operates, directs and controls the loading of the rail cars. Global Mining has the ability to determine how coal in the rail cars is transported by BNSF. Global Mining Holding intends to continue coal shipments through Washington by rail now and in the future.

FirstEnergy

41. FirstEnergy Corp. is an energy company that operates in six states and holds $50 billion in assets. FirstEnergy's subsidiaries maintain a total capacity of over 20,000 megawatts. In 2012, approximately 64% of FirstEnergy's fuel mix came from coal.

42. FirstEnergy holds a 1/3 ownership interest in Signal Peak coal mine (also known as the Bull Mountain mine) near Roundup, Montana, a facility that ships coal through Washington to

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export. Coal is shipped on BNSF rail lines through Washington state to the Westshore Terminal at Robert's Bank in Vancouver, Canada.

43. FirstEnergy is the owner/operator of some rail cars, which constitute point source containers and/or rolling stock. FirstEnergy operates, directs and controls the loading of the rail cars and has the ability to determine how coal in the rail cars is transported by BNSF. FirstEnergy intends to continue coal shipments through Washington by rail now and in the future.

STATUTORY AND REGULATORY FRAMEWORK

44. Under the CWA, the United States has committed itself "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," including establishing a "national goal that the discharge of pollutants into the navigable waters be eliminated." CWA § 101, 33 U.S.C. §1251.

45. Pursuant to the CWA, a discharge of a pollutant means "any addition of any pollutant to navigable waters from any point source," and "any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft." CWA § 502(12), 33 U.S.C. § 1362(12). *See also* CWA § 502(7), 33 U.S.C. § 1362(7) (definition of "navigable waters"); 40 CFR § 122.2 (definition of "waters of the U.S.").

46. The CWA specifies a number of materials and wastes that, if discharged into water, render them pollutants, including, but not limited to, solid waste, chemical wastes, industrial waste, biological materials, sand, and rock. CWA § 502(6), 33 U.S.C. § 1362(6).

47. Under the Clean Water Act, the term "point source" means "any discernible, confined and discrete conveyance, including but not limited to any . . . container [or] rolling stock. . .from which pollutants are or may be discharged." CWA § 502(14), 33 U.S.C. § 1362(14).

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49. To advance its goals, Congress established in the CWA that all discharges of pollutants are prohibited "except in compliance" with specified provisions of the CWA including, most importantly, the National Pollutant Discharge Elimination System (NPDES) permitting program. CWA § 301(a), 33 U.S.C. §1311(a); CWA § 402(a), 33 U.S.C. §1342(a); 40 CFR §§122.1 *et seq*.

50. The NPDES program requires a potential discharger to first obtain a NPDES permit that limits the type and quantity of pollutants to be released so as to maintain water quality standards, among other objectives. CWA § 402(a), 33 U.S.C. §1342(a); 40 CFR §122.1. No NPDES permit may be issued where discharges pursuant to it would cause receiving water-bodies to fail to meet water quality standards. *Id*. and 40 CFR §122.4 (prohibitions on permit issuance). Unless done pursuant to a NPDES permit, any coal pollutant discharge from a rail car or train into navigable waters of the U.S. is prohibited under the CWA.

FACTS

Pollutants Being Discharged

51. Defendants, by their ownership, operation, lease of, participation in, contract for, or receipt of material from, trains and rail cars transporting coal, petcoke, and their byproducts (hereinafter, "coal"), have discharged, are discharging, and will continue to discharge coal pollutants to waters of the U.S. within the State of Washington.

52. Such coal pollutants include, but are not limited to, coal, coal chunks, coal dust, coal contaminated water, metabolites or related by-products of coal, surfactants applied to the coal, coal chunks and coal dust, petcoke, petcoke chunks, petcoke dust, petcoke contaminated water, and suppressants.

Discharge Events

53. Defendants have discharged, are discharging, and will continue to discharge coal

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pollutants into waters of the U.S. by each and every one of the defendants' trains and rail cars that carry coal.

54. Each and every train and each and every rail car discharges coal pollutants to waters of the United States when traveling adjacent to, over, and in proximity to waters of the United States.

55. Defendants discharge coal pollutants into waters of the U.S. in the State of Washington through holes in the bottoms and sides of the rail cars and by spillage or ejection from the open tops of the rail cars and trains.

56. Defendants discharge coal pollutants during the transportation of the coal in both normal and abnormal operating conditions, and upon loading and unloading coal.

57. Defendants' discharges of coal pollutants from the container or rolling stock point sources are especially frequent or severe when their coal trains pass over rough rail tracks, track changes, bridges, and switches; during transportation of coal over bumpy terrain, in windy conditions, at high operating speed, during steep descents and ascents and through sag-areas spanning steep ascent and descent reaches of track (or vice versa); during and after precipitation events; at moments of high crosswinds; and during derailments.

58. Defendants' coal pollutant discharges occur despite the use of topping agents, surfactants or suppressants, and these topping agents, surfactants and suppressants themselves are pollutants discharged by defendants.

59. The specific dates, times, amounts, and exact or approximate locations, along with, for example, the rail conditions, rail car conditions, design and performance of rail cars, weather conditions, passing trains, loading and unloading practices employed, and incline or decline of railways in specific locations of the discharges during each of the years 2008 through the present

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are, or should be, in the possession of the defendants.

Waters Affected

60. Waters of the U.S. are located in, in proximity to, or run through the State of Washington and receive defendants' coal pollutant discharges where defendant BSNF-operated rail lines and rail cars pass by, cross, or are in proximity to such waters.

61. Defendants have discharged, are discharging, and will continue to discharge pollutants from point sources into waters of the United States, including, but not limited to, rivers, streams, lakes, ponds, coulees, estuaries, bays, sounds, canals, shipping canals, fresh water and tidal wetlands, and coastal waters of the Pacific Ocean. These waters derive water from, are tributaries to, forks of, and/or exchange water with many of the waters in the State of Washington, many of which are navigable waters and all of which eventually discharge into the Pacific Ocean.

62. Waters impacted by defendants' coal pollutant discharges include, but are not limited to, the Puget Sound, Columbia River, Alder Creek, Ashes Lake, Bass Lake, Beckie River, Beckler River, Chamberlain Lake, Chiwawa River, Chuckanut Bay, Coal Creek, Cow Creek, Cowlitz River, Coweeman Confluence, Crab Creek, Crah Creek, Dakota Creek, Dead Canyon, Deschutes River, Drano Lake, East Low Canal, Elliott Bay, Esquatzel Coulee, Franz Lake, Glade Creek, Green River, Grant Lake, Hangman Creek (also known as Latah Creek), Hewett Lake, Horsethief Lake, Howard Hanson Reservoir, Kalama River, Klickitat River, Lake Union, Lewis River, Little White Salmon River, Little Spearfish Lake, Look Lake, Locke Lake, Newaukum River, Nisqually River, Nooksack River, North Fork – Skykomish River, Pilchuk Creek, Pilchuk River, Possession Sound, Quilceda Creek, Rock Cove, Rowland Lake, Salmon Creek, Samish River, Shilshole Bay, Skagit River, Skookumchuck River, Skykomish River, Snake River,

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Snohomish River, South Fork – Skykomish River, Spokane River, Status Creek, Steamboat Slough, Stillaguamish River, Stuck River, Sultan River, Teanaway River, Toppenish Creek, Toutle River, Union Slough, Wallace River, Washougal River, Wenatchee River, West Canal, White Salmon River, Wind River, Yakima River and their tributaries. [1]

Discharges Unpermitted Under the CWA

63. Defendants have never obtained a NPDES permit allowing their discharges of coal pollutants into State of Washington waterbodies from rail cars and trains. Moreover, the types of discharges that have occurred, are occurring and that are likely to continue to occur are not permitted under federal law.

64. Defendants intend to continue loading and transporting coal and petcoke and related coal pollutants by rail to and through the state of Washington.

ALLEGATIONS

65. Plaintiffs hereby incorporate by reference all preceding paragraphs.

66. Section 301(a) of the CWA, 33 U.S.C. §1311(a), prohibits the discharge of pollutants from a point source into navigable waters of the United States, unless pursuant to the terms of a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. §1342.

67. Defendants have discharged coal pollutants in contravention of CWA §301, as described herein, during rail transport of coal, since at least April 2008, and such discharges are presently ongoing and likely to continue.

[1] Plaintiffs note that this list is inclusive of some waterways in the Western District of Washington, some in the Eastern District of Washington, and some which flow through both the Western and Eastern Districts of Washington. Plaintiffs intend to file a similar action in the Eastern District of Washington at a later date, but, recognizing that some of the waterways overlap Districts, include one list of impacted waterways here for reference.

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COUNT 1

Discharge of Pollutants Without NPDES Permit into Waters of United States

68. All waterways named herein are waters of the United States protected by the CWA.

69. Defendants did not have and do not retain a NPDES Permit authorizing their discharges of coal pollutants into such waterways.

70. Defendants have discharged coal pollutants from the operation of rail cars and trains into, at least, the listed waterways from April 2008 (and for many years prior to 2008) to present. Such operations and discharges are continuing and are likely to continue into the future.

71. Each such coal discharge from each rail car and train into each separate waterway on each separate day constitutes a separate violation of the CWA.

RELIEF REQUESTED

WHEREFORE, plaintiffs respectfully request that this Court grant plaintiffs the following relief:

A. Issue a declaratory judgment that defendants have violated and continue to violate the CWA;

B. Issue a declaratory judgment that each rail car container constitutes a separate point source;

C. Issue a declaratory judgment that each separate discharge into each waterway constitutes a separate violation;

C. Enjoin defendants from operating rail cars and trains in such a manner as will result in further violation of the CWA;

D. Enjoin defendants' use of uncovered rail cars for any transport of coal;

E. Enjoin defendants' use of rail cars that, through design or imperfection – including holes or openings in their sides or bottoms—allow coal pollutants to be discharged into waters

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of the U.S;

F. Order defendants to remove coal pollutants that are in-place or otherwise recoverable from receiving water-bodies;

G. Order defendants to pay civil penalties of up to $37,500 per day for each violation of the CWA, pursuant to Sections 309(d) and 505(a) of the CWA, 33 U.S.C. §§1319(d) and 1365(a), and 40 C.F.R. § 19 *et seq.*, including those identified in plaintiff's notice letters, violations identified during discovery, and violations committed subsequent to those identified in this Complaint;

H. Order defendants to monitor and report their coal pollutant discharges to the federal Environmental Protection Agency and the State of Washington Department of Ecology;

I. Order defendants to provide plaintiff, for a period beginning on the date of the Court's order and running for five years after defendants achieve compliance with the CWA with a copy of all reports and other documents which defendants submit to EPA, to the Regional Administrator of the EPA, or to the State of Washington regarding defendants' coal pollutant discharges at the time these documents are submitted to these authorities;

J. Issue a remedial injunction ordering defendants to pay the cost of any environmental restoration or remediation deemed necessary and proper by the Court to comply with the Clean Water Act and ameliorate the water degradation caused by defendants' violations;

K. Award plaintiff its costs, including reasonable attorney and expert witness fees, as authorized by 33 U.S.C. §1365(d) and 28 U.S.C. §2412(d); and

L. Award such other relief as this Court deems appropriate.

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Respectfully submitted,

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HON. JOHN C. COUGHENOUR

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

SIERRA CLUB, a California nonprofit corporation; PUGET SOUNDKEEPER ALLIANCE, a Washington nonprofit corporation; RE SOURCES FOR SUSTAINABLE COMMUNITIES, a Washington nonprofit corporation; COLUMBIA RIVERKEEPER, a Washington nonprofit corporation; FRIENDS OF THE COLUMBIA GORGE, INC., dba FRIENDS OF THE COLUMBIA GORGE, an Oregon nonprofit corporation;

Plaintiffs,

v.

BNSF RAILWAY COMPANY, a Delaware corporation; CLOUD PEAK ENERGY, Inc., a Delaware corporation; PEABODY ENERGY CORPORATION; a Delaware corporation; GLOBAL MINING HOLDING CO., LLC, a Delaware limited liability company; FIRSTENERGY CORP., an Ohio corporation; AMBRE ENERGY NORTH AMERICA, INC., a Delaware corporation,

Defendants.

CIVIL No. 2:13-cv-00967-JCC

NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE AS TO DEFENDANTS CLOUD PEAK ENERGY, INC.; PEABODY ENERGY CORPORATION; GLOBAL MINING HOLDING CO., LLC; FIRSTENERGY CORP.; AND AMBRE ENERGY NORTH AMERICA, INC.

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Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i), Plaintiffs hereby voluntarily dismiss, without prejudice, Defendants Cloud Peak Energy, Inc.; Peabody Energy Corporation; Global Mining Holding Co., LLC; FirstEnergy Corp.; and Ambre Energy North America, Inc. from this action. BNSF Railway Company remains a defendant in this case.

Respectfully submitted this 29th day of July, 2013,

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CERTIFICATE OF SERVICE

I hereby certify that on JULY 29, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will automatically send notification of such filing to the following:

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HON. JOHN C. COUGHENOUR

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

SIERRA CLUB, a California nonprofit corporation; PUGET SOUNDKEEPER ALLIANCE, a Washington nonprofit corporation; RE SOURCES FOR SUSTAINABLE COMMUNITIES, a Washington nonprofit corporation; COLUMBIA RIVERKEEPER, a Washington nonprofit corporation; FRIENDS OF THE COLUMBIA GORGE, INC., dba FRIENDS OF THE COLUMBIA GORGE, an Oregon nonprofit corporation; SPOKANE RIVERKEEPER; NATURAL RESOURCES DEFENSE COUNCIL, a New York nonprofit corporation,

Plaintiffs,

v.

BNSF RAILWAY COMPANY, a Delaware corporation; CLOUD PEAK ENERGY, Inc., a Delaware corporation; PEABODY ENERGY CORPORATION; a Delaware corporation; GLOBAL MINING HOLDING CO., LLC, a Delaware limited liability company; FIRSTENERGY CORP., an Ohio corporation; AMBRE ENERGY NORTH AMERICA, INC., a Delaware corporation,

Defendants.

CIVIL No. 2:13-cv-00967-JCC

FIRST AMENDED COMPLAINT

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INTRODUCTION

1. This is a civil suit for declaratory and injunctive relief against Defendant Burlington Northern Santa Fe Railway Company ("BNSF"), for violations of the Federal Water Pollution Control Act (commonly known as the Clean Water Act and hereinafter referred to as the CWA), 33 U.S.C. §§1251 *et seq*.

2. This action is brought pursuant to Section 505 of the CWA (Citizen Suits), 33 U.S.C. §1365.

3. As detailed below, Plaintiffs allege that BNSF has discharged coal, coal chunks, coal dust, metabolites or related byproducts of coal, and other substances or materials added to the coal including, but not limited to, surfactants and suppressants, and petroleum coke ("petcoke") and its byproducts (collectively, hereinafter, "coal pollutants") into waters of the United States, including the Puget Sound and other waterbodies in and around the Seattle area as well as throughout the State of Washington.

4. These discharges have not been permitted under the CWA, so that each discharge violates §301(a) of the CWA, 33 U.S.C. §1311(a).

5. In addition, BNSF is likely to continue to violate the CWA by discharging, from a point source, coal pollutants into the waters of the United States.

6. Plaintiffs seek a declaratory judgment, injunctive relief, remedial relief, the imposition of civil penalties, and the award of costs, including attorney and expert witness fees.

JURISDICTION

7. This Court has subject matter jurisdiction over the claims specified in this Complaint pursuant to 33 U.S.C. §1365(a) and 28 U.S.C. §1331. The relief requested is authorized pursuant to 33 U.S.C. §§1319 and 1365(a), and 28 U.S.C. §§ 2201 and 2202.

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8. In compliance with 33 U.S.C. §1365(b)(1)(A), on April 2, 2013, Plaintiffs gave notice of the violations specified in this complaint and of their intent to file suit to the Defendant, to the Administrator of the United States Environmental Protection Agency (EPA), to the Regional Administrator of the EPA, and to the State of Washington. On May 9, 2013, Plaintiffs supplemented their Notice of Intent to Sue by adding Spokane Riverkeeper and Natural Resources Defense Council as Notifiers. A copy of the notice letters are attached hereto as Exhibits A & B, respectively, and all details and allegations in the notice letters are incorporated by reference.

9. Sixty days have passed since the notices were served, and the violations complained of in the notice letters are continuing at this time, or are reasonably likely to continue. Defendant remains in violation of the CWA. Neither the EPA nor the Washington Department of Ecology (WADOE) has commenced or is diligently prosecuting a civil or criminal action to redress the violations.

VENUE

10. Venue is appropriate pursuant to Section 505(c)(1) of the CWA, 33 U.S.C. §1365(c)(1), because the sources of the violations complained of have occurred in the District.

PARTIES

Plaintiffs

11. Plaintiffs are seven not-for-profit organizations comprised, in part, of members who live, work, and recreate in the state of Washington. Plaintiffs share similar interests in the protection and preservation of regional water bodies and wild spaces.

Sierra Club

12. Plaintiff Sierra Club is a nonprofit corporation incorporated and headquartered in

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California, with a regional office located in Seattle and members throughout the State of Washington. Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the Earth; to practicing and promoting the responsible use of the Earth's resources and ecosystems; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Sierra Club's concerns encompass the protection and restoration of the water quality of the waters of the U.S. within the state of Washington, including the Puget Sound, the Columbia River, and all life connected to these waterbodies, from their headwaters to the Pacific Ocean. Sierra Club has more than 600,000 members nationwide, including over 21,000 in Washington, and brings this action on behalf of itself and its affected members. Sierra Club members reside, work, travel and recreate next to and in the general vicinity of BNSF's railroad tracks in Washington and the waterways into which defendants discharge pollutants. The environmental, health, aesthetic, and recreational interests of Sierra Club members have been, are being, and will be adversely affected by Defendant's illegal coal and petroleum coke pollutant discharges into waters of the United States. Members of Sierra Club use and enjoy the waters and lands into and onto which Defendant's railcars discharge, including waters in the immediate vicinity of, and downstream from, Defendant's discharges into waters of the United States.

13. Sierra Club's members live within the impacted watersheds; recreate by fishing, rafting, hiking, plant gathering, walking, windsurfing, sailing, photographing, and boating in and around the impacted waters; observe and enjoy wildlife in the watershed around Defendant's discharges; and retain an aesthetic and health interest in the health and restoration of the impacted waters in the vicinity of Defendant's railroad tracks and railcars.

Puget Soundkeeper

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14. Puget Soundkeeper 's mission is to protect and preserve the water of Puget Sound by monitoring, cleaning up and preventing pollutants from entering its waters. Puget Soundkeeper is headquartered in Washington with offices in Seattle. Puget Soundkeeper's approximately 1,400 members reside, among other places, throughout the State of Washington, particularly next to and in the general vicinity of BNSF's railroad tracks and the waterways into which defendants discharge pollutants.

15. The environmental, health, aesthetic, and recreational interests of Puget Soundkeeper members have been, are being, and will be adversely affected by Defendant's illegal coal pollutant discharges into waters of the United States. Members of Puget Soundkeeper use and enjoy the waters and lands into and onto which Defendant's railcars discharge, including waters in the immediate vicinity of, and downstream from, Defendant's discharges into waters of the United States.

16. Puget Soundkeeper's members live within the impacted watersheds; recreate, or would recreate, by fishing, rafting, hiking, plant gathering, walking, sailing, windsurfing, photographing and boating in and around the impacted waters; observe and enjoy wildlife in the watershed around Defendant's discharges; and retain an aesthetic and health interest in the health and restoration of the impacted waters in the vicinity of Defendant's railroad tracks and railcars.

RE Sources for Sustainable Communities

17. RE Sources for Sustainable Communities promotes sustainable communities through recycling, education, advocacy, and conservation of natural resources. RE Sources is based in Washington with offices in Bellingham. RE Sources for Sustainable Communities' approximately 5,200 members reside, among other places, throughout the State of Washington next to and in the general vicinity of BNSF's railroad tracks and the waterways into which

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defendants discharge pollutants.

18. The environmental, health, aesthetic, and recreational interests of RE Sources for Sustainable Communities members have been, are being, and will be adversely affected by Defendant's illegal coal pollutant discharges into waters of the United States. Members of RE Sources for Sustainable Communities use and enjoy the waters and lands into and onto which Defendant's railcars discharge, including waters in the immediate vicinity of, and downstream from, Defendant's discharges into waters of the United States.

19. RE Sources for Sustainable Communities' members live within the impacted watersheds; recreate, or would recreate, by fishing, rafting, hiking, plant gathering, walking, windsurfing, sailing, photographing and boating in and around the impacted waters; observe and enjoy wildlife in the watershed around Defendant's discharges; and retain an aesthetic and health interest in the health and restoration of the impacted waters in the vicinity of Defendant's railroad tracks and railcars.

Columbia Riverkeeper

20. Columbia Riverkeeper's mission is to restore and protect the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. To achieve these objectives, Riverkeeper operates scientific, educational, and legal programs aimed at protecting water, quality, air quality, and habitat in the Columbia River Basin. Columbia Riverkeeper's over 3000 members reside, among other places, throughout the State of Washington next to and in the general vicinity of BNSF's railroad tracks and the waterways into which defendants discharge pollutants.

21. The environmental, health, aesthetic, and recreational interests of Columbia Riverkeeper's members have been, are being, and will be adversely affected by Defendant's

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illegal coal pollutant discharges into waters of the United States. Members of Columbia Riverkeeper use and enjoy the waters and lands into and onto which Defendant's railcars discharge, including waters in the immediate vicinity of, and downstream from, Defendant's discharges into waters of the United States.

22. Columbia Riverkeeper's members live within the impacted watersheds; recreate, or would recreate, by fishing, rafting, hiking, plant gathering, walking, windsurfing, photographing and boating in and around the impacted waters; observe and enjoy wildlife in the watershed around Defendant's discharges; and retain an aesthetic and health interest in the health and restoration of the impacted waters in the vicinity of Defendant's railroad tracks and railcars.

Friends of the Columbia Gorge

23. Friends of the Columbia Gorge seeks to vigorously protect the scenic, natural, cultural, and recreational resources of the Columbia River Gorge. Friends of the Columbia Gorge's approximately 5,000 members reside, among other places, throughout the State of Washington next to and in the general vicinity of BNSF's railroad tracks and the waterways into which defendants discharge pollutants.

24. The environmental, health, aesthetic, and recreational interests of Friends of the Columbia Gorge members have been, are being, and will be adversely affected by Defendant's illegal coal pollutant discharges into waters of the United States. Members of Friends of the Columbia Gorge use and enjoy the waters and lands into and onto which Defendant's railcars discharge, including waters in the immediate vicinity of, and downstream from, Defendant's discharges into waters of the United States.

Friends of the Columbia Gorge's members live within the impacted watersheds; recreate, or would recreate, by fishing, rafting, hiking, plant gathering, walking, windsurfing,

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photographing and boating in and around the impacted waters; observe and enjoy wildlife in the watershed around Defendant's discharges; and retain an aesthetic and health interest in the health and restoration of the impacted waters in the vicinity of Defendant's railroad tracks and railcars.

Spokane Riverkeeper

25. Spokane Riverkeeper is a program of the Center for Justice, which is a Spokane-based, for-impact legal advocacy organization. Spokane Riverkeeper's mission is to protect and restore the health of the Spokane River watershed. Spokane Riverkeeper seeks to accomplish its mission through collaboration, education, and, where necessary, litigation. Spokane Riverkeeper's first priority is to defend the Spokane River, a tributary of the Columbia River, against pollution and polluters.

26. Spokane Riverkeeper's approximately 1200 members reside, among other places, throughout the State of Washington next to and in the general vicinity of BNSF's railroad tracks and the waterways into which defendants discharge pollutants.

27. The environmental, health, aesthetic, and recreational interests of Spokane Riverkeeper members have been, are being, and will be adversely affected by Defendant's illegal coal pollutant discharges into waters of the United States. Members of Spokane Riverkeeper use and enjoy the waters and lands into and onto which Defendant's railcars discharge, including waters in the immediate vicinity of, and downstream from, Defendant's discharges into waters of the United States.

28. Spokane Riverkeeper's members live within the impacted watersheds; recreate, or would recreate, by fishing, rafting, hiking, plant gathering, walking, windsurfing, photographing and boating in and around the impacted waters; observe and enjoy wildlife in the watershed around Defendant's discharges; and retain an aesthetic and health interest in the health and restoration of

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the impacted waters in the vicinity of Defendant's railroad tracks and railcars.

Natural Resources Defense Council

29. Natural Resources Defense Council (NRDC) is a national, not-for-profit membership corporation that is dedicated to the preservation, protection, and defense of the environment, public health, and natural resources. NRDC has long been active in working to protect water quality and specifically, enforcement of the Clean Water Act.

30. NRDC has more than 363,700 members nationwide, including approximately 14,600 members who reside throughout the State of Washington next to and in the general vicinity of BNSF's railroad tracks and the waterways into which defendants discharge pollutants.

31. The environmental, health, aesthetic, and recreational interests of NRDC members have been, are being, and will be adversely affected by Defendant's illegal coal pollutant discharges into waters of the United States. Members of NRDC use and enjoy the waters and lands into and onto which Defendant's railcars discharge, including waters in the immediate vicinity of, and downstream from, Defendant's discharges into waters of the United States.

32. NRDC 's members live within the impacted watersheds; recreate, or would recreate, by fishing, rafting, hiking, plant gathering, walking, windsurfing, photographing and boating in and around the impacted waters; observe and enjoy wildlife in the watershed around Defendant's discharges; and retain an aesthetic and health interest in the health and restoration of the impacted waters in the vicinity of Defendant's railroad tracks and railcars.

Defendants

Burlington Northern Santa Fe Railway Company ("BNSF")

33. BNSF Railway has a rail network of 32,500 route miles in 28 states and two Canadian provinces. BNSF owns and operates rail lines throughout the state of Washington and along the

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Columbia River along the Washington/Oregon border. In 2012, BNSF hauled 2.2 million coal shipments. In 2012, BNSF reported that its coal business unit was responsible for nearly one-quarter--$4.8 billion--of the company's $20 billion total freight revenue, and that more than 90% of the coal hauled by BNSF comes from the Powder River Basin.

34. BNSF transports coal from, *inter alia*, the Powder River Basin across waterways via routes in the center and south of Washington to locations throughout Washington and sometimes continuing into Canada. The coal transport trains travel along, among other waterways, the Columbia River and the Puget Sound.

STATUTORY AND REGULATORY FRAMEWORK

35. Under the CWA, the United States has committed itself "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," including establishing a "national goal that the discharge of pollutants into the navigable waters be eliminated." CWA § 101, 33 U.S.C. §1251.

36. Pursuant to the CWA, a discharge of a pollutant means "any addition of any pollutant to navigable waters from any point source," and "any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft." CWA § 502(12), 33 U.S.C. § 1362(12). *See also* CWA § 502(7), 33 U.S.C. § 1362(7) (definition of "navigable waters"); 40 CFR § 122.2 (definition of "waters of the U.S.").

37. The CWA specifies a number of materials and wastes that, if discharged into water, render them pollutants, including, but not limited to, solid waste, chemical wastes, industrial waste, biological materials, sand, and rock. CWA § 502(6), 33 U.S.C. § 1362(6).

38. Under the Clean Water Act, the term "point source" means "any discernible, confined and discrete conveyance, including but not limited to any . . . container [or] rolling stock. . .from

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which pollutants are or may be discharged." CWA § 502(14), 33 U.S.C. § 1362(14).

49. To advance its goals, Congress established in the CWA that all discharges of pollutants are prohibited "except in compliance" with specified provisions of the CWA including, most importantly, the National Pollutant Discharge Elimination System (NPDES) permitting program. CWA § 301(a), 33 U.S.C. §1311(a); CWA § 402(a), 33 U.S.C. §1342(a); 40 CFR §§122.1 *et seq*.

50. The NPDES program requires a potential discharger to first obtain a NPDES permit that limits the type and quantity of pollutants to be released so as to maintain water quality standards, among other objectives. CWA § 402(a), 33 U.S.C. §1342(a); 40 CFR §122.1. No NPDES permit may be issued where discharges pursuant to it would cause receiving water-bodies to fail to meet water quality standards. *Id*. and 40 CFR §122.4 (prohibitions on permit issuance). Unless done pursuant to a NPDES permit, any coal pollutant discharge from a rail car or train into navigable waters of the U.S. is prohibited under the CWA.

FACTS

Pollutants Being Discharged

51. Defendant, by its ownership, operation, lease of, participation in, contract for, or receipt of material from, trains and rail cars transporting coal, petcoke, and their byproducts (hereinafter, "coal"), has discharged, is discharging, and will continue to discharge coal pollutants to waters of the U.S. within the State of Washington.

52. Such coal pollutants include, but are not limited to, coal, coal chunks, coal dust, coal contaminated water, metabolites or related by-products of coal, surfactants applied to the coal, coal chunks and coal dust, petcoke, petcoke chunks, petcoke dust, petcoke contaminated water, and suppressants.

Discharge Events

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53. Defendant has discharged, is discharging, and will continue to discharge coal pollutants into waters of the U.S. by each and every one of the Defendant's trains and rail cars that carry coal.

54. Each and every train and each and every rail car discharges coal pollutants to waters of the United States when traveling adjacent to, over, and in proximity to waters of the United States.

55. For example, on Sunday, July 21, 2013, at approximately 8:05 a.m., a west-bound BNSF coal train, while crossing the point of confluence of the White Salmon River and Columbia River approximately one mile west of White Salmon, Washington, discharged a significant quantity of coal particles into the White Salmon and Columbia Rivers.

56. Defendant discharges coal pollutants into waters of the U.S. within the State of Washington through holes in the bottoms and sides of the rail cars and by spillage or ejection from the open tops of the rail cars and trains.

57. Defendant discharges coal pollutants during the transportation of the coal in both normal and abnormal operating conditions, and upon loading and unloading coal.

58. Defendant's discharges of coal pollutants from the container or rolling stock point sources are especially frequent or severe when their coal trains pass over rough rail tracks, track changes, bridges, and switches; during transportation of coal over bumpy terrain, in windy conditions, at high operating speed, during steep descents and ascents and through sag-areas spanning steep ascent and descent reaches of track (or vice versa); during and after precipitation events; at moments of high crosswinds; and during derailments.

59. Defendant's coal pollutant discharges occur despite the use of topping agents, surfactants or suppressants, and these topping agents, surfactants and suppressants themselves are pollutants

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discharged by Defendant.

60. The specific dates, times, amounts, and exact or approximate locations, along with, for example, the rail conditions, rail car conditions, design and performance of rail cars, weather conditions, passing trains, loading and unloading practices employed, and incline or decline of railways in specific locations of the discharges during each of the years 2008 through the present are, or should be, in the possession of the Defendant.

Waters Affected

61. Waters of the U.S. are located in, in proximity to, or run through the State of Washington and receive Defendant's coal pollutant discharges where defendant BSNF-operated rail lines and rail cars pass by, cross, or are in proximity to such waters.

62. Defendant has discharged, is discharging, and will continue to discharge pollutants from point sources into waters of the United States, including, but not limited to, rivers, streams, lakes, ponds, coulees, estuaries, bays, sounds, canals, shipping canals, fresh water and tidal wetlands, and coastal waters of the Pacific Ocean. These waters derive water from, are tributaries to, forks of, and/or exchange water with many of the waters in the State of Washington, many of which are navigable waters and all of which eventually discharge into the Pacific Ocean.

63. Waters impacted by Defendant's coal pollutant discharges include, but are not limited to, the Puget Sound, Columbia River, Alder Creek, Ashes Lake, Bass Lake, Beckie River, Beckler River, Chamberlain Lake, Chiwawa River, Chuckanut Bay, Coal Creek, Cow Creek, Cowlitz River, Coweeman Confluence, Crab Creek, Crah Creek, Dakota Creek, Dead Canyon, Deschutes River, Drano Lake, East Low Canal, Elliott Bay, Esquatzel Coulee, Franz Lake, Glade Creek, Green River, Grant Lake, Hangman Creek (also known as Latah Creek), Hewett Lake, Horsethief Lake, Howard Hanson Reservoir, Kalama River, Klickitat River, Lake Union, Lewis

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River, Little White Salmon River, Little Spearfish Lake, Look Lake, Locke Lake, Newaukum River, Nisqually River, Nooksack River, North Fork – Skykomish River, Pilchuk Creek, Pilchuk River, Possession Sound, Quilceda Creek, Rock Cove, Rowland Lake, Salmon Creek, Samish River, Shilshole Bay, Skagit River, Skookumchuck River, Skykomish River, Snake River, Snohomish River, South Fork – Skykomish River, Spokane River, Status Creek, Steamboat Slough, Stillaguamish River, Stuck River, Sultan River, Teanaway River, Toppenish Creek, Toutle River, Union Slough, Wallace River, Washougal River, Wenatchee River, West Canal, White Salmon River, Wind River, Yakima River and their tributaries.[1]

Discharges Unpermitted Under the CWA

64. Defendant has never obtained a NPDES permit allowing its discharges of coal pollutants into State of Washington waterbodies from rail cars and trains. Moreover, the types of discharges that have occurred, are occurring and that are likely to continue to occur are not permitted under federal law.

65. Defendant intends to continue loading and transporting coal and petcoke and related coal pollutants by rail to and through the State of Washington.

ALLEGATIONS

66. Plaintiffs hereby incorporate by reference all preceding paragraphs.

67. Section 301(a) of the CWA, 33 U.S.C. §1311(a), prohibits the discharge of pollutants from a point source into navigable waters of the United States, unless pursuant to the terms of a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. §1342.

[1] Plaintiffs note that this list is inclusive of some waterways in the Eastern District of Washington, some in the Western District of Washington, and some that flow through both the Western and Eastern Districts of Washington. Plaintiffs have filed a similar action in the Eastern District of Washington and intend to move for consolidation, but, recognizing that some of the waterways overlap Districts, include one list of impacted waterways here for reference.

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68. Defendant has discharged coal pollutants in contravention of CWA §301, as described herein, during rail transport of coal, since at least April 2008, and such discharges are presently ongoing and likely to continue.

COUNT 1

Discharge of Pollutants Without NPDES Permit into Waters of United States

69. All waterways named herein are waters of the United States protected by the CWA.

70. Defendant did not have and does not retain a NPDES Permit authorizing its discharges of coal pollutants into such waterways.

71. Defendant has discharged coal pollutants from the operation of rail cars and trains into, at least, the listed waterways from April 2008 (and for many years prior to 2008) to present. Such operations and discharges are continuing and are likely to continue into the future.

72. Each such coal discharge from each rail car and train into each separate waterway on each separate day constitutes a separate violation of the CWA.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court grant Plaintiffs the following relief:

A. Issue a declaratory judgment that Defendant has violated and continues to violate the CWA;

B. Issue a declaratory judgment that each rail car container constitutes a separate point source;

C. Issue a declaratory judgment that each separate discharge into each waterway constitutes a separate violation;

C. Enjoin Defendant from operating rail cars and trains in such a manner as will result in further violation of the CWA;

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D. Enjoin Defendant's use of uncovered rail cars for any transport of coal;

E. Enjoin Defendant's use of rail cars that, through design or imperfection – including holes or openings in their sides or bottoms—allow coal pollutants to be discharged into waters of the U.S;

F. Order Defendant to remove coal pollutants that are in-place or otherwise recoverable from receiving water-bodies;

G. Order Defendant to pay civil penalties of up to $37,500 per day for each violation of the CWA, pursuant to Sections 309(d) and 505(a) of the CWA, 33 U.S.C. §§1319(d) and 1365(a), and 40 C.F.R. § 19 *et seq.*, including those identified in Plaintiff's notice letters, violations identified during discovery, and violations committed subsequent to those identified in this Complaint;

H. Order Defendant to monitor and report their coal pollutant discharges to the federal Environmental Protection Agency and the State of Washington Department of Ecology;

I. Order Defendant to provide Plaintiff, for a period beginning on the date of the Court's order and running for five years after defendants achieve compliance with the CWA with a copy of all reports and other documents which defendants submit to EPA, to the Regional Administrator of the EPA, or to the State of Washington regarding Defendant's coal pollutant discharges at the time these documents are submitted to these authorities;

J. Issue a remedial injunction ordering Defendant to pay the cost of any environmental restoration or remediation deemed necessary and proper by the Court to comply with the Clean Water Act and ameliorate the water degradation caused by Defendant's violations;

K. Award Plaintiffs their costs, including reasonable attorney and expert witness fees, as authorized by 33 U.S.C. §1365(d) and 28 U.S.C. §2412(d); and

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L. Award such other relief as this Court deems appropriate.

Respectfully submitted this 29th day of July,

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CERTIFICATE OF SERVICE

I hereby certify that on JULY 29, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will automatically send notification of such filing to the following:

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THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SIERRA CLUB, *et al.*, Plaintiff, v. BNSF RAILWAY COMPANY, Defendant.	CASE NO. C13-0967-JCC ORDER

This matter comes before the Court on the parties' stipulated motion for consolidation pursuant to Federal Rule of Civil Procedure 42(a) and Local Civil Rule 42. (Dkt. No. 82.) The motion is GRANTED. The Court hereby CONSOLIDATES case numbers C13-0967-JCC and C14-0660-RAJ into a single case. *See* FED. R. CIV. P. 42(a). All future pleadings shall bear the case number C13-0967-JCC.

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DATED this 8th day of May 2014.



John C. Coughenour
UNITED STATES DISTRICT JUDGE

HON. JOHN C. COUGHENOUR

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

SIERRA CLUB, a California nonprofit corporation; PUGET SOUNDKEEPER ALLIANCE, a Washington nonprofit corporation; RE SOURCES FOR SUSTAINABLE COMMUNITIES, a Washington nonprofit corporation; COLUMBIA RIVERKEEPER, a Washington nonprofit corporation; FRIENDS OF THE COLUMBIA GORGE, INC., dba FRIENDS OF THE COLUMBIA GORGE, an Oregon nonprofit corporation; SPOKANE RIVERKEEPER; NATURAL RESOURCES DEFENSE COUNCIL, a New York nonprofit corporation,

Plaintiffs,

v.

BNSF RAILWAY COMPANY, a Delaware corporation
&
CIT GROUP, Inc., a Delaware corporation,

Defendants.

CIVIL No. 2:13-cv-00967-JCC
(consolidated with No. 2:14-cv-00660)

THIRD AMENDED COMPLAINT

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INTRODUCTION

1. This is a civil suit for declaratory and injunctive relief against Defendants Burlington Northern Santa Fe Railway Company ("BNSF") and CIT Group, Inc., for violations of the Federal Water Pollution Control Act (commonly known as the Clean Water Act and hereinafter referred to as the CWA), 33 U.S.C. §§1251 *et seq*.

2. This action is brought pursuant to Section 505 of the CWA (Citizen Suits), 33 U.S.C. §1365.

3. As detailed below, Plaintiffs allege that BNSF and CIT Group have discharged coal, coal chunks, coal dust, metabolites or related byproducts of coal, and other substances or materials added to the coal including, but not limited to, surfactants and suppressants, and petroleum coke ("petcoke") and its byproducts (collectively, hereinafter, "coal pollutants") into waters of the United States, including the Puget Sound and other waterbodies in and around the Seattle area as well as throughout the State of Washington. Waters of the United States are under or in proximity to BNSF's rail lines and rail cars, and these lines and cars discharge coal pollutants directly to U.S. waters as well as to land adjacent to those waters.

4. These discharges have not been permitted under the CWA, so that each discharge violates §301(a) of the CWA, 33 U.S.C. §1311(a).

5. In addition, BNSF is likely to continue to violate the CWA by discharging, from a point source, coal pollutants into the waters of the United States.

6. Plaintiffs seek a declaratory judgment, injunctive relief, remedial relief, the imposition of civil penalties, and the award of costs, including attorney and expert witness fees.

JURISDICTION

7. This Court has subject matter jurisdiction over the claims specified in this Complaint

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pursuant to 33 U.S.C. §1365(a) and 28 U.S.C. §1331. The relief requested is authorized pursuant to 33 U.S.C. §§1319 and 1365(a), and 28 U.S.C. §§ 2201 and 2202.

8. In compliance with 33 U.S.C. §1365(b)(1)(A), on April 2, 2013, Plaintiffs gave notice of the violations specified in this complaint and of their intent to file suit to Defendant BNSF, to the Administrator of the United States Environmental Protection Agency (EPA), to the Regional Administrator of the EPA, and to the State of Washington. On May 9, 2013, Plaintiffs supplemented their Notice of Intent to Sue by adding Spokane Riverkeeper and Natural Resources Defense Council as Notifiers. On October 10, 2013, Plaintiffs sent a second supplemental Notice of Intent to Sue as a protective notice to address alleged issues of improper notice raised by BNSF in its Motion to Dismiss filed on August 15, 2013 in the Western District of Washington. Copies of the notice letters are attached hereto as Exhibits A, B, and C, respectively, and all details and allegations in the notice letters are incorporated by reference in this complaint.

9. Also in compliance with 33 U.S.C. §1365(b)(1)(A), on February 20, 2015, Plaintiffs gave notice of the violations specified in this complaint and of their intent to file suit to Defendant CIT Group, to the Administrator of the United States Environmental Protection Agency (EPA), to the Regional Administrator of the EPA, and to the State of Washington. On March 31, 2015, Plaintiffs supplemented their Notice of Intent to Sue by adding Columbia Riverkeeper as a Notifier and by providing the names, addresses and phone numbers of certain notifers. Copies of the notice letters are attached hereto as Exhibits D and E, respectively, and all details and allegations in the notice letters are incorporated by reference in this complaint.

10. Sixty days have passed since the notices were served, and the violations complained of in the notice letters are continuing at this time, or are reasonably likely to continue. Defendants

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remain in violation of the CWA. Neither the EPA nor the Washington Department of Ecology (WADOE) has commenced or is diligently prosecuting a civil or criminal action to redress the violations.

VENUE

11. Venue is appropriate pursuant to Section 505(c)(1) of the CWA, 33 U.S.C. §1365(c)(1), because the sources of the violations complained of have occurred in the District.

PARTIES

Plaintiffs

12. Plaintiffs are seven not-for-profit organizations comprised, in part, of members who live, work, and recreate in the state of Washington. Plaintiffs share similar interests in the protection and preservation of regional water bodies and wild spaces.

Sierra Club

13. Plaintiff Sierra Club is a nonprofit corporation incorporated and headquartered in California, with a regional office located in Seattle and members throughout the State of Washington. Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the Earth; to practicing and promoting the responsible use of the Earth's resources and ecosystems; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Sierra Club's concerns encompass the protection and restoration of the water quality of the waters of the U.S. within the state of Washington, including the Puget Sound, the Columbia River, and all life connected to these waterbodies, from their headwaters to the Pacific Ocean. Sierra Club has more than 600,000 members nationwide, including over 21,000 in Washington, and brings this action on behalf of itself and its affected members. Sierra Club members reside, work, travel and

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recreate next to and in the general vicinity of BNSF's railroad tracks in Washington and the waterways into which Defendants discharge pollutants. The environmental, health, aesthetic, and recreational interests of Sierra Club members have been, are being, and will be adversely affected by Defendants' illegal coal and petroleum coke pollutant discharges into waters of the United States. Members of Sierra Club use and enjoy the waters and lands into and onto which Defendants' railcars discharge, including waters in the immediate vicinity of, and downstream from, Defendants' discharges into waters of the United States.

14. Sierra Club's members live within the impacted watersheds; recreate by fishing, rafting, hiking, plant gathering, walking, windsurfing, sailing, photographing, and boating in and around the impacted waters; observe and enjoy wildlife in the watershed around Defendants' discharges; and retain an aesthetic and health interest in the health and restoration of the impacted waters in the vicinity of Defendants' railroad tracks and railcars.

Puget Soundkeeper

15. Puget Soundkeeper 's mission is to protect and preserve the water of Puget Sound by monitoring, cleaning up and preventing pollutants from entering its waters. Puget Soundkeeper is headquartered in Washington with offices in Seattle. Puget Soundkeeper's approximately 1,400 members reside, among other places, throughout the State of Washington, particularly next to and in the general vicinity of BNSF's railroad tracks and the waterways into which Defendants discharge pollutants.

16. The environmental, health, aesthetic, and recreational interests of Puget Soundkeeper members have been, are being, and will be adversely affected by Defendants' illegal coal pollutant discharges into waters of the United States. Members of Puget Soundkeeper use and enjoy the waters and lands into and onto which Defendants' railcars discharge, including waters

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in the immediate vicinity of, and downstream from, Defendants' discharges into waters of the United States.

17. Puget Soundkeeper's members live within the impacted watersheds; recreate, or would recreate, by fishing, rafting, hiking, plant gathering, walking, sailing, windsurfing, photographing and boating in and around the impacted waters; observe and enjoy wildlife in the watershed around Defendants' discharges; and retain an aesthetic and health interest in the health and restoration of the impacted waters in the vicinity of Defendants' railroad tracks and railcars.

RE Sources for Sustainable Communities

18. RE Sources for Sustainable Communities promotes sustainable communities through recycling, education, advocacy, and conservation of natural resources. RE Sources is based in Washington with offices in Bellingham. RE Sources for Sustainable Communities' approximately 5,200 members reside, among other places, throughout the State of Washington next to and in the general vicinity of BNSF's railroad tracks and the waterways into which Defendants discharge pollutants.

19. The environmental, health, aesthetic, and recreational interests of RE Sources for Sustainable Communities members have been, are being, and will be adversely affected by Defendants' illegal coal pollutant discharges into waters of the United States. Members of RE Sources for Sustainable Communities use and enjoy the waters and lands into and onto which Defendants' railcars discharge, including waters in the immediate vicinity of, and downstream from, Defendants' discharges into waters of the United States.

20. RE Sources for Sustainable Communities' members live within the impacted watersheds; recreate, or would recreate, by fishing, rafting, hiking, plant gathering, walking, windsurfing, sailing, photographing and boating in and around the impacted waters; observe and

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enjoy wildlife in the watershed around Defendants' discharges; and retain an aesthetic and health interest in the health and restoration of the impacted waters in the vicinity of Defendants' railroad tracks and railcars.

Columbia Riverkeeper

21. Columbia Riverkeeper's mission is to restore and protect the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. To achieve these objectives, Riverkeeper operates scientific, educational, and legal programs aimed at protecting water, quality, air quality, and habitat in the Columbia River Basin. Columbia Riverkeeper's over 3000 members reside, among other places, throughout the State of Washington next to and in the general vicinity of BNSF's railroad tracks and the waterways into which Defendants discharge pollutants.

22. The environmental, health, aesthetic, and recreational interests of Columbia Riverkeeper's members have been, are being, and will be adversely affected by Defendants' illegal coal pollutant discharges into waters of the United States. Members of Columbia Riverkeeper use and enjoy the waters and lands into and onto which Defendants' railcars discharge, including waters in the immediate vicinity of, and downstream from, Defendants' discharges into waters of the United States.

23. Columbia Riverkeeper's members live within the impacted watersheds; recreate, or would recreate, by fishing, rafting, hiking, plant gathering, walking, windsurfing, photographing and boating in and around the impacted waters; observe and enjoy wildlife in the watershed around Defendants' discharges; and retain an aesthetic and health interest in the health and restoration of the impacted waters in the vicinity of Defendants' railroad tracks and railcars.

Friends of the Columbia Gorge

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24. Friends of the Columbia Gorge seeks to vigorously protect the scenic, natural, cultural, and recreational resources of the Columbia River Gorge. Friends of the Columbia Gorge's approximately 5,000 members reside, among other places, throughout the State of Washington next to and in the general vicinity of BNSF's railroad tracks and the waterways into which Defendants discharge pollutants.

25. The environmental, health, aesthetic, and recreational interests of Friends of the Columbia Gorge members have been, are being, and will be adversely affected by Defendants' illegal coal pollutant discharges into waters of the United States. Members of Friends of the Columbia Gorge use and enjoy the waters and lands into and onto which Defendants' railcars discharge, including waters in the immediate vicinity of, and downstream from, Defendants' discharges into waters of the United States.

Friends of the Columbia Gorge's members live within the impacted watersheds; recreate, or would recreate, by fishing, rafting, hiking, plant gathering, walking, windsurfing, photographing and boating in and around the impacted waters; observe and enjoy wildlife in the watershed around Defendants' discharges; and retain an aesthetic and health interest in the health and restoration of the impacted waters in the vicinity of Defendants' railroad tracks and railcars.

Spokane Riverkeeper

26. Spokane Riverkeeper is a program of the Center for Justice, which is a Spokane-based, for-impact legal advocacy organization. Spokane Riverkeeper's mission is to protect and restore the health of the Spokane River watershed. Spokane Riverkeeper seeks to accomplish its mission through collaboration, education, and, where necessary, litigation. Spokane Riverkeeper's first priority is to defend the Spokane River, a tributary of the Columbia River, against pollution and polluters.

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27. Spokane Riverkeeper's approximately 1200 members reside, among other places, throughout the State of Washington next to and in the general vicinity of BNSF's railroad tracks and the waterways into which Defendants discharge pollutants.

28. The environmental, health, aesthetic, and recreational interests of Spokane Riverkeeper members have been, are being, and will be adversely affected by Defendants' illegal coal pollutant discharges into waters of the United States. Members of Spokane Riverkeeper use and enjoy the waters and lands into and onto which Defendants' railcars discharge, including waters in the immediate vicinity of, and downstream from, Defendants' discharges into waters of the United States.

29. Spokane Riverkeeper's members live within the impacted watersheds; recreate, or would recreate, by fishing, rafting, hiking, plant gathering, walking, windsurfing, photographing and boating in and around the impacted waters; observe and enjoy wildlife in the watershed around Defendants' discharges; and retain an aesthetic and health interest in the health and restoration of the impacted waters in the vicinity of Defendants' railroad tracks and railcars.

Natural Resources Defense Council

30. Natural Resources Defense Council (NRDC) is a national, not-for-profit membership corporation that is dedicated to the preservation, protection, and defense of the environment, public health, and natural resources. NRDC has long been active in working to protect water quality and specifically, enforcement of the Clean Water Act.

31. NRDC has more than 363,700 members nationwide, including approximately 14,600 members who reside throughout the State of Washington next to and in the general vicinity of BNSF's railroad tracks and the waterways into which Defendants discharge pollutants.

32. The environmental, health, aesthetic, and recreational interests of NRDC members have

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been, are being, and will be adversely affected by Defendants' illegal coal pollutant discharges into waters of the United States. Members of NRDC use and enjoy the waters and lands into and onto which Defendants' railcars discharge, including waters in the immediate vicinity of, and downstream from, Defendants' discharges into waters of the United States.

33. NRDC 's members live within the impacted watersheds; recreate, or would recreate, by fishing, rafting, hiking, plant gathering, walking, windsurfing, photographing and boating in and around the impacted waters; observe and enjoy wildlife in the watershed around Defendants' discharges; and retain an aesthetic and health interest in the health and restoration of the impacted waters in the vicinity of Defendants' railroad tracks and railcars.

Defendants

Burlington Northern Santa Fe Railway Company ("BNSF")

34. BNSF Railway has a rail network of 32,500 route miles in 28 states and two Canadian provinces. BNSF owns and operates rail lines throughout the state of Washington and along the Columbia River along the Washington/Oregon border. In 2012, BNSF hauled 2.2 million coal shipments. In 2012, BNSF reported that its coal business unit was responsible for nearly one-quarter—$4.8 billion—of the company's $20 billion total freight revenue, and that more than 90% of the coal hauled by BNSF comes from the Powder River Basin.

35. BNSF transports coal from, *inter alia*, the Powder River Basin across waterways via routes in the center and south of Washington to locations throughout Washington and sometimes continuing into Canada. The coal transport trains travel along, over and adjacent to, among other waterways, the Columbia River and the Puget Sound.

36. CIT Group is the owner or operator of at least six percent of the rail cars carrying coal or petcoke through the State of Washington since February 2010, and its share of total rail cars used

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for these purposes has climbed to over 10% during the period at issue. CIT Group rail cars carry coal or petcoke from, *inter alia*, the Powder River Basin across waterways via routes in the center and south of Washington to locations throughout Washington and sometimes continuing into Canada. The coal transport trains with CIT Group coal rail cars travel along, over and adjacent to, among other waterways, the Columbia River and the Puget Sound.

STATUTORY AND REGULATORY FRAMEWORK

37. Under the CWA, the United States has committed itself "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," including establishing a "national goal that the discharge of pollutants into the navigable waters be eliminated by 1985 . . . ." CWA § 101(a), 33 U.S.C. §1251(a).

38. Pursuant to the CWA, a discharge of a pollutant means "any addition of any pollutant to navigable waters from any point source," and "any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft." CWA § 502(12), 33 U.S.C. § 1362(12).

39. Under the CWA, "[t]he term 'navigable waters' means the waters of the United States, including the territorial seas." *See also* CWA § 502(7), 33 U.S.C. § 1362(7); 40 CFR § 122.2 (definition of "waters of the U.S.").

40. The CWA prohibits discharges of pollutants from point sources directly into waters of the United States. The CWA also prohibits discharges of pollutants from point sources onto land adjacent and in proximity to waterways where those pollutants are added to waters by forces such as, for example, gravity, wave wash, fluctuation of water levels, vibration, wind, and precipitation.

41. The CWA specifies a number of materials and wastes that, if discharged into water,

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render them pollutants, including, but not limited to, solid waste, chemical wastes, industrial waste, biological materials, sand, and rock. CWA § 502(6), 33 U.S.C. § 1362(6).

42. Under the Clean Water Act, the term "point source" means "any discernible, confined and discrete conveyance, including but not limited to any . . . container [or] rolling stock . . . from which pollutants are or may be discharged." CWA § 502(14), 33 U.S.C. § 1362(14).

43. To advance its goals, Congress established in the CWA that all discharges of pollutants are prohibited "except in compliance" with specified provisions of the CWA including, most importantly, the National Pollutant Discharge Elimination System (NPDES) permitting program. CWA § 301(a), 33 U.S.C. §1311(a); CWA § 402(a), 33 U.S.C. §1342(a); 40 CFR §§122.1 *et seq*.

44. The NPDES program requires a potential discharger to first obtain a NPDES permit that limits the type and quantity of pollutants to be released so as to maintain water quality standards, among other objectives. CWA § 402(a), 33 U.S.C. §1342(a); 40 CFR §122.1. No NPDES permit may be issued where discharges pursuant to it would cause receiving water-bodies to fail to meet water quality standards. *Id*. and 40 CFR §122.4 (prohibitions on permit issuance). Unless done pursuant to a NPDES permit, any coal pollutant discharge from a rail car or train into navigable waters of the U.S. is prohibited under the CWA. Similarly, dischargers have violated, are violating, and will continue to violate the CWA through unpermitted discharges of pollutants from point sources onto land adjacent and in proximity to waterways where those pollutants are added to waters by forces such as, for example, gravity, wave wash, fluctuation of water levels, vibration, wind, and precipitation.

FACTS

Pollutants Being Discharged

45. Defendants, by their ownership, operation, lease of, participation in, contract for, or

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receipt of material from, trains and rail cars transporting coal, petcoke, and their byproducts (hereinafter, "coal"), have discharged, are discharging, and will continue to discharge coal pollutants to waters of the U.S. within the State of Washington.

46. Such coal pollutants include, but are not limited to, coal, coal chunks, coal dust, coal contaminated water, metabolites or related by-products of coal, surfactants applied to the coal, coal chunks and coal dust, petcoke, petcoke chunks, petcoke dust, petcoke contaminated water, and suppressants.

Discharge Events

47. Defendants have discharged, are discharging, and will continue to discharge coal pollutants into waters of the U.S. by each and every one of the Defendants' trains and rail cars that carry coal.

48. Each and every coal train and each and every rail car carrying coal discharges coal pollutants to waters of the United States when traveling adjacent to, over, and in proximity to waters of the United States.

49. Each and every coal train and each and every rail car carrying coal discharges coal pollutants to waters of the United States by discharging onto land adjacent and in proximity to waterways where those pollutants are added to water by forces such as, for example, gravity, wave wash, fluctuation of water levels, vibration, wind, and precipitation.

50. For example, on Sunday, July 21, 2013, at approximately 8:05 a.m., a west-bound BNSF coal train, while crossing the point of confluence of the White Salmon River and Columbia River approximately one mile west of White Salmon, Washington, discharged a significant quantity of coal particles into and along the White Salmon and Columbia Rivers.

51. Defendants discharge coal pollutants into waters of the U.S. within the State of

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Washington through holes in the bottoms and sides of the rail cars and by spillage or ejection from the open tops of the rail cars and trains.

52. Defendants discharge coal pollutants during the transportation of the coal in both normal and abnormal operating conditions, and upon loading and unloading coal.

53. Defendants' discharges of coal pollutants from the container or rolling stock point sources are especially frequent or severe when the coal trains pass over rough rail tracks, track changes, bridges, and switches; during transportation of coal over bumpy terrain, in windy conditions, at high operating speed, during steep descents and ascents and through sag-areas spanning steep ascent and descent reaches of track (or vice versa); during and after precipitation events; at moments of high crosswinds; and during derailments.

54. Defendants' coal pollutant discharges occur despite the use of topping agents, surfactants or suppressants, and these topping agents, surfactants and suppressants themselves are pollutants discharged by Defendants.

55. The specific dates, times, amounts, and exact or approximate locations, along with, for example, the rail conditions, rail car conditions, design and performance of rail cars, weather conditions, passing trains, loading and unloading practices employed, and incline or decline of railways in specific locations of the discharges during each of the years 2008 through the present are, or should be, in the possession of the Defendants.

Waters Affected

56. Waters of the U.S. are located in, in proximity to, or run through the State of Washington and receive Defendants' coal pollutant discharges where defendant BSNF-operated rail lines and rail cars pass by, cross, or are in proximity to such waters.

57. Defendants have discharged, are discharging, and will continue to discharge pollutants

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from point sources into waters of the United States, including, but not limited to, rivers, streams, lakes, ponds, coulees, estuaries, bays, sounds, canals, shipping canals, fresh water and tidal wetlands, and coastal waters of the Pacific Ocean. These waters derive water from, are tributaries to, forks of, and/or exchange water with many of the waters in the State of Washington, many of which are navigable waters and all of which eventually discharge into the Pacific Ocean.

58. Defendants have discharged, are discharging, and will continue to discharge through unpermitted discharges of pollutants from point sources directly into waters of the United States and by discharges of pollutants onto land adjacent and in proximity to waterways where those pollutants are added to water by forces such as, for example, gravity, wave wash, fluctuation of water levels, vibration, wind, and precipitation. .

59. Waters impacted by Defendants' coal pollutant discharges include, but are not limited to, the Puget Sound, Columbia River, Alder Creek, Ashes Lake, Bass Lake, Beckie River, Beckler River, Chamberlain Lake, Chiwawa River, Chuckanut Bay, Coal Creek, Cow Creek, Cowlitz River, Coweeman Confluence, Crab Creek, Crah Creek, Dakota Creek, Dead Canyon, Deschutes River, Drano Lake, East Low Canal, Elliott Bay, Esquatzel Coulee, Franz Lake, Glade Creek, Green River, Grant Lake, Hangman Creek (also known as Latah Creek), Hewett Lake, Horsethief Lake, Howard Hanson Reservoir, Kalama River, Klickitat River, Lake Union, Lewis River, Little White Salmon River, Little Spearfish Lake, Look Lake, Locke Lake, Newaukum River, Nisqually River, Nooksack River, North Fork – Skykomish River, Pilchuk Creek, Pilchuk River, Possession Sound, Quilceda Creek, Rock Cove, Rowland Lake, Salmon Creek, Samish River, Shilshole Bay, Skagit River, Skookumchuck River, Skykomish River, Snake River, Snohomish River, South Fork – Skykomish River, Spokane River, Status Creek, Steamboat

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Slough, Stillaguamish River, Stuck River, Sultan River, Teanaway River, Toppenish Creek, Toutle River, Union Slough, Wallace River, Washougal River, Wenatchee River, West Canal, White Salmon River, Wind River, Yakima River and their tributaries.

Discharges Unpermitted Under the CWA

60. Defendants have never obtained any NPDES permit to allow their discharges of coal pollutants into State of Washington waterbodies from rail cars and trains. Moreover, the types of discharges that have occurred, are occurring and that are likely to continue to occur are not permitted under federal law.

61. Defendants intend to continue loading and transporting coal and petcoke and related coal pollutants by rail to and through the State of Washington.

ALLEGATIONS

62. Plaintiffs hereby incorporate by reference all preceding paragraphs.

63. Section 301(a) of the CWA, 33 U.S.C. §1311(a), prohibits the discharge of pollutants from a point source into navigable waters of the United States, unless pursuant to the terms of a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. §1342.

64. Defendants have discharged coal pollutants in contravention of CWA §301, as described herein, during rail transport of coal, since at least April 2008, and such discharges are presently ongoing and likely to continue.

COUNT 1

Discharge of Pollutants Without NPDES Permit into Waters of United States

65. All waterways named herein are waters of the United States protected by the CWA.

66. Defendants did not have and do not retain a NPDES Permit authorizing their discharges of coal pollutants into such waterways.

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67. Defendants have discharged coal pollutants from the operation of rail cars and trains into, at least, the listed waterways from April 2008 (and for many years prior to 2008) to present. Such operations and discharges are continuing and are likely to continue into the future.

68. Each such coal discharge from each rail car and train into each separate waterway on each separate day constitutes a separate violation of the CWA.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court grant Plaintiffs the following relief:

A. Issue a declaratory judgment that Defendants have violated and continues to violate the CWA;

B. Issue a declaratory judgment that each rail car container constitutes a separate point source;

C. Issue a declaratory judgment that each separate discharge into each waterway, and adjacent to each waterway such that the discharge adds pollutants to the waterway, constitutes a separate violation;

D. Enjoin Defendants from operating rail cars and trains in such a manner as will result in further violation of the CWA;

E. Enjoin Defendants' use of uncovered rail cars for any transport of coal pollutants;

F. Enjoin Defendants' use of rail cars that, through design or imperfection – including holes or openings in their sides or bottoms—allow coal pollutants to be discharged into waters of the U.S;

G. Order Defendants to remove coal pollutants that are in-place or otherwise recoverable from receiving water-bodies;

H. Order Defendants to pay civil penalties of up to $37,500 per day for each violation of the

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CWA, pursuant to Sections 309(d) and 505(a) of the CWA, 33 U.S.C. §§1319(d) and 1365(a), and 40 C.F.R. § 19 *et seq.*, including those identified in Plaintiffs' notice letters, violations identified during discovery, and violations committed subsequent to those identified in this Complaint;

I. Order Defendants to monitor and report their coal pollutant discharges to the federal Environmental Protection Agency and the State of Washington Department of Ecology;

J. Order Defendants to provide Plaintiffs, for a period beginning on the date of the Court's order and running for five years after Defendants achieve compliance with the CWA with a copy of all reports and other documents which Defendants submit to EPA, to the Regional Administrator of the EPA, or to the State of Washington regarding Defendants' coal pollutant discharges at the time these documents are submitted to these authorities;

K. Issue a remedial injunction ordering Defendants to pay the cost of any environmental restoration or remediation deemed necessary and proper by the Court to comply with the Clean Water Act and ameliorate the water degradation caused by Defendants' violations;

L. Award Plaintiffs their costs, including reasonable attorney and expert witness fees, as authorized by 33 U.S.C. §1365(d) and 28 U.S.C. §2412(d); and

M. Award such other relief as this Court deems appropriate.

Respectfully submitted this 6th day of May, 2015 by

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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will automatically send notification of such filing to the following:

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The Hon. John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SIERRA CLUB, a California nonprofit corporation, et al., Plaintiffs, v. BNSF RAILWAY COMPANY, a Delaware Corporation, et al., Defendants.	Civil Action No. C13-0967-JCC **DEFENDANT CIT GROUP INC.'S MOTION TO DISMISS THIRD AMENDED COMPLAINT** **NOTE ON MOTION CALENDAR: September 4, 2015** **ORAL ARGUMENT REQUESTED**

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INTRODUCTION

CIT Group Inc. ("Group Inc.") is a financial holding company that neither owns nor operates rail cars. Subsidiaries of Group Inc. that are not defendants herein lease rail cars of all variety to third-parties who use them for a wide variety of purposes. Those third-party lessees, *not* Group Inc. or its subsidiaries, determine *when, how,* and *where* to use the rail cars for the transportation of goods for which they are leased. The lessees, *not* Group Inc. or its subsidiaries, also consign the leased rail cars to shippers, who then have a statutory obligation as common carriers to carry such cars to their destination. Even the Group Inc. subsidiaries that lease rail cars (and that are not parties to this litigation) have no operational control over the equipment used and transported by others. Thus there is no basis for Group Inc. to sued for alleged Clean Water Act ("CWA") violations in Washington State relating to the transport of coal cars that are operated and controlled by unrelated third parties.

Here, even under the most generous interpretation of the Complaint, Plaintiffs' claims against Group Inc. must fail. First, Plaintiffs lack standing to sue Group Inc. Because Group Inc. has no ownership of rail cars or control over the transport of coal in Washington, Plaintiffs' alleged injuries cannot be fairly traced to Group Inc. or its subsidiaries, and those injuries cannot be redressed by an order issued against Group Inc. Second, Plaintiffs' notice letter to Group Inc. is legally insufficient because Plaintiffs failed to include sufficient facts—which should be in their possession—to allow Group Inc. to identify all of the alleged violations. Third, Plaintiffs' cursory allegations against Group Inc. are insufficient to state a claim that Group Inc. has discharged coal into waters of the United States in violation of the CWA. Plaintiffs also have failed to state a claim for alleged discharges of coal to the ground, as opposed to waters of the United States. Fourth, Plaintiffs' claims are barred by the statute of limitation to the extent the alleged violations occurred prior to May 6, 2010.

For the reasons stated below, Group Inc. respectfully requests that this Court dismiss the claims against Group Inc. This is a case of Plaintiffs wrongfully suing an entity that has no liability and, importantly, that could afford no remedy—were it liable—even under the facts construed most

favorably to Plaintiffs. Allowing the litigation to proceed further against Group Inc. will subject Group Inc. to significant and unnecessary burdens, costs and expense.

BACKGROUND

Plaintiffs' Third Amended Complaint ("Complaint") adds Group Inc. as a defendant and alleges that Group Inc. has violated the CWA by discharging coal[1] "into waters of the United States … throughout the State of Washington" without a permit. 3rd Am. Compl. ¶¶ 3-4. The CWA prohibits "the discharge of any pollutant by any person" without a permit. 33 U.S.C. § 1311(a). The "discharge of a pollutant" is defined to include "any addition of any pollutant to navigable waters from any point source." *Id.* § 1362(12). Under the statute, "navigable waters" are "the waters of the United States." *Id.* § 1362(7). The CWA authorizes a private citizen to commence a civil action against any person alleged "to be in violation" of the CWA after giving 60 days' notice. *Id.* § 1365(a), (b).

Plaintiffs allege that "[e]ach and every coal train and each and every rail car carrying coal discharges coal pollutants to waters of the United States when traveling adjacent to, over, and in proximity to waters of the United States." 3rd Am. Compl. ¶ 48. The Complaint lists 75 waters in Washington State that are allegedly impacted by coal discharges. *Id.* ¶ 59. Plaintiffs allege that Group Inc. is responsible for some of these discharges because it "is the owner or operator of at least six percent of the rail cars carrying coal or petcoke through the State of Washington since February 2010, and its share of total rail cars used for these purposes has climbed to over 10% during the period at issue." *Id.* ¶ 36. Plaintiffs initially sued BNSF Railway Company ("BNSF"), which they allege "owns and operates rail lines throughout the state of Washington." *Id.* ¶ 34. The Complaint does not name other alleged owners or operators of any other rail cars that carry coal in Washington or any shippers of coal.

At the outset, the entity Plaintiffs recently named as a defendant here, Group Inc., is merely a financial holding company, which is a type of bank holding company, that neither owns nor

[1] Plaintiffs define coal broadly to include "coal, coal chunks, coal dust, metabolites or related byproducts of coal, and other substances or materials added to the coal including, but not limited to, surfactants and suppressants and petroleum coke … and its byproducts." 3rd Am. Compl. ¶ 3.

operates rail cars. Declaration of Christopher H. Paul, at ¶¶ 3-4 ("Paul Decl.").[2] In fact, to comply with applicable regulations for financial holding companies, Group Inc. and its subsidiary companies may not operate rail cars. *Id.* ¶ 3. Certain subsidiaries of Group Inc., which are separate and legally distinct entities that have not been joined in this lawsuit, lease rail cars including coal transport cars to a variety of third parties. *Id.* ¶ 4. Once the rail cars are delivered to lessees, Group Inc.'s subsidiaries become passive owners who exercise no operational control over the rail cars. Declaration of Mel Kusta, at ¶¶ 5-6 ("Kusta Decl."). While Group Inc.'s subsidiaries may, in some circumstances, arrange for service, maintenance, and repair of the rail cars by third parties, the lessees have complete discretion to determine when, where, and how the rail cars will be used to transport coal. *Id.*

STANDARD OF REVIEW

A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556-70). While a court must accept as true factual allegations included in a complaint, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.*

The Court, however, is not limited to the four corners of the Complaint when determining jurisdiction, including whether Plaintiffs have standing to sue Group Inc. here. "When subject matter jurisdiction is challenged under [Rule] 12(b)(1), the plaintiff has the burden of proving jurisdiction in order to survive the motion. A plaintiff … must show in his pleading, affirmatively and distinctly, the existence of whatever is essential to federal jurisdiction, and, if he does not do so, the court, on having the defect called to its attention or on discovering the same, must dismiss the case, unless the defect be corrected by amendment." *Tosco Corp. v. Cmtys. for a Better Env't*,

[2] The facts stated herein are central to Group Inc.'s standing argument and are cognizable in the context of a motion under Fed. R. Civ. P. 12(b)(1), as discussed *infra* pp. 3-4.

236 F.3d 495, 499 (9th Cir. 2001) (citations and internal quotations omitted). Further, if, in a Rule 12(b)(1) motion, "a defendant challenges the factual underpinnings of the allegations … courts may look beyond the complaint in resolving the dispute." *Sierra Club v. BNSF Railway Co.*, Case No. 13-967, slip op. at 4 (Coughenour, J., Mar. 12, 2014) (citing *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004).

ARGUMENT

I. Plaintiffs Cannot Establish Standing For The Alleged Unlawful Discharges With Respect To Group Inc.

Contrary to Plaintiffs' allegations, 3rd Am. Compl. ¶ 32, Group Inc. *neither* owns *nor* operates any rail cars. Furthermore, even had Plaintiffs properly named Group Inc.'s subsidiaries—which they did not—those subsidiaries have no operational control over the factors that Plaintiffs allege are responsible for discharges of coal. Thus, Plaintiffs lack standing to sue Group Inc. for the injuries alleged here. Further, Plaintiffs fail to plead sufficient facts to establish that their alleged injuries can be fairly traced to any rail cars allegedly owned by Group Inc. Finally, Plaintiffs fail to explain how a ruling that applies to Group Inc. only would redress Plaintiffs' alleged injuries when, even according to Plaintiffs' own incorrect allegations regarding Group Inc.'s ownership of rail cars, Group Inc. has a relatively minute share of the coal car market.

To establish standing, "a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000). In light of the information presented below—much of which was available to Plaintiffs before they sued Group Inc.—Plaintiffs cannot establish standing to pursue Group Inc.

A. Plaintiffs Have Failed to Allege an Injury that Is Fairly Traceable to Group Inc.

1. Plaintiffs' Alleged Injuries Cannot Be Traced to Group Inc. Because Group Inc. Is Merely a Financial Holding Company that Does Not Own, Lease, or Operate Rail Cars

Put simply, Plaintiffs have sued the wrong defendant. Plaintiffs' alleged injuries cannot be fairly traced to Group Inc. because Group Inc. is a financial holding company that neither owns nor operates rail cars. Paul Decl. ¶¶ 3-4. To satisfy the second prong of the standing inquiry, a plaintiff's alleged injury "has to be 'fairly … trace[able] to the challenged action of the defendant, and not … th[e] result [of] the independent action of some third party not before the court.'" *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976)) (alterations in original); *see also Ecological Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1152 (9th Cir. 2000) ("[T]he causal connection put forward for standing purposes cannot be too speculative, or rely on conjecture about the behavior of other parties ….").

Applying this standard, the Ninth Circuit has affirmed dismissal due to lack of standing when "it appears Plaintiffs' injury is 'the result of the independent action of some third party not before the court.'" *DSE Grp., LLC v. Richardson*, 381 F. App'x 749, 751 (9th Cir. 2010) (quoting *Bennett v. Spear*, 520 U.S. 154, 169 (1997)). In *DSE Group*, plaintiffs alleged that the Arizona Department of Real Estate violated their constitutional rights by prohibiting them from developing their properties. *Id.* The court found that Maricopa County, not the Arizona Department of Real Estate, was responsible for any alleged injury because the county refused to issue building permits to the plaintiffs. *Id.* Thus, the plaintiffs could not establish that their injury was fairly traceable to the Arizona Department of Real Estate because they had sued the wrong defendant.

Likewise, here, Plaintiffs cannot establish standing because they have named the wrong defendant. Group Inc. is a registered financial holding company, which is a form of bank holding company, whose activities are limited by statute and regulation to banking activities and activities that are financial in nature, or incidental or complementary to a financial activity. *See* Paul Decl. ¶ 3; *see also* 12 U.S.C. § 1-5720; 12 C.F.R. § 225.81-145. Group Inc. does not own or lease rail cars. Paul Decl. ¶ 3. All business involving rail cars is conducted by separate and legally distinct

subsidiary companies. *Id.* ¶ 4. Those subsidiaries are the entities that own and lease rail cars, Kusta Decl. ¶ 4, and their actions cannot be fairly traced to Group Inc. Thus, even if Plaintiffs' Clean Water Act theory of liability in this case were correct—which it is not—Plaintiffs nonetheless lack standing to sue Group Inc. because Group Inc. has no ownership of or operational control over the rail cars that have allegedly injured Plaintiffs. In fact, Group Inc. does not execute leases for rail cars and is not named on such leases as the lessor, owner, or operator of rail cars. *Id.* ¶ 3. Plaintiffs had information in their possession to inform them of the Group Inc. subsidiaries that actually own or lease rail cars, yet they inexplicably elected to sue Group Inc.

Further, neither Plaintiffs' February 20, 2105 Notice of Intent to Sue under § 505 of the Federal Water Pollution Control Act ("Notice Letter"), *see* 3rd Am. Compl. Exh. D, nor the Complaint includes any allegations suggesting that Group Inc. should be directly liable as an operator under *United States v. Bestfoods*, 524 U.S. 51 (1998) or derivatively liable under a veil piercing theory. Plaintiffs have already engaged in discovery for the express purpose of identifying additional parties to add to the case. Unopposed Motion to Extend Time to Amend Pleadings/Add Parties, *Sierra Club*, W.D. Wash., Case No. 13-967, Dkt. # 103. Plaintiffs are, therefore, well aware that Group Inc. neither owns nor operates rail cars and does not lease rail cars to BNSF or any other entities.

2. Plaintiffs Could Not Cure the Standing Defects by Naming Group Inc.'s Subsidiaries Because They Have No Operational Control of the Rail Cars

Furthermore, Plaintiffs could not cure their standing defect even if they sought a further opportunity to amend the Complaint to add or substitute as defendants the separate and legally distinct Group Inc. subsidiaries that own and lease rail cars. Like Group Inc., those subsidiaries lack any operational control over the cars. At the outset, and to be clear, Plaintiffs not only have failed to name any Group Inc. subsidiaries as defendants in this litigation in their Complaint, but they further have not provided CWA citizen suit notice to any Group Inc. subsidiaries and could not proceed without doing so.

Even if Plaintiffs were to ask this Court to further delay this litigation and add Group Inc. subsidiaries, Plaintiffs still could not establish standing. When evaluating whether an injury is

fairly traceable to a defendant, courts consider whether the defendant produces "a determinative or coercive effect upon the action of someone else," *Bennett*, 520 U.S. at 168, and conclude that plaintiffs lack standing when the defendant "has no control over [the third party] or its operations." *Sancho v. U.S. Dep't of Energy*, 392 F. App'x 610, 611 (9th Cir. 2010). Here, any alleged injury related to the transport of coal in rail cars owned by Group Inc. subsidiaries would be too attenuated to establish standing, as it could not be fairly traced back to any Group Inc. subsidiaries. "In cases where a chain of causation 'involves numerous third parties' whose 'independent decisions' collectively have a 'significant effect' on plaintiffs' injuries, the Supreme Court and [the Ninth Circuit] have found the causal chain too weak to support standing at the pleading stage." *Maya v. Centex*, 658 F.3d 1060, 1070 (9th Cir. 2011) (citing *Allen v. Wright*, 468 U.S. 737, 759 (1984) and *San Diego Cnty. Gun Rights v. Reno*, 98 F.3d 1121, 126 (9th Cir. 1996)).

Specifically, the injuries Plaintiffs allege from the discharge of coal into certain water bodies in Washington cannot be fairly traced to any Group Inc. subsidiary because once the lessee takes possession of the rail cars, Group Inc. subsidiaries lack any determinative or coercive control over when, where, or how the rail cars are used to transport coal. First, leases executed by Group Inc. subsidiaries do not limit where the lessees can use the rail cars within the United States. Kusta Decl. ¶ 5. Thus, lessees have full autonomy to determine whether the rail cars will be used to transport, load, or unload coal in Washington or elsewhere and, as a result, whether those rail cars may be transported in the vicinity of the water bodies identified in the Complaint. 3rd Am. Compl. ¶¶ 52, 59. Second, the leases do not limit the track conditions or terrain on which the rail cars can be operated. Kusta Decl. ¶ 5; *see also* 3rd Am. Compl. ¶ 53. Third, the leases do not limit train operating conditions, such as speed. Kusta Decl. ¶ 5; *see also* 3rd Am. Compl. ¶ 53. Fourth, the leases do not contain conditions that dictate how coal cars will be loaded or whether topping agents such as surfactants will be used. Kusta Decl. ¶ 6; *see also* 3rd Am. Compl. ¶ 54.

In fact, Group Inc.'s subsidiaries are prohibited by law from exercising such operational control over the equipment they lease. Specifically, financial holding companies and their subsidiaries may not lease personal property unless "[t]he lease is on a nonoperating basis." 12 C.F.R. § 225.28(b)(3). The regulations go on to clarify that "[t]he requirement that a lease be on

a nonoperating basis means that the bank holding company may not, directly or indirectly, engage in operating, servicing, maintaining, or repairing leased property during the lease term." *Id.* § 225.28(b)(3) n.6.[3] However, a "bank holding company may arrange for a third party to provide these services …." *Id.* § 225.28(b)(3) n.6. Thus, to comply with these regulations, Group Inc.'s subsidiaries relinquish operational control over the rail cars once the lessee takes possession of them.

In short, neither Group Inc's subsidiaries' ownership of coal cars nor the leases they execute could establish a causal link to the alleged discharge of coal into jurisdictional waters in Washington State, even were the subsidiaries named here. Because the alleged discharges of coal into Washington waterways occur solely as the result of independent actions by entities other than Group Inc. or its subsidiaries, these alleged discharges cannot be reasonably traced to Group Inc.'s subsidiaries.

3. Plaintiffs Fail to Plead Any Injury that Can Be Traced to Any Rail Cars Owned by Group Inc.

Plaintiffs' claims against Group Inc. also fail because the Complaint lacks any allegations sufficient to trace the alleged coal discharges to rail cars allegedly owned by Group Inc. Even at the pleading stage, "the plaintiffs [must] plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (alterations added). "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.* (quoting *Twombly*, 550 U.S. at 557).

Here, Plaintiffs fail to allege any facts that would permit Group Inc. or the Court to trace an alleged injury suffered by Plaintiffs to coal discharges from a rail car owned by Group Inc. Even if Group Inc. did own or operate rail cars, which it does not, Plaintiffs fail to satisfy this prong of the standing analysis. In their Complaint, Plaintiffs provide only generalized allegations regarding the injuries their members have suffered, 3rd Am. Compl. ¶¶ 13, 14, 16, 17, 19, 20, 22, 23, 25, 28, 29,

[3] Financial holding companies are a type of Bank Holding Company. Group Inc. is both a bank holding company and, more specifically, a financial holding company. *See* Paul Decl. ¶ 3.

32, 33, and how those alleged injuries are related to rail cars generally, *id.* ¶¶ 48-49, 51-54. Importantly, Plaintiffs fail, however, to allege that those injuries can be traced to cars allegedly *owned by Group Inc. or its subsidiaries* as opposed to cars owned by some other entity.

Indeed, the Complaint includes only *a single allegation* of a specific discharge event involving a BNSF coal train. *Id.* ¶ 50. This sole allegation does not mention Group Inc. or any Group Inc. subsidiaries who are not parties here. To the contrary, Plaintiffs allege, even under their view, that only a small fraction of the coal cars operating in Washington are owned by Group Inc., *id.* ¶ 36, making it even more unlikely that the single reference to a discharge has any nexus to Group Inc.

Given the complete lack of allegations that coal has been discharged from rail cars owned by Group Inc. or even its subsidiaries, the broad allegations in the Complaint do not rise above the threshold of mere consistency with Plaintiffs' theory of liability and thus cannot support a plausible claim that Plaintiffs' alleged injuries can be reasonably traced to rail cars allegedly owned by Group Inc. Without an allegation that coal discharges from a rail car owned by Group Inc. have harmed Plaintiffs' members, the mere generalized observation that such cars are operated in the state of Washington cannot establish standing.

4. Plaintiffs' Broad and Sweeping Allegations Are Insufficient to Establish that an Injury to Their Members Can Be Fairly Traced to a Discharge Attributable to Group Inc.

Plaintiffs' Complaint alleges undefined and expansive violations of the CWA, asserting that "each such coal discharge from each rail car and train into each separate waterway on each separate day constitutes a separate violation of the CWA." 3rd Am. Compl. ¶ 68. These broad allegations have important repercussions for Plaintiffs' ability to establish standing because "[a] plaintiff must demonstrate standing 'for each claim he seeks to press' and for 'each form of relief sought.'" *Oregon v. Legal Servs. Corp.*, 552 F.3d 965, 959 (9th Cir. 2009) (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006)). Thus, to establish standing, Plaintiffs must separately demonstrate that one of their members is harmed by each alleged discharge from each rail car and

train into each separate waterway. Even at this early stage, Plaintiffs' broad and vague allegations cannot meet this standard.

Despite listing 75 distinct water bodies that are allegedly "impacted by Defendants' coal pollutant discharges," 3rd Am. Compl. ¶ 57, Plaintiffs list only three of those water bodies—Puget Sound, the Columbia River, and the Spokane River—when describing the interests of their members, *id.* ¶¶ 13-33. Rather than alleging an injury-in-fact for each railroad crossing for each of the 75 affected water bodies, Plaintiffs rely on sweeping allegations that their members "use and enjoy the waters … in the immediate vicinity of, and downstream from, Defendants' discharges into waters of the United States." *E.g.*, *id.* ¶ 68. In light of the fact that these 75 water bodies, many of which have multiple railroad crossings, effectively cover the entire state of Washington, Plaintiffs allegations can be boiled down to the broad assertion that their members recreate in and near water within the state.

The Supreme Court has held plaintiffs cannot establish standing through "averments which state only that one of respondent's members uses unspecified portions of an immense tract of territory, on some portions of which, the [challenged action] has occurred or probably will occur …." *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 889 (1990). Even at the pleading stage, Plaintiffs' allegation that their members use waters wherever the alleged discharges occur is nothing more than a conclusory recital of the legal standard for standing, which is insufficient to withstand a motion to dismiss. *See Iqbal*, 556 U.S. at 678 ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."). Thus, Plaintiffs' broad allegations of injury to their members are insufficient to establish standing for each of the narrow and specific CWA violations that Plaintiffs have alleged.

B. Any Alleged Injury to Plaintiffs' Members Cannot Be Redressed by a Favorable Decision of this Court Against Group Inc.

A decision against Group Inc. would not redress Plaintiffs' alleged injuries because Group Inc. owns no rail cars and even its subsidiaries, who are not parties here, have no operational control over the transport of coal in Washington. Thus, an injunction directed to Group Inc., or even its subsidiaries, that prohibits the use of certain types of coal cars—such as open-topped

cars—would not deter coal transporters from continuing their current operations using the same type of coal cars owned by other entities. "To establish redressability, [a plaintiff] must show that it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Bernhardt v. Cnty. of Los Angeles*, 279 F.3d 862, 869 (9th Cir. 2002). A plaintiff lacks standing when the alleged injury can only be redressed through "the unfettered choices made by third parties not before the court." *Lujan*, 504 U.S. at 560.

Here, an array of third parties are involved in owning, leasing, loading, transporting, and unloading coal rail cars. Group Inc. has no role or say on how the loading and unloading processes are conducted. Kusta Decl. ¶ 6. All rail cars used to transport coal from the Powder River Basin are open-topped cars. *Ark. Elec. Coop. – Petition for Declaratory Order*, Decision, Surface Transp. Bd. Docket No. FD 35305 at 8 (Mar. 2, 2011). In response to the uniform use of open-topped cars, loading and unloading facilities have developed highly efficient processes that take advantage of the cars' open tops during loading and unloading. Here, Plaintiffs concede that even the rail cars owned by the Group Inc.'s subsidiaries are only a small portion of the rail cars that transport coal through the State. Thus, even if these subsidiaries were parties here, modifying the design of the rail cars owned by Group Inc.'s subsidiaries as Plaintiffs request would render them incompatible with the current loading and, in many cases, unloading procedures that depend on uniform car design. The entities that actually use the rail cars to transport coal would be free to replace the small fraction of coal cars owned by Group Inc.'s subsidiaries with open-topped cars owned by other entities that are compatible with existing loading and unloading processes, resulting in, at most, a reshuffling of rail cars that provides no relief to Plaintiffs' alleged injuries.

This situation is akin to the facts before the Supreme Court in *Lujan*, where the Court found the plaintiffs lacked standing. There, the Court noted that the federal government provided less than ten percent of the funding for the project that allegedly harmed the plaintiffs and found that plaintiffs "have produced nothing to indicate that the projects they have named will either be suspended, or do less harm to the listed species, if that fraction is eliminated. *Lujan*, 504 U.S. at 571; *see also Pritikin v. Dep't of Energy*, 254 F.3d 791, 800 (9th Cir. 2001) (finding no redressability when the remedy sought would have to be implemented by a third party not named in

the lawsuit). Thus, an injunction issued against Group Inc. or its subsidiaries would simply cause transporters of coal to use other companies' rail cars for coal transported by rail through Washington.

Further, Plaintiffs cannot cure this infirmity by asserting that Group Inc. is a "necessary" party pursuant to Fed. R. Civ. P. 19, as an alleged coal car owner that should be required to alter its cars. Were that theory correct, it would be equally necessary for Plaintiffs to join the owners of the other 90-94 % of coal cars that they allege are operated in Washington.

II. Plaintiffs Failed To Provide Group Inc. With Adequate Notice Under The Clean Water Act's Citizen Suit Provision

Before a plaintiff can file a citizen suit under the CWA, it must first provide the alleged violator with 60 days notice. 33 U.S.C. § 1365(b). "A failure to provide adequate notice deprives the Court of jurisdiction to consider a citizen plaintiff's claim." *Sierra Club*, slip op. at 4 (citing *Ctr. for Biological Diversity v. Marina Point Dev. Co.*, 566 F.3d 794, 800 (9th Cir. 2009)). To comply with EPA's regulations, a plaintiff's notice letter must include:

> sufficient information to permit the recipient to identify the specific standard, limitation, or order alleged to have been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, *the location of the alleged violation, the date or dates of such violation*, and the full name, address, and telephone number of the person giving notice.

40 C.F.R. § 135.3(a) (emphasis added).

As this Court has explained, "[t]he requisite determination is whether the descriptions provided enable the putative *defendant* to determine the dates and locations of the noticed violations." *Sierra Club*, slip op. at 8; *see also Marina Point*, 566 F.3d at 801 ("[E]ven at our most lenient we have never abandoned the requirement that there be a true notice that tells a target precisely what it allegedly did wrong, and when. The target is not required to play a guessing game in that respect."). Even were Group Inc. the owner or operator of any rail cars used to transport coal through Washington—which, as discussed above, it is not—Plaintiffs' notice letter falls woefully short of this standard, given the limited information possessed by Group Inc.

A. Plaintiffs' Notice Letter Lacks Sufficient Detail to Allow Group Inc. to Identify the Alleged Clean Water Act Violations

The sheer scope of alleged CWA violations in this lawsuit is without precedent. Unlike a typical CWA case that involves a single facility and, at most, a few discharge locations, this case, as Plaintiffs have framed it, would encompass every coal car in Washington that travels "adjacent to, over, and in proximity to waters of the United States." 3rd Am. Compl. ¶ 48. Notice to the alleged violators must be on par with these expansive allegations. However, Plaintiffs' vague and generalized notice letter fails to meet even the minimal standard the Ninth Circuit has established in more narrowly defined cases.

Plaintiffs' vague description of the times and places of the alleged discharges, when coupled with the assertion that each discharge from each coal car into each waterway is a separate CWA violation, is inconsistent with the explicit text of 40 C.F.R. § 135.3(a). Courts in the Ninth Circuit have held that "a reasonably specific indication of the area and time frame of the violations" must be included in a notice letter. *San Francisco Baykeeper v. Town of Hillsborough*, No. 08-3760, 2008 WL 5130418 at *2 (N.D. Cal. Dec. 5, 2008). A plaintiff may be excused from including the exact dates and location of each alleged violation only when "the additional violations were 'from the same source, were of the same nature, and were easily identifiable.'" *San Francisco Baykeeper v. Tosco Corp.*, 309 F.3d 1153, 1159 (9th Cir. 2002) (quoting *Cmty. Ass'n v. Bosma Dairy*, 305 F.3d 943, 953 (9th Cir. 2002)). In *Tosco*, plaintiffs' notice was deemed sufficient when it alleged that Tosco unlawfully discharged petroleum coke during ship unloading, included 14 dates when Coast Guard records showed that ships were docked at the facility, and alleged that a violation occurred each time that unloading took place. *Id.* at 1158-59.

Given the sheer breadth of alleged violations included in Plaintiffs' Complaint, the notice provided to Group Inc. was vastly insufficient. With respect to the location of the alleged discharges, the Notice Letter asserts that violations occur at each location where coal cars travel "adjacent to, over, and in proximity to" a non-exclusive list of more than 70 distinct water bodies, some of which are hundreds of miles long. Notice Letter at 2, 5. The Notice Letter alleges that the violations have "continued from at least February 2010 (and for many years prior to 2010)" to the

present. *Id.* at 5. Finally, Plaintiffs include an appendix to the Notice Letter that lists 58 "Dates and Places of Discharges," *id.* at 8-10, but that appendix provides no details regarding which, if any, of the cars on those trains were allegedly owned by Group Inc. or its subsidiaries. This limited information fails to provide Group Inc. with sufficient notice of the alleged violations.

First, the Notice Letter fails to identify each source of the alleged violations. While Plaintiffs allege that each coal car is a separate point source, Notice Letter at 2, they fail to identify *any* Group Inc. coal cars that are alleged to have discharged coal. Plaintiffs' broad allegation is akin to an allegation that because one industrial facility discharged pollutants at one location on one day, all the rest must be discharging pollutants as well at their respective locations. But under Ninth Circuit precedent, providing notice of representative dates and locations is deemed sufficient only where all violations allegedly flow from the same source. *Tosco*, 309 F.3d at 1159. While requiring defendants—rather than plaintiffs—to identify additional dates of violations may be permissible when the source and location of the alleged discharges is fixed, a Notice Letter cannot be deemed sufficient when defendants are forced to speculate about the dates, locations, and sources of the additional alleged violations, particularly given the vast geographical and chronological focus here.

The allegations here are particularly problematic for Group Inc., as it owns no rail cars and even its subsidiaries own, at most, a small fraction of the coal cars in operation in Washington—a fact even Plaintiffs acknowledge (although they wrongly attribute the ownership to Group Inc. rather than its subsidiaries). Notice Letter at 2. Plaintiffs make no effort to determine when or where rail cars owned by Group Inc. subsidiaries have allegedly discharged coal and do not indicate whether any such rail cars were present on the trains identified in the representative examples in Appendix A.

Second, there is no indication that all of the alleged discharges from rail cars owned by Group Inc. subsidiaries are of the same nature as those identified as representative examples in Appendix A. In the Notice Letter, Plaintiffs provide a laundry list of factors that they believe contribute to coal discharges into waters of the United States, including use of open-top cars, vibration of rail cars, rugged terrain, loading coal above the top of rail cars, wind, descending

portions of track, slack action shock waves due to deceleration and acceleration, holes in rail cars, precipitation, and ineffective use of surfactants. Notice Letter at 3-4. But Plaintiffs make no attempt to determine the relative contribution of each of these factors, whether they all contribute to each of the alleged discharges, and whether they can be attributed to passive lessors like Group Inc.'s subsidiaries. Because there is no indication that the contributing factors causing the alleged violations in the representative examples are the same as those that cause the alleged violations for all of the unnamed dates, locations, and rail cars that Plaintiffs seek to include in their Complaint, Plaintiffs cannot establish that the additional violations are "of the same nature" as those in the notice letter. *Tosco*, 309 F.3d at 1159. As a result, the Notice Letter is inadequate.

Third, the additional alleged violations are not easily identifiable based on the facts alleged in the Notice Letter. As described more fully in Section II.B, *infra*, Group Inc., which is not an owner, and its subsidiaries which are themselves merely passive owners and lessors, lack access to all of the information that could allow them to identify each of the additional, unnamed violations alleged by Plaintiffs.

B. Group Inc. Lacks Access to All of the Information Plaintiffs Claim Is Necessary to Provide Details of Each Alleged Violation

Plaintiffs are required to include in a notice letter "sufficient information to permit *the recipient* to identify the alleged violations and bring itself into compliance." *Bosma Dairy*, 305 F.3d at 951 (internal quotation marks omitted; emphasis added). Plaintiffs do not do that here. Instead, Plaintiffs' Notice Letter to Group Inc. copies, nearly verbatim, from the notice letter Plaintiffs provided to BNSF on April 2, 2013. 3rd Am. Compl. Exh. A. And rather than providing additional details based on discovery obtained from BNSF, Plaintiffs simply assert that:

> [t]he information concerning the specific dates, amounts, and exact or approximate locations, along with, for example, the rail conditions, rail car conditions, design and performance of rail cars, weather conditions, passing trains, loading practices employed, and incline or decline of railways in specific locations of the discharges during each of the years 2008 through the present are, or should be, in the possession of [Group Inc.] or BNSF.[4]

[4] Whether such information is or should be in BNSF's possession is wholly irrelevant to the sufficiency of Plaintiffs' notice to Group Inc.

Notice Letter at 2-3. Providing the same notice as was provided to BNSF is wholly insufficient. Group Inc. and BNSF are fundamentally two different types of companies. Group Inc. is merely a financial holding company. As described below, at most Group Inc.—through its subsidiaries—has access to or possesses only an incomplete view of the information that Plaintiffs claim is necessary to identify each alleged violation. Further, because Plaintiffs have now obtained discovery directly from BNSF, they are in a far better position than Group Inc. to identify each alleged violation in the Notice Letter and Complaint, as they are required to do.

At an earlier stage in this litigation, the Court held that Plaintiffs provided sufficient notice to BNSF. But that decision was based on facts unique to BNSF and the status of the litigation at that time. While acknowledging that Plaintiffs' explanation of the alleged violations was broad, this Court found that Plaintiffs had provided BNSF with a method to determine the date and location of each alleged violation. *Sierra Club*, slip op. at 7. The Court explained that "BNSF certainly has schedules of its own trains; by reviewing those schedules, [BNSF] could easily determine when trains in Washington were scheduled to pass over or next to waterways." *Id.* In doing so, the Court cited with approval the finding in *Tosco* that the "[the defendant] is obviously in a *better position* than [the plaintiff] to identify the exact dates, or additional dates" when violations occurred. *Tosco*, 309 F.3d at 1158 (emphasis added). The Court went on to explain that "[t]o require more than Plaintiffs are able to provide *given their available data* would be to require the 'impossible' upon citizens seeking to enforce the law." *Sierra Club*, slip op. at 8 (emphasis added).

Group Inc.'s situation is starkly different. Unlike BNSF, which owns the railroad tracks in Washington and serves as a common carrier, Group Inc. is merely a financial holding company. Even its subsidiaries, who are not parties here, have no role in deciding when, where, or how their cars are used to transport coal in Washington or anywhere else in the United States. Kusta Decl. ¶ 5. As a result, Group Inc. and its subsidiaries lack much of the information that Plaintiffs allege is in Group Inc's possession and that the Court relied upon in accepting the sufficiency of Plaintiffs' notice to BNSF.

First, for the approximately 30% of the coal cars leased by Group Inc. subsidiaries that bear the rail marks of the lessees rather than the Group Inc. subsidiary, neither Group Inc. nor its

subsidiaries possess relevant information such as when or where the rail cars are loaded and used to transport coal because such information is generally available only to the railroad company and the owner of the rail marks. *Id.* ¶¶ 10-11. With respect to the other approximately 70% of the coal cars leased by Group Inc. subsidiaries, the Group Inc. subsidiary receives raw data that provides limited information about the movement of coal cars. *Id.* ¶¶ 8-9. Thus, Group Inc. and its subsidiaries lack sufficient information to identify the alleged violations.

Second, Plaintiffs can no longer shift the burden of identifying each alleged violation to Group Inc. by claiming a lack of available data themselves. *See Sierra Club*, slip op. at 8. Plaintiffs' discovery requests to BNSF included "all schedules of BNSF Railway shipments of coal or petcoke in or through the State of Washington from April 16, 2008 to present" and "all receipts, bills of lading, and manifests of all BNSF trains shipping coal or petcoke in or through the state of Washington, from April 16, 2008 to present." *Sierra Club*, W.D. Wash., Case No. 13-967, Dkt. # 102 at 2. Plaintiffs apparently used that information—the majority of which is not in Group Inc.'s possession—to allege that rail cars purportedly owned by Group Inc. comprise between six and ten percent of cars carrying coal or petcoke in the state of Washington, Notice Letter at 2, but elected not to use it to describe Group Inc.'s alleged CWA violations with the detail necessary to allow Group Inc. to identify those alleged violations. The generalized and representative examples of alleged violations provided by Plaintiffs cannot be deemed sufficient when, unlike in *Tosco*, Plaintiffs "[are] obviously in a *better position*" than Group Inc. "to identify the exact dates, or additional dates" of the alleged violations. *Tosco*, 309 F.3d at 1158 (emphasis added).

III. Plaintiffs Fail To State A Claim Upon Which Relief Can Be Granted

A. Plaintiffs' Conclusory Claim that Group Inc. Is an Owner or Operator of Rail Cars Fails to Meet Minimum Pleading Standards and Must Be Dismissed

Plaintiffs' broad and conclusory allegations against Group Inc.—a mere financial holding company whose separate and legally distinct subsidiaries are passive owners of a small fraction of the rail cars used to transport coal through Washington—must be dismissed because they fail to provide the necessary facts to support Plaintiffs' claims. A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).

"[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions." *Twombly*, 550 U.S. at 555.

> To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged ….Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of "entitlement to relief."

Iqbal, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556-70). While a court must accept as true factual allegations included in a complaint, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.*

The facts set forth in the Complaint fall short of what is required to adequately plead a CWA claim against Group Inc. Plaintiffs do not provide even the minimal amount of required specificity regarding who or what is the source of the pollutants that have allegedly been discharged into waterways in Washington State. Instead, Plaintiffs incorrectly allege that Group Inc. owns and operates what Plaintiffs acknowledge is, at most, a small fraction of the coal cars used in Washington, 3rd Am. Compl. ¶ 32, and offer a general theory as to how coal from a rail car could find its way into a water of the United States, *id.* ¶¶ 49-55. These allegations, if proven at trial, at most could establish the hypothetical *possibility* that coal from a Group Inc. subsidiary-owned rail car (not from a Group Inc.-owned rail car) was discharged into a water of the United States in violation of the CWA.

However, to state a claim for relief that is *plausible*, Plaintiffs must at an absolute minimum plead some specific allegation that Group Inc. discharged coal into water of the United States from a coal car that it owns or operates. They have not done so here. The Complaint includes a single allegation of a specific discharge event, stating that "on Sunday, July 21, 2013, at approximately 8:05 a.m., a west-bound BNSF coal train, while crossing the point of confluence of the White Salmon River and Columbia River approximately one mile west of White Salmon, Washington, discharged a significant quantity of coal particles into and along the White Salmon and Columbia Rivers." *Id.* ¶ 50. Plaintiffs then make the conclusory allegation that "[e]ach and every coal train and every rail car carrying coal discharges coal pollutants to waters of the United States when

traveling adjacent to, over, and in proximity to waters of the United States." *Id.* ¶ 48. But there is no allegation that that train contained any rail cars purportedly owned or operated by Group Inc. (or even its subsidiaries who are not parties here). Likewise, Plaintiffs' Notice Letter to Group Inc. lists 58 "Dates and Places of Discharges," but fails to allege that any rail cars purportedly owned or operated by Group Inc. were involved in those alleged discharge events. 3rd Am. Compl. Exh. D. In the absence of a single allegation stating when and where coal from a rail car purportedly owned or operated by Group Inc. was discharged into waters of the United States, Plaintiffs' allegations are "merely consistent with [Group Inc.'s] liability." *See Iqbal*, 556 U.S. at 678. In other words, Plaintiffs only have alleged the hypothetical possibility that the alleged discharge of coal could have come from a rail car purportedly owned by Group Inc. because some of its rail cars leased to third parties are used to transport coal in Washington. To cross the threshold of plausibility, Plaintiffs need, at a minimum, to plead a specific allegation that at least one such discharge did in fact come from a rail car owned by Group Inc.

Instead, Plaintiffs' threadbare and conclusory allegations based on the percentage of coal cars in Washington that Plaintiffs incorrectly allege are owned or operated by Group Inc. are more akin to the theory of "market share" liability in the products liability context. But that theory is not applicable in a CWA citizen suit. Nowhere in the Act did Congress permit an allegation against one market participant based on the theory that there is some statistical possibility that such party may have liability. Plaintiffs must plead specific discharges by Group Inc. to proceed, and they have not done so.[5]

Finally, Plaintiffs' Complaint, as it pertains to Group Inc., is "so vague" that Group Inc. "cannot reasonably prepare a response." Fed. R. Civ. P. 12(e). In addition to the defects discussed above, Plaintiffs simply do not offer Group Inc. sufficient information or details that would put Group Inc. on notice to fairly defend itself in this action. Furthermore, Plaintiffs' pleadings lack the

[5] Even were the judicially created market share theory applicable here, the Complaint as to Group Inc. would have to be dismissed for failure to meet one of the fundamental tenets of that theory: that a substantial percentage of all market participants be joined in the suit. *Sindell v. Abbott Labs.*, 607 P.2d 924, 937 (Cal. 1980). Even accepting Plaintiffs' incorrect allegations regarding Group Inc.'s ownership of rail cars, Group Inc.'s market share of coal rail cars in Washington is a modest six to ten percent. *See* 3rd Am. Compl. ¶ 32; Notice Letter at 2.

information needed for Group Inc. to stop, alter, or even investigate any of its alleged wrongdoing in this case. *See id.* Should the Court deny this Motion to Dismiss at this time, Plaintiffs should be required to provide a more definitive statement pursuant to Fed. R. Civ. P. 12(e).

B. Plaintiffs Fail to State a Claim For Alleged "Discharges" Attributed to Land Adjacent and in Proximity to Waterways

Plaintiffs cannot state a claim based on the alleged discharge of coal that is deposited on land and subsequently conveyed to waters of the United States by natural forces such as precipitation or wind. Plaintiffs allege that rail cars carrying coal through Washington State discharge pollutants "onto land adjacent and in proximity to waterways where those pollutants are added to water by forces such as, for example, gravity, wave wash, fluctuation of water levels, vibration, wind, and precipitation." 3rd Am. Compl. ¶ 49. Section 301 of the CWA prohibits the unauthorized "discharge of pollutants," 33 U.S.C. § 1311(a), which is defined as "any addition of any pollutant to navigable waters from a point source," *id.* § 1362(12). It does not prohibit the discharge of pollutants onto land, even if those pollutants eventually enter a waterbody as nonpoint source pollution.

Areas of "land adjacent to and in proximity to waterways," 3rd Am. Compl. ¶ 49, are not "point sources" and thus any discharges from these areas cannot fall within the scope of Section 301(a)'s prohibition. "[P]oint and nonpoint sources are not distinguished by the kind of pollution they create or by the activity causing the pollution, *but rather by whether the pollution reaches the water through a confined, discrete conveyance*." *Trs. for Alaska v. EPA*, 749 F.2d 549, 558 (9th Cir. 1984) (emphasis added). The critical question, then, is how the pollutant is discharged into waters of the United States, not the conditions at some further point upstream from the discharge. Thus, "[d]iffuse runoff, such as rainwater that is *not* channeled through a point source, is considered nonpoint source pollution and is not subject to federal regulation." *Envtl. Def. Ctr., Inc. v. EPA*, 344 F.3d 832, 841 n.8 (9th Cir. 2003). Plaintiffs fail to state a CWA claim with respect to coal allegedly discharged "onto land adjacent and in proximity to waterways," 3rd Am. Compl. ¶ 49, because Plaintiffs fail to allege that such coal is subsequently "channeled through a point source" into water of the United States.

IV. Plaintiffs' Claims For Violations Prior To May 6, 2010 Are Beyond the Statute of Limitations

Plaintiffs' Complaint should be dismissed to the extent that Plaintiffs seek to hold Group Inc. liable for alleged violations prior to May 6, 2010, five years before the date Group Inc. was sued. *See* 3rd Am. Compl. ¶ 67. Such alleged violations are barred by 28 U.S.C. § 2462, which provides that "an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued …." 28 U.S.C. § 2462. The Ninth Circuit has established that this five year limitation period is applicable to CWA citizen suits such as this one. *Sierra Club v. Chevron U.S.A., Inc.*, 834 F.2d 1517, 1522 (1987).

The claims as to Group Inc. plainly do not relate back to the original complaint filed on June 4, 2013. Amendments that add a new party will relate back only "if, within the period provided by Rule 4(m) … the party to be brought in by amendment (1) received such notice of the action that it will not be prejudiced in defending on the merits; and (2) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity." Fed. R. Civ. P. 15(c)(1)(C). Group Inc. is not related to any party to the original complaint and was not aware of Plaintiffs' intentions to name Group Inc. as a defendant until receipt of the CWA citizen suit notice letter nearly two years later, on February 20, 2015. *See* Paul Decl. ¶ 6. Thus, Rule 15(c) cannot be satisfied. Fed. R. Civ. P. 15(c)(1)(C) and 4(m); *see also Krupski v. Costa Crociere S.p.A.*, 560 U.S. 538, 548 (2010) (holding that "what the prospective defendant knew or should have known during the Rule 4(m) period" is determinative for whether a pleading relates back).

V. Joinder In BNSF's Motion To Dismiss

To preserve its rights, Group Inc. respectfully joins in the arguments in BNSFs' motions to dismiss. *Sierra Club*, W.D. Wash., Case No. 13-967, Dkt. # 38; *Sierra Club v. BNSF Railway Co.*, E.D. Wash., Case No. 13-272, Dkt. # 23.

CONCLUSION

Group Inc. respectfully requests that the Court grant its Motion to Dismiss Plaintiffs' Third Amended Complaint for lack of subject matter jurisdiction, or, in the alternative, for failure to state a claim.

Dated: July 10, 2015

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2015 I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record who receives CM/ECF notification.

Dated: July 10, 2015

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HON. JOHN C. COUGHENOUR

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

SIERRA CLUB, a California nonprofit corporation; PUGET SOUNDKEEPER ALLIANCE, a Washington nonprofit corporation; RE SOURCES FOR SUSTAINABLE COMMUNITIES, a Washington nonprofit corporation; COLUMBIA RIVERKEEPER, a Washington nonprofit corporation; FRIENDS OF THE COLUMBIA GORGE, INC., dba FRIENDS OF THE COLUMBIA GORGE, an Oregon nonprofit corporation; SPOKANE RIVERKEEPER; NATURAL RESOURCES DEFENSE COUNCIL, a New York nonprofit corporation,

Plaintiffs,

v.

BNSF RAILWAY COMPANY, a Delaware corporation,

Defendant.

CIVIL No. 2:13-cv-00967-JCC
(consolidated with No. 2:14-cv-00660)

STIPULATION OF VOLUNTARY DISMISSAL UNDER FED. R. CIV. P. 41(a)(1)(A)(ii)

Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), Plaintiffs Sierra Club, et al. (hereinafter, "Plaintiffs") and Defendants CIT Group, Inc. (hereinafter "CIT Group") and BNSF Railway Co.

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hereby stipulate and notify this Court that Plaintiffs voluntarily dismiss CIT Group from the above-captioned matter, pursuant to the terms below:

1. Based on CIT Group's representation that it does not own or lease rail cars, Plaintiffs agree to voluntarily dismiss their claims against CIT Group in *Sierra Club, et al. v. BNSF Railway Co. and CIT Group, Inc.*, Case No. 13-cv-00967-JCC (W.D. Wash.) with prejudice.

2. The release identified above in ¶ 1 does not apply to any subsidiaries of CIT Group that may own or lease rail cars that transport coal or petroleum coke.

3. CIT Group agrees not to seek recovery of attorneys' fees or costs from Plaintiffs that were incurred in defending Plaintiffs' claims against CIT Group in *Sierra Club, et al. v. BNSF Railway Co. and CIT Group, Inc.*, Case No. 13-cv-00967-JCC (W.D. Wash.).

DATED this 10th day of August, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2015, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record who receive CM/ECF notification at the e-mail addresses below:

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HON. JOHN C. COUGHENOUR

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

SIERRA CLUB, a California nonprofit corporation; PUGET SOUNDKEEPER ALLIANCE, a Washington nonprofit corporation; RE SOURCES FOR SUSTAINABLE COMMUNITIES, a Washington nonprofit corporation; COLUMBIA RIVERKEEPER, a Washington nonprofit corporation; FRIENDS OF THE COLUMBIA GORGE, INC., dba FRIENDS OF THE COLUMBIA GORGE, an Oregon nonprofit corporation; SPOKANE RIVERKEEPER; NATURAL RESOURCES DEFENSE COUNCIL, a New York nonprofit corporation,

Plaintiffs,

v.

BNSF RAILWAY COMPANY, a Delaware corporation,

Defendant.

CIVIL No. 2:13-cv-00967-JCC
(consolidated with No. 2:14-cv-00660)

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT BNSF'S MOTION FOR LEAVE TO FILE OVERLENGTH MOTION IN LIMINE (ECF No. 181)

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PLAINTIFFS' RESPONSE TO BNSF'S MOTION FOR LEAVE TO FILE OVER-LENGTH MOTION IN LIMINE

Plaintiffs respectfully submit their Response in Opposition to Defendant BNSF's Motion for Leave to File Over-length Motion in Limine (ECF No. 181). As with its earlier motion seeking leave to file an over-length brief (ECF No. 170), Defendant BNSF did not confer with Plaintiffs about its latest request to enlarge the page limits for pleadings prescribed by the Local Rules. If it had so conferred, BNSF may have discovered that its Motion misrepresents what relief Plaintiffs request. Plaintiffs have stated that the statutory maximum potential civil penalties could reach in the neighborhood of four trillion dollars. Under applicable case law, the district court should begin its penalty calculation by determining the maximum civil penalty and then apply the penalty factors identified in 33 U.S.C. § 1319(d). *Atl. States Legal Found. v. Tyson Foods*, 897 F.2d 1128, 1142 (11th Cir. 1990) ("district court should first determine the maximum fine…."); *Community Ass'n for Restoration of the Env't, Inc. v. Henry Bosma Dairy*, No. CY-98-3011, 2001 U.S. Dist. LEXIS 3579, *24-25 (E.D. Wash. Feb. 27, 2001) (adopting "top down" penalty approach), *aff'd*, 305 F.3d 943 (9th Cir. 2002).

Additionally, BNSF continues its pattern of seeking to make work for the Plaintiffs by filing a motion, the merits of which have no real basis. While Plaintiffs oppose an overlength brief, of course, Plaintiffs defer to the Court's discretion.

Respectfully submitted this 5th day of August, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2016, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record who receive CM/ECF notification at the e-mail addresses below:

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SIERRA CLUB, *et al.*,

Plaintiffs,

v.

BNSF RAILWAY COMPANY,

Defendant.

CASE NO. 2:13-cv-00967-JCC
(consolidated with Case No. 2:14-cv-00660)

DEFENDANT BNSF RAILWAY COMPANY'S MOTION FOR SUMMARY JUDGMENT

NOTE ON MOTIONS CALENDAR: September 23, 2016

ORAL ARGUMENT REQUESTED

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INTRODUCTION

Plaintiffs assert a legal theory that would expand the reach of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, ("CWA") in an unprecedented manner. They broadly allege that "[e]ach and every [BNSF] coal train and each and every rail car carrying coal discharges coal pollutants to waters of the United States" throughout Washington State. *See* 3d Am. Compl. (ECF No. 13) ("Complaint"), at ¶ 48. Based on this unsubstantiated theory, Plaintiffs ask the Court to impose the largest civil penalty in the history of environmental law.

Discovery is now closed, and Plaintiffs simply have not proved – and cannot prove – that coal emissions from BNSF trains are the ubiquitous and continuous phenomenon that Plaintiffs allege. Without such proof, Plaintiffs cannot demonstrate the injury that would allow them to establish standing to prosecute their claims. They cannot satisfy the Clean Water Act's requirement that unpermitted discharges must be direct – not mediated by air, wind, or stormwater – and must be proved with specificity, not in the aggregate of months or years. And they cannot justify a penalty of trillions of dollars, and a remedy that would have the effect of regulating BNSF's interstate rail operations in violation of the Interstate Commerce Commission Termination Act, 49 U.S.C. § 10101 *et seq.* ("ICCTA"). BNSF is entitled to summary judgment.

STANDARD OF REVIEW

BNSF is entitled to summary judgment if it "shows that there is no genuine dispute as to any material fact and [it] is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). When a motion for summary judgment is properly made and supported, the "non-moving party must set forth . . . 'specific facts showing that there is a genuine issue for trial.'" *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007) (quotations omitted).

ARGUMENT

I. PLAINTIFFS ARE UNABLE TO ESTABLISH ARTICLE III STANDING.

Plaintiffs cannot establish Article III standing for the vast majority of the discharges that they allege. Article III's standing requirement ensures that Plaintiffs cannot "convert the judicial process into no more than a vehicle for the vindication of the value interests of concerned bystanders." *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State*, 454 U.S. 464, 473 (1982) (internal quotations omitted). Each plaintiff organization must therefore identify at least one individual member that satisfies three requirements.[1] *See Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009). First, the member must have suffered an "injury in fact." Second, injury must have been caused by the conduct complained of; the injury must be "fairly traceable to the challenged action of the defendant." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (internal citations omitted). Third, the injury must be likely – as opposed to merely speculatively – to be "redressed by a favorable decision." *Id.*; *Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 629 F.3d 387, 397 (4th Cir. 2011) ("*Gaston Copper II*").

Plaintiffs must establish standing for each claim they assert "with the manner and degree of evidence required" proportionate to the phase of litigation. *Ctr. for Biological Diversity v. E.P.A.*, 90 F. Supp. 3d 1177, 1186 (W.D. Wash. 2015) (quoting *Lujan*, 504 U.S. at 561) (internal

[1] Plaintiffs concede that they bring this case on behalf of their members. Feb. 26, 2016, Pl. RE Sources for Sustainable Communities' ("RE Sources") Suppl. Objections & Resps. to Def. BNSF's First Set of Reqs. For Admis. ("RFA") & Resps. To BNSF's Second Set of Reqs. For Admis., Ex. 1 to Declaration of Fred R. Wagner ("Wagner Decl.") at RFA 1; Mar. 23, 2016 Pl. Puget Soundkeeper Alliance's Combined Objections & Resps. to Def. BNSF's First & Second Set of RFAs, Ex. 2 to Wagner Decl. at RFA 1; Mar. 28, 2016 Pl. Spokane Riverkeeper's Combined Objections & Resps. to Def. BNSF's First Set of RFAs ("Spokane RFA Resps."), Ex. 3 to Wagner Decl., at RFA 4; Apr. 4, 2016 Pl. Columbia Riverkeeper's Answers & Objections to Def. BNSF's First Set of RFAs, Ex. 4 to Wagner Decl., at RFA 1; Apr. 21, 2016 Pl. Friends of the Columbia Gorge's ("Friends") Combined Suppl. Objections & Resps. to Def. BNSF's First & Second Set of RFAs, Ex. 5 to Wagner Decl., at RFA 1; Apr. 22, 2016 Pl. Sierra Club's Combined Objections & Resps. to Def. BNSF's First Set of RFAs ("Sierra RFA Resps."), Ex. 6 to Wagner Decl., at RFA 1; Apr. 22, 2016 Pl. Natural Resources Defense Council ("NRDC") Objections & Resps. to Def. BNSF's First Set of RFAs ("NRDC RFA Resps."), Ex. 7 to Wagner Decl.at RFA 1.

quotations omitted). "At the summary judgment stage, a plaintiff cannot rest on mere allegations," but must set forth specific facts, by affidavit or other evidence. *Id.* (citing *Washington Envt'l Council v. Bellon*, 732 F.3d 1131, 1139 (9th Cir. 2013)). Plaintiffs must establish standing for alleged discharges to *all* waterbodies in Washington, but have adduced facts based upon members' use of only a limited number of named waterbodies. As a matter of law, Plaintiffs cannot establish standing for waterbodies their members do not use.[2] *Lujan*, 504 U.S. at 565-66 ("a plaintiff claiming injury from environmental damage must use the area affected by the challenged activity") (internal quotation marks and citations omitted).

An "injury in fact" must be "concrete and particularized." *Friends of the Earth, Inc. v. Laidlaw Envt'l Servs., Inc.*, 528 U.S. 167, 180 (2000).[3] Consequently, Plaintiffs cannot rely on broad allegations of use of a waterbody, particularly large water bodies. *See Sierra Club, Lone Star Chapter v. Cedar Point Oil*, 73 F.3d 546, n. 24 (5th Cir. 1996). In *Laidlaw*, organizational members alleged long-standing recreational interests in a particular waterbody and the cessation of use due to the defendant's discharge at one particular location. *Id.* In order to prove a similarly concrete and particularized injury with a causative nexus to any alleged BNSF activities, Plaintiffs must demonstrate use and enjoyment of each waterbody at issue. *See, e.g., S. F. Baykeeper v. W. Bay Sanitary Dist.*, 791 F. Supp. 2d 719, 746 (N.D. Cal. 2011) (standing

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[2] Plaintiffs have not presented evidence of specific use by any of their members of the following waterbodies: Ashes Lake, Bass Lake, Beckie River, Beckler River, Chamberlain Lake, Cow Creek, Crah Creek, Dead Canyon, East Low Canal, Esquatzel Coulee, Glade Creek, Grant Lake, Hewett Lake, Locke Lake, Look Lake, Newaukum River, Pilchuk Creek, Pilchuk River, Salmon Creek, Skookumchuk River, Status Creek, Stuck River, Toppenish Creek, and West Canal. If the Court agrees that Plaintiffs cannot base their claims on waterbodies that Plaintiffs do not use, then claims based on these 24 waterbodies should be dismissed.

[3] *Compare Summers*, 555 U.S. at 495-97 (no standing based on purported future intention to visit unnamed portion of 190-million acres of national forests) *with Ecological Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1150 (9th Cir. 2000) (standing where members allege specific recreational interests in the "specific place at issue in this case" and the cessation of use due to concerns about pollution).

where "specific evidence regarding… use of the areas… affected by . . . alleged discharges"); *Ohio Valley Envt'l Coal., Inc. ("OVEC") v. Fola Coal Co., LLC*, 2013 WL 6709957, *6-*9 (S.D.W.Va. Dec. 19, 2013) (analyzing standing individually for each waterbody and discharge).

Plaintiffs also cannot use a limited number of waterbodies in a representative capacity to establish standing for all waterbodies in the state. *See, e.g., Alaska Ctr. for the Env't v. Browner*, 20 F.3d 981, 984-86 (9th Cir. 1994). Cases where representative use can establish standing involve a government agency's single alleged violation, failure to act, and corresponding relief, an order to take appropriate action that applies to all waters statewide. *Id.* Here, by contrast, Plaintiffs have alleged that each separate discharge into each waterbody constitutes a "separate violation" of the CWA, which would result in separate penalties for each violation. *See* Complaint, at Relief Requested C, H. Thus, Plaintiffs must satisfy the elements of standing with particularity for each waterbody at which their members claim an injury.

Plaintiffs cannot satisfy Article III's standing requirements for substantial portions of their sweeping CWA claim because (1) Plaintiffs have limited by stipulation the waterbodies for which they will offer facts for *any* claimed injury; (2) three Plaintiffs are not member organizations entitled to assert organizational standing; (3) Plaintiffs cannot establish injury in fact or causation for multiple waterbodies; and (4) no member of Plaintiff NRDC can satisfy the elements of standing. The Court should therefore dismiss four Plaintiffs from the case, along with Plaintiffs' claims concerning the waters identified below.[4]

[4] The only waterbodies for which Plaintiffs have presented even arguably sufficient evidence for standing are the following: Colony Creek, Columbia River, Horsethief Lake, Klickitat River, Little White Salmon River (a/k/a Drano Lake), White Salmon River, and Wind River.

A. The parties' January 26, 2016 stipulation limits the waterbodies for which Plaintiffs may offer factual evidence to meet their standing burden.

On January 26, 2016, Plaintiffs stipulated that they would only offer fact witnesses or factual evidence for a specified list of fifty waterbodies in support of their claims. Plaintiffs thus cannot offer any facts that would show (1) injury, (2) causation, or (3) redressability with respect to waterbodies not included in the Stipulation.[5] Consequently, BNSF is entitled to summary judgment dismissing any of Plaintiffs' claims to the extent they may be understood to involve waterbodies other than those memorialized in the January 26, 2016 Stipulation.[6]

B. Three Plaintiff organizations do not have standing because they have no members.

An entity may establish associational standing by relying on member individuals.[7] *Am. Legal Found. v. F.C.C.*, 808 F.2d 84, 89 (D.C. Cir. 1987). Despite claiming to bring suit on

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[5] Plaintiffs agreed not to offer any factual evidence other than BNSF's documents, none of which can support any Plaintiff's claim for standing. *See* January 26, 2016, Stipulation Concerning Discovery and Fact Witnesses and Evidence of Plaintiffs' Use of Waterways, Ex. 8 to Wagner Decl. ("Stipulation"), at ¶ 4. The purpose of the Stipulation was to efficiently manage pending discovery. On November 20, 2015 BNSF served 192 RFAs on Plaintiff RE Sources that addressed all waterbodies named by Plaintiffs to date. Plaintiffs agreed to limit the presentation of factual evidence as noted above and BNSF agreed to limit its discovery requests accordingly. Stipulation at ¶ 4, 5a & b. BNSF withdrew 114 of its RFAs to RE Sources and limited its future discovery requests and scope of depositions. Plaintiffs cannot present evidence to prove standing for waterbodies that BNSF has had no opportunity to address through discovery.

[6] The following waterbodies were not part of the Stipulation: Alder Creek, Alderwood Creek, Ashes Lake, Ballard Locks, Bass Lake, Beckie River, Beckler River, Burnt Bridge Creek, California Creek, Carson Creek, Chamberlain Lake, Chiwawa River, Coal Creek, Cow Creek, Coweeman River, Crab Creek, Crah Creek, Dead Canyon, Drayton Harbor, Duwamish River, East Low Canal, Esquatzek Coulee, Franz Lake, Glade Creek, Grant Lake, Hewett Lake, Howard Hanson Reservoir, Kalama River, Kanaka Creek, Lake Union, Lawton Creek, Little Squalicum Creek, Locke Lake, Look Lake, Nelson Creek, Newaukum River, Nisqually River, Padilla Bay, Pilchuk Creek, Pilchuk River, Possession Sound, Quilcaeda Creek, Salmon Bay, Salmon Creek, Samish Bay, Shilshole Bay, Skagit Bay, Skookumchuk River, Squalicum Creek, Status Creek, Steamboat Slough, Strait of Georgia, Stuck River, Sultan River, Teanaway River, Toppenish Creek, Toutle River, Union Slough, Wallace River, Wenatchee River, West Canal, and Whatcom Creek/Waterway. Stipulation, at ¶ 4.

[7] This Court may analyze the standing of any plaintiff, regardless of whether any other plaintiff already has standing. *See We are America/Somos America v. Maricopa Cty. Bd. Of Supervisors*, 809 F. Supp. 2d 1084, 1091(D. Ariz. 2011) (finding that a district court in a multiple plaintiff case is not strictly prohibited from "considering the standing of the other plaintiffs even if it finds that one plaintiff has standing); *Thiebaut v. Colo. Springs Util.*, 455 F. App'x 795, 802 (10th Cir. 2011) (unpublished) ("courts retain discretion to analyze the standing of all plaintiffs in a

behalf of their respective "members," Plaintiffs Spokane Riverkeeper, Friends, and RE Sources do not have any members; each entity relies solely on associational standing as the basis for bringing this lawsuit. BNSF is entitled to summary judgment against these Plaintiffs because they have no members on whose behalf they are suing. Spokane Riverkeeper is a program within the Center for Justice, not a membership organization.[8] Even if the Center for Justice itself has members, that is not enough for Spokane Riverkeeper to assert associational standing. *See Apalachicola Riverkeeper v. Taylor Energy Co.*, 2013 WL 1897142, *4 n.26 (E.D. La. May 4, 2013) (dismissing Riverkeeper group for lack of standing where it was only "a project of and association within" the Louisiana Environmental Action Network ("LEAN") and "does not enjoy any legal status independent of LEAN"). Additionally, both Friends' and RE Sources's bylaws and articles of incorporation expressly prohibit membership.[9] *See Friends of Tilden Park, Inc. v. Dist. of Columbia*, 806 A.2d 1201, 1207-10 (D.C. 2002) (organization whose articles of incorporation preclude it from having members cannot establish associational standing).

These entities cannot show indicia of membership that would overcome their lack of actual members. These indicia include election of board members and finance and guidance of activities by members. *See Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 344-45 (1977) (listing "indicia of membership" including: "[members] alone elect the members of the

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case and to dismiss those plaintiffs that lack standing."); *NRDC v. Watkins*, 954 F.2d 974, 978 n.6 (4th Cir. 1992) (finding summary judgment appropriate against plaintiff organization without standing); *OVEC v. Marfork Coal Co.*, 966 F. Supp. 2d 667, 676 (S.D.W.V. 2013) (granting motion for partial summary judgment for three plaintiffs who failed to demonstrate standing). This is proper here because many of the claimed violations originate entirely from the allegations of one of these organizations that lacks standing.

[8] *See* Spokane RFA Resps. at RFA 1; Spokane Riverkeeper_000001, Ex. 9 to Wagner Decl.; Spokane Riverkeeper_000011, Ex. 10 to Wagner Decl.

[9] *See* FOCG_000001, Ex. 11 to Wagner Decl.; FOCG_000009-10, Ex. 12 to Wagner Decl.; RESOURCES_003336, Ex. 13 to Wagner Decl.; RESOURCES_003333-34, Ex. 14 to Wagner Decl.

Commission; [members] alone may serve on the Commission; [members] alone finance its activities . . . through assessments levied upon them."); *see also Am. Legal Found.*, 808 F.2d at 89-90. While each of these entities may have supporters, "a 'supporter' is not the same as a 'member,' and a supportive relationship is not the functional equivalent of a membership association." *Friends of Tilden Park*, 806 A.2d at 1209. In these three Plaintiff organizations, supporters do not elect Board members, they are not required to make up a majority of the governing Board, and they do not provide the primary form of financing the organizations' activities.[10] *See id.* at 1210.

Consequently, the Court should dismiss claims related to waterbodies for which standing is asserted only by Spokane Riverkeeper, Friends, and RE Sources or their supporters.[11]

C. Plaintiffs have not presented members that meet Article III standing requirements for multiple bodies of water.

1. Plaintiffs cannot establish injury in fact for multiple waterbodies.

Plaintiffs lack standing with respect to multiple waters because they have not shown an injury to any interest in these places. "The 'injury in fact' requirement in environmental cases is satisfied if an individual adequately shows that she has an aesthetic or recreational interest in a particular place . . . and that that interest is impaired by a defendant's conduct." *Ecological Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1147 (9th Cir. 2000) (collecting cases). The

[10] *See* May 26, 2016 R. Eichstaedt Deposition, Ex. 15 to Wagner Decl. ("Eichstaedt Depo.") at 120:25-121:2, 121:25-122: 3; Spokane Riverkeeper_000011; April 20, 2016 C. Hoyer Deposition, Ex. 16 to Wagner Decl. ("Hoyer Depo.") at 47:13-23, 51:23-25; RESOURCES_003336; May 19, 2016 M. Lang Deposition, Ex. 17 to Wagner Decl. ("Lang Depo.") at 22:2-10; FOCG_000001.

[11] This category includes the following waterbodies: Crab Creek, Hangman Creek (Latah) (Spokane Riverkeeper); Alder Creek, Alderwood Creek, California Creek, Dakota Creek, Drayton Harbor, Little Squalicum Creek, Padilla Bay, Squalicum Creek, Strait of Georgia, Whatcom Creek/Waterway (RE Sources); and Burnt Bridge Creek, Carson Creek, Coweeman River, Franz Lake, Gibbons Creek, Kanaka Creek, Lawton Creek, Nelson Creek, Toutle River (Friends).

individual must show that her aesthetic or recreational satisfaction with an area in question is actually injured. *Id.* (no standing when plaintiffs "failed to show any tangible, continuing connection to any particular location affected by the challenged decision [or conduct]"); *see also United States v. Ensign*, 491 F.3d 1109, 1116–17 (9th Cir. 2007) (injury must be "actual or threatened"). Notably, the relevant showing is not injury to the *environment* but injury to the *plaintiff*. *Laidlaw*, 528 U.S. at 181 (emphasis added). Further, the injury must be specific to the individual, and not a generalized grievance. *See Valley Forge Christian Coll.*, 454 U.S. at 475.[12] "Ultimately, federal jurisdiction cannot lie if the alleged injury is merely an ingenious academic exercise in the conceivable." *RE Sources for Sustainable Cmtys. v. Pac. Int'l Terminals, Inc.*, 2013 WL 11233980, at *5 (W.D. Wash. July 23, 2013) (Coughenour, J.) (quoting *U.S. v. SCRAP*, 412 U.S. 669, 688 (1973)) (internal quotation marks and brackets omitted). Plaintiffs simply cannot show concrete harm to a specific interest in multiple waterbodies at issue in this litigation.

a. Not in Washington

Two waterbodies listed in the January 26, 2016 Stipulation – the Deschutes River and the Sandy River – are entirely within the state of Oregon. Lang Depo. at 112:10-15. As this case is about waterbodies in Washington, the court should dismiss Plaintiffs' claims to the extent they include an injury based on alleged discharges to the Deschutes River and the Sandy River.

[12] Several of Plaintiffs' witnesses are no different from concerned bystanders or any other citizen who takes an interest in the environment. *See Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149 (4th Cir. 2000) ("*Gaston Copper I*") ("He must somehow differentiate himself from the mass of people who may find the conduct of which he complains to be objectionable only in an abstract sense."). For example, Polly Wood asserts that she has been injured because coal pollution threatens the local economy. May 24, 2016 Polly Wood Deposition, Ex. 18 to Wagner Decl. ("P. Wood Depo."), at 61:19- 63:21. However, she provides no support for this statement or evidence that she is uniquely harmed. *Id.* Similarly, Paul Anderson asserts an injury based on the concern, completely unrelated to alleged discharges to water, that "when [coal's] burned, it releases CO2 into the atmosphere, adding to global warming . . . and depositing mercury into the watersheds." April 7, 2016 P. Anderson Deposition, Ex. 19 to Wagner Decl., at 212:44-18 ("Anderson Depo."). Such statements are insufficient for Plaintiffs to meet their burden of establishing a concrete and particularized injury.

Moreover, the CWA's exclusive venue provision precludes any claims based on alleged discharges outside of the judicial district of this consolidated case. The CWA directs that "[a]ny action respecting a violation by a discharge source of an effluent standard or limitation . . . may be brought under this section only in the judicial district in which such source is located." 33 U.S.C. § 1365(c)(1); *see also* BNSF's Mot. to Dismiss (ECF No. 38), at 15.

b. No coal observations

Plaintiffs lack standing to assert claims in the absence of actual, specific evidence of injury. Conclusory allegations of harm – absent specific evidence that discharges into water have actually occurred – do not establish standing. *See Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990) ("injury in fact" alleged for standing "must be actual or imminent, not 'conjectural' or 'hypothetical'") (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 101–102 (1983)); *see also Lujan*, 504 U.S. at 566 (standing "requires, at the summary judgment stage, a factual showing of perceptible harm"). Allegations that harm "probably will occur" by virtue of a train traveling near a waterbody are insufficient to establish standing.[13] Without actual evidence of a discharge to a specific waterbody, Plaintiffs have not established injury that establishes standing at summary judgment to assert a claim regarding that waterbody. *See Tex. Indep. Producers & Royalty Owners Ass'n*, 410 F.3d at 973-74.

Where members have not observed alleged coal discharges or alleged coal in the environment, Plaintiffs assert "injury" solely based on Plaintiffs' proposed expert Dr. Robert

[13] *Laidlaw*, 528 U.S. at 183 (plaintiff could not survive summary judgment "merely by offering 'averments which state only that one of [the organization's] members uses unspecified portions of an immense tract of territory, on some portions of which mining activity has occurred or probably will occur by virtue of the governmental action." (citing *Lujan* 497 U.S. at 889 (1990)); *see also Tex. Indep. Producers &Royalty Owners Ass'n, supra*, 410 F.3d at 973-74 (requiring at least some evidence of discharge of pollutants and finding that NOIs that authorize discharges are insufficient to establish discharges occurred).

Breidenthal's vague and unsubstantiated, "catch-all" opinion that all coal cars emit coal dust to all Washington waters near BNSF rail lines. *See* May 6, 2016 Rule 26 report of R. Breidenthal, Ex. 20 to Wagner Decl. ("Breid. Report"), at ¶ 66. This conjecture lacks the specificity needed to establish an injury for standing purposes. *See Ecological Rights Found.*, 230 F.3d at 1150 (discussing "the specific place" where party's conduct impaired the enjoyment of such use); *Gaston Copper II*, 629 F.3d at 395 ("use of an area roughly in the vicinity of the affected area was insufficient") (citations omitted); *RE Sources*, 2013 WL 11233980, at *6 (collecting cases).

Consequently, the Court should dismiss Plaintiffs' claims related to waterbodies at which no coal has been observed, and for which standing is alleged only on the basis of Dr. Breidenthal's "catch-all" theory of coal emissions.[14]

c. No injury where it was manufactured for purposes of this litigation

Plaintiffs cannot establish an injury arising from waters where they merely sent their members looking for coal for the purposes of this litigation. Plaintiffs are not permitted to "manufacture standing"; they must have a credible contention that their "future life will be less enjoyable" as a result of any alleged discharge. *OVEC v. Maple Coal Co.*, 808 F. Supp. 2d 868, 880 (S.D.W.Va. 2011). Although a handful of Plaintiffs' members may have used the Cowlitz River, only John Wood *may* have seen material alleged to be coal at that location. May 23, 2016

[14] This category includes the following waterbodies: Ashes Lake, Bass Lake, Beckie River, Beckler River, California Creek, Carson Creek, Chamberlain Lake, Chiwawa River, Coal Creek, Cow Creek, Crab Creek, Crah Creek, Dead Canyon, Drayton Harbor, Duncan Creek, Duwamish River, East Low Canal, Esquatzel Coulee, Falls Creek, Franz Lake, Gibbons Creek, Glade Creek, Grant Lake, Greenleaf Creek, Hamilton Creek, Hardy Creek, Hewett Lake, Howard Hanson Reservoir, Lake Union, Lawton Creek, Locke Lake, Look Lake, Major Creek, Nelson Creek, Newaukum River, Nooksack River, Oak Bay, Padilla Bay, Pilchuk Creek, Pilchuk River, Possession Sound, Quilceada Creek, Salmon Creek, Sandy River, Skagit Bay, Skookumchuk River, Skykomish River, Skykomish River North Fork, Skykomish River South Fork, Snake River, Snoqualmie River, Spring Creek, Status Creek, Strait of Georgia, Stuck River, Sultan River, Tacoma Narrows, Teanaway River, Toppenish Creek, Wallace River, Washougal River, Wenatchee River, West Canal, Woodard Creek, and Yakima River.

J. Wood Deposition, Ex. 21 to Wagner Decl. ("J. Wood Depo. I"), at 66:20 ("I think I have to slightly hedge on that and say that I think it was the Cowlitz River"). Mr. Wood only visited the Cowlitz River once, with the sole purpose of searching for coal to support this lawsuit. *Id.* at 68:10-14, 21-24. Mr. Wood is also the only person purported to have seen alleged coal in or near the Lewis River. However, he visited the river solely to look for coal for the purpose of this lawsuit and has not been back since. *Id.* at 96:22-23, 97:4-6, 10-12, 101:14-16. As Plaintiffs cannot establish an injury to their members as a result of any alleged discharges at the Cowlitz and Lewis Rivers, the Court should dismiss these claims.

d. No actual and imminent injury

Even where Plaintiffs' members claim to have observed coal they have not shown any actual, concrete injury. Alleging a discharge, without more, does not establish an injury. *See Tex. Indep. Producers and Royalty Owners Ass'n*, 410 F.3d at 973-94. Plaintiffs must establish that the presence of coal actually caused their members to change their behavior. *See, e.g., Idaho Conserv. League v. Atlanta Gold Corp.*, 844 F. Supp. 2d 1116, 1128 (D. Idaho 2012) ("He will not let his children get into the creek. He states that AGC's discharges keep him from fishing").

There is no evidence that any of Plaintiffs' members have changed their behavior because they were "harmed" by the presence of coal at multiple waterbodies. For example, Paul Anderson asserted an injury based on observations of coal near Bellingham Bay, but he continues to return, and enjoy returning, to the precise area where he found coal. Anderson Depo., at 269:66-14 ("I almost go over there daily"). Ginger Lee First also continues to return to recreate at Bellingham Bay daily, despite observing coal. July 1, 2016 G. L. First Deposition, Ex. 22 to Wagner Decl. ("First Depo."), at 62:18-20 ("Q: Why do you go by there every day? A: Because I'm a bicyclist[.]"). Sue Joerger has increased the frequency with which she uses Piper's Creek

since making an observation of coal. June 6, 2016 S. Joerger Deposition, Ex. 23 to Wagner Decl. ("Joerger Depo."), at 84:17-18 ("Now I go quite often.").[15] Without any change in behavior, Plaintiffs' claims of harm are unsubstantiated and insufficient to invoke the Court's jurisdiction.[16]

2. Plaintiffs have not established causation.

Plaintiffs must show that their individual members' injuries are "fairly traceable" to BNSF's actions. *Lujan*, 504 U.S. at 560. The causal connection cannot "be too speculative, or rely on conjecture[.]" *Ocean Advocates v. U.S. Army Corps of Engineers*, 402 F.3d 846, 860 (9th Cir. 2005).

Plaintiffs claim injury based on their members' use or hypothetical use of waters that are *upstream* from observed coal. No causal link exists in these instances because water does not

[15] *Compare Lujan*, 504 U.S. at 564 (stating that "'some day' intentions – without any description of concrete plans, or indeed even any specification of *when* the some day will be" does not satisfy the injury requirement), *with Laidlaw*, 528 U.S. at 184 (finding injury where affiants "would use the nearby North Tyger River for recreation if Laidlaw were not discharging pollutants into it"); *see also Valley Forge Christian Coll.*, 454 U.S. at 486 ("[S]tanding is not measured by the intensity of the litigant's interest or the fervor of his advocacy."); *Pub. Interest Research Grp. of N.J., Inc. v. Magnesium Elektron, Inc.*, 123 F.3d 111, 121-22 (3rd Cir. 1997) ("Our decision in *Powell Duffryn* does not and could not stand for the principle that generic claims of harm, without more, satisfy the injury requirement for standing."); *Envt'l Prot. Info. Ctr. v. Pac. Lumber Co.*, 469 F. Supp. 2d 803, 817 (N.D. Cal 2007) (finding no standing where indirect contact did not amount to particularized injury particularly where there was no deterrence from undertaking activities at the waterbody at issue).

[16] This category includes the following waterbodies named by Plaintiffs: Alder Creek, Alderwood Creek, Ashes Lake, Ballard Locks, Bass Lake, Beckie River, Beckler River, Bellingham Bay, Burnt Bridge Creek, California Creek, Carson Creek, Catherine Creek, Chamberlain Lake, Chiwawa River, Chuckanut Bay, Coal Creek, Cow Creek, Coweeman River, Cowlitz River, Crab Creek, Crah Creek, Dakota Creek, Dead Canyon, Deschutes River, Drayton Harbor, Duncan Creek, Duwamish River, East Low Canal, Elliott Bay, Esquatzel Coulee, Franz Lake, Gibbons Creek, Glade Creek, Grant Lake, Green River, Greenleaf Creek, Hamilton Creek, Hangman Creek (Latah), Hardy Creek, Hewett Lake, Howard Hanson Reservoir, Kalama River, Kanaka Creek, Lake Union, Lake Washington, Lawton Creek, Lewis River, Little Spearfish Lake, Little Squalicum Creek, Locke Lake, Look Lake, Major Creek, Nelson Creek, Newaukum River, Nisqually River, Nooksack River, Oak Bay, Padden Creek, Padilla Bay, Pilchuk Creek, Pilchuk River, Piper's Creek, Possession Sound, Puget Sound, Quilceada Creek, Rock Creek/Cove, Rowland Lake, Salmon Bay, Salmon Creek, Samish Bay, Samish River, Sandy River, Shilshole Bay, Skagit Bay, Skagit River, Skookumchuk River, Skykomish River, Skykomish River North Fork, Skykomish River South Fork, Snake River, Snohomish River, Snoqualmie River, Spokane River, Spring Creek, Squalicum Creek, Status Creek, Steamboat Slough, Stillaguamish River, Strait of Georgia, Stuck River, Sultan River, Tacoma Narrows, Teanaway River, Toppenish Creek, Toutle River, Union Slough, Wallace River, Washougal River, Wenatchee River, West Canal, Whatcom Creek/Waterway, Woodard Creek, and Yakima River.

flow upstream. *Sierra Club v. City of Jackson*, 2002 WL 496379, at *4-5 (5th Cir. Mar. 19, 2002) (unpublished) (no standing where member alleged use of river upstream of discharge site, because the area physically could not be affected by defendant's conduct and plaintiff offered no evidence to dispute such a conclusion); *see also Pollack v. U.S. Dep't of Justice*, 577 F.3d 736, 741 (7th Cir. 2009) (no injury because "Pollack is not downstream from the alleged pollutants and it is unclear whether their presence affects him.").[17]

For example, Polly Wood testified that she reduced her use of Falls Creek based on concerns about coal. P. Wood Dep., at 22:17-23:2; 28:17-29:6. But she has never seen coal at Falls Creek, nor is she aware of anyone who has. *Id.* at 28:17-29:6. Notably, the area where Ms. Wood recreates is over 18 miles upstream of the Columbia River and the nearest observation of material believed to be coal. *Id.*; Depo. Ex. 246, Ex. 24 to Wagner Decl. Similarly, although Plaintiffs may have observed coal or other dark materials at or in the Columbia River, they have no proof of alleged discharges at many of the Columbia River's feeder streams and rivers, such as Catherine Creek, Hardy Creek, and the Snake River. *See, e.g.*, June 8, 2016 B. VandenHeuvel Deposition, Ex. 25 to Wagner Decl. ("VandenHeuvel Depo."), at 32:17-20, 33:10-16, 19-23; May 23, 2016 P. Cornelison Deposition, Ex. 26 to Wagner Decl. ("Cornelison Depo. I"), at 106:20-22; Eichstaedt Depo., at 88:22-89:9. The Court should dismiss Plaintiffs' claims related to waterbodies that are upstream of areas alleged to be affected by coal.

[17] *Compare Laidlaw*, 528 U.S. at 183-84 (finding plaintiffs had standing where a showing was made that plaintiffs repeatedly used and observed the river which was being polluted, the path from the pollution to the harm upon which the individuals' injuries were based was readily apparent, and the plaintiffs' concerns were reasonable), *with Gordon v. Guide Corp.*, 2001 WL 1168144, at *4 (S.D. Ind. Aug. 21, 2001) (denying standing under *Laidlaw* standard where plaintiff offered no evidence to demonstrate the path of harm from site of defendant's discharge to the areas at which plaintiff claimed his activities would be harmed).

Plaintiffs cannot support standing by asserting injury based on the use or hypothetical use of waterbodies at locations that are far removed from where they allegedly observed material believed to be coal. Such a tenuous connection is insufficient to defeat a challenge to standing on summary judgment. *See Cent. & S. W. Servs., Inc. v. E.P.A.*, 220 F.3d 683, 700–701 (5th Cir. 2000) (denying standing where "it is purely conjectural that PCBs could leach from the landfill and contaminate [the] town's water supply").

For example, Chris Wilke testified that he only observed what may have been coal upstream of the Howard Hanson Reservoir, over 30 miles upstream of the area of the lower Green River that he routinely patrols.[18] May 31, 2016 C. Wilke Deposition, Ex. 27 to Wagner Decl. ("Wilke Depo."), at 101:25-102: 25, 105:2-106:4. Plaintiffs also claim an injury based on use of Lake Washington, even though the closest observation of coal was over 8 miles away, on the west side of the Ballard Locks. Cornelison Depo., at 109:3-5; July 7, 2016 K. Seabrook Deposition, Ex. 28 to Wagner Decl. ("Seabrook Depo.) at 43:2-5; May 26, 2016 B. Mihailovich Deposition, Ex. 29 to Wagner Decl. ("Mihailovich Depo.") at 31:9-20. But to reach Lake Washington, coal would have to travel up through the Ballard Locks and through Salmon Bay, the Fremont Canal, Lake Union, the Montlake Cut, and Union Bay before allegedly making its way to Lake Washington.

Plaintiffs also assert injuries based on members' use of Oak Bay and the Tacoma Narrows. Stipulation at ¶ 4. But Plaintiffs have presented no evidence of specific use of or observations of coal in or near Oak Bay or Tacoma Narrows, other than purported discharges to other far-off areas of Puget Sound. Wilke Depo., at 133:7-20. Puget Sound is "so large that

[18] Mr. Wilke had only been to the upstream location once. Wilke Depo., at 107:14-22.

plaintiffs should rightfully demonstrate a more specific geographic or other causative nexus in order to satisfy the 'fairly traceable' element of standing." *Sierra Club, Lone Star Chapter*, 73 F.3d 546, 558 n.24.[19]

These tenuous connections are insufficient to establish standing. Causation must be supported by evidence that a discharge of coal actually does affect, or even *could* affect an area many miles removed from the point of discharge. *See Gaston Copper I*, 204 F.3d at 161 ("[P]laintiffs submitted evidence that the company's discharge will travel 16.5 miles downstream – well beyond the four-mile point that is Shealy's lake."); *OVEC v. Marfork Coal Co.*, 966 F. Supp. 2d 667 (S.D.W.Va. 2013) ("Plaintiffs have produced evidence that selenium has been detected in Little Marsh Fork and Marsh Fork, downstream of Brushy Fork."). Thus, in *Friends of the Earth v. Crown Central*, the court dismissed claims for lack of standing where a plaintiff's members used a lake located eighteen miles and three tributaries downstream from defendants' refinery. 95 F.3d 358, 361 (5th Cir. 1996). Likewise, the court in *RE Sources* dismissed claims where the plaintiff asserted "with no supporting evidence that because water runs downstream, and defendant was polluting water (somewhere) upstream, their injury must be sufficient and causation established." 2013 WL 11233980, at *7; *id.* ("Under such circumstances, a plaintiff must produce some proof.") (quotations omitted).

As established above, Plaintiffs lack evidence of a geographic connection between a distant alleged discharge and areas that their members actually use. Consequently, the Court

[19] *See also Gulf Restoration Network v. Hancock Cty. Dev., LLC*, 772 F. Supp. 2d 761, 765-66 (S.D. Miss. 2011) (holding that Plaintiffs "must use the area affected by the challenged activity and not an area roughly 'in the vicinity' of it") (quoting *Lujan*, 504 U.S. at 565-66).

should dismiss claims tied to use of waterbodies where the alleged use or hypothetical use is too remote from any asserted discharge.[20]

D. NRDC failed to present any members with standing.

NRDC[21] has presented three members to support its claim of associational standing: Carol Freese, Meredith Long and Patricia Meeks.[22] Each member's claimed injury is based on her use of varying lists of waterbodies.[23] None of these witnesses can provide a basis for NRDC's standing, and the Court should dismiss NRDC from this lawsuit.

Ms. Freese asserts an "aesthetic" injury, based on the "the scenery, the ground and vegetation," but she has never seen material she believes to be coal in or near water or coming off a railcar. June 10, 2016 C. Freese Deposition, Ex. 32 to Wagner Decl. ("Freese Depo."), at 27:3-8, 32:19-22, 37:16-22, 43:16-17, 45:17-22, 46:24-47:12. Without seeing coal, she cannot

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[20] This category includes the following waterbodies: Ashes Lake, Bass Lake, Beckie River, Beckler River, California Creek, Carson Creek, Catherine Creek, Chamberlain Lake, Chiwawa River, Coal Creek, Cow Creek, Coweeman River, Crab Creek, Crah Creek, Dead Canyon, Deschutes River, Drayton Harbor, Duncan Creek, Duwamish River, East Low Canal, Esquatzek Coulee, Falls Creek, Franz Lake, Gibbons Creek, Glade Creek, Grant Lake, Green River, Greenleaf Creek, Hamilton Creek, Hardy Creek, Hewett Lake, Lake Union, Lake Washington, Lawton Creek, Locke Lake, Look Lake, Major Creek, Nelson Creek, Newaukum River, Nooksack River, Oak Bay, Padilla Bay, Pilchuk Creek, Pilchuk River, Possession Sound, Quilcaeda Creek, Salmon Creek, Samish Bay, Sandy River, Skagit Bay, Skookumchuk River, Skykomish River, Skykomish River North Fork, Skykomish River South Fork, Snake River, Snohomish River, Snoqualmie River, Spring Creek, Status Creek, Stillaguamish River, Strait of Georgia, Stuck River, Sultan River, Tacoma Narrows, Teanaway River, Toppenish Creek, Wallace River, Washougal River, Wenatchee River, West Canal, Woodard Creek, and Yakima River.

[21] BNSF noticed a Fed. R. Civ. P. 30(b)(6) deposition of NRDC for June 21, 2016. NRDC has filed a Motion for Protective Order seeking to narrow the scope of that deposition; the motion remains pending. BNSF reserves its right to supplement this motion, if necessary, based on the outcome of any deposition of NRDC that occurs.

[22] July 14, 2014 Pl.'s Resps. & Objections to Def.'s First Set of Interrogs. & Reqs. For Produc. of Docs. ("July 2014 Interrog. Resps."), Ex. 30 to Wagner Decl., at Interrog. 1.

[23] Carol Freese's injury is based on her use of the Columbia River, Snake River and Yakima River. October 10, 2014 Pl.'s Am. & Suppl. Resps. & Objections to Def.'s First Set of Interrogs. and Reqs. for Produc. of Docs. ("October 2014 Interrog. Resps."), Ex. 31 to Wagner Decl., at Interrog. 2. Meredith Long's injury is based on her use of the Columbia River, Deschutes River, Falls Creek, Hamilton Creek, Horsethief Lake, Lewis River, Little White Salmon River, Puget Sound, Sandy River, and the Washougal River. *Id.*; NRDC RFA Resps. at RFA 22, 30, 40, 54, 62, 83. Patricia Meeks's injury is based on her use of the Columbia River, Drano Lake, and White Salmon River. October 2014 Interrog. Resps. at Interrog. 2.

establish *any* aesthetic injury. Further, Ms. Freese concedes that she continues to use the Columbia, Snake, and Yakima Rivers without any change in behavior due to the alleged presence of coal. *Id.* at 45:17-22. Likewise, Ms. Long testified to using the Columbia River once every five years before 2008 and not at all between 2008 and 2015. June 13, 2016 M. Long Deposition, Ex. 33 to Wagner Decl. ("Long Depo."), at 39:15-16, 19, 22-23; 40:9, 13-16. Ms. Long once saw what she thought to be coal near railroad tracks at Stevenson, not near the Columbia River itself (though she had gone in search of coal).[24] *Id.* at 18:8-18, 20:10-18, 48:19-49:1, 50:6-10; 51:25-52:5. *See supra*, at § I.C.1.c. No evidence shows that Ms. Long recreates there, nor is there any basis to conclude her "future life will be less enjoyable" as a result of this apparent observation. *OVEC v. Maple Coal Co.*, 808 F. Supp. 2d 868, 880 (S.D.W.Va. 2011).

Finally, Ms. Meeks' cannot show any injury to any use of the waters in Washington that she has identified. She testified that she does not actually use the Little White Salmon River or the White Salmon River. June 9, 2016 P. Meeks Deposition, Ex. 34 to Wagner Decl. ("Meeks Depo."), at 28:5-8, 14-16; 29:4-8, 11. She continues to use the Columbia River almost daily during the summer months and has demonstrated no change in behavior or other harm stemming from the alleged presence of coal. *Id.* at 31:8-11, 49:5-6, 9-10.

Having failed to identify a single member to have suffered an injury in fact, the Court should dismiss NRDC.

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[24] With regard to the other water bodies she alleges to use: the Deschutes River is entirely in Oregon and she last used it in 2006, Long Depo., at 53:3-5; she uses Falls Creek approximately once per year at a location approximately 15 miles upstream of the railroad tracks, *id.* at 27:9-28:11; no witness has ever seen coal at Hamilton Creek, which, at the time of the complaint, she hiked at once every two years, *id.* at 30:6-10; she last used Horsethief Lake in 1984, *id.* 55:4-8; she did not use the Lewis River from 2008 to 2013 and has used it once since then, *id.* at 62:9-12, 62:24-63:6; she last used the Little White Salmon River 25 years ago, *id.* 32:13-15; she last used Puget Sound 25 years ago, *id.* at 34:2-4; she last used the Sandy River 20 years ago, *id.* at 34:20-22; and at the time of the complaint she had not been to the Washougal River in 25 years, *id.* at 36:14-21.

II. BNSF IS ENTITLED TO SUMMARY JUDGMENT UNDER THE CLEAN WATER ACT ON ALL OF PLAINTIFFS' CLAIMS.

BNSF is entitled to summary judgment on Plaintiffs' CWA claims because the CWA does not prohibit the releases alleged by Plaintiffs, and Plaintiffs fail to raise a genuine dispute of material fact that BNSF violated the statute. Plaintiffs' allegations of releases to land and releases to water, even if true, are not CWA violations. Further, Plaintiffs' reliance on Dr. Breidenthal's opinions, recovery of unidentified material from unidentified sources, and material collected by handmade floats does not establish the specific discharges to Washington waterbodies on specific days necessary to create a genuine dispute of material fact.

A. The Clean Water Act does not prohibit the types of releases alleged.

1. Releases to land, and from land to water, are not CWA discharges.

Plaintiffs allege that pollutants from "[e]ach and every coal train and each and every rail car carrying coal" are "discharging onto land adjacent and in proximity to waterways where those pollutants are added to water by forces such as, for example, gravity, wave wash, fluctuation of water levels, vibration, wind, and precipitation." *See* Complaint, at ¶ 49; *see also id*. at ¶¶ 44, 58. These alleged coal losses, however, are not prohibited by CWA Section 301 because (1) Section 301 addresses "discharges," 33 U.S.C. § 1311(a), which by definition are releases to water, not deposition on land; and (2) any material released to the land that later is conveyed to surface waters by stormwater or other natural forces is either excused from Section 301's discharge prohibition or does not fall within the definition of a regulated discharge from a point source.

a. Deposition on land is not a CWA discharge.

The CWA prohibits any unauthorized "discharge of a pollutant," and defines a "discharge" as "any addition of any pollutant *to navigable waters* from any point source"

(emphasis added). 33 U.S.C. §§ 1311, 1362(12)(A). "Navigable waters," or "waters of the United States," include rivers, streams, lakes, wetlands, and a host of other hydrologic features, none of which includes dry land. 33 U.S.C. § 1362(7); 40 C.F.R. § 230.3. Accordingly, releases to land are not CWA "discharges" and are not subject to CWA Section 301's discharge prohibition. *See, e.g., Rice v. Harken Expl. Co.*, 250 F.3d 264, 269 (5th Cir. 2001) (refusing to extend jurisdiction under the Oil Pollution Act to areas not covered by the CWA, including "dry land" from which oil seeps into groundwater, and explaining that "there still must be a discharge of [a pollutant] into a protected body of water for liability under either statute to attach"); *Cordiano v. Metacon Gun Club, Inc.*, 575 F.3d 199, 225 (2d Cir. 2009) (granting summary judgment dismissing alleged CWA violation where lead shot was fired into an upland berm rather than into jurisdictional waters). As a matter of law, Plaintiffs' allegations of coal deposition to land, including coal that has been released to land over the top or through the bottom or sides of railcars, cannot constitute violations of Section 301.

b. Transport to water from land by stormwater, sheet flow, wind, and other forces is not a CWA discharge.

Plaintiffs' allegations involving transport of coal from land to waters of the U.S. by stormwater, sheet flow, wind, water level fluctuation, wave action, and similar natural forces also do not give rise to CWA liability.[25] By definition, these alleged releases constitute either

[25] Plaintiffs allege that "precipitation" is a means of transporting coal to waters of the United States. *See* Complaint, at ¶¶ 44, 49, 58. In oral argument in the companion case to this action before consolidation, however, Plaintiffs conceded that coal released to waters of the United States via stormwater does not give rise to CWA liability. *See* Dec. 12, 2013 Verbatim Report of Proceedings Mot. to Dismiss ("Dec. 2013 Mot. To Dismiss Tr."), Ex. 35 to Wagner Decl., at 35 ("We are not claiming that the discharges on the upland areas are violations of the Clean Water Act, even though they will likely be taken by stormwater"); *id.* at 57 ("What we were going to show you is another picture of an upland deposit that we would not claim is a discharge into waters because it would take storm -- it would take stormwater to get it there."); *see also Sierra Club v. BNSF*, 2014 WL 53309, *5 (E.D. Wash. Jan. 2, 2014). BNSF agrees and the legal basis for that concession is set forth *infra* at §§ I.B.1-2.

unregulated point source discharges of stormwater or nonpoint source pollution, neither of which gives rise to CWA liability.

Plaintiffs allege that BNSF violates the CWA when precipitation transports coal from railroad tracks and adjacent land areas into navigable waters. *See* Complaint, at ¶¶ 44, 49, and 58. BNSF's rail transportation does not fall into any category of stormwater discharge that would require a permit under the CWA. "Storm water" consists of "storm water runoff, snow melt runoff, and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13). CWA Section 402(p) subjects to National Pollution Discharge Elimination System ("NPDES") permitting requirements only those specific categories of discharges that Congress deemed the most significant: stormwater from prior permitted sources, from certain municipal sewer systems, that EPA or a state has determined contributes to a water quality violation or is a significant contributor of pollutants to waters of the U.S., or that is "associated with industrial activity." *See* 33 U.S.C 1342(p)(1), (2) & (6). The rail transportation at issue here falls into none of these categories.[26]

Stormwater from rail transportation is not "associated with industrial activity," which is "the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant." 40 C.F.R § 122.26(b)(14). This definition does not include stormwater from or near the rail transportation at issue here. *See id.* at § 122.26(b)(14)(i)-(xi) (describing the specific types of

[26] Plaintiffs do not claim the alleged stormwater discharges to be from a prior permitted source or a municipal system. *See generally* Complaint. Similarly, neither EPA nor the state of Washington has invoked its discretionary authority under Section 402(p)(2)(E) to regulate the alleged stormwater discharges as contributors to water quality violations or significant contributors of pollution. *See* generally 40 C.F.R. Parts 122-124 (setting forth EPA's stormwater regulations identifying the scope of those categories).

industrial sources that are subject to NPDES stormwater permitting).[27] Any alleged discharge of stormwater from rail transportation, trackbeds, and adjacent lands that enters surface waters, even if through a point source, thus cannot give rise to CWA liability.

Moreover, alleged discharges from land to water by means of sheet flow, wind, water fluctuation, wave wash, and the like, are not "discharges" as defined by the CWA. Rather, these are classic examples of nonpoint source pollution, which is not prohibited by Section 301. EPA has explained that "nonpoint source pollution does not result from a discharge at a specific, single location (such as a single pipe) but generally results from land runoff, precipitation, atmospheric deposition, or percolation." *See Alaska Cmty. Action on Toxics v. Aurora Energy Servs., LLC*, 940 F. Supp. 2d 1005, 1024 (D. Alaska 2013) (quoting EPA Office of Water, *Nonpoint Source Guidance* 3 (1987)); *rev'd on other grounds, Alaska Cmty. Action on Toxics v. Aurora Energy Servs., LLC*, 765 F.3d 1169 (9th Cir. 2014).

The Ninth Circuit has described nonpoint source pollution as often resulting from a rainstorm, for example, when "[s]mall amounts of rubber are worn off of the tires of millions of cars and deposited as a thin film on highways; minute particles of copper dust from brake linings are spread across roads and parking lots each time a driver applies the brakes; [and] drips and drabs of oil and gas ubiquitously stain drive-ways and streets" and then rain washes that material into "creeks, rivers, bays, and the ocean." *League of Wilderness Defs/Blue Mountains Biodiversity Project v. Forsgren*, 309 F.3d 1181, 1184 (9th Cir. 2002). For this reason, the Ninth

[27] "Transportation facilities," specifically rail transportation facilities, are included in that list, but only if such a facility has "vehicle maintenance shops, equipment cleaning operations or airport deicing operations." 40 C.F.R. § 122.26(b)(14)(viii). Even for transportation facilities within that class, the definition states that "only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (b)(14)(i)-(vii) or (ix)-(xi) of this section are associated with industrial activity." *Id.* The areas subject to Plaintiffs' allegations satisfy neither of these criteria.

Circuit has concluded that "runoff caused primarily by rainfall around activities that employ or create pollutants [is] a nonpoint source." *Greater Yellowstone Coalition v. Lewis*, 628 F.3d 1143, 1152 (9th Cir. 2010) (citation omitted); *see also Cordiano*, 575 F.3d at 223-24 ("Even assuming rain and flooding . . . may cause lead [from an upland] berm to migrate to jurisdictional wetlands via surface water runoff, SAPS has provided no evidence that such runoff is in any way 'collected or channeled by man.' 40 C.F.R. § 122.2. Thus, there is insufficient evidence that surface water runoff from the berm constitutes a discharge from a point source, and such runoff is outside the ambit of the CWA permit requirement.").

Similarly, windblown materials from land to water are nonpoint source pollution. Indeed, "wind is the polar opposite of" point source pollution. *Alaska Cmty. Action on Toxics*, 940 F. Supp. 2d at 1026-27; *see also Cordiano*, 575 F.3d at 224 (finding that lead blown by wind as airborne dust from an upland berm to jurisdictional wetlands is nonpoint source pollution and explaining that to find otherwise would "eviscerate the point source requirement[.]").[28]

The commonality linking these modes of natural transport as nonpoint source pollution is the absence of a point source – a "discernible, confined and discrete conveyance" that collects and transports material from land to water. *Nw. Envt'l Def. Ctr. v. Brown*, 640 F.3d 1063, 1070 (9th Cir. 2010), *rev'd on other grounds*, *Decker v. Nw. Envt'l Def. Ctr.*, 133 S. Ct. 1326 (2013). Uncontrolled, natural forces are not point sources. *See id.* ("Stormwater that is not collected or

[28] Likewise, the natural, irregular, water level fluctuation and wave wash of non-tidal waters cannot be deemed collected or channeled to constitute a point source discharge. *See Cordiano*, 575 F.3d at 223-24 (material transported from land by floodwater is nonpoint source pollution). Moreover, such releases occurring outside of the ordinary high water mark are releases to land, which as discussed above, are not subject to the CWA Section 301 discharge prohibition. *See* 33 C.F.R. § 328.4(c)(1) (in the absence of adjacent wetlands, non-tidal waters of the United States extend only to the ordinary high water mark); *Rice*, 250 F.3d at 272 (concluding that discharges to land fall outside the CWA's jurisdiction).

channeled and then discharged, but rather runs off and dissipates in a natural and unimpeded manner, is not a discharge from a point source[.]").

Any coal that may enter water via sheet flow, wind, and non-tidal water fluctuation/wave wash is likewise undirected, diffuse, and naturally dissipating, not collected or channeled. It therefore does not constitute a point source discharge and, as a matter of law, cannot be a violation of Section 301. *See* 33 U.S.C. § 1311 (a). Plaintiffs have neither alleged nor provided any evidence that any sheet flow, precipitation, wind, or non-tidal water fluctuation/wave wash carrying coal to navigable waters is collected or channeled. Accordingly, the Court should dismiss those CWA claims.

2. The alleged coal releases to water from railcars are not regulable point source discharges.

Plaintiffs have also made unsupported assertions of direct discharges from trains and railcars into water. Plaintiffs cannot demonstrate that these observations involved a regulable "addition of a pollutant" to navigable waters "*from a point source.*" 33 U.S.C. § 1362(12).

A point source is "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14). Among the examples of features that may be considered point sources if they otherwise meet the CWA's definition are "containers" and "rolling stock[.]" *See* 33 U.S.C. § 1362(14). Plaintiffs' entire argument hinges on these examples. *See* Dec. 2013 Mot. to Dismiss Tr. ("we have alleged that railcars are each a point source, that discharges from rolling stock or containers, whichever, are defined as point sources under 33 U.S.C. 1362, Subsection 14."). As Judge Suko made clear in the companion case to this action before consolidation, the mere inclusion of containers and rolling stock in this list does not make every railcar per se a point source: "Plaintiffs must prove more than that the

pollutant originated from an identifiable source. Regardless of where the pollution originates, a plaintiff must prove that the pollutant reached the water through a confined, discrete conveyance." Order re Defs. Mot. to Dismiss at 7 (E.D. Wash., Jan. 2, 2014); *see also Alaska Cmty. Action on Toxics*, 940 F. Supp. 2d at 1024 ("[No] matter how easily [the facility's coal piles, stacker-reclaimer, and railcar unloader] are identified as the original sources of coal dust blown into the Bay, [they] cannot by themselves constitute 'point sources' where there is no 'discernible, confined and discrete conveyance' of the dust from those sources to the water. To find otherwise would require the Court to ignore clear statutory language."). Coal jostled and scattered by vibration, even if jostled directly into waters, is not sufficiently collected or channeled to constitute a point source discharge. Defendants are entitled to summary judgment because Plaintiffs have failed to show that the alleged releases, even if they originated from a "container" or "rolling stock," are from a discernible, confined, and discrete conveyance.

Finally, with respect to Plaintiffs' allegations of drainage from holes in railcars directly to waters, such drainage would consist of stormwater that is not regulated by the CWA even if it emanated from a point source. To the extent any moisture exits a railcar over water, that moisture would be present in the railcar as a result of "storm water runoff or snow melt runoff," and would constitute "stormwater" as defined by the NPDES program regulations. 40 C.F.R. § 122.26(b)(13). As discussed above, a discharge of stormwater from BNSF rail operations is exempted from the NPDES permitting requirement. Consequently, even if any alleged drainage from a railcar directly to waters did emanate from a point source, such a discharge would be properly considered stormwater that cannot form the basis of CWA liability.

3. Aerial and windblown deposition from railcars directly into water are not CWA discharges.

Even if railcars constitute point sources under the Act, windblown dispersion of material from these cars constitutes nonpoint source pollution that cannot give rise to CWA liability. Similarly, airborne deposition of pollutants, even from a discrete source, constitutes nonpoint source pollution and is not subject to permitting under the NPDES program. *Cordiano*, 575 F.3d at 223-24 (finding airborne lead from a berm that migrated to jurisdictional wetlands was nonpoint source pollution).

The Tenth Circuit addressed this issue in *Chem. Weapons Working Group, Inc. v. U.S. Dep't. of the Army*, where it rejected an argument that stack emissions could provide a basis for CWA liability. 111 F.3d 1485, 1489-91 (10th Cir. 1997). The court concluded that regulating such atmospheric depositions to water as discharges under the CWA "would lead to irrational results." *Id*. at 1490. "While Plaintiffs argue that the [EPA] could issue a nationwide permit 'for sources of water pollution such as cars and chimneys' . . . the very thought of regulating car emissions under the Clean *Water* Act exposes the absurdity of their position." *Id.* Regulation of airborne deposition from railcars would lead to similarly irrational results: all dust emissions – including particulate matter in the exhaust of diesel engines – would require an NPDES permit.

In addition to generating an illogical permitting scheme, regulation of airborne deposition under the CWA would conflict with Congressional intent and produce discord between the CWA and the Clean Air Act ("CAA"). *Id.* at 1490-91 (10th Cir. 1997) (finding that atmospheric deposition from stack emissions do not constitute prohibited discharges under the CWA because, *inter alia*, "the pollution effects of atmospheric deposition are expressly considered and regulated under the [CAA].") The 1990 CAA Amendments instructed EPA to study the impact of

atmospheric deposition on waterbodies under the CAA. *See* 42 U.S.C. § 7412(m). Subsequent agency documents indicate that Congress did not consider atmospheric deposition subject to CWA regulation. *See* EPA, *Frequently Asked Questions About Atmospheric Deposition: A Handbook for Watershed Managers* (2001) ("Atmospheric Deposition Handbook") at 2-3 (explaining atmospheric deposition pollution to water should be addressed through air permitting standards).[29] The Court should avoid creating dissonance between these two federal statutes by holding, consistent with courts in the Second and Tenth Circuits, and in other district courts within the Ninth Circuit, that windblown coal cannot give rise to CWA liability.

B. Plaintiffs fail to raise a genuine dispute of material fact that the CWA was violated by alleged coal discharges to Washington waterbodies.

Even if Plaintiffs could establish, as a matter of legal principle, that a CWA "discharge" from a "point source" may have occurred in this case, CWA liability still only attaches to "actual discharges that are proven to have occurred on specific days." *See Alaska Cmty. Action on Toxics v. Aurora Energy Servs., LLC*, 940 F. Supp. 2d at 1027; *see also Alaska Cmty. Action on Toxics v. Aurora Energy Servs., LLC*, 2011 WL 13069517, at *11 (D. Alaska Jan. 10, 2011) (granting in part motion for judgment on the pleadings because "the Court agrees that any civil penalties under § 1319(d) should be calculated only with respect to days involving actual discharges of pollutants.") CWA liability is not proved in the aggregate, or on a year-by-year basis. To survive summary judgment, Plaintiffs must demonstrate a series of specific genuine disputes of material fact regarding *specific discharges* on *specific days*. *See also Cal. Sportfishing Prot. Alliance v. W. Sacramento*, 905 F. Supp. 792, 799 (E.D. Cal. 1995) ("The civil penalty provision is pegged to each day of violation."); *Envt'l Prot. Info. Ctr. v. Pac. Lumber Co.*, 430 F. Supp. 2d 996, 1011

[29] *See* nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=2000NQU1.TXT (last visited Aug. 19, 2016)

(N.D. Cal. 2006) (requiring "specific" proof of unpermitted point source discharges). Plaintiffs cannot do so.

Plaintiffs attempt to prove discharges to U.S. waters with proof in four general categories:

- Expert testimony of Robert Breidenthal that coal is released to Horsethief Lake, part of the Columbia River, and other waterbodies in proximity to BNSF rail lines;[30]
- Lay witness testimony concerning alleged bits of coal found in the environment, without proof of specific discharges on specific days;
- Coal dust collected from three homemade floats in the Columbia River on 34 occasions in 2013 by Plaintiffs' contractor Richard Mecsko; and
- Eyewitness testimony describing alleged coal releases directly from trains to water.[31]

None of these categories of proof, however, are sufficient to raise a genuine dispute of material fact regarding any specific unlawful discharge of coal to waters of the United States on any specific day. Even in the light most favorable to Plaintiffs, each category systematically fails to generate any triable issue under the CWA standards described *supra*. Given that their lawsuit invokes the potential for a penalty larger than the yearly U.S. federal budget, the weakness of Plaintiffs' actual proof is remarkable.

The four sections below correspond to a table in Exhibit A to this motion ("Waterbody Table"). Plaintiffs have alleged that BNSF has discharged coal into many individual waterbodies in Washington, and the following sections organize those waterbodies into the four distinct categories listed above, and make legal arguments specific to each category. The Waterbody

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[30] Dr. Breidenthal purports to offer a "catch-all" opinion that coal dust is discharged into every waterbody adjacent to or in proximity with BNSF trains. *See* Breid. Report at ¶ 66. At this stage of the litigation, BNSF has not attempted to determine which waterbodies are not subject to this catch-all opinion because they are not in proximity with BNSF trains; BNSF will do so at trial, if needed.

[31] This category includes a video purporting to show coal lost from a train to the Columbia River. BNSF has filed a separate Motion for Sanctions asking that this video be excluded on the grounds that Plaintiffs spoliated other, related videos of trains that did not show any such releases.

Table is intended as a visual summary of the waterbodies in each category, in a form that should allow the Court to more efficiently apply its rulings on the arguments below to Plaintiffs' independent claims in this case.[32]

1. Dr. Breidenthal's opinions are not sufficient to create a genuine dispute of material fact regarding any CWA violation.

Dr. Breidenthal's "catch-all" opinion – that coal dust is emitted from all BNSF trains and released into all waterbodies in proximity to BNSF trains – applies to all waterbodies that are the subject of Plaintiffs' allegations or purported factual evidence in this case. Breid. Report at ¶ 66. Of these, Plaintiffs' witnesses claim to have found coal in less than two dozen waterbodies, and claim to have actually seen coal released to water in only a handful of waterbodies. This means that Plaintiffs' claims regarding more than 80 waterbodies are supported solely by Dr. Breidenthal's "catch-all" opinion. *See* Waterbody Table, at T-1.

But Dr. Breidenthal, an aeronautics professor, has never analyzed trains, coal, or coal dust emissions in any way before this case. *See* July 6, 2016 Breidenthal Deposition, Ex. 36 to Wagner Decl. ("Breidenthal Depo."), at 7:8-9, 23:5-7, 156:9-12. He is manifestly unqualified to develop a methodology for measuring coal dust emissions now, for the first time, solely for purposes of this litigation. Moreover, the methodology he cobbled together is inadequate in every way under Rule 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). BNSF has filed herewith a motion in limine to exclude his testimony. If the Court grants

[32] The third category of evidence above – alleged coal dust gathered in Mr. Mecsko's floats in the Columbia River – applies only to a single waterbody, and consequently does not appear as a separate section of the Waterbody Table. Additionally, where a waterbody was not one of the 50 waterbodies included in the January 26, 2016 Stipulation described *supra* at § I.A, fact-witness evidence of coal dust releases to that waterbody are not admissible. These waterbodies are accordingly listed on the Waterbody Table in the first category – waterbodies for which Plaintiffs' only admissible evidence is the catch-all testimony of Plaintiffs' proffered expert Robert Breidenthal. Where applicable, this status is flagged in footnotes to individual waterbodies in the Waterbody Table. *Id.* at T-1.

that motion, BNSF will be entitled to summary judgment on Plaintiffs' claims regarding the waterbodies for which Dr. Breidenthal is Plaintiffs' only support. *See* Waterbody Table, at T-1.

Even if Dr. Breidenthal is not excluded, however, the Court should determine that his testimony is insufficient to create a genuine dispute of material fact with respect to any waterbody in Washington – and particularly with respect to all the waterbodies he did not directly address in his report (*i.e.*, every waterbody except Columbia River and Horsethief Lake). For example, Dr. Breidenthal purported to calculate a "generic" rate of coal dust emissions in Washington based on simple dust measurements BNSF collected over two months in 2010 and 2011 in two locations more than 700 miles away in the Powder River Basin in Wyoming.[33] *See* Mot. in Limine, at § I.C.1. But the Wyoming dustfall collector measurements that he used as the basis for his analysis included dust that had been re-entrained (i.e., stirred up from the ground) and was not a measure of coal dust emissions from trains. In addition, not all of the trains passing by the BNSF dustfall collectors were BNSF trains, and *none* traveled to or through Washington. July 28, 2016 D. Carre Deposition, Ex. 37 to Wagner Decl. ("Carre" Depo."), at 345:7-10. His purported "generic" coal dust emissions rate does not account for any of these factors or for differences in wind speed, train speed, coal moisture, coal profile, dust suppressant efforts, coal shifting, or vibration – all of which Dr. Breidenthal acknowledges are factors that determine how much coal is lost, if any, from a train in transit. Mot. in Limine, at § I.C. Dr. Breidenthal concedes that wind, rain, train speed, and dust suppressants can inhibit coal dust emissions in various ways, *id.*, and that the emissions he purports to describe may often be so low that they cannot be measured by the most sensitive monitoring equipment. *Id.* at § I.C.1.

[33] The full extent of the limitations of Dr. Breidenthal's methodology are reviewed in BNSF's Motion in Limine, and are incorporated by reference. *See* Mot. in Limine, at § I.

With these limitations in his methodology, and given the complex and varying pattern of distance and topography between BNSF rail lines and waters across Washington, Dr. Breidenthal simply cannot offer evidence of any specific discharge on any specific day, as the law requires. Indeed, Dr. Breidenthal concedes that coal dust emissions may frequently be undetectable, Breidenthal Depo., at 168:6-12, and even at its strongest, his opinion purports to describe dust emissions that can only be measured at the most sensitive measurement thresholds. Mot. in Limine, at § I.C.1. Dr. Breidenthal has thus effectively concluded only that open-top coal cars can generate *air* emissions – no different, categorically, than engine exhaust. Such air emissions are governed by the CAA, not the CWA. *See supra*, at § II.A.3. His testimony, therefore – even in the light most favorable to Plaintiffs – creates no genuine dispute of material fact under the CWA as to any waterbody in Washington.

2. Alleged coal found in the environment creates no triable issues because CWA liability requires evidence of specific discharges on specific days.

Certain of Plaintiffs' witnesses may testify that they found material they believed to be coal in or near 23 allegedly impacted waterbodies. *See* Waterbody Table, at T-2. But CWA liability requires proof of specific discharges on specific days, *Alaska Cmty. Action on Toxics*, 940 F. Supp. 2d at 1027, and even with all inferences in their favor, Plaintiffs' witnesses cannot offer such testimony. At best, these witnesses can say only that they found dark material (often in minute amounts) in the environment. They do not know how that material got there, when it got there, or even what the material was. *See, e.g.*, First Depo., at 47:9-48:11, 60:8-62:1; VandenHeuvel Depo., at 71:4-72:10, P. Wood Depo., at 19:3-20:24. Even viewed in the light most favorable to Plaintiffs, this evidence is insufficient to create a genuine dispute of material fact; no testimony these witnesses could offer at trial could close these fatal gaps.

Even if a given bit of material identified by a witness was, in fact, coal, and even if it originated with a BNSF train during the statutory limitations period, there was no actionable CWA discharge if, for example, it was originally released to railroad tracks or dry land and later migrated to water via wind, stormwater runoff, or some other mechanism. *See supra*, at § I.A.1.b. In addition, these materials *cannot* be presumed to be coal. Lay witnesses cannot identify coal – such identification requires technical expertise outside of the common experience of non-experts – and only a very small fraction of the material collected by Plaintiffs' witnesses was ultimately analyzed by a professional to determine its nature.[34] *See* Nelson Report, at 4. Of the few samples that were analyzed, many were found not to be coal, *id.*, but even the handful of confirmed coal samples do not establish CWA liability, because the samples do not establish *specific discharges* – *i.e.*, discharges directly from a point source to water – on *specific days*. Plaintiffs' lay and expert testimony regarding material found in the environment raises no genuine dispute of material fact as to any actionable CWA violation.[35]

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[34] "[L]ay witnesses may testify based upon their experience, but they may not provide opinions 'based on scientific, technical, or other specialized knowledge within the scope of Rule 702.'" *Humboldt Baykeeper v. Union Pacific R. R. Co.*, 2010 WL 2179900, at *1 (N.D. Cal. May 27, 2010) (quoting Fed. R. Evid. 701). Rule 702 requires expert testimony to be reliable, and "the mere percipience of a witness to the facts on which he wishes to tender an opinion does not trump Rule 702." *Id.* (quoting *U.S. v. Figueroa-Lopez*, 125 F.3d 1241, 1246 (9th Cir. 1997) (lay witness may not testify to observations that are not "common" and that require demonstrable expertise)). Plaintiffs do not contend that lay witnesses can identify coal – that is why they designated a professional geologist, Bruce Nelson, Ph.D., to identify coal samples. The difficulty of amateur coal identification is demonstrated by the work of David LaLiberte, whom Plaintiffs hired to collect coal samples in this case. Mr. LaLiberte, an environmental professional, collected nine samples that he believed to be coal from sites along the Columbia River. To an untrained eye, all nine *looked* like coal; even Mr. LaLiberte apparently thought so. *See* Dep. Ex. 804, photos of LaLiberte Samples, Ex. 38 to Wagner Decl. Yet four of the nine samples – almost half – turned out not to be coal. *See* May 6, 2016 Rule 26 report of B. Nelson, Ex. 39 to Wagner Decl. ("Nelson Report"), at 3.

[35] If the Court agrees with the arguments in this section, the 23 waterbodies in this evidentiary category can be the subject of CWA liability only by operation of Dr. Breidenthal's catch-all opinion that coal dust is discharged into every waterbody adjacent to or in proximity with BNSF trains. *See* Breid. Report at ¶ 66. That too fails as described above. Dr. Breidenthal's testimony is inadmissible, and air emissions are regulated under the CAA, not the CWA. Summary Judgment for BNSF is appropriate. *See* Waterbody Table, at T-1.

3. Material collected from handmade floats is not sufficient to create a genuine dispute of material fact regarding any CWA violation.[36]

In an effort to collect dust from passing trains, Plaintiffs hired Richard Mecsko to deploy three buckets in the Columbia River in the late summer and fall of 2013. Two were placed opposite Horsethief Lake and one opposite Little Spearfish Lake. *See* Depo. Ex. 708, R. Mecsko report, Ex. 40 to Wagner Decl., ("Mecsko Report"), at 1. Between August 30 and November 29, 2013, he visited his floats to collect samples on a total of 34 occasions. *Id.* at 2-9. Mr. Mecsko never visited the same floats two days in a row – he would stagger his visits so that he would visit each float roughly every 3-5 days. *Id.* Sometimes there was coal dust in his buckets; sometimes he did not collect a sample because there was not enough dust in the buckets to analyze. July 12, 2016, R. Mecsko Deposition, Ex. 41 to Wagner Decl. ("Mecsko Depo."), at 84:1-85:1.

Like material found in the environment, the dust Mr. Mecsko found in his floats does not create a genuine dispute of material fact as to any actionable CWA discharge because it cannot prove any *specific discharge* on any *specific day* from an identified point source or the mechanism of any purported release. Even though Mr. Mecsko checked his floats every 3-5 days, a dusting of coal in Mr. Mecsko's float – even in the light most favorable to Plaintiffs – cannot establish a specific discharge on a specific day or whether material came to be located in his bins via a point source or from unregulated nonpoint source pollution.[37] Because no trial testimony can close these gaps, Mr. Mecsko's dust does not create a genuine dispute of material fact sufficient to prevent summary judgment in favor of BNSF.

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[36] BNSF filed a separate Motion for Sanctions asking this Court to exclude Mr. Mecsko's evidence on the grounds that Plaintiffs spoliated earlier, related evidence. If the Court excludes Mr. Mecsko's evidence and testimony, this section is moot.

[37] Nor can Mr. Mecsko's samples distinguish between coal released directly from the top of a train car and coal stirred up from the track bed by a passing train. Carre Depo., at 123:2-13, 285:22-286:3.

4. Eyewitness testimony of releases of coal to water does not establish a CWA violation because open-top coal cars are not "point sources."

Certain Plaintiffs' witnesses may testify that they observed releases of coal from open-top coal cars to six individual waterbodies. *See* Waterbody Table, at T-3. For the reasons set forth *supra* at §§ II.A.2-3, however, such releases are not actionable CWA violations because a railcar is not a "point source" under the statute where coal is released from the open top of the car, and because airborne dust – even from a discrete source, like a smokestack or a chimney – is not point-source pollution under the CWA. *Id.* Dr. Breidenthal conceded that coal car dust emissions in general – even under his own very aggressive interpretation – may often be measurable only by the most sensitive particle detection equipment, like the kind used to measure air emissions from smokestacks. Breidenthal Depo., at 40:24-41:8; id. at 43:11-16. Plaintiffs' own purported expert description of coal dust emissions from trains cannot distinguish such emissions from ordinary air emissions – from diesel locomotive engines, smokestacks, etc. – that are not governed by the CWA.

III. ICCTA PREEMPTS PLAINTIFFS' REQUESTED REMEDIES.

BNSF is entitled to summary judgment on Plaintiffs' requested remedies because those remedies – including requests for civil penalties and injunctive relief – are preempted by ICCTA and the broad and exclusive jurisdiction that Congress conferred on the Surface Transportation Board ("STB" or "the Board") under that statute.

Plaintiffs seek relief that would require BNSF to append covers to all railcars carrying coal, completely discard its current railcar fleet and use only cars that meet Plaintiffs' desired specifications, and otherwise operate in a manner guaranteed to prevent the discharges that Plaintiffs allege. *See* Complaint, at Relief Requested D, E, F. Plaintiffs cannot obtain this relief

because ICCTA prohibits using the CWA's citizen suit provision to impose operational requirements on a railroad. ICCTA vested in the STB *exclusive* regulatory jurisdiction over rail operations. Congress protected the STB's exclusive jurisdiction with an unambiguous clause that precludes and preempts other state and federal remedies with respect to rail transportation. Case law confirms this principle. Moreover, the relief that Plaintiffs request precludes any reading of ICCTA and the CWA that would "harmonize" the two statutes. The Court must preserve the STB's exclusive jurisdiction over remedies concerning rail transportation and protect BNSF (and other railroads) from conflicting compliance obligations. Dismissal of Plaintiffs' claims for injunctive relief governing BNSF's rail operations and claims for civil penalties or other monetary relief that would have the same effect is appropriate.[38]

A. Regulation of the railroad industry under ICCTA is exclusive.

Railroads must navigate a comprehensive regulatory regime. Historically, the Interstate Commerce Act governed railroads and their operations under what the Supreme Court has described as one of "the most pervasive and comprehensive of federal regulatory schemes." *City of Auburn v. U.S.*, 154 F.3d 1025, 1029 (9th Cir. 1998) (quoting *Chicago & N.W. Transp. Co. v. Kalo Brick & Title Co.*, 450 U.S. 311, 318 (1981)) (quotations omitted). In 1995, Congress sought to streamline this regime by ICCTA. Congress intended ICCTA to advance a number of important objectives, including consolidating federal regulation of the railroad industry, minimizing the regulatory burden imposed on railroads, and promoting expeditious regulatory decisions concerning the industry. *See* 49 U.S.C. § 10101.

[38] BNSF's argument is limited to the specific remedies requested by Plaintiffs. As such, this argument does not address whether ICCTA would preempt other potential remedies.

In support of these objectives, ICCTA created the STB and vested in it *exclusive* authority over a wide range of subject matter concerning the regulation of railroads, thereby preempting other potentially applicable state and federal laws to the STB's authority. 49 U.S.C. § 10501(b). Congress conferred on the STB "exclusive jurisdiction" over "transportation by rail carriers," including "the remedies provided under [49 U.S.C. §§ 10101-11908] with respect to … rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers." *Id.* § 10501(b). Congress defined transportation by rail expansively to encompass "a locomotive, car. . . yard, property, facility, instrumentality, or equipment of any kind related to the movement. . . of property. . . by rail," as well as "services related to that movement." *Id.* § 10102(9).

ICCTA's legislative history further attests to Congress's intention to displace laws that would otherwise regulate rail operations. In support of its grant of exclusive jurisdiction over rail operations to STB, Congress explained that "[a]ny other construction would undermine the uniformity of Federal standards and risk the balkanization and subversion of the Federal scheme of minimal regulation for this intrinsically interstate form of transportation." H.R. Rep. No. 104-311, at 96, *reprinted in* 1995 U.S.C.C.A.N. 793, 808. The conferees who finalized ICCTA further emphasized how "remedies with respect to rail regulation," as opposed to "State and Federal law generally," rested exclusively within the jurisdiction of the STB. H.R. Conf. Rep. 104-422, at 167, *reprinted in* 1995 U.S.C.C.A.N. 850, 852. Such preemption is a critical component of how ICCTA streamlines federal railroad regulation.

In contrast to ICCTA's comprehensive, but industry-specific scope, the CWA is a statute of general applicability. The CWA generally prohibits the discharge of any pollutant from a "point source" into navigable waters without first obtaining and complying with the terms of a

NPDES permit. *See* 33 U.S.C. § 1311(a); *see also id.* § 1342 (establishing the NPDES program). Although the CWA primarily charges EPA or a delegated state with enforcing its requirements, the statute allows citizens to sue for alleged discharges into navigable waters from a point source without a NPDES permit. *See* 33 U.S.C. § 1365(a)(1), (f). As is relevant here, the CWA's citizen suit provision defines the universe of relief that a court can prescribe: civil penalties and limited injunctive relief "to enforce. . . an effluent standard or limitation, or. . . an order [issued by EPA]." *Id.* § 1365(a); *see also NRDC v. Sw. Marine, Inc.*, 236 F.3d 985, 1000 (9th Cir. 2000) (district courts "are limited to enforcing standards, limitations, and orders that have been violated" when fashioning injunctive relief). Both are preempted by ICCTA here.

B. BNSF has reduced coal dust emissions under the oversight of the STB.

BNSF is a Class I rail carrier that provides rail service in thirty-two states, including Washington. Among various types of freight, BNSF transports coal from more than a dozen mines, the majority of which are in the Powder River Basin ("PRB") in Wyoming and Montana, to numerous destinations. As transport of coal increased from the PRB, BNSF observed in the early 2000s that coal dust had begun to accumulate in the rock ballast supporting the primary rail line ("the Joint Line") used by BNSF and Union Pacific Railroad ("UP") to access the majority of the PRB mines. That accumulation led to track instability, requiring additional costly maintenance. As BNSF began to investigate this issue, two derailments occurred on the Joint Line in May 2005, prompting BNSF to take more urgent action.

Since that time, BNSF has undertaken major efforts to minimize the potential loss of coal dust. As a common carrier regulated by the STB, however, BNSF does not have unfettered discretion to impose requirements on mines or its shippers to reduce coal dust. The company must navigate limits on, among other things, (a) equipment and loading restrictions that BNSF

may impose on shippers, (b) the conditions under which BNSF is permitted to refuse service, and (c) the rates BNSF may charge its customers.

BNSF has spearheaded multiple efforts to develop methods for reducing coal dust losses. The company tested the efficacy of "grooming" coal loads into a bread-loaf shape and the application of dust-suppressing topper agents. *See* BNSF's Supp. Resps. to Pl.'s Third Set of Interogs., Ex. 42 to Wagner Decl., at Interrog. 25. BNSF also installed Trackside Monitors and Dustfall Collectors to monitor and better understand coal dust losses. *Id.* at 9-10. While conducting these activities, BNSF shared information and engaged with members of the National Coal Transportation Association, a group of mines and shippers, to address their concerns and seek their assistance in addressing coal dust losses. *Id.* at 12-13. BNSF invested its resources and time into these efforts with the objective of developing viable options that would significantly reduce potential coal dust losses and be accepted by all stakeholders in the transportation of coal by rail. *See generally id.* at 8.

By 2009, BNSF had been unsuccessful in securing voluntary agreement from other stakeholders to implement measures that would significantly reduce in-transit coal dust losses. *See In re Ark. Elec. Coop. Corp.*, STB Fin. Dkt. No. 35305, 2011 WL 742698 (STB Mar. 2, 2011) ("Coal Dust I"). Consequently, BNSF issued a rule requiring coal shippers to take measures to have mines load cars in a manner that would reduce coal dust emissions by at least 85 percent. BNSF also directed shippers to load and groom coal to meet specific dimensions that BNSF had determined through testing would reduce coal dust losses. Several coal shippers and shipper groups challenged the rule before the STB as unreasonable. While the STB affirmed BNSF's right to impose rules intended to reduce coal dust losses during transit, the STB rejected

BNSF's rule as "unreasonable" under 42 U.S.C. § 10702 because it did not define with sufficient precision how shippers could ensure their compliance with the rule's requirements. *Id.* at *8-9.

In 2011, BNSF issued a new rule following lab and field testing of a variety of coal dust suppression methods. *In re Reasonableness of BNSF Ry. Co. Coal Dust Mitigation Tariff Provisions*, STB Fin. Dkt. No. 35557, 2013 WL 6638384 (STB Dec. 11, 2013) ("Coal Dust II"). Under this rule, BNSF established a "safe harbor" by which shippers were deemed to be in compliance with the tariff if they used pre-approved dust suppression methods that BNSF's testing had shown reduced coal dust losses by at least 85 percent. *Id.* at *2. These pre-approved methods involved coal to a specific profile and spraying the top of the coal in a loaded railcar with an approved topper agent. *Id.* Alternatively, shippers could comply with the rule by using any other method of coal dust suppression, provided that the shipper could demonstrate that the method reduced coal dust emissions by at least 85 percent. *Id.* The STB upheld this new rule (referred to as a coal loading rule) as reasonable in December 2013. *Id.* at *22.

C. ICCTA preempts Plaintiffs' requested injunctive relief as a matter of law because Plaintiffs' requested relief attempts to govern rail operations.

ICCTA's exclusive jurisdiction and remedies provisions preempt the injunctive relief Plaintiffs seek under the CWA because that relief would dictate the manner of BNSF's rail operations. ICCTA provides that its remedies "preempt" those arising under federal or state law.[39] 49 U.S.C. § 10501(b). As the U.S. Supreme Court made clear in *POM Wonderful LLC v. Coca-Cola Co.*, when a court considers whether one federal statute displaces another, "traditional rules of statutory interpretation" apply, and "any 'presumption against pre-emption' … has no

[39] As a legal matter, whether one federal statute prevents application of another is a question of *preclusion*, not preemption. *See POM Wonderful LLC v. Coca Cola Co.*, 134 S. Ct. 2228, 2236. In discussing legal standards involving ICCTA and the CWA, this motion uses "preemption" in order to be consistent with ICCTA's terminology.

force." 134 S. Ct. 2228, 2236 (2014) (quoting *Wyeth v. Levine*, 555 U.S. 555, 565 n.3 (2009)). The Court also instructed that language specifically addressing displacement of other federal laws is "powerful evidence" that Congress intended one federal statute to preempt another. *Id.* at 2237 (internal citation omitted).

Application of these principles to Section 10501(b) demonstrates that Congress intended ICCTA to preempt relief governing rail operations. ICCTA's text and legislative history demonstrate that Congress intended ICCTA to supplant remedies available under other federal laws to the extent that they are used to govern rail operations. Case law on preemption of state laws only buttresses this conclusion. These decisions show how ICCTA's remedy-preemption provisions apply to and render invalid any law or judicial relief that dictates the manner in which a railroad conducts its core rail operations.

1. ICCTA's plain meaning bars the relief that Plaintiffs seek.

ICCTA's expansive text leaves little doubt that Section 10501(b) preempts the injunctive remedies that Plaintiffs seek because those remedies would govern BNSF's rail operations. ICCTA commands that its remedies "with respect to regulation of rail transportation *are exclusive* and *preempt the remedies provided under Federal* or State law." 49 U.S.C. § 10501(b) (emphasis added).[40] Congress further specified that these ICCTA remedies fall exclusively under the STB's jurisdiction. *See id.* ("The jurisdiction of the Board over. . . transportation by rail carriers, *and the remedies provided in this part*. . . is exclusive." (emphasis added)). Congress made these preemptive provisions expansive by defining rail "transportation" to encompass (a) "a

[40] In contrast, a crucial component of the *POM Wonderful* holding finding no preclusion was that the Federal Food, Drug, and Cosmetic Act lacked explicit preclusion language that could be read to bar suits under another federal statute. *See* 134 S. Ct. at 2237.

locomotive, car. . . or equipment of any kind related to the movement of. . . property. . . by rail," as well as (b) "services related to that movement, including receipt, delivery. . . storage, handling, and interchange of property." *Id.* § 10102(9); *see also*, *City of Auburn*, 154 F.3d at 1031 (holding that "[w]e believe the congressional intent to preempt this kind of state and local regulation of rail lines is explicit in the plain language of the ICCTA and the statutory framework surrounding it.") ICCTA therefore preempts other remedies under federal law, including the CWA, to the extent those remedies would govern rail operations.

Plaintiffs seek injunctive relief that is squarely within the STB's jurisdiction. They request an injunction that would directly regulate BNSF's equipment, infrastructure, and rail operations. Plaintiffs have confirmed that they are seeking relief that includes, at a minimum, requiring covers for coal cars or the use of only specific types of cars to transport coal.[41] Plaintiffs' requested relief would require BNSF to replace the entire fleet of rail cars used to carry coal in interstate commerce and would presumably require shippers and other railroads to replace their fleets as well.[42] All such matters and this relief thus falls squarely within the scope of ICCTA's preemption provision.

2. Plaintiffs' demand for relief cannot be harmonized with ICCTA.

While a Court should try to "harmonize" a federal statute with ICCTA in order to avoid conflict, Plaintiffs' desired injunctive relief makes harmonization impossible because it would, for the first time, extend application of the CWA to regulate rail transportation directly. *See Asss'n of Am. R.R. v. S. Coast Air Quality Mgmt. Dist.*, 622 F.3d 1094, 1098 (9th Cir. 2010).

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[41] *See* June 2, 2016, B. Nilles Deposition, Ex. 43 to Wagner Decl. ("Nilles Depo."), at 67, 73.

[42] *Id.* at 73:13-24.

a. The CWA and other environmental statutes cannot be harmonized with ICCTA when extended to direct rail operations.

ICCTA and the Plaintiffs' unprecedented application of the CWA's citizen suit provision cannot be harmonized because ICCTA preempts federal environmental statutes to the extent that they are used to impose operating requirements on railroads. In *Association of American Railroads*, the Ninth Circuit held that ICCTA preempted regulations, not yet incorporated into the California State Implementation Plan ("SIP"), that regulated train idling under the federal Clean Air Act. 622 F.3d at 1095-96, 1098. The court's analysis assessed "the degree to which the challenged regulations burden rail transportation." *Id.* at 1097-98 (quoting *N.Y. Susquehanna & W. Ry. Corp. v. Jackson*, 500 F.3d 238, 252 (2d Cir. 2007)). The court found this burden to be significant, observing that the rules would "apply exclusively and directly to railroad activity …." *Id.* at 1098. The Ninth Circuit left open, however, the question of whether the CAA and ICCTA could be harmonized if these regulations became part of the California SIP. *See id.* at 1097-98.

The STB took up this precise question and concluded that the CAA and ICCTA could not be harmonized because the regulations dictated specific aspects of railroad operations. *In re EPA Petition*, STB Fin. Dkt. 35803, 2014 WL 7392860 (STB Dec. 29, 2014). The Board instructed that a federal law cannot be harmonized with ICCTA when it is "being used to regulate rail operations directly or being applied in a discriminatory manner against railroads" and held that ICCTA preempted the CAA to the extent it was used to directly dictate rail operations. *Id.* at *7. The Board observed that the regulation would potentially subject railroads to multiple, conflicting obligations and "decide for the railroads what constitutes unnecessary idling and also to influence the railroads' choice of equipment and how to configure that equipment." *Id.* at *8.

Plaintiffs seek to use the CWA in precisely the manner that the STB has already rejected. As the agency charged with administering ICCTA, the STB is entitled to deference to its determination that ICCTA preempts application of other federal laws to the extent they are used to directly manage rail operations. *Ass'n of Am. R.R.*, 622 F.3d at 1097 (explaining that courts in the Ninth Circuit owe *Chevron* deference to STB decisions (citing *DHX, Inc. v. STB*, 501 F.3d 1080, 1086 (9th Cir. 2007)). Just as the CAA cannot be used to set standards for rail operations relating to idling, Plaintiffs cannot use the CWA to dictate to a railroad what cars it may transport and how its trains must operate.

b. Prior case law addressing ICCTA and the CWA does not apply to Plaintiffs' requested relief.

Prior cases analyzing ICCTA's preemptive effect on the CWA do not provide guidance on whether ICCTA preempts the injunctive relief Plaintiffs seek here. For example, in *Humboldt Baykeeper v. Union Pac. R.R. Co.*, the court only held that the cost of litigating a CWA citizen suit was an insufficient basis for finding that the CWA could not apply alongside ICCTA. 2010 WL 217990, at *3 (N.D. Cal. May 27, 2010). *United States v St. Mary's Railway West* held only that ICCTA does not prevent *federal* (as opposed to private) enforcement of CWA Section 404's prohibition of unauthorized discharges against certain construction activities collateral to rail operations that were undertaken on a railroad's property. 989 F. Supp. 2d 1357 (S.D. Ga. 2013). In reaching this holding, *St. Mary's* only concluded that ICCTA does not displace the CWA's unauthorized discharge prohibition *in toto*. *See id.* at 1362. *St. Mary's* did not address whether ICCTA preempts relief imposing operational restrictions on a railroad.

Even to the extent *St. Mary's* addressed an "as-applied" challenge to the CWA, the STB's 2014 decision strips this case of its persuasive value. The *St. Mary's* discussion of as-applied

challenges rests on two assumptions: (1) that the STB would not read ICCTA to preempt federal environmental laws, *see id.* at 1364 (distinguishing STB decisions because they "note that federal environmental laws are still available …."); and (2) the lack of authority supporting the proposition that ICCTA is capable of "limiting federal action." *Id.* at 1365. The STB's 2014 conclusion that ICCTA displaces other federal laws to the extent they are used to manage rail operations nullifies both of these key assumptions, showing that the STB will read ICCTA to displace the remedies Plaintiffs seek. *See In re EPA Petition*, 2014 WL 7392860, at *6.

3. Plaintiffs' relief would undermine the STB's authority over rail operations and the policies that Congress intended ICCTA to promote.

Plaintiffs' injunctive relief threatens the STB's jurisdiction and ICCTA in multiple ways. First, an injunction would upend the balance struck by the STB when it approved BNSF's current set of coal dust control measures. Second, Plaintiffs' requested injunctive relief would subject railroads to new and conflicting regulatory obligations that likely will vary as a train travels across different jurisdictions. Congress expressly intended that railroads not face this type of regulatory burden, and the Court should not permit Plaintiffs to extend the CWA to rail operations and do just that.

a. An injunction would upset the economic and technical balance struck by the STB's decision on BNSF's coal loading rule.

Allowing Plaintiffs to use the CWA to direct BNSF's operations would undermine the STB's authority in concrete ways. The relief that they seek would effectively set aside the Board's decision concerning the reasonableness of BNSF's rule. The Board's finding that BNSF's second rule is reasonable struck a careful balance based on evidence concerning the efficacy of BNSF's required coal dust suppression methods, their cost effectiveness, and the

appropriateness of imposing the cost of compliance on shippers. *See Coal Dust II*, 2013 WL 6638384, at *6-14, *18-20.

For example, the parties before the STB described the variety of commercial and operating relationships that would be affected by coal dust control measures. *Coal Dust II*, 2013 WL 6639384, at *11 (Verified Statement of Stevan B. Bobb, at 4, 6-8, BNSF Railway Company's Opening Evidence and Argument, Coal Dust II, STB Docket No. FD 35557 (filed Oct. 1, 2012)). Coal is loaded by the coal mines, which act, for the most part, as agents for coal shippers, not the railroad. *See Coal Dust II*, at *4 (STB served May 15, 2015). The mines load coal into rail cars delivered by BNSF. Rail car ownership varies, with railroads owning and leasing some cars and shippers owning and leasing others. *See Coal Dust I*, 2011 WL 742698, at *6 (STB served Mar. 3, 2011). In evaluating the reasonableness of BNSF's rule, the STB considered the interests of the entire commodity chain that would be affected by coal dust control measures, such as feasibility, infrastructure, cost, and the potential impact on coal supply, to ensure that any rules would be consistent with the public interest.

Moreover, any remedies in this case relating to coal transportation would not be limited to Washington. BNSF transports coal from more than ten mines in Montana and Wyoming to or through Washington. *See* BNSF_WA_009292-BNSF_WA_009313, Ex. 44 to Wagner Decl. Accordingly, remedies supposedly focused on coal transportation in Washington would affect not only a large number of entities that are not parties in this case, but have ramifications across the country. Enjoining BNSF's rail operations would impose compliance costs on BNSF, its

customers, PRB mines, and the nation's rail network as a whole. Congress intended that these economic impacts be considered, but only in the context of an STB proceeding.[43]

b. An injunction would undermine ICCTA's uniform regulatory scheme for railroads.

Allowing injunctive relief governing rail operations in CWA citizen suits would also undermine ICCTA's objective of protecting railroads from navigating multiple competing compliance obligations across jurisdictions. Congress intended ICCTA's exclusive remedy and jurisdiction provisions to prevent the application of state and federal laws in a manner that balkanize and subvert the federal "scheme" of railroad regulation. H.R. Rep. No. 204-311, at 95-96 (1995), *reprinted in* 1995 U.S.C.C.A.N. 793, 808. CWA injunctions governing rail operations would inevitably result in railroads becoming subject to different decrees issued by different district courts or regulations issued by a state. This is particularly true because most states, including Washington, have been delegated CWA NPDES permitting authority.[44] Those schemes vary from state to state and are further complicated by the delegation of NPDES authority to individual tribal governments within those states. In the face of competing authorities, a railroad almost certainly would be forced to comply with multiple, potentially conflicting operational and permitting requirements during a single trip each time one of its trains traverses jurisdictions of multiple federal courts or states. Congress intended ICCTA to prevent

[43] Denial of Plaintiffs' requested relief would not leave Plaintiffs without a forum to hear their concerns. ICCTA permits any person, without limitation, to file a complaint with the Board alleging a violation of ICCTA. *See* 49 U.S.C. § 11701(b). Citizens groups also have the ability to participate in Board rulemaking proceedings. *See* 49 C.F.R. § 1110.2 (authorizing any person to initiate a rulemaking proceeding); *id.* § 1110.3 (authorizing participation through written and oral comments); *id.* § 1115.1(b) (authorizing judicial review of board decisions). Plaintiffs thus have avenues for addressing concerns about BNSF's coal loading rule that do not usurp the Board's authority to assess the reasonableness and economic impact of operating restrictions.

[44] *See* E.P.A, NPDES State Program Information, https://www.epa.gov/npdes/npdes-state-program-information (last updated Feb. 19, 2016); http://www.ecy.wa.gov/programs/wq/permits/ (last visited Aug. 18, 2016).

that precise problem from arising, and this Court should not permit Plaintiffs to pursue relief that would undermine the critical legislative objective of uniformity.

4. Courts consistently interpret ICCTA to prohibit judicial relief and regulatory standards that govern railroad operations.

Case law analyzing ICCTA preemption of state laws provides further support that Congress intended ICCTA to prohibit relief governing railroad operations, even when sought under generally applicable laws. In *PCI Transportation, Inc. v. Fort Worth & Western Railroad Co.*, the Fifth Circuit held that claims arising under a contract were completely preempted by ICCTA, even though Texas common law governed the claims. 418 F.3d 535 (5th Cir. 2005). In addition to other relief, the plaintiff sought an injunction that would dictate how Fort Worth & Western provided switching services. In affirming the district court's complete preemption holding, the Fifth Circuit held that the injunctive relief governing Fort Worth & Western "would regulate the operation of [its] switching yard and would therefore fall squarely under § 10501(b)." *Id.* at 540. *Rushing v. Kansas City Southern Railway Co.* similarly held that ICCTA preempted a nuisance claim to the extent that plaintiffs sought an injunction requiring the railroad to operate its trains and switch yard in a manner that would prevent the vibrations that were the subject of the suit. 194 F. Supp. 2d 493 (S.D. Miss. 2001). ICCTA preempted this relief because "Plaintiffs seek to use state common law to regulate the manner in which the Defendant conducts operations at its switch yard, which in turn would result in an economic impact on the Defendant. . . ." *Id.* at 500. These cases provide further support that ICCTA reaches any relief that has the effect of managing rail operations, which is precisely what Plaintiffs seek here.

D. ICCTA also preempts Plaintiffs' claims for civil penalties or other monetary relief.

Courts and the STB have made clear that ICCTA preemption applies to claims for monetary relief and is not limited to remedies, like the injunctive relief sought here, that would demand changes in a railroad's core operations. *See, e.g., Pace v. CSX Transp., Inc.*, 613 F.3d 1066, 1069 (11th Cir. 2010) (holding that ICCTA preempted claim for monetary relief under state law); *Norfolk S. Ry. Co. – Dec. on Pet. for Declaratory Order* Docket No. FD 35701, 2013 WL 5891582 (Nov. 4, 2013) (holding that ICCTA preempted claim for monetary relief arising from alleged "discharge of smoke, dust, dirt, and other particulates"). The reasoning set forth in § III.C above establishing preemption of Plaintiffs' claims for injunctive relief applies with equal force here and for the same reasons compels the conclusion that ICCTA preempts Plaintiffs' claims for monetary relief. The imposition of civil penalties or other monetary relief would have the effect of regulating BNSF's rail operations because BNSF could be exposed to civil penalties unless it undertakes the specific operational measures that Plaintiffs seek to impose through their claims for injunctive relief. In other words, preemption of the injunctive relief claims would have no practical effect without preemption of Plaintiffs' claims for monetary relief.

In cases where relief sought by plaintiffs is preempted by ICCTA, courts generally dismiss the claims on which such relief is based in their entirety. *See, e.g., Pace*, 613 F.3d at 1069. Consequently, BNSF is entitled to summary judgment dismissing Plaintiffs' claims.

CONCLUSION

For all of the above reasons, the Court should grant BNSF's motion, enter judgment in favor of BNSF, and dismiss Plaintiffs' claims.

DATED this 19th day of August, 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing DEFENDANT BNSF RAILWAY COMPANY'S MOTION FOR SUMMARY JUDGMENT with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SIERRA CLUB, a California nonprofit corporation, *et al.*,

Plaintiffs,

v.

BNSF RAILWAY COMPANY, a Delaware corporation,

Defendant.

Case No. 2:13-cv-00967-JCC
(consolidated with Case No. 2:14-cv-00660)

THE ASSOCIATION OF AMERICAN RAILROADS' *AMICUS CURIAE* BRIEF

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I. Introduction and Summary of Argument

Congress has long recognized that railroads must be subject to a uniform set of federal regulations. Railroads cannot provide the rail transportation that is critical to the U.S. economy if they are subject to conflicting regulatory requirements imposed on their operations. For this reason, Congress has given a federal agency, the Surface Transportation Board ("STB"), exclusive jurisdiction to regulate rail transportation and has provided that any remedy under other federal or state law that seeks to regulate rail transportation is preempted.

The Association of American Railroads ("AAR") files this *amicus curiae* brief because of the importance to its members of preventing regulation of rail transportation under other statutes, including other federal statutes, that conflict with the ICC Termination Act ("ICCTA") and with the STB's exclusive authority to regulate interstate rail transportation. It is not tenable for AAR's members, or the many shippers that rely on the rail service provided by AAR's members, to be subject to conflicting regulatory mandates under different federal or state laws. AAR has a strong interest in the enforcement of ICCTA to avoid conflicting, patchwork regulation of rail operations.

AAR believes that the injunctive relief sought by the Plaintiffs in this case would be preempted by ICCTA. AAR files this *amicus curiae* brief to describe for the Court the severe consequences that the relief sought by Plaintiffs would have on the rail industry and on shippers and their customers that rely on rail service. Plaintiffs are asking the Court to regulate rail transportation of coal under the Clean Water Act by mandating transportation of coal in cars with mechanical covers and the redesign of all cars to have certain design features that Plaintiffs would require. But Congress precluded the use of federal law to regulate rail transportation in this way. Congress adopted an express statutory preemption provision in ICCTA to avoid

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subjecting railroads to multiple and potentially conflicting operating requirements that could interfere with rail service. The grounds for Congress's concern are amply demonstrated here. Plaintiffs' requested injunctive relief would make it impossible, at least in the near term, for railroads to comply with their most fundamental obligation under ICCTA to provide rail service and would therefore have severe adverse consequences for utility shippers of coal and their customers. Plaintiffs' requested relief would also conflict with the STB's regulation of rail practices regarding coal transportation, including standards that the STB has already established and applied to railroads transporting coal, and would potentially create a patchwork of coal dust regulation that would impair rail transportation across the United States.

AAR urges the Court to find that the injunctive relief requested by Plaintiffs is preempted by ICCTA. While the Clean Water Act might have application to railroads in some areas, the remedies sought by Plaintiffs in this case go far beyond anything that would be permitted under ICCTA.

II. ICCTA Precludes Regulation of Rail Operations Under Other State and Federal Statutes.

Plaintiffs' proposed Clean Water Act remedies must be considered in the context of the unique regulatory structure governing railroads. Accordingly, before addressing the severe consequences of Plaintiffs' proposed remedies for railroads and their shippers, AAR provides a brief summary of the relevant law governing rail regulation and the preemption of other state and federal law that seek to regulate rail operations.

Congress's regulation of interstate rail transportation under federal law has been recognized as "among the most pervasive and comprehensive of federal regulatory schemes." *Chi. & N. W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 318 (1981). While pruning economic regulation at the federal level more recently, Congress has made it clear that rail transportation must continue to be subject to uniform rules and regulations. In 1995, Congress

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enacted ICCTA to establish exclusive federal regulatory jurisdiction and exclusive federal remedies for rail transportation. Specifically, the ICCTA vests the STB with "exclusive" jurisdiction over "transportation by rail carriers" including rail practices and the operation of rail facilities. 49 U.S.C. § 10501(b). The statute defines rail transportation expansively to encompass a car, facility or equipment "of any kind" related to the movement of property by rail. 49 U.S.C. § 10102(9)(A). To emphasize and protect the STB's exclusive authority to regulate rail transportation, ICCTA further states that "the remedies provided under this part with respect to regulation of rail transportation are exclusive and *preempt the remedies* provided *under Federal* or State law." 49 U.S.C. § 10501(b) (emphases added).

One of Congress's key objectives in reducing regulatory burdens and providing the STB with exclusive regulatory authority was to ensure the railroad industry's economic viability and its ability to meet the transportation needs of rail shippers. *See Ass'n of Am. R.Rs. v. S. Coast Air Quality Mgmt. Dist.*, 622 F.3d 1094, 1096 (9th Cir. 2010) ("*AAR*") (ICCTA is "a federal act that substantially deregulated the railroad industry"). As Congress explained, over time "[t]he combination of . . . onerous Federal regulations and stiff competition from the motor carrier industry proved lethal for the railroads; by the 1970s, the railroad industry was on the brink of financial collapse." H.R. Rep. No. 104-331, at 90 (1995), *reprinted in* 1995 U.S.C.C.A.N. 793, 802. ICCTA "builds on the deregulatory policies that have promoted growth and stability in the surface transportation sector. . . . The [Act] keeps bureaucracy and regulatory costs at the lowest possible level, consistent with affording remedies only where they are necessary and appropriate." *Id.* at 93, 1995 U.S.C.C.A.N. at 805. Thus, "freeing the railroads from state and federal regulatory authority was the principal purpose of Congress." *Wis. Cent. Ltd. v. City of Marshfield*, 160 F. Supp. 2d 1009, 1015 (W.D. Wis. 2000). The preemption of other state and

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federal law that would add to, and potentially conflict with, regulation by the STB was essential to accomplishing Congress's objectives.

The courts have concluded that "Congress intended the preemptive net of [ICCTA] to be broad by extending exclusive jurisdiction to the STB over anything included within the general and all inclusive term 'transportation by rail carriers.'" *CSX Transp., Inc. v. Ga. Pub. Serv. Comm'n*, 944 F. Supp. 1573, 1582 (N.D. Ga. 1996) (citation omitted); *see also Friberg v. Kan. City S. Ry. Co.*, 267 F.3d 439, 443 (5th Cir. 2001) ("The language of the statute could not be more precise, and it is beyond peradventure that regulation of KCS train operations . . . is under the exclusive jurisdiction of the STB . . . ."). The Ninth Circuit has recognized that the preemptive effect of ICCTA is broad and sweeping. *See AAR*, 622 F.3d at 1096.

Most cases involving ICCTA preemption have arisen in the context of state or local government efforts to regulate rail transportation, where ICCTA has been repeatedly found to preclude any efforts to interfere with rail operations. The courts and the STB have found, without exception, that any attempt to directly regulate core rail operations is preempted by ICCTA. In *CSX Transportation, Inc. – Petition for Declaratory Order*, STB Finance Docket No. 34662, 2005 WL 584026, at *8 (S.T.B. served Mar. 14, 2005), *petition for reconsideration denied*, 2005 WL 1024490 (S.T.B. served May 3, 2005), the STB found that operational limits imposed by the District of Columbia on movements of hazardous materials near the U.S. Capitol were preempted, noting that "[r]egulating when and where particular products can be carried by rail . . . would constitute direct regulation of a railroad's activities" that is prohibited by ICCTA. When a town in Massachusetts directed a railroad to cease operations on a line, the STB explained that "[s]uch an attempt to prohibit common carrier rail transportation directly conflicts with the most fundamental common carrier rights and obligations provided by federal law and

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the Board's exclusive jurisdiction over that service. The Town's actions are therefore *plainly* preempted by § 10501(b)." *Boston & Maine Corp. & Springfield Terminal R.R. Co. – Petition for Declaratory Order*, STB Docket No. FD 35749, 2013 WL 3788140, at *3 (S.T.B. served July 19, 2013) (emphasis added).[1] Since the STB has exclusive authority to regulate rail transportation, the courts have also held that injunctions issued by a court that are directed at rail operations are preempted by ICCTA.[2]

ICCTA also is unique among federal statutes in extending the preemptive effect of the STB's exclusive jurisdiction to cover *federal law* remedies involving "regulation of rail transportation." 49 U.S.C. § 10501(b). Congress understood that uniform regulation of rail transportation by the STB could be undermined by the application of federal law to rail operations as well as state law. In the limited areas of rail safety and hazardous materials transportation, Congress expressly provided regulatory authority to other federal agencies within

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[1] Numerous court and STB decisions have reached the same conclusion. *See, e.g., Tex. Cent. Bus. Lines Corp. v. City of Midlothian*, 669 F.3d 525, 536 (5th Cir. 2012) (finding preemption because "the City's ordinances manage or regulate rail transportation"); *Griffioen v. Cedar Rapids & Iowa City Ry. Co.*, 977 F. Supp. 2d 903, 905 (N.D. Iowa 2013) (claims based on the placement of railcars loaded with ballast upon tracks preempted because "the parking of loaded cars on tracks to prevent them from washing away was a core operational activity, with ramifications on the continued operations of the network, governed by the ICCTA"); *Burlington N. & Santa Fe Ry. Co. v. Dep't of Transp.*, 206 P.3d 261, 264 (Or. Ct. App. 2009) (finding preemption of a law regulating the blocking of rail crossings preempted because it was "not a law of general applicability" but "an 'operating rule' and a 'regulation of rail transportation'" (quoting *Friberg*, 267 F.3d at 443)).

[2] *Blanchard Sec. Co. v. Rahway Valley R.R. Co.*, No. 04-3040, 2004 U.S. Dist. LEXIS 25647, at *18-20 (D.N.J. Dec. 22, 2004) (injunctive relief claim that would restrict the railroad's use of the rail line to three round trips per week is not valid), *aff'd*, 191 F. App'x 98, 100 (3d Cir. 2006); *Rushing v. Kan. City S. Ry. Co.*, 194 F. Supp. 2d 493, 501 (S.D. Miss. 2001) (injunctive relief claim preempted even if nuisance damages could be pursued); *Wichita Terminal Ass'n, BNSF Ry. Co. & Union Pac. R.R. Co. – Petition for Declaratory Order*, STB Docket No. FD 35765, 2015 WL 3875937, at *3 (S.T.B. served June 23, 2015) ("[A]ny court order . . . requiring a crossing at Emporia Court is preempted under § 10501(b) because it would have the effect of managing or governing property that is part of the national rail network.").

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the U.S. Department of Transportation. *See* Hazardous Materials Transportation Act ("HMTA"), 49 U.S.C. §§ 5101-5128; Federal Railroad Safety Act of 1970 ("FRSA"), Pub. L. No. 91-458, 84 Stat. 971 (codified at 49 U.S.C. § 20102, *et seq.*).[3] But outside of those areas, Congress understood that the economic viability of the rail industry, and the adequacy of rail transportation necessary to meet the needs of the country, requires that rail operations be subject to a single regulatory authority.

Thus, the broad preemptive effect of ICCTA extends to remedies under federal environmental law that seeks to regulate rail operations. The STB has concluded that federal environmental laws would be preempted if "federal environmental laws are being used to regulate rail operations or being applied in a discriminatory manner against railroads." *Grafton & Upton R.R.—Petition for Declaratory Order*, STB Docket No. FD 35779, 2014 WL 292443, at *5 (STB served Jan. 27, 2014). In *U.S. EPA – Petition for Declaratory Order*, STB Docket No. FD 35803, 2014 WL 739260, at *8 (S.T.B. served Dec. 30, 2014) (slip op.) ("*EPA*"), the STB concluded that the proposed adoption of certain locomotive idling requirements under the federal Clean Air Act would likely be precluded by ICCTA because they "would likely affect the railroads' ability to conduct their operations, as it appears to decide for the railroads what constitutes unnecessary idling and also to influence the railroads' choice of equipment and how to configure that equipment." *Id*. at 9.

Notably, where federal environmental laws have been applied to railroads, the courts have made it clear that they were *not* being applied in a way that regulated or obstructed rail operations. Thus, in *United States v. St. Mary's Railway West LLC*, 989 F. Supp. 2d 1357, 1362

[3] These statutes underscore the importance of uniform regulation of rail operations with their own preemption provisions. 49 U.S.C. § 20106(a) (preemption under FRSA); 49 U.S.C. § 5125 (preemption under HMTA).

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(S.D. Ga. 2013), a court concluded that EPA's action against a railroad for discharges into wetlands made in connection with construction of a side track was not preempted by ICCTA, noting that it was "in no way a direct regulation on Defendants' activities." A limit on where construction waste could be dumped – the issue in the case – had no impact on the railroad's ability to conduct rail operations or even a significant impact on the railroad's construction activity. The court viewed the railroad's conduct relating to disposal of construction by-products as collateral to the railroad's core transportation activities and therefore subject to Clean Water Act requirements.

The Ninth Circuit has said that before applying ICCTA preemption to another federal law, "the courts must strive to *harmonize* the two laws, giving effect to both laws if possible." *AAR*, 622 F.3d at 1097 (emphasis added). But it would not be possible to "harmonize" ICCTA, which gives the STB exclusive authority to regulate rail operations, and the direct regulation of rail operations by federal courts under environmental law. The jurisdictional grant of exclusive authority to the STB to regulate rail transportation cannot be harmonized with the exercise of jurisdiction over rail transportation by someone other than the STB, regardless of how that jurisdiction is manifested. The core objective of ICCTA preemption was to avoid subjecting railroads to potentially conflicting regulation of rail operations under laws other than ICCTA. That objective cannot be "harmonized" with Plaintiffs' request that the Court engage in direct regulation of rail operations under the Clean Water Act.

The plain language of the ICCTA preemption provision precludes Plaintiffs' proposed remedies, which seek to regulate BNSF's rail operations. As the court found in the *St. Mary's* case, federal environmental law may apply to railroad conduct that is collateral to railroads'

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basic function – providing rail transportation – but it cannot be used to regulate the way railroads provide service on the interstate rail network that is administered by the STB.

The use of federal environmental law remedies to regulate the way railroads operate would be fundamentally repugnant to ICCTA. Here, the relief sought by Plaintiffs would have precisely the effect that Congress sought to avoid when it adopted the exclusive jurisdiction provisions of ICCTA and provided for preemption of state and federal law: it would subject railroads to conflicting operating mandates that would seriously impair rail transportation.

III. Plaintiffs' Requested Injunctive Relief Would Prevent Railroads from Meeting Their Most Basic Obligations Under ICCTA.

A fundamental purpose of ICCTA is to ensure the availability of rail transportation to meet the needs of rail shippers and the U.S. economy. Accordingly, ICCTA expressly requires railroads to provide rail transportation upon reasonable request. 49 U.S.C. § 11101(a).[4] Railroads' service obligation, referred to as the common carrier obligation, is at the heart of the regulatory scheme established by Congress and it is critical to the U.S. economy. Coal shippers rely on the availability of rail transportation to move coal primarily for use in coal-fired electricity generating facilities. Coal is the largest single commodity handled by U.S. railroads, accounting for about 40% of total rail transportation (by tons) in 2012.[5]

[4] Numerous other statutory provisions in ICCTA reflect Congress's strong desire to ensure adequate rail transportation to serve the public, including provisions directing the STB to ensure the revenue adequacy of railroads (49 U.S.C. § 10704(a)(2)), prohibiting rail line abandonments or discontinuance of rail service without STB approval (49 U.S.C. § 10903), requiring railroads to provide adequate car service (49 U.S.C. § 11121) and giving the STB authority to address service emergencies (49 U.S.C. § 11123).

[5] Ass'n of Am. R.Rs., U.S. Freight Railroad Industry Snapshot, https://www.aar.org/data-center/railroads-states (last accessed Aug. 18, 2016).

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Plaintiffs request injunctive relief from the Court that would mandate a fundamental change in the way coal is transported by rail in the United States. Coal is not currently transported in rail cars that use or are capable of using mechanical covers.[6] Moreover, many rail cars used for coal transportation have design features that permit water to drain from the car under certain conditions.[7] Nevertheless, Plaintiffs ask the Court to require installation of mechanical covers on rail cars,[8] and to order BNSF to replace each rail car currently in use with a newly designed rail car that does not have any holes along the side or bottom of the cars.[9]

Coal transportation by rail would be impossible, at least in the near term, if railroads were ordered to use covered cars for coal transportation or to change design features of cars used to transport coal. Safe and effective covers for rail coal cars are not commercially available, and there currently is no feasible technology or infrastructure that would allow for the safe application or transport of mechanical covers on coal rail cars. Coal cars would have to be re-

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[6] *See* Bruce Nilles, Plaintiffs' 30(b)(6) witness, Deposition Tr. at 70:23-24 (June 2, 2016) ("A. Are [covers] currently being used in the United States? Not to my knowledge."); James Paul, BNSF's Rebuttal to Plaintiffs' Expert Reports, at 7 (June 29, 2016) ("Despite the potential benefits, [Airflow Sciences Corporation's] research into the topic of coal car covers indicates that there are significant safety, and technical feasibility concerns that have prevented adoption by the car owners and railroads in the United States."). BNSF provided AAR with public copies of pleadings, expert materials and deposition transcripts relevant to the relief requested by Plaintiffs.

[7] *See* Nilles 30(b)(6) Deposition Tr. at 73:8-9 ("Q: Is Sierra Club aware of any railcars currently used to transport coal or petcoke in the United States that do not have holes or openings in their sides or bottoms? A. Not for the petcoke, but other products, yes. Not for coal, but other products.").

[8] *See* Plaintiffs' Third Amended Complaint Item E (asking the Court to "Enjoin Defendants' use of uncovered railcars for any transport of coal pollutants").

[9] *See* Plaintiffs' Third Amended Complaint Item F (asking the Court to "Enjoin Defendants' use of railcars that, through design or imperfection—including holes or openings in their sides or bottoms—allow coal pollutants to be discharged into the waters of the U.S.").

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engineered and re-designed to accommodate mechanical covers and to eliminate current drainage features on cars.[10] The question of whether car covers and other rail car design changes could be feasible for *future* use is not relevant here. There is no dispute that railroads could not *now* comply with a court order requiring transportation of coal in re-designed, covered rail cars because the technology, equipment and infrastructure are not currently in place to comply with such an order. It would be physically impossible for railroads to comply with the injunctive relief sought by Plaintiffs and still provide rail service needed by railroads' coal shippers.

The disruption to the economy from Plaintiffs' requested relief would be enormous. When rail congestion and extreme weather conditions caused delays in rail transportation of coal in 2014, numerous utility companies and public officials came to the STB with urgent requests that the STB take action to ensure the availability of coal, describing the potential adverse consequences of an interruption in coal supplies.[11] Concern over the possible impact of service disruptions on the coal supply chain led the STB's staff to work with the U.S. Department of

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[10] *See, e.g.*, Nilles 30(b)(6) Deposition Tr. at 73:17-24 ("Q. So because the entire fleet of railcars carrying coal and petcoke has holes in their sides or bottoms, either by design or most often by design, is the Sierra Club asking the court to require BNSF to change its entire fleet of railcars carrying coal and petcoke? A. If needed to comply with the Clean Water Act, just as you did with the oil trains.").

[11] *See, e.g.*, Letter from Senator Tammy Baldwin et al. to the Surface Transportation Board, at 1 (Nov. 19, 2014) (urging the STB to "prioritize its oversight activities of coal deliveries" so that electric utilities could avoid having "to take extraordinary and costly steps to conserve coal by shutting down power plants, restricting operations, and purchasing more costly power from other sources"), *docketed in U.S. Rail Serv. Issues*, STB Ex Parte No. 724 (filed Nov. 25, 2014); Letter from Congresswoman Cheri Bustos to the Surface Transportation Board, at 1 (Aug. 6, 2014) (stating that the "lack of [rail] service . . . has put [an electric utility's] coal supply at a perilous level" and asking the STB to work with the railroad and utility to "ensure the stability of the electric grid in the Midwest region"), *docketed in U.S. Rail Serv. Issues*, STB Ex Parte No. 724 (filed Aug. 12, 2014); Letter from Senator Al Franken to the Surface Transportation Board, at 1 (Sept. 4, 2014) (stating that an electric utility "fear[ed] that they could run out [of coal] this winter because of a lack of rail service"), *docketed in U.S. Rail Serv. Issues*, STB Ex Parte No. 724 (filed Sept. 4, 2014).

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Energy and Federal Energy Regulatory Commission ("FERC") "in order to share information about the coal railroad supply chain as it relates to the reliability of energy production." *U.S. Rail Serv. Issues*, STB Docket No. EP 724, 2014 WL 7405861, at *4 (S.T.B. served Dec. 30, 2014). BNSF was required to submit "to the Board its contingency plans for addressing any such shortfalls [in coal stockpiles], including a detailed description of the steps it takes to identify coal-fired plants at critical levels and to remedy acute shortages in a timely fashion." *Id*.

In 2005, when coal transportation was delayed in Wyoming due to problems with the stability of tracks used by heavy coal trains, utilities claimed that they suffered losses of hundreds of millions of dollars and their customers suffered serious interruptions in service.[12] FERC subsequently met with utility and railroad representatives "to examine concerns raised by certain electric utility associations with respect to coal inventories at power stations and rail coal deliveries to their member companies. These claims raise serious questions about the adequacy of electricity supply in certain regions of the country as we enter the summer months." *Discussions with Utility and Railroad Representatives on Market and Reliability Matters*, 71 Fed. Reg. 33746, 33746 (June 12, 2006). The STB was so concerned about the potential for disruption to the nation's energy supply that it established the Rail Energy Transportation Advisory Committee, whose members include railroads, coal producers, electric utilities, the private railcar industry as well as STB members and representatives from the Departments of Energy and Transportation and the FERC. *See Establishment of a Rail Energy Transp. Advisory Comm.*, STB Ex Parte No. EP 670, slip op. at 2 (S.T.B. served July 17, 2007) ("The Board views

[12] Eleven utilities estimated that they incurred a total of $228 million in costs from the service delays after the 2005 derailments. Congressional Research Service, *Rail Transportation of Coal to Power Plants: Reliability Issues* (Sept. 26, 2007).

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the reliability of the nation's energy supply as crucial to this nation's economic and national security, and the transportation by rail of coal and other energy resources as a vital link in the energy supply chain.").

The potential interruption of coal transportation due to the physical inability to comply with an order requiring use of car covers and re-designed cars, even in the near term, would cause severe damage to the U.S. economy. Congress sought to avoid precisely this result by preempting the regulation of rail operations under other federal law. Congress mandated the uniform regulation of rail operations under STB authority to ensure that the rail industry would be able to meet the needs of rail shippers and the U.S. economy. The enormous disruptions that would result from the regulation of rail transportation of coal under Plaintiffs' requested remedies show that Congress's concerns were well founded.

The Plaintiffs appear to acknowledge the infeasibility of an immediate court-imposed requirement to change transportation equipment and practices.[13] But the Plaintiffs' concession is fatal to their request for relief. Courts are not in a position to oversee the implementation of what are essentially regulatory requirements. Congress created the STB precisely for that purpose and adopted an express preemption provision to preclude courts from overseeing rail operations through remedies arising under other law. ICCTA plainly preempts federal law remedies that would turn the courts into substitute regulators.

IV. Plaintiffs' Proposed Injunctive Relief Would Conflict with the STB's Regulation of Rail Practices Regarding Coal Dust.

[13] *See* Nilles 30(b)(6) Deposition Tr. at 72:10-14 ("We are not asking for the court to stop all coal transport tomorrow. We are mindful that there will . . . likely need to be a compliance period for you to put them on your railcars, or for BNSF to put them on their railcars.").

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When Congress gave the STB jurisdiction over rail transportation, it expressly provided the STB with exclusive regulatory authority over rail practices. 49 U.S.C. §§ 10501(b)(1), 10702(2). The STB has exercised that authority to regulate measures that railroads can take to address coal losses in transit from rail cars. Accordingly, Plaintiffs are asking the Court to regulate practices that are already subject to STB regulation. The core purpose of ICCTA preemption was to avoid such conflicting regulatory mandates.

In *Arkansas Electric Cooperative Corp. – Petition for Declaratory Order*, STB Docket No. FD 35305, slip op. at 12 (S.T.B. served Mar. 3, 2011) ("*Coal Dust I*"), BNSF published a tariff requiring rail shippers of coal to take measures when they load rail cars to reduce substantially the amount of coal that could be lost in transit. The tariff was challenged by coal shippers as an unreasonable practice, subject to the STB's jurisdiction over railroad practices. The STB determined that it was appropriate for railroads to require their shippers to take measures to reduce coal losses in transit, but railroads had to follow certain regulatory standards. The STB set out a regulatory framework for determining what a railroad could do to address coal losses in transit.

Two aspects of that regulatory framework are relevant here. First, the STB stated that "once a determination has been made that a problem exists for which a solution is required, the focus is on whether the solution is effective in relation to its costs." *Id.* at 5 n.14. Railroads were not entitled to impose cost-prohibitive measures that might interfere with rail transportation. Second, the STB made it clear that the solution to the problem had to be one that shippers could meet: "A coal dust emission requirement that a shipper may be unable to meet, even if the currently accepted methods of coal dust suppression are employed, is problematic." *Id.* at 12.

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The public interest in adequate rail transportation required solutions that do not unreasonably interfere with rail movements on the network.

In *Coal Dust I*, the STB refused to allow BNSF to implement its proposed tariff, finding that the tariff, which set a performance standard for coal dust losses measured at fixed locations on the right of way, created too much uncertainty for shippers who would not know when they loaded the cars whether they would be in compliance with the tariff. *Id*. at 14. BNSF subsequently established a new tariff that identified specific loading practices that would be deemed to be in compliance with the tariff. The approved practices involved, among other things, the application of certain chemical toppers shown to be effective in reducing coal losses in transit. The STB found that the new tariff was reasonable, noting that the specified approach was "the most effective measure for controlling the dispersion of dust from open-top rail cars" and that there was no evidence that the specified approach was "cost prohibitive, particularly in relation to the delivered cost of PRB coal." *Reasonableness of BNSF Ry. Co. Coal Dust Mitigation Tariff Provisions*, STB Docket No. FD 35557, slip op. at 19 (S.T.B. served Dec. 13, 2013) ("*Coal Dust II*").

The STB's *Coal Dust* decisions make it clear that railroads are not free to take any measures they wish to address coal losses in transit. Railroads do not load or unload rail cars, and many rail cars are not even owned by the railroads. Therefore any requirements for the use of rail car covers or the re-design of coal cars would have to be imposed on and implemented by coal shippers. Given the numerous and varied interests involved in regulating coal loading and transportation, the measures railroads can take in the area of coal loading practices are subject to regulation by the STB, which has already exercised its jurisdiction on two occasions to ensure compliance with the public interest objectives of ICCTA.

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Plaintiffs' requested injunctive remedies ignore and irreconcilably conflict with the STB's role in regulating railroads' practices and loading requirements that can be imposed on shippers. Since the STB has already exercised its regulatory authority in this area, Plaintiffs' proposed remedies fall into the core of what Congress intended to preempt.

V. Plaintiffs' Proposed Injunctive Relief Could Result in the Patchwork Regulation of Rail Operations.

As the STB has explained, a major objective of ICCTA is "to prevent a patchwork of local regulation from interfering with interstate commerce." *Wichita Terminal Ass'n BNSF Ry. Co. & Union Pac. R.R. Co. – Petition for Declaratory Order*, STB Docket No. FD 35765, 2015 WL 3875937, at *4 (S.T.B. served June 23, 2015). The prospect of a "patchwork" of local regulation does not arise only through application of state and local law, but also can result from the application of federal environmental law to railroads through different court decisions applicable to rail operations in different parts of the country. In *EPA*, the STB found that this concern would support preclusion of federal environmental law as applied to locomotive idling restrictions.

In that case, the EPA asked the STB to declare whether certain locomotive idling restrictions applicable to rail operations in California would be preempted if they were adopted under the federal Clean Air Act. The STB ruled that such restrictions, if adopted, would likely be preempted by ICCTA. The STB noted that if the regulation of locomotive idling were permitted under federal air quality law, there were more than 100 nonattainment districts across several states that might seek to impose some form of idling restriction on railroads. *EPA*, slip op. at 8. If regulation of locomotive idling were permitted in California, other parties "could propose their own rules on locomotive operations to meet localized concerns through the SIP

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process, thereby leading to the lack of uniformity of regulation that Congress intended to preclude in § 10501(b)." *Id*. at 9.

Here, Plaintiffs seek regulation of BNSF's operations in Washington State based on alleged discharges into navigable waters in Washington. But there are numerous navigable waterways across the country that are near rail lines used to provide transportation of coal. If Plaintiffs are entitled to use the Clean Water Act to regulate rail transportation of coal in the State of Washington based on allegations relating to discharges in the state, plaintiffs in other areas of the country could bring similar lawsuits. As in the *EPA* case, those parties could propose their own injunctive relief based on local conditions, leading to the patchwork of regulation that ICCTA was intended to preclude.

Conclusion

Plaintiffs' proposed injunctive remedies are precluded under the plain language of ICCTA. Remedies that seek to regulate rail operations are fundamentally inconsistent with Congress's express intent to subject rail operations to uniform regulation under the STB and to prevent operating mandates under other law, including federal law, from interfering with the flow of rail transportation. The disastrous impact that the remedies requested by Plaintiffs here would have on rail shippers and the economy shows that Congress's concerns over the potential impact of nonuniform regulation were well founded. The Court should find that the injunctive relief sought by Plaintiffs in this case is preempted by ICCTA.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SIERRA CLUB, a California nonprofit corporation, et al., Plaintiffs, v. BNSF RAILWAY COMPANY, a Delaware corporation, Defendant.	CASE NO. C13-967-JCC ORDER DENYING PLAINTIFFS' AND DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT

This matter comes before the Court on Plaintiffs' motion for partial summary judgment (Dkt. No. 197) and Defendant's motion for summary judgment (Dkt. No. 200). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby DENIES the motions for the reasons explained herein.

I. BACKGROUND

The above-captioned matter is a Clean Water Act (CWA) citizen lawsuit in which seven environmental advocacy organizations allege that BNSF Railway Company—an operator of railway lines that run from Wyoming to Washington—violates federal law by allowing its railcars to discharge coal and related pollutants into protected waterways within Washington. (Dkt. No. 113.) Plaintiffs are Sierra Club, Puget Soundkeeper Alliance, RE Sources for Sustainable Communities (RE Sources), Columbia Riverkeeper, Friends of the Columbia Gorge,

Inc., Spokane Riverkeeper, and Natural Resources Defense Council (NRDC). (*Id.*) Plaintiffs allege that each organization has members who "live, work, and recreate in the State of Washington." (*Id.* at ¶ 12.) They seek declaratory and injunctive relief against BNSF under the CWA for the allegedly unpermitted discharges, as well as "remedial relief, the imposition of civil penalties, and the award of costs, including attorney and expert witness fees." (*Id.* at ¶ 6.)

Plaintiffs base Defendant's CWA violations on the alleged fact that "[e]ach and every train and each and every rail car discharges coal pollutants to waters of the United States when traveling adjacent to, over, and in proximity to the waters of the United States." (*Id.* at ¶ 48.) Plaintiffs allege that each time a BNSF train carrying coal travels through the state of Washington it discharges coal pollutants "through holes in the bottoms and sides of the rail cars and by spillage or ejection from the open tops of the rail cars and trains." (*Id.* at ¶ 51.) Such discharges are alleged to be

> [E]specially frequent or severe when the[] coal trains pass over rough rail tracks, track changes, bridges, and switches; during transportation of coal over bumpy terrain, in windy conditions, at high operating speed, during steep descents and ascents and through sag-areas spanning steep ascent and descent reaches of track[]; during and after precipitation events; at moments of high crosswinds; and during derailments.

(*Id.* at ¶ 53.) Because BNSF has "never obtained a NPDES [National Pollution Discharge Elimination System] permit allowing its discharges of coal pollutants . . . from rail cars and trains[,]" Plaintiffs allege that each discharge constitutes an unpermitted and unlawful discharge under the CWA. (*Id.* at ¶ 60.)

On August 19, 2016, both parties moved for summary judgment. (Dkt. Nos. 197, 200.) Both parties raise three issues in their briefing: Article III standing, liability for alleged CWA violations, and preemption of CWA remedies by the Interstate Commerce Commission Termination Act, 49 U.S.C. § 10101 *et seq.*, (ICCTA).[1]

[1] As a legal matter, whether one federal statute prevents application of another is a question of preclusion, not preemption. *See POM Wonderful LLC v. Coca-Cola Co.*, 134 S. Ct. 2228, 2236 (2014). However, to remain

II. DISCUSSION

A. Motion for Summary Judgment Standard

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In making such a determination, the Court must view the facts and justifiable inferences to be drawn there from in the light most favorable to the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Once a motion for summary judgment is properly made and supported, the opposing party "must come forward with 'specific facts showing that there is a *genuine issue for trial*.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting Fed. R. Civ. P. 56(e)). Material facts are those that may affect the outcome of the case, and a dispute about a material fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for the non-moving party. *Anderson*, 477 U.S. at 248–49. Conclusory, non-specific statements in affidavits are not sufficient, and "missing facts" will not be "presumed." *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888–89 (1990). Ultimately, summary judgment is appropriate against a party who "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

The parties agree that the evidentiary standard in this case, preponderance of evidence, can be met by circumstantial evidence. (Dkt. No. 293 at 5) (citing *In re Exxon Valdez*, 270 F.3d 1215, 1232 (9th Cir. 2001)). However, "at this stage of the litigation, the judge does not weigh conflicting evidence with respect to a disputed material fact." *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987) (citing *Anderson*, 477 U.S. at 249).

Where parties have filed cross-motions for summary judgment, "[e]ach motion must be

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consistent with the ICCTA's statutory language, the Court will use the term "preemption" when discussing this preclusion issue.

considered on its own merits." *Fair Hous. Council of Riverside Cnty., Inc. v. Riverside Two*, 249 F.3d 1132, 1135–36 (9th Cir. 2001). However, in this case, the arguments set forth in the parties' summary judgment motions are the same as those set forth in their oppositions to the opposing parties' summary judgment motion. The Court will therefore address the motions together.

B. Article III Standing

Standing, which is an "essential and unchanging" requirement of federal jurisdiction, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992), requires that parties have "a personal stake in the outcome of the controversy [so] as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends." *Allen v. Wright*, 468 U.S. 737, 770 (1984). When, as here, an organization seeks to invoke federal jurisdiction, it must prove "(a) its members would have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purposes; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977). At issue in these motions is whether a member of one of the Plaintiff organizations would otherwise have standing to sue in his or her own right.

To maintain an action in federal court, a member of one of the Plaintiff organizations must show: (1) the member has suffered or will suffer a concrete and particularized "injury in fact," (2) the injury is fairly traceable to the conduct complained of; and (3) the injury is likely redressable by a favorable decision. *Defs. of Wildlife*, 504 U.S. at 560–61. The CWA's citizen suit provision "extends standing to the outer boundaries" set by Article III of the Constitution. *Ecological Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1147 (9th Cir. 2000) (citing *Middlesex Cnty. Sewerage Auth. v. Nat'l Sea Clammers Ass'n*, 453 U.S. 1, 16 (1981)). "In response to a summary judgment motion, however, the plaintiff can no longer rest on such 'mere allegations,' but must 'set forth' by affidavit or other evidence 'specific facts,' Fed. Rule Civ.

Proc. 56(e), which for purposes of the summary judgment motion will be taken to be true." *Defs. of Wildlife*, 504 U.S. at 561.

Defendant attacks Plaintiffs' standing on many fronts and this standing analysis has many moving pieces. First, the Court will discuss Plaintiffs' argument that only one plaintiff needs standing for the case to proceed. (Dkt. No. 267 at 11.) The law is clear that "only one [p]etitioner must establish standing to enable review." *Sierra Club v. U.S. EPA*, 762 F.3d 971, 976 (9th Cir. 2014) (citing *Massachusetts v. EPA*, 549 U.S. 497, 518 (2007)). Defendant concedes that Plaintiffs Sierra Club, Columbia Riverkeeper, Puget Soundkeeper Alliance, and NDRC may have standing for Colony Creek, Horsethief Lake, Klickitat River, Little White Salmon River (Drano Lake), White Salmon River, and Wind River. (Dkt. No. 293 at 2 n.1.)[2] However, the fact that four plaintiffs may have standing for six waterways does not necessarily mean that the Plaintiffs have standing for all of the waterways in Washington that BNSF trains pass.

Therefore, the Court next addresses Defendant's argument that Plaintiffs do not have standing because they "cannot use a limited number of waterbodies in a representative capacity to establish standing for all waterbodies in the state" because each discharge into each waterbody constitutes a separate violation of the CWA. (Dkt. No. 200 at 14.) Defendant made the same argument in a motion to dismiss over two years ago (Dkt. No. 66 at 7), which the Court denied. (Dkt. No. 77.) This Court held that "[s]uch a burden would undoubtedly be a herculean task given the scope of Plaintiffs' allegations." (Dkt. No. 77 at 10.) Plaintiffs do not dispute that they have not provided standing witnesses for each and every waterway identified in this matter. (Dkt. No. 197 at 41.) However, Plaintiffs ask this Court to adopt the holding of *Alaska Center for Environment v. Browner*, 20 F.3d 981 (9th Cir. 1994), in order to confer standing for their alleged CWA violations at all the waterways at issue. (Dkt. No. 197 at 43.)

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[2] Defendant's contention in its reply that NDRC may have standing is inconsistent. (Dkt. No. 293 at 2 n.1.) Defendant argued in its motion for summary judgment that NDRC failed to present any members with standing. (Dkt. No. 200 at 26). However, because at least one Plaintiff, Sierra Club, Columbia Riverkeeper, or Puget Sound Alliance, may have standing, Defendant's inconsistency does not change the Court's analysis.

In *Alaska Center for Environment*, plaintiffs brought a citizen suit against the Environmental Protection Agency (EPA) to implement the CWA's provisions concerning total maximum daily loads to achieve water quality standards for impaired waterways in Alaska. 20 F.3d at 983. The EPA argued that the lower court erred in ordering statewide relief, and the relief could only be granted for those waterways that the plaintiffs' members had used and for which they therefore had standing for. *Id.* at 985. The Ninth Circuit held that a plaintiff seeking state-wide environmental relief was not required to demonstrate harm over the entire state but was only required to establish that a representative number of areas were adversely affected by the EPA's inaction. *Id.* The Ninth Circuit found that "for CWA regulatory purposes, all waters within a state are interrelated" and focused on the singular nature of the defendant's conduct in relation to all the waterways. *Id.* The Court found that the plaintiff had presented the legal questions at issue in a "concrete factual context" that the Article III standing requirement was meant to ensure. *Id.*

In *Washington Toxic Coalition v. EPA*, 2002 WL 34213031, at *7 (W.D. Wash. July 2, 2002), this Court declined to extend the *Alaska Center for Environment* holding to claims under the Endangered Species Act where the EPA failed to properly consult with another agency regarding the effects of its pesticide registrations. This Court declined because "the actions that plaintiffs challenge [were] not singular, as in *Alaska Ctr.*, but myriad." *Id.* This Court held that "[a]lthough the duty to consult is identical with respect to all registered pesticides, it is distinct with respect to each pesticide," and therefore the case was factually distinct from *Alaska Center for Environment*. *Id.* In comparison, this Court has already held that although Plaintiffs in this case allege multiple continuing violations of the CWA, they assert one central claim: "Defendant's operation of train cars, which because of their design and use routinely discharge the same coal pollutants, systematically and continually violates the CWA prohibition of unauthorized discharges." (Dkt. No. 77 at 11.) Therefore this Court's analysis in *Washington Toxic Coalition* is not binding because although Plaintiffs allege separate violations of the CWA

at each waterway, the conduct is not distinct and different with regards to each waterway.

Moreover, the Court is not persuaded by Defendant's claim that *Alaska Center for the Environment* does not apply because this matter does not involve a challenge to a state-wide government action. (Dkt. No. 272 at 43.) The Ninth Circuit in *Alaska Center for the Environment* did not base its standing holding on the fact that the plaintiffs were suing the EPA or a unit of the government. The holding was based on the fact that the EPA's failure to implement CWA provisions would be felt across every waterway within the state. The same occurs here: Plaintiffs allege that coal discharges affect every Washington waterway that BNSF's trains travel adjacent to or across. Therefore, the Court adopts the holding in *Alaska Center for the Environment* for this case.

However, although general allegations of harm suffice at the motion to dismiss stage, Plaintiffs must still set forth specific facts to support their standing claims, even under this more lenient *Alaska Center for the Environment* standard for state-wide environmental claims. *See Defs. of Wildlife*, 504 U.S. at 561. Plaintiffs must establish with specific facts that (1) at least one Plaintiff has standing to sue on behalf of its members by meeting the three standing requirements and (2) the specific and representative waterways the Plaintiffs have alleged standing for provide a "concrete factual context" to establish standing for the remaining waterways. *See Alaska Center for the Environment*, 20 F.3d at 985.

1. Injury in Fact

"The 'injury in fact' requirement in environmental cases is satisfied if an individual adequately shows that she has an aesthetic or recreational interest in a particular place . . . and that that interest is impaired by a defendant's conduct." *Ecological Rights Found.*, 230 F.3d at 1147 (collecting cases). The individual's injury must be actual or threatened, *see United States v. Ensign*, 491 F.3d 1109, 1116–17 (9th Cir. 2007), though it is clear that an actual "increased risk of harm can itself be injury in fact sufficient for standing." *Ecological Rights Found.*, 230 F.3d at 1151. "[T]he threshold question of citizen standing under the CWA is whether an individual can

show that she has been injured in her use of a particular area because of concerns about violations of environmental laws, not whether the plaintiff can show there has been actual environmental harm." *Id.* (citing *Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 160 (4th Cir.2000) (en banc)). As the Ninth Circuit has explained, "an individual can establish 'injury in fact' by showing a connection to the area of concern sufficient to make credible the contention that the person's future life will be less enjoyable—that he or she really has or will suffer in his or her degree of aesthetic or recreational satisfaction—if the area in question remains or becomes environmentally degraded." *Id.* at 1149. The claimed injury "need not be large, an identifiable trifle will suffice." *Sierra Club v. Cedar Point Oil Co.*, 73 F.3d 546, 557 (5th Cir. 1996).

For example, in *Friends of the Earth v. Laidlaw*, the Supreme Court held that an environmental organization had standing to bring a CWA citizen suit based on the declarations of its members, in which the individuals alleged that they were injured in their downstream use and enjoyment of a river, because the defendant had repeatedly discharged pollutants directly into the same waterway. *Laidlaw*, 528 U.S. at 181–83. The Court held that the plaintiffs had sufficiently demonstrated injury to their recreational and aesthetic interests by proving that they had repeatedly used and observed the river which was being polluted. *Id.* The Court made clear that the path from the pollution to the harm upon which the individuals' injuries were based was readily apparent, and explained that the plaintiffs' concerns were "reasonable." *Id.* Importantly, the Supreme Court noted that it saw "nothing 'improbable' about the proposition that a company's continuous and pervasive discharges of pollutants into a river would cause nearby residents to curtail their recreational use of that waterway and would subject them to other economic and aesthetic harms."*Id.* at 184.

Here, Plaintiffs have provided an appendix to their motion for partial summary judgment outlining which members of Plaintiffs' groups have standing at 30 different waterways in the state of Washington. (Dkt. No. 197 at 49–51.) Plaintiffs allege that these members and their

injuries at these 30 waterways are representative for the remaining, unsupported waterways. (*Id.* at 41.)The waterways identified with standing witnesses include the Columbia River and Puget Sound, two of the largest waterways in the state of Washington. (*Id.*) The appendix is supported by 20 declarations from members of Plaintiffs' groups. (Dkt. Nos. 46–65.) Defendant argues that these declarations contain merely "conclusory allegations of harm" that were "manufactured for purposes of this litigation." (Dkt. No. 200 at 19–20.) Defendant further contends that even "where Plaintiffs' members claim to have observed coal they have not shown any actual, concrete injury" because "alleging discharge, without more, does not establish injury." (*Id.* at 21.)

However, Plaintiffs' members have stated that they have seen coal in the water and have been reluctant to continue use of waterways. For example, Sierra Club member Kathleen Seabrook states that she enjoys windsurfing at a spot on the Columbia River known as Doug's Beach. (Dkt. No. 49 at ¶ 6.) She alleges that "even after a few hours of windsurfing at Doug's Beach," her car will be covered in a fine layer of what she believes to be coal dust. (*Id.* at ¶ 9.) She also claims that in the summer of 2012 near Doug's Beach, she "observed a coal train moving slowly nearby and saw piles of coal left on the tracks in its wake that [she believes] came off the tops and out of the bottom of the cars and went into the river as well." (*Id.* at ¶ 14.) As a result of the coal discharges, she is reluctant to continue windsurfing in the Columbia River. (*Id.* at ¶ 15.) This is exactly the type of injury sufficient to confer standing based on specific facts because Ms. Seabrook has shown a connection to the area of concern, her wind surfing at the Columbia River, sufficient to make credible the contention that her future life will be less enjoyable, because she is reluctant to return. *See Ecological Rights Foundation*, 230 F.3d at 1148–49. There is "nothing 'improbable' about the proposition that a company's continuous and pervasive discharges of pollutants into a river would cause nearby residents to curtail their recreational use of that waterway and would subject them to other economic and aesthetic harms." *Laidlaw*, 528 U.S. at 184.

Plaintiffs' declarations are replete with similar facts at different waterways. (*See, e.g.*, Dkt. No. 51 at ¶ 8–9 (Puget Sound Alliance member saw coal in the water near the Ballard locks and in the Puget Sound, and her enjoyment there was diminished); Dkt. No. 54 at ¶ 21 (Columbia Riverkeeper member saw coal in the Columbia River, and his enjoyment there was diminished)). Moreover, although not all Plaintiffs' members allege that they have seen coal in the waterways, all at least allege they have seen BNSF trains near the waterways or coal near the tracks, and their enjoyment of the waters are limited by the alleged CWA violations. (*See e.g.*, Dkt. No. 46 at ¶ 7.) Therefore, Defendant's contention that some of Plaintiffs' members do not allege injury because they did not witness actual coal in the waters is incorrect. Plaintiffs have done exactly what they are required to do to prove standing: prove they have been injured in their use of a particular area because of concerns about violations of environmental laws. *Ecological Rights Found.*, 230 F.3d at 1151. Proof of actual environmental harm is not necessary. *Id.*

Moreover, Defendant's allegation that Plaintiffs cannot prove injury in fact because not all of Plaintiffs' members have discontinued use of the waterways is off base. Cessation of use is not a prerequisite for an injury to confer standing. Plaintiffs merely need to show that their "pleasure is diminished." *Am. Bottom Conservancy v. U.S. Army Corp. of Eng'rs*, 650 F. 3d 652, 658 (7th Cir. 2011). As already indicated above, Plaintiffs have met this burden. Therefore, Plaintiffs have alleged sufficient facts to prove they suffered injury due to Defendant's alleged pollution of Washington waterways.

2. Causation

Second, Plaintiffs' injury in fact must be "fairly traceable" to the challenged activity. *Defenders of Wildlife*, 504 U.S. at 560–61. The Ninth Circuit has adopted the holding of the Fourth Circuit in *Gaston Copper* that the threshold requirement of "traceability does not mean that plaintiffs must show to a scientific certainty that defendant's effluent . . . caused the precise harm suffered by the plaintiffs" in order to establish causation. *Nat. Res. Def. Council v. Sw.*

Marine, Inc., 236 F.3d 985, 995 (9th Cir. 2000) (quoting *Gaston Copper Recycling Corp.*, 204 F.3d at 161) (citations and internal quotation marks omitted). Proving causation with a scientific certainty goes to the merits of the case. *Ecological Rights Foundation*, 230 F.3d at 1152. To satisfy the standing causation requirement, "[r]ather than pinpointing the origins of particular molecules, a plaintiff must merely show that a defendant discharges a pollutant that causes or contributes to the kinds of injuries alleged in the specific geographic area of concern." *Nat. Res. Def. Council*, 236 F.3d at 995. Therefore, Plaintiffs may rely on "circumstantial evidence such as proximity to polluting sources, predictions of discharge influence, and past pollution to prove both injury in fact and traceability." *Gaston Copper Recycling Corp.*, 204 F.3d at 163.

Defendant argues that causation is not met because "water does not flow upstream" and "Plaintiffs lack evidence of a geographic connection between a distant alleged discharge and areas that their members actually use." (Dkt. No. 200 at 22–25.) Essentially, Defendant contends that causation cannot be established for all the waterways at issue. (Dkt. No. 272 at 47.) Plaintiffs counter that because BNSF is the sole transporter of coal in Washington over and adjacent to the navigable waters at issue, their injuries are traceable to BNSF. (Dkt. No. 217-1 at 5.) Moreover, many Plaintiffs' members have seen BNSF trains passing by the representative waterways. (*See infra* § II.B.1.) The Court agrees with Plaintiffs. Because the Court has adopted *Alaska Center for the Environment*, Plaintiffs need to prove only that their injuries at the allegedly representative waterways were traceable to Defendant, not that Defendant caused an injury at each waterway at issue. Therefore based on the facts stated above, the Court concludes that Plaintiffs have alleged sufficient facts to support causation for their injuries.

3. Redressability

The Court need not linger on the redressability prong. Outside of challenging that certain relief is unavailable, an argument the Court addresses below, Defendant does not challenge that Plaintiffs have adequately supported redressability. The Court is likewise satisfied that Plaintiffs' injuries would be redressed by a favorable decision in this matter.

Therefore, Plaintiffs have alleged sufficient facts that their members have standing at the representative waterways.[3]

4. Standing for All Waterways

Finally, the Plaintiffs must also prove that the specific and representative waterways provide a "concrete factual context" to establish standing for the remaining, unsupported waterways. *See Alaska Ctr. for the Env't*, 20 F.3d at 985. Plaintiffs contend that they have provided standing witnesses for "most of the waters involved in this case" including two main "receiving waters", the Columbia River and Puget Sound. (Dkt. No. 197 at 42.) Therefore, Plaintiffs argue, these supported waterways are representative of all of the other unsupported waterways at issue in this case. (*Id.*) Defendant contends that the waterways cannot be representative because Plaintiffs have not provided any evidence that the unsupported waterbodies are physically connected to the representative and supported waterbodies. (Dkt. No. 272 at 47). However, the Ninth Circuit has held that "for CWA regulatory purposes, all waters within a state are interrelated." *Alaska Ctr. for Env't*, 20 F.3d at 985. *See Ctr. for Biological Diversity v. EPA*, 90 F. Supp. 3d 1177, 1188 (W.D. Wash. 2015) (finding that the alleged harms spanned a sample set of beaches and coastline for Washington's and Oregon's coastlines and estuaries). Moreover, the parties stipulated that "many of the waterways for which Plaintiffs have not identified standing witnesses are tributaries, hydrologically connected waterways, or have a significant nexus with waterways for which Plaintiffs have identified standing witnesses." (Dkt. No. 202-2 at 120.) Therefore, in light of the holding in *Alaska Center for the Environment* that the Court has adopted, Plaintiffs have presented a concrete factual context to establish

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[3] Defendant argues that three Plaintiff organizations do not have standing because they have no members. (Dkt. No. 200 at 15–17.) This argument is irrelevant, however, because Defendant concedes (Dkt. No. 293 at 2 n.1.), and the Court agrees, that at least Sierra Club has standing. The law is clear that "only one [p]etitioner must establish standing to enable review." *Sierra Club*, 762 F.3d at 976. Standing is demonstrated by the declaration of Ms. Seabrook, a member of Sierra Club, and the fact that the Court finds the representative waterways establish a concrete factual context to maintain standing for the remaining waterways, discussed below. Therefore, the Court need not decide if the remaining Plaintiffs have standing.

standing for all of the remaining and unsupported waterways in the state of Washington that BNSF trains pass. Plaintiffs have successfully alleged standing for major waterways, including the Columbia River and Puget Sound, and have provided an adequate sample set of waterways.

C. Clean Water Act Violations

Moving to the merits of the case, Plaintiffs request that the Court find that there is no genuine dispute that Defendant is liable for discharging coal into Washington's waterways in violation of the CWA. (Dkt. No. 197 at 7.) Plaintiffs present the Court with three options: (1) find that BNSF is liable for at least 12,583,440 violations of the CWA in Washington for the period from 2012 through 2015 based on a finding that all rail cars discharge continuously; (2) find that BNSF is liable for at least 15,000 violations of the CWA in Washington based on individual discharge events attested to by Plaintiffs; or (3) grant Plaintiffs' request for declaratory relief that BNSF is liable for CWA violations in Washington, while holding over to trial determination of the total number of CWA violations, the appropriate amount of civil penalties, and Plaintiffs' requests for injunctive and remedial relief. (*Id.* at 46.) Defendant requests that the Court should dismiss the case entirely because there is no dispute that Defendant did not violate the CWA (Dkt. No. 200 at 28–43) and the ICCTA preempts Plaintiffs' requested remedies (Dkt. No. 200 at 43–57). Having thoroughly considered the parties' briefing and the relevant record, the Court finds that none of the requested relief is entirely adequate.

The CWA's objective is to "restore and maintain the chemical, physical, and biological integrity of the Nation's water." 33 U.S.C. § 1251(a). The CWA prohibits "discharge" of "any pollutant" from a "point source" into "navigable waters," unless the discharge is authorized by a permit. 33 U.S.C. § 1311(a). To ensure enforcement, Congress included a "citizen suit" provision authorizing any citizen to commence suit against "any person . . . who is alleged to be in violation of . . . an effluent standard or limitation." 33 U.S.C. § 1365(a). An "effluent standard or limitation" includes the prohibition against discharging pollutants from a point source into navigable waters, unless authorized by a permit. 33 U.S.C. § 1365(f)(1).

To establish a violation of section 1311(a), a citizen-plaintiff must establish that the defendant is (1) a person that has (2) discharged (3) a pollutant (4) from a point source (5) into navigable waters (6) without a National Pollution Discharge Elimination System permit. 33 U.S.C. §§ 1311(a), 1342; *ONCR Action v. U.S. Bureau of Recl.*, 798 F.3d 933, 936 (9th Cir. 2015). Liability under the CWA is strict, and there is no "*de minimis*" exception. *Sierra Club v. Union Oil of Cal.*, 813 F.2d 1480, 1490 (9th Cir. 1987), *vacated on other grounds*, 485 U.S. 931 (1988). The parties agree that only the point source discharge element remains in dispute. The Court agrees and need not consider the person, pollutant, navigable waters, or without a permit elements of a CWA claim in this Order. Before the Court can decide if there are disputes of material fact as to CWA liability, the Court must first decide as a matter of law if the Plaintiffs' claims are in fact actionable point source discharges pursuant to the CWA.[4]

1. Point Source Discharges

Defendant contends that coal emissions to land, coal emissions from land to water, and coal dust emissions are not point source discharges under the CWA. (Dkt. No. 197 at 28, 35.) Pursuant to the CWA, a "point source" means "*any discernible, confined and discrete conveyance*, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, *container, rolling stock*, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. § 1362(14) (emphasis added). However, "[o]ther pollution sources, such as runoff from agriculture or . . . animal grazing[ ] are nonpoint sources." *Or. Nat. Desert Ass'n v. Dombeck*, 172 F.3d 1092, 1095 (9th Cir. 1998). "Discharge of a pollutant" means "any *addition* of any pollutant *to* navigable waters from any point source." 33 U.S.C. § 1362(12) (emphasis added). Based on the statutory

[4] Defendant divides its argument into two distinct sections attacking discharges and point sources separately. (*See* Dkt. No. 200 at 28, 36.) However, because the two are interrelated, the Court considers them together. There is only a CWA violation if there is a point source that discharges as a discrete conveyance. 33 U.S.C. § 1362(14) (defining point source as "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged").

language, Plaintiffs must do more than point to a statutorily defined point source to prove that there was actual addition of coal to the waters. They must also prove that there was a discharge to navigable waters.

The Supreme Court has held that an alleged point source "need only convey the pollutant to 'navigable waters'" for it to be a point source discharge. *S. Florida Water Mgmt. Dist. v. Miccosukee Tribe of Indians*, 541 U.S. 95, 105 (2004). If an alleged emission is not a point source discharge, it is defined as "nonpoint source pollution" by courts. "Although nonpoint source pollution is not statutorily defined, it is widely understood to be the type of pollution that arises from many dispersed activities over large areas, and is not traceable to any single discrete source. Because it arises in such a diffuse way, it is very difficult to regulate through individual permits." *League of Wilderness Defs./Blue Mountains Biodiversity Project v. Forsgren*, 309 F.3d 1181, 1184 (9th Cir. 2002). The Ninth Circuit went on to explain that the most common example of nonpoint source pollution is the residue left on roadways by automobiles due to the rubber worn off of millions of cars, which is then carried away to waterways. *Id.* Although this rubber is inherently a pollutant, this is nonpoint source pollution because there is not a single discrete source. *Id.* Importantly, "point and nonpoint sources are not distinguished by the kind of pollution they create or by the activity causing the pollution, but rather by whether the pollution reaches the water through a confined, discrete conveyance." *Trustees for Alaska v. EPA*, 749 F.2d 549, 558 (9th Cir. 1984).

While the CWA recognizes that nonpoint source pollution also contributes to the degradation of water quality, it "provides no direct mechanism to control nonpoint source pollution." *ONRC Action*, 798 F.3d at 936 (citing *Dombeck*, 172 F.3d at 1097). Nonpoint source pollution is "generally excluded from CWA regulations" and is left to the states to regulate through their own tracking and targeting methods. *Or. Natural Desert Ass'n v. U.S. Forest Serv.*, 550 F.3d 778, 785 (9th Cir. 2008). The reason for this is, in part, because "nationwide uniformity in controlling non-point source pollution [is] virtually impossible" and, in part, because Congress

is reluctant "to allow extensive federal intrusion into areas of regulation that might implicate land and water uses in individual states." *Id.*

a. *Emissions to land and from land to water*

Plaintiffs argue that BNSF coal emissions to the land adjacent to the tracks are point source discharges because the BNSF trains are statutorily defined in the CWA as rolling stock and container. (Dkt. No. 197 at 23.) BNSF does not dispute that their cars are statutorily defined, but argues that the cars are not a "discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged" to water (Dkt. No. 200 at 33) (citing 33 U.S.C. § 1362(14)). Defendant does not challenge discharges that go directly into the water, but contends that "releases to land, and from land to water, are not CWA discharges" because they are not a discrete conveyance of coal directly to water. (Dkt. No. 200 at 28.) Defendant argues that "[c]oal jostled and scattered by vibration, even if jostled directly into waters, is not sufficiently collected or channeled to constitute a point source." (*Id.* at 34.)

It is undisputed that Defendant is the sole transporter of coal adjacent to the waterways at issue. (Dkt. No. 217-1 at 5.) Therefore, there is a discrete source and conveyance for the coal that allegedly lands directly in the water from the trains. However, Plaintiffs have not provided evidence that there is a discrete conveyance of coal into the water for the coal that is deposited onto the land adjacent to the tracks. Plaintiffs allege that the coal enters the water "via wave wash, gravity, fluctuation of water levels, vibration, and the like." (Dkt. No. 267 at 30.) However, Plaintiffs' citation for this assertion is to their complaint, not a scientific study that this kind of phenomenon is possible or happens. Plaintiffs also allege that BNSF data demonstrates that coal can move as far as 30 feet away from the centerline of the tracks in Washington. (Dkt. No. 197 at 28.) However, that is a conclusory statement without demonstration of a discrete conveyance. Although the coal may be deposited by a statutorily defined point source on the ground near the tracks and move from the tracks into the water, it is not clear that the alleged point source, BNSF trains, *caused* the coal to move to the water. Moreover, the word "addition"

in the definition of discharge "means a discharge into navigable waters not an increase in the amount of a pollutant introduced into the system." *Pedersen v. Wash. St. Dep't of Transp.*, 611 P.2d 1293, 1295 (1980). The definition is explicit; the discharge has to be addition of any pollutant *to* navigable water. 33 U.S.C. § 1362(12). Therefore, the Court agrees with Defendant that under these facts, coal discharges to land and from land to water are not point source discharges as defined by the CWA. Defendant is only liable for coal that is discharged directly into the navigable waters at issue if Plaintiffs establish that these kinds of discharges actually occurred.

b. *Aerial and windblown emissions*

Defendant also argues that "[a]erial and windblown dispositions from railcars directly into waters" are nonpoint source discharges. (Dkt. No. 200 at 35.) The EPA has published guidelines on nonpoint source pollution and has stated, "[i]n practical terms, nonpoint source pollution does not result from a discharge at a specific, single location (such as a single pipe) but generally results from land runoff, precipitation, *atmospheric deposition*, or percolation." EPA Office of Water, Nonpoint Source Guidance 3 (1987) (emphasis added).[5] Most of the case law on nonpoint source pollution deals with runoff water and stormwater.

However, the Ninth Circuit held that pesticides channeled through a spraying apparatus on a plane, when sprayed *directly over* water, met the statutory definition of a point source discharge. *League of Wilderness Defs/Blue Mts. Biodiversity Project*, 309 F.3d at 1190. In line with this decision, but coming to different conclusions, other district courts and circuit courts have found that airborne pollution is not a point source discharge when the pollution at issue is not discharged via a discernible, confined, and discrete conveyance. *Cordiano v. Metacon Gun Club, Inc.*, 575 F.3d 199, 224–25 (2d Cir. 2009) (holding that lead dust in berm was not point source discharge because there was no discernible conveyance of the lead dust from the berm to

[5] This EPA guidance is available online in PDF form at https://nepis.epa.gov/Exe/ZyPDF.cgi/910217GL.PDF?Dockey=910217GL.PDF.

water); *Alaska Cmty. Action on Toxics v. Aurora Energy Servs.*, LLC, 940 F. Supp. 2d 1005, 1024 (D. Alaska 2013), *rev'd on different grounds*, 765 F.3d 1169 (9th Cir. 2014). In *Alaska Community Action on Toxics*, the district court found that coal dust from stationary coal piles located nearly a half-mile away from navigable waters, 940 F. Supp. 2d at 1009, "no matter how easily [the piles] are identified as the original sources of coal dust blown" into the water, cannot by themselves constitute point source discharges where there was no discernible conveyance. *Id.* at 1024. The Court agrees with this line of decisions: coal dust deposited in the navigable waters from BNSF trains is not a point source discharge unless there is a discrete conveyance.

Here, it is undisputed that "[a]ll [BNSF] coal trains generate coal dust during various periods while in transit." (Dkt. No. 209-7 at 4.) It is also undisputed that BNSFs trains run directly next to and over many of the waterways at issue (Dkt. No. 220-1), and are the only trains to do so in those areas. (Dkt. No. 217-1 at 5.) Therefore, *Alaska Community Action on Toxics*'s holding is not persuasive under this set of facts because the coal particles at issue in that case had to travel nearly a half-mile to get to navigable waters. The facts of this case are closer to *League of Wilderness Defs/Blue Mts. Biodiversity Project*, where pesticides were emitted directly over navigable waters. In this matter, coal particles were allegedly emitted directly over navigable waters. Thus, the Court finds that the coal particles allegedly discharged by BNSF trains that travel adjacent to and above the waters at issue are point source discharges because there is a discrete conveyance: the BNSF trains that travel directly next to or across the water. Defendant is liable for these aerial point source discharges if Plaintiffs establish that these kinds of discharges actually occurred.

2. CWA Violation Evidence

Finally, after clarifying which of Defendant's emissions are in fact point source discharges, the Court moves to consider whether either party's motion for summary judgment can be granted. Plaintiffs base their entire theory of liability for over 12 million CWA violations on the proposition that "[e]ach and every train and each and every rail car discharges coal

pollutants to waters of the United States when traveling adjacent to, over, and in proximity to the waters of the United States." (Dkt. No. 113 at ¶ 48.) Therefore, the Court must find there is no genuine dispute of material fact that the evidence supports or does not support this proposition to grant Plaintiffs' or Defendant's motions for summary judgment, respectively. If Plaintiffs can support this imposing allegation, they have proven that actual discharges occurred on specific days, as they are required to do by statute. *See* 33 U.S.C. § 1319(d) ("Any person who violates section 1311 . . . of this title . . . shall be subject to a civil penalty not to exceed $25,000 *per day for each violation*") (emphasis added); *Alaska Cmty. Action on Toxics*, 940 F. Supp. 2d at 1027 (emphasizing that plaintiffs had to prove "actual discharges . . . on specific days"). However, as stated above, Defendant is only potentially liable for point source discharges of coal that went directly into the water and point source discharges of coal dust that came from trains passing directly above or adjacent to the waters.

Plaintiffs have offered studies completed and data collected by Defendant to prove their sweeping allegation. These studies include studies using "passive" coal collectors to collect coal blown off the tops of cars (Dkt. No. 214-4), studies using "coal traps" to quantify the "coal/coal dust problem" (Dkt. No. 214-3), and studies estimating a loss from the top of coal cars to be "50-500 lbs/car/100miles" and a loss from the bottom of coal cars to be "10 lbs/100miles" (Dkt. No. 216-1 at 5), among many others. Plaintiffs also provided many expert reports, witness observations of coal found in the environment and being released from BNSF trains (*see, e.g.*, Dkt. No. 199 at ¶ 9), analysis of coal collections at various waterways (Dkt. No. 210-1), and two studies from the Columbia River (Dkt. No. 208 and exhibits; Dkt. No. 221-1) to prove that BNSF trains emit coal pollutants into water each time they travel close to the Washington waters at issue. Plaintiffs argue that this large amount of data demonstrates that there is no dispute of material fact that Defendant is liable for CWA violations. Defendant counters that Plaintiffs misconstrue BNSF's data and studies (Dkt. No. 272 at 18), the parties' experts disagree (*id.* at 14), Plaintiffs' witnesses are insufficient to prove violations (*id.* at 26–32), and the Columbia

River float study is insufficient evidence of point source discharges of this magnitude (*id.* at 33–36).

Immediate review of these arguments reveals that there are inherent disputes of material fact, most significantly Defendant's concession that the experts disagree. Moreover, upon review of the evidence, the Court finds that Plaintiffs' central theory driving this case, that "[e]ach and every train and each and every rail car discharges coal pollutants to waters of the United States when traveling adjacent to, over, and in proximity to the waters of the United States" (Dkt. No. 113 at ¶ 48), remains in dispute. Both parties have provided an extensive amount of evidence to support their arguments and both parties come to different conclusions about the implications of the evidence. A reasonable trier of fact, upon drawing reasonable inferences from the extensive evidence, could determine that Plaintiffs' evidence was sufficient to support a conclusion that Plaintiffs' allegation is more likely than not true. However, a reasonable trier of fact could also determine that Plaintiffs have not met their burden of proving that a CWA violation occurred every single time BNSF trains passed based on the preponderance of evidence standard and the same evidence. Therefore, "there is sufficient evidence for a reasonable jury to return a verdict for [either] non-moving party." *Anderson*, 477 U.S. at 248–49. In order to decide which theory is correct, the Court would be required to weigh evidence, for example the BNSF studies that Defendant's claim are being misinterpreted, which is impermissible at the motion for summary judgment stage. *See T.W. Elec. Serv., Inc.*, 809 F.2d at 630 (citing *Anderson*, 477 U.S. at 249). Therefore, the Court denies the parties' motions for summary judgment.

The Court has outlined above what point source discharges will be sufficient for violations of the CWA at trial. The Court declines to find Defendant liable of any violations at this time due to the disputes of material fact that remain.

D. Interstate Commerce Commission Termination Act Preemption

When Congress passed the ICCTA, it vested jurisdiction to regulate rail transportation in the Surface Transportation Board, a federal agency. 49 U.S.C. § 10501(b). This jurisdiction

includes "transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers." *Id.* The ICCTA further states that "the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law." *Id.* However, "[i]f an apparent conflict exists between ICCTA and a federal law, then the courts must strive to harmonize the two laws, giving effect to both laws if possible." *Ass'n of Am. Railroads v. S. Coast Air Quality Mgmt. Dist.*, 622 F.3d 1094, 1097 (9th Cir. 2010).

Defendant argues that Plaintiffs' requested injunctive relief is preempted by the ICCTA (Dkt. No. 200 at 43–57), and Plaintiffs disagree (Dkt. No. 197 and 45–46). However, the Court has declined to find Defendant liable for CWA violations at this time. Therefore, the Court postpones its decision on the ICCTA preemption issue until after a possible finding of liability at trial.

III. CONCLUSION

For the foregoing reasons, Plaintiffs' motion for partial summary judgment (Dkt. No. 197) is DENIED and Defendant's motion for summary judgment (Dkt. No. 200) is DENIED.

DATED this 25th day of October 2016.

John C. Coughenour
UNITED STATES DISTRICT JUDGE

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SIERRA CLUB, *et al.*, Plaintiffs, v. BNSF RAILWAY COMPANY, Defendant.	CASE NO. C13-0967-JCC CONSENT DECREE

This matter comes before the Court on the parties' motion to enter their proposed consent decree (Dkt. No. 374). The United States has no objection to entry of the proposed consent decree. (Dkt. No. 383.) Having thoroughly considered the motion and the relevant record, the Court hereby GRANTS the motion and ENTERS the following consent decree:

WHEREAS, Plaintiffs Sierra Club, Puget Soundkeeper Alliance, RE Sources for Sustainable Communities, Columbia Riverkeeper, Friends of the Columbia Gorge, Spokane Riverkeeper, and Natural Resources Defense Council (collectively, Plaintiffs) filed a complaint in this Court seeking civil penalties, as well as declaratory and injunctive relief, against Defendant BNSF Railway Company (BNSF and collectively with Plaintiffs, the Parties) and others on June 4, 2013, alleging violations of the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, (the CWA or the Act);

WHEREAS, Plaintiffs filed a separate complaint in the United States District Court for the Eastern District of Washington similarly alleging that BNSF and others had violated the CWA (assigned Civil No. 2:13-cv-00272 (E.D. Wash.) and hereafter referred to as the Eastern District Action);

WHEREAS, the Eastern District Action was transferred to this Court and assigned Civil No. 2:14-cv-00660, after which it was consolidated with the above-captioned civil action (Dkt. No. 84) (the Litigation);

WHEREAS, subsequent to consolidation, on May 6, 2015, Plaintiffs filed their third amended complaint (Dkt. No. 113) naming only BNSF as a Defendant;

WHEREAS, prior to filing their initial complaint, Plaintiffs sent to BNSF and others Notices of Intent to Sue dated April 2, 2013, and May 9, 2013, in which they stated their intent to assert claims for alleged violations of CWA sections 301 and 404, 33 U.S.C. §§ 1311, 1344, and the Rivers and Harbors Act of 1899, 33 U.S.C. § 403, *et seq*., and further asserted that "[t]he pollutants that the Dischargers have discharged, are discharging, and will continue to discharge include, but are not limited to, coal, coal chunks, coal dust, metabolites or related byproducts of coal, surfactants applied to the coal, coal chunks and coal dust, petcoke, petcoke chunks, petcoke dust, and suppressants";

WHEREAS, CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the unpermitted discharge of any pollutant to waters of the United States;

WHEREAS, Plaintiffs brought their action against BNSF for alleged CWA violations pursuant to Section 505 of the Act, 33 U.S.C. § 1365;

WHEREAS, BNSF is a Class I railroad operating in 28 states. BNSF transports freight, including a number of commodities, for a wide range of customers. As a Class I railroad, BNSF operates as a common carrier subject to the jurisdiction of the Surface Transportation Board (STB). BNSF's status as a common carrier requires the railroad to provide transportation of goods on reasonable request;

WHEREAS, coal and petroleum coke (petcoke) are among the commodities that BNSF transports for its customers. BNSF transports coal, petcoke, and other commodities in open-top railcars in the State of Washington and several other states;

WHEREAS, Paragraph 48 of Plaintiffs' third amended complaint alleges that "[e]ach and every coal train and each and every rail car carrying coal discharges coal pollutants to waters of the United States when traveling adjacent to, over, and in proximity to waters of the United States." Paragraph 3 of the third amended complaint defines "coal pollutants" to include "coal, coal chunks, coal dust, metabolites or related byproducts of coal, and other substances or materials added to the coal including, but not limited to, surfactants and suppressants, and petroleum coke." The third amended complaint further alleges that BNSF did not obtain any permit to discharge any pollutants from its railcars;

WHEREAS, BNSF asserted defenses to the allegations contained in the third amended complaint, expressly denies Plaintiffs' allegations in their entirety, and admits no liability by entering this Consent Decree;

WHEREAS, the Parties recognize that this Consent Decree is a settlement of a contested matter;

WHEREAS, the objective of the Parties in entering this Consent Decree is to resolve the Litigation; and

WHEREAS, the Parties acknowledge that this Consent Decree has been negotiated by the Parties in good faith and will avoid further litigation, and the Court, in entering this Consent Decree, finds that this Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, without the admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties,

IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. GENERAL PROVISIONS

1. Jurisdiction and Venue. This Court has jurisdiction over the subject matter of this action

and the Parties pursuant to 28 U.S.C. § 1331 and 33 U.S.C. § 1365(a). Venue is proper in this judicial district pursuant to section 505(c) of the Act, 33 U.S.C. § 1365(c), because the complaint alleges that discharges in violation of the Act occurred in this judicial district. BNSF does not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

2. Retention of Jurisdiction. This Court shall retain jurisdiction for the purposes of issuing such further orders and directions as may be necessary and appropriate for the implementation or modification of this Consent Decree, enforcing compliance with, or resolving disputes regarding the provisions of this Consent Decree.

3. Reservation of Rights. The Parties reserve the right to enforce the terms of this Consent Decree and take any action authorized by federal or state law not inconsistent with this Consent Decree.

4. Parties Bound. This Consent Decree shall be binding upon Plaintiffs, BNSF, and their respective officers, agents, servants, employees, successors, and assigns.

5. Counterparts. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

6. DOJ and EPA Review. The Parties recognize that, under 33. U.S.C. § 1365(c)(3), this Consent Decree can be entered only forty-five (45) days after the Attorney General of the United States and the Administrator of the Environmental Protection Agency receive a copy of this proposed Consent Decree. Plaintiffs shall serve copies of the executed Consent Decree upon the Administrator of the United States Environmental Protection Agency, the Attorney General, and the Regional Administrator for EPA Region 10, and Plaintiffs shall provide notice to the Court of the foregoing requirements, as required pursuant to 40 C.F.R. § 135.5.

7. Final Judgment. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final, non-appealable judgment of the Court under Rules 54

and 58 of the Federal Rules of Civil Procedure.

II. CAR COVER STUDY

8. BNSF shall conduct a study to assess the commercial and operational feasibility of car covers for use on open-top coal and petcoke railcars (the Car Cover Study). In its sole discretion, BNSF may conduct this study in cooperation with various interested stakeholders, including without limitation, the Association of American Railroads, its customers, mine operators located in the Powder River Basin, or others invited by BNSF, to the extent they may agree to participate. It is anticipated that the Car Cover Study will occur over a period of approximately two years following entry of this Consent Decree.

9. BNSF's obligation to conduct the Car Cover Study under Paragraph 8 shall require BNSF to assess only car cover designs for which a functioning prototype is reasonably available to BNSF within six months of the date of entry of this Consent Decree. As part of the first phase of the Car Cover Study, BNSF shall conduct outreach and solicit participation from car cover manufacturers.

10. This Consent Decree shall not be construed to require BNSF to assess any conceptual car cover design or develop any car cover design. As between the Parties, BNSF is exclusively responsible for conducting and overseeing the Car Cover Study, as well as arranging for equipment and personnel.

11. Once during each six-month period (January–June and July–December of each year) until the conclusion of the Car Cover Study, BNSF shall provide to Plaintiffs electronic copies of final versions of all reports, technical specifications of car cover designs, testing results, testing procedures, and testing data created for the Car Cover Study. Prior to receiving any such information pursuant to this Paragraph, each Plaintiff organization shall execute a confidentiality agreement acceptable to all study participants, including without limitation any companies whose covers will be assessed. Plaintiffs acknowledge that BNSF reserves the right to redact cover manufacturer-, customer-, mine- and utility-specific information in any document provided

pursuant to this Paragraph, and Plaintiffs agree that the redaction of such information shall not be a basis for challenging the adequacy of BNSF's compliance with this Paragraph. In the event that Plaintiffs contend that any information redacted by BNSF prevents Plaintiffs from assessing compliance with this Consent Decree, Plaintiffs may invoke the Dispute Resolution provisions in Section VIII to contest the necessity for such redactions.

12. If, in its sole discretion, BNSF determines that any car cover design assessed under Paragraph 8 is commercially and operationally feasible, then BNSF shall undertake good faith efforts to amend the safe harbor provision of BNSF Price List 6041-B (the Coal Loading Rule) to add such car cover design(s) within 90 days of the conclusion of the car cover study. A decision by the STB concluding that any amendment to the Coal Loading Rule proposed pursuant to this Paragraph is unreasonable or otherwise invalid shall not constitute the basis for any allegation that BNSF has not complied with its obligations under this Consent Decree.

13. For the purpose of Section II, commercial and operational feasibility of a car cover design shall mean that a particular car cover (a) when used during loading and unloading operations, and in transit, poses no unreasonable risk of property damage or of bodily harm to BNSF employees, employees of any shipper for which BNSF transports coal and/or petcoke, employees of any mine, or to the general public; (b) can be physically attached to existing open-top railcars transported by BNSF without unreasonable modification to such railcars, (c) will function properly and as intended throughout all operational conditions encountered by BNSF trains while in-transit, (d) complies with all applicable regulatory requirements and industry equipment and interchange rules, (e) conforms to all applicable BNSF clearance and operational requirements, (f) requires no unreasonable modifications to equipment or processes used in loading or unloading coal and petcoke into or out of railcars, (g) would not be unreasonably expensive to procure, install, operate, replace, repair, or maintain; and (h) otherwise meets the requirements of the Coal Loading Rule. Notwithstanding any such determination of commercial and operational feasibility by BNSF, mines, shippers, or any other entity providing rail cars

cannot be required by BNSF to adopt or accept any specific railcar covers or associated modifications to equipment or loading or unloading processes.

14. In the event that BNSF determines in its sole discretion that there exists one or more car cover design that is commercially and operationally feasible under Section II, BNSF shall present the results of the Car Cover Study at the following rail transportation and coal industry meetings or conferences during the two-year period following the conclusion of the Car Cover Study: American Railway Engineering and Maintenance of Way Association meetings, the National Coal Transportation Association meetings, and the Railroad Environmental Conference. BNSF shall provide Plaintiffs with copies of any materials that BNSF uses to present the results of the Car Cover Study at those events.

III. REMOVAL

15. BNSF shall remove significant accumulations of coal and/or petcoke materials in areas on or adjacent to BNSF's right-of-way at each of the locations identified in Appendix A to this Consent Decree, as identified at trial and in designated deposition testimony. BNSF shall complete this initial removal of accumulations of coal and/or petcoke materials from each of these locations no later than one (1) year from entry of this Consent Decree.

16. Within thirty (30) business days of completion of the removal of coal and/or petcoke material at each site required by Paragraph 15, BNSF shall notify Plaintiffs that the removal is complete. The notification shall include before and after photographs and other documentation reasonably necessary to demonstrate that BNSF has removed materials consistent with Paragraph 15.

17. BNSF shall conduct follow-up inspections of each area identified in Appendix A two times during the period of this Consent Decree. BNSF will use good faith efforts to conduct the first inspection between 9–12 months after service of the notification required by Paragraph 16, and the second 9–12 months after the preceding inspection, subject to the availability of sufficient track windows, and taking into consideration weather, safety, and other factors that

could restrict the time available to conduct an inspection. Within thirty (30) days of each inspection, BNSF shall provide Plaintiffs with a statement as to whether any significant accumulations of coal and/or petcoke materials require removal consistent with Paragraph 16.

18. In the event that BNSF identifies significant accumulations of coal and/or petcoke materials in areas on or adjacent to BNSF's property during either of the two subsequent inspections required by Paragraph 17, BNSF shall remove such materials in the same manner as in Paragraph 15. Within thirty (30) days of completion of any additional removal required by this Paragraph, BNSF shall notify Plaintiffs in writing that this additional removal is complete. The notification shall include photographs or other documentation reasonably necessary to demonstrate that BNSF has complied with its obligations under this Paragraph.

19. BNSF's obligation to remove significant accumulations of coal and/or petcoke material under Paragraphs 15 and 18 shall be limited to material on land. BNSF is only required to use non-invasive methods or techniques (e.g., vacuuming) to conduct the removal, and the means and methods to conduct the removal required under Section III are within BNSF's sole discretion. In no event shall BNSF be required under this Consent Decree to conduct any removal activities in any waterway, including any water of the United States, or conduct any ballast or track maintenance activities to remove materials from BNSF track, nor shall BNSF be obligated to remove non-significant accumulations or scattered, individual pieces or fragments of coal and/or petcoke material. BNSF shall not be required through this Consent Decree to remove coal and/or petcoke materials under Paragraphs 15 or 18 from any property in the event that any property owner declines to allow BNSF or its contractors access to their property under reasonable conditions.

20. In the event that Plaintiffs disagree with any determination that (a) BNSF has completed removal of significant accumulations of coal and/or petcoke material at any location under Paragraphs 15 and 18, (b) any subsequent inspection pursuant to Paragraph 17 identified no new and significant accumulations of coal and/or petcoke material that require removal, or (c) BNSF

has completed any subsequent removal of significant accumulations of coal and/or petcoke material required under Paragraph 18, Plaintiffs may invoke the Dispute Resolution procedures in Section VIII.

IV. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

21. Within 30 days of the date this Consent Decree is approved by the Court, BNSF shall pay $1,000,000 to The Rose Foundation for Communities and the Environment for projects to improve water quality or habitat in the State of Washington (and, to the extent they may improve habitat or water quality of the Columbia River, in the State of Oregon). (*See* Dkt. No. 374-1.) Such payment shall be made by check payable and mailed to The Rose Foundation for Communities and the Environment, Attention: Tim Little, 1970 Broadway, Suite 600, Oakland, California 94612, and shall bear the notation "Sierra Club, et al. v. BNSF Railway Co., Clean Water Act Settlement," with a copy provided to Plaintiffs at the time payment is made.

V. RELEASE AND COVENANT NOT TO SUE

22. Plaintiffs release BNSF for all claims that were or could have been brought in this litigation.

23. Plaintiffs covenant not to sue BNSF system-wide under the Clean Water Act or analogous state law or any common law theory on the theory of material leaving open-top rail cars and entering waters of the United States or waters of any state for any events or occurrences arising over the next five (5) years.

24. Any information provided by BNSF to Plaintiffs pursuant to this Consent Decree shall not be admissible in any proceeding against BNSF or any entity that meaningfully participates in the Car Cover Study (as that term is defined in Section II). Notwithstanding the previous sentence, information provided by BNSF to Plaintiffs pursuant to this Consent Decree may be used in proceedings to enforce the terms of this Consent Decree.

25. If the Consent Decree is terminated prior to five (5) years from the date of entry of the Consent Decree, the provisions of Paragraphs 23 and 24 shall survive for the remainder of the

five (5) year term of the covenant not to sue.

26. The Parties agree that, as of the date of the entry of this Consent Decree, litigation is not "reasonably foreseeable" concerning the matters described in the third amended complaint. To the extent that any Party previously implemented a litigation hold to preserve documents or electronically stored information related to the Litigation, the Party is no longer required to maintain such litigation hold. Nothing in this paragraph relieves any Party of any other obligations imposed by this Consent Decree or of the obligation to implement a litigation hold concerning the rights, obligations, and duties set forth in this Consent Decree.

VI. ATTORNEY FEES AND COSTS

27. By entering into this Consent Decree, BNSF in no way acknowledges or concedes that Plaintiffs are entitled to recover any costs of litigation (including attorney fees or expert witness fees).

28. Notwithstanding Local Civil Rule 54, within sixty (60) days of entry of this Consent Decree, Plaintiffs may file with the Court a petition under 33 U.S.C. § 1365(d) seeking an award of attorney fees and litigation costs (including but not limited to expert witnesses' fees and costs). BNSF reserves the right to contest such a petition.

VII. FORCE MAJEURE AND EXCUSABLE DELAYS

29. BNSF shall perform all requirements under this Consent Decree in the manner and within the time limits established herein, unless performance is delayed or prevented by Force Majeure or Excusable Delay, which are defined for purposes of this Consent Decree as events or circumstances arising from causes not reasonably foreseeable and beyond the control of BNSF, or any entity controlled by BNSF or BNSF's contractors, which delay or prevent performance of any obligation under this Consent Decree despite due diligence and best efforts to fulfill the obligation. Events and circumstances beyond the control of BNSF may include, without limitation, earthquake, flood, hurricane, severe weather or other acts of God, war, riot, fire, injunction, labor stoppage, freight embargo, material shortages, and compliance with any law,

rule, or decree of any governmental body, either now existing or hereafter created, that conflicts with the requirements or obligations of this Consent Decree. Such events and circumstances do not include normal inclement weather, financial inability to complete the work, increased cost of performance, changes in BNSF's business or economic circumstances, or the failure to obtain federal, state, or local permits, authorizations and approvals, unless BNSF has made timely and complete application for such permits, authorizations, and approvals.

30. BNSF shall notify the Plaintiffs in writing within ten (10) business days after becoming aware of an event or circumstance that BNSF believes constitutes Force Majeure or Excusable Delay that may prevent or delay performance of an obligation under this Consent Decree. BNSF's notification shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by BNSF to prevent or minimize the delay, and a timetable by which those measures will be implemented. BNSF shall adopt all reasonable measures to avoid or minimize any such delay. BNSF shall include in the notification a proposed extension of the deadline associated with any obligation under this Consent Decree whose performance may be prevented or delayed by unforeseeable events or circumstances beyond BNSF's reasonable control.

31. Unless BNSF's notice contains no reasonable basis to conclude that the circumstance, event, or anticipated event identified in the notice has caused or will cause a delay that constitutes a Force Majeure or Excusable Delay, the time for performance shall be extended by an appropriate period substantially equal to the necessary delay.

VIII. DISPUTE RESOLUTION

32. The Dispute Resolution procedures of this Section shall be the exclusive mechanism for the parties to raise and resolve disputes arising under or with respect to this Consent Decree (Covered Dispute).

33. A Covered Dispute shall be considered to have arisen when one Party sends the other Part(ies) a written Notice of Dispute.

34. Any Covered Dispute shall, in the first instance, be the subject of informal negotiations between the Parties in an attempt to resolve the dispute in good faith and in an expeditious manner. The Parties shall have thirty (30) days following receipt of a Notice of Dispute to reach agreement.

35. If the Parties cannot reach agreement on the dispute during the 30-day period provided under Paragraph 33, Plaintiffs and BNSF shall jointly file a motion with the Court requesting resolution of the Covered Dispute. Plaintiffs and BNSF shall append to that motion written statements not to exceed five (5) single-spaced pages (excluding attachments or exhibits) setting forth their respective proposed resolutions of the dispute.

36. The Parties shall comply with any written agreement reached as a result of informal negotiations conducted during the 30-day period provided for by Paragraph 33, including any extension of time to comply with a schedule or deadline required by this Consent Decree, so long as the agreement does not constitute a material change to any terms of this Consent Decree. Section X of this Consent Decree shall govern the process for any proposed material changes to the terms of this Consent Decree.

IX. NOTICES

37. Unless otherwise specified herein, any notification, submission, statement of position, or communication required by this Consent Decree shall be made electronically, unless otherwise requested, and addressed as follows:

As to Plaintiffs:	Charles M. Tebbutt, charlie@tebbuttlaw.com Daniel C. Snyder, dan@tebbuttlaw,com David Pettit, dpettit@nrdc.org Jessica Yarnall Loarie, jessica.yarnall@sierraclub.org
As to BNSF:	Timothy M. Sullivan, tsullivan@bdlaw.com Dava Kaitala, Dava.Kaitala@BNSF.com Brooke Gaede, Brooke.Gaede@BNSF.com

//

38. Any Party may, by written notice to all other Parties, change its designated notice recipient or notice address provided above.

39. Notices submitted pursuant to this Section shall be deemed submitted upon electronic transmission, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

X. MODIFICATION

40. This Consent Decree contains the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation, or understanding. Any non-material modification of this Consent Decree after entry may be made without approval of the Court but must be in writing and approved by the Parties.

41. Any material modification to any term of this Consent Decree shall be effective only upon approval by the Court.

42. A Party shall not petition the Court for modification without having first made a good faith effort to reach agreement with the other Part(ies) on such modification. Notwithstanding the above, any Party may, after having made such effort, petition the Court for a modification of this Consent Decree and the Court shall rule on any such petition pursuant to law in effect at such time. Any ruling by the Court on a petition for modification may be appealed by a Party in accordance with law.

XI. TERMINATION

43. Upon completion of all of the work required by this Consent Decree, BNSF shall notify Plaintiffs in writing that it has fully satisfied all Consent Decree requirements. This notification shall indicate the case name and civil action number.

44. Should Plaintiffs disagree with BNSF's notification under Paragraph 43, Plaintiffs may invoke Dispute Resolution pursuant to Section VIII within ten (10) days of receipt of the

certification.

45. Following the notification that BNSF has completed all work required under the Consent Decree, either Party, or the Parties jointly, may move this Court to terminate this Consent Decree.

IT IS SO ORDERED.

DATED this 2nd day of May 2017.

John C. Coughenour
UNITED STATES DISTRICT JUDGE

APPENDIX A
Removal Sites

Description	Segment of BNSF Right Of Way Start	End
Rail Bridge at Drano Lake and Drano Lake Parking Area	45.710015 N, 121.639022 W	45°42'41.21"N 121°38'58.01"W
Confluence of White Salmon and Columbia Rivers	45°43'42.30"N 121°31'15.54"W	45.729216 N 121.524720 W
Confluence of Rock Creek and Columbia River	45°41'23.24"N 121°53'15.21"W	45°41'20.77"N 121°53'19.90"W
Horsethief Lake Site – Area in vicinity of public access to boat ramp and along the top of the causeway	45.646089 N 121.096466 W	45.639152 N 121.104766 W
Causeway near Murdock	45.658225 N 121.198597 W	45.658771 N 121.198875 W

ALASKA POLLUTANT DISCHARGE ELIMINATION SYSTEM

MULTI-SECTOR GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY (MSGP)

Permit Number: AKR060000 – **Final**

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Wastewater Discharge Authorization Program
555 Cordova Street
Anchorage, AK 99501

In compliance with the provisions of the Clean Water Act (CWA), 33 U.S.C. §1251 *et seq*., as amended by the Water Quality Act of 1987, P.L. 100-4, this permit is issued under provisions of Alaska Statutes (AS) 46.03; the Alaska Administrative Code (AAC) as amended; and other applicable State laws and regulations. Operators of storm water discharges associated with industrial activity located in an area identified in Part 1.1 where the Alaska Department of Environmental Conservation (DEC) is the permitting authority are authorized to discharge to waters of the United States in accordance with the eligibility and Notice of Intent (NOI) requirements, effluent limitations, inspection requirements, and other conditions set forth in this permit. This permit is structured as follows:

- General requirements that apply to all facilities are found in Parts 1 through 10, and
- Industry sector-specific requirements are found in Part 11.

The Appendices (A through F) contain additional permit conditions that apply to all operators covered under this permit.

This permit becomes effective on April 1, 2020.

This permit and the authorization to discharge expire at midnight, March 31, 2025.

Signature	February 20, 2020 Date
Gene McCabe Printed Name	Program Manager Title

APDES MULTI-SECTOR GENERAL PERMITS FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY

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SCHEDULE OF SUBMISSIONS

The Schedule of Submissions summarizes some of the required submissions and activities the permittee must complete and/or submit to the Alaska Department of Environmental Conservation (DEC) during the term of this permit. The permittee is responsible for all submissions and activities even if they are not summarized below.

Table: Schedule of Submissions

Permit Part	Submittal or Completion	Frequency	Due Date	Submit to [a]
1.3	No Exposure Certification	Once, depending on facility status	Once every five years	Permitting Program
2.1.3, 5.2	Storm Water Pollution Prevention Plan (SWPPP)	Once at beginning of coverage	At filing of NOI	Permitting Program
2.1.5, 2.2	Notice of Intent (NOI)	Once at beginning of coverage	Once per permit cycle	Permitting Program
2.7	NOI Modification	As needed	As needed	Permitting Program
7.2.1.2, 7.2.2.1	Monitoring	Quarterly during first year	the 15th day of the following month	Compliance and Enforcement Program
9.3	Noncompliance Notification Form	Upon exceedance of effluent limit	the 15th day of the following month	Compliance and Enforcement Program
8.4	Corrective Action Report	Upon exceedance (See Part 8.1 and 8.2)	Submit with Annual Report	Compliance and Enforcement Program
9.2	Annual Report	Annually	By Feb 15th of the year following the reporting year	Compliance and Enforcement Program
9.4	Additional Reporting	See Section for details	See Section for details	Compliance and Enforcement Program
10.1	Notice of Termination	Once	At end of permit coverage	Permitting Program

Notes:
a. See Part 9.6 Addresses for Reports

Summary of Permit Required On-Site Documentation

Permit Part	Document Name or Title	Frequency	Purpose of Document
1.3	No Exposure Certification	Once every five years	To demonstrate facility has reviewed the permit and facility to determine they do not need to file for permit coverage
2.1.3, 5.2	SWPPP	Developed prior to submitting the NOI. Updated as necessary	To describe the project and the control measures to minimize the discharge of pollutants into waters of the U.S. Documents installation, maintenance, inspections, corrective actions, and reporting.
2.1.5, 2.2	NOI	Once at start of coverage	Applicant request for authorization to discharge under permit coverage
2.4	DEC NOI Reply Letter	Once at start of coverage	To provide permittee with DEC permit tracking number indicating project is covered by MSGP
2.7	NOI Modification	As needed	To modify the original NOI if facility conditions or lead personnel change
5.8.3	Copy of Permit Part 1-10 and Sector specific section	Include in SWPPP	To provide reference during permit period
6.1, 6.3.2	Inspection Reports	Conducted at frequency specified in MSGP and SWPPP	To monitor compliance with SWPPP and MSGP
7.2, 7.2.2.1 7.2.1.2	Monitoring Reports	Conducted at frequency specified in MSGP	To monitor compliance with MSGP
7.2.2.3, 9.3	Noncompliance Notification	As needed	To report any exceedances found during monitoring
8.4	Corrective Action Report	As needed	To report the corrective actions taken at the facility
9.2	Annual Report	Annually	To report annual results of inspections
9.4	Additional Reporting	As required	To provide additional information
10.1	Notice of Termination	Once	To close coverage by the permit.

1. Coverage under this Permit.

1.1 Permit Area.

This general permit covers waters of the United States (U.S.) located in the State of Alaska, except the Indian Reservation of Metlakatla and the Denali National Park and Preserve.

1.2 Eligibility.

1.2.1 **Facilities Covered**. To be eligible to discharge under this permit, a permittee must (1) have a storm water discharge associated with industrial activity from the permittee's primary industrial activity, as defined in Appendix C, provided their primary industrial activity is included in Appendix D, or (2) be notified by DEC that the permittee is eligible for coverage under Sector AD of this permit.

1.2.2 **Allowable Storm Water Discharges**. Unless otherwise made ineligible under Part 1.2.4, the following discharges are eligible for coverage under this permit:

1.2.2.1 Storm water discharges associated with industrial activity for any primary industrial activities and co-located industrial activities, as defined in Appendix C;

1.2.2.2 Discharges designated by DEC as needing a storm water permit as provided in Sector AD;

1.2.2.3 Discharges that are not otherwise required to obtain APDES permit authorization but are commingled with discharges that are authorized under this permit (i.e., allowable non-storm water discharges commingled with allowable storm water discharges); and

1.2.2.4 Discharges subject to any of the national storm water-specific effluent limitations guidelines listed in Table 1-1.

(Table 1-1: Storm Water-Specific Effluent Limitations Guidelines located on following page.)

Table 1-1: Storm Water-Specific Effluent Limitations Guidelines

Regulated Discharge	40 CFR Section	MSGP Sector	New Source Performance Standard (NSPS)	New Source Date
Discharges resulting from spray down or intentional wetting of logs at wet deck storage areas	Part 429, Subpart I	A	Yes	1/26/81
Runoff from phosphate fertilizer manufacturing facilities that comes into contact with any raw materials, finished product, by-products or waste products (SIC 2874)	Part 418, Subpart A	C	Yes	4/8/74
Runoff from asphalt emulsion facilities	Part 443, Subpart A	D	Yes	7/28/75
Runoff from material storage piles at cement manufacturing facilities	Part 411, Subpart C	E	Yes	2/20/74
Mine dewatering discharges at crushed stone, construction sand and gravel, or industrial sand mining facilities	Part 436, Subparts B, C, and D	J	No	N/A
Runoff from hazardous waste and non-hazardous waste landfills	Part 445, Subparts A and B	K, L	Yes	2/2/00
Runoff from coal storage piles at steam electric generating facilities	Part 423	O	Yes	11/19/82 (10/8/74)[1]
Existing and new primary airports with 1,000 or more annual jet departures that discharge wastewater associated with airfield pavement deicing that contains urea commingled with stormwater	Part 449, Subpart A	S	Yes	6/15/12

1.2.3 **Allowable Non-Storm Water Discharges**. The following are the non-storm water discharges authorized under this permit, provided the non-storm water component of the permittees discharge is in compliance with Part 4.2.10:

- Discharges from emergency/unplanned fire-fighting activities;
- Fire hydrant flushings;
- Potable water, including water line flushings;
- Uncontaminated condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids;
- Irrigation drainage;
- Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with the approved labeling;

[1] NSPS promulgated in 1974 were not removed via the 1982 regulation; therefore wastewaters generated by Part 423-applicable sources that were New Sources under the 1974 regulations are subject to the 1974 NSPS.

- Pavement wash waters where no detergents or hazardous cleaning products are used (e.g., bleach, hydrofluoric acid, muriatic acid, sodium hydroxide, nonylphenols), and the wash waters do not come into contact with oil and grease deposits or any other toxic or hazardous materials (unless cleaned up using dry clean-up methods). The permittee is prohibited from directing any authorized pavement wash waters directly into any surface water or storm drain inlet unless the permittee has implemented appropriate control measures that meet the non-numeric effluent limits in Part 4.2. Where appropriate control measures are not in place, wash water runoff must first undergo treatment prior to discharge such as filtration, detention, or settlement;

- Routine external building washdown / power washwater that does not remove significant amount of building paint or use detergents or hazardous cleaning products, (such as those containing bleach, hydrofluoric acid, muriatic acid, sodium hydroxide, nonylphenols);

- Uncontaminated ground water or spring water;

- Foundation or footing drains where flows are not contaminated with process materials;

- Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains);

- Discharges from the spray down of lumber and wood product storage yards where no chemical additives are used in the spray-down waters and no chemicals are applied to the wood during storage (applicable only to Sector A facilities provided the non-stormwater component of the discharge is in compliance with the non-numeric effluent limits requirements in Part 4.2).

- Other uncontaminated discharges meeting water quality criteria that the Department approves on a case-by-case basis.

1.2.3.1 Also allowed for all sectors are discharges of stormwater listed above in Parts 1.2.2 or authorized non-stormwater discharges in Part 1.2.3, mixed with a discharge authorized by a different APDES permit and/or a discharge that does not require APDES permit authorization. All other non-stormwater discharges requiring APDES permit coverage except those specifically listed in Part 1.2.3 are not authorized by this permit. If non-stormwater discharges requiring APDES permit coverage other than those specifically authorized in Part 1.2.3, including sector-specific non-stormwater discharges that are listed in Part 11 as prohibited (a non-exclusive list provided to raise awareness of contaminants or sources of contaminants characteristic of certain sectors), will be discharged, such non-stormwater discharges are not authorized by this permit and must either be eliminated or covered under another APDES permit.

1.2.4 **Limitations on Coverage**.

1.2.4.1 **Discharges Mixed with Non-Storm Water.** Storm water discharges that are mixed with non-storm water, other than those non-storm water discharges listed in Part 1.2.3, are not eligible for coverage under this permit.

1.2.4.2 **Discharges Associated with Construction Activity**. Storm water discharges associated with construction activity disturbing one acre or more, or that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more, are not eligible for coverage under this permit, unless in conjunction with mining activities or certain oil and gas extraction activities as specified in Sectors G, H, I, and J of this permit.

1.2.4.3 **Discharges Currently or Previously Covered by another Permit.** Unless the permittee received written notification from DEC specifically allowing these discharges to be covered under this permit, the permittee is not eligible for coverage under this permit for any of the following:

- Storm water discharges associated with industrial activity that are currently covered under an individual APDES permit or an alternative APDES general permit;
- Discharges covered within five years prior to the effective date of this permit by an individual permit or alternative general permit where that permit established site-specific numeric water quality-based limitations developed for the storm water component of the discharge; or
- Discharges from facilities where any APDES permit has been or is in the process of being denied, terminated, or revoked by EPA (this does not apply to the routine reissuance of permits every five years).

1.2.4.4 **Discharges Subject to Effluent Limitations Guidelines.** For discharges subject to storm water effluent limitation guidelines under 40 CFR, Subchapter N, only those storm water discharges identified in Table 1-1 are eligible for coverage under this permit.

1.2.4.5 **Eligibility for New Dischargers: Based on Water Quality Standards**. A new discharger (as defined in Appendix C), is not eligible for coverage under this permit for discharges that DEC, prior to authorization under this permit, determines will not meet WQS. Where such a determination is made prior to authorization, DEC may notify the applicant that an individual or other general permit APDES application is necessary in accordance with Part 2.8. However, DEC may authorize coverage under this permit after the applicant has included appropriate controls and implementation procedures designed to ensure the discharge meets WQS. In the absence of information demonstrating otherwise, DEC expects that compliance with the storm water control requirements of this permit, including the requirements applicable to such discharges in Part 4, will meet WQS.

1.2.4.6 **New Discharges to Water Quality Impaired Waters**.[2] If the permittee is a new discharger they are not eligible for coverage under this permit to discharge to an "impaired water", as defined in Appendix C unless they:

- Prevent all exposure to storm water of the pollutant(s) for which the waterbody is impaired, and retain documentation of procedures taken to prevent exposure onsite with the SWPPP; or

- Prior to submitting the permittee's NOI, provide to the Department technical information or other documentation that the pollutant(s) for which the waterbody is impaired is not present at the site, and retain documentation of this finding with their SWPPP; or

- Prior to submitting the permittee's NOI, provide to the Department data or other technical documentation to support a conclusion that the discharge is not expected to cause or contribute to an exceedance of a water quality standard (WQS), and retain such data onsite with the SWPPP. To do this, the permittee must provide data and other technical information to the Department sufficient to demonstrate:

  - For discharges to waters without an EPA approved or established Total Maximum Daily Load (TMDL), that the discharge of the pollutant for which the water is impaired will meet in-stream water quality criteria at the point of discharge to the waterbody; or

  - For discharges to waters with an EPA approved or established TMDL, that there are sufficient remaining wasteload allocations in an EPA approved or established TMDL to allow the permittees discharge and that existing dischargers to the waterbody are subject to compliance schedules designed to bring the waterbody into attainment with WQS. The permittee must also evaluate the recommendations in the Implementation Section of the EPA approved or established TMDL and incorporate applicable measures into their operations.

A permittee is eligible under Part 1.2.4.6 if they receive an affirmative determination from the Department that their discharge will not contribute to the existing impairment, in which case the permittee must maintain such determination onsite with the SWPPP, or if the Department fails to respond within 30 days of submission of data to the Department.

[2] The project will be considered to discharge to an impaired water if the first water of the U.S. to which the discharge enters is identified by the Department pursuant to Section 303(d) of the CWA as not meeting a WQS, or is included in an EPA-approved or established total maximum daily load (TMDL). For discharges that enter a storm sewer system prior to discharge, the first water of the U.S. to which the discharge is the waterbody that receives the stormwater discharge from the storm sewer system.

1.3 Conditional Exclusion for No Exposure.

If the permittee is covered by this permit, and becomes eligible for a no exposure exclusion from permitting under 40 CFR 122.26(g), the permittee may file a No Exposure Certification. The permittee is no longer required to have a permit upon submission of a complete and accurate no exposure certification to DEC. If the permittee is no longer required to have permit coverage because of a no exposure exclusion and has submitted a No Exposure Certification form to DEC, they are required to submit a Notice of Termination (NOT) to terminate permit coverage before being covered by the No Exposure Certification. The permittee must submit a No Exposure Certification to DEC once every five years from the initial date of filing.

Facilities which have multiple industrial sectors covered under one permit can not use the No Exposure Certification form to remove those individual sectors from permit coverage. Upon a thorough evaluation to determine some sectors have no exposure to storm water, those areas must be noted in the facility wide SWPPP and inspected annually during the comprehensive site inspections to ensure no exposure exists. If inspections reveal those individual sectors eligible for coverage under this permit have exposure, the SWPPP must be updated to include those sectors and all permit requirements applied to those areas. The No Exposure Certification for Exclusion applies to an entire facility and not individual outfalls or areas located within the facility covered under a single permit.

2. Authorization under this Permit.

2.1 How to Obtain Authorization.

To obtain authorization under this permit, the permittee must:

2.1.1 Be located in the area where DEC is the permitting authority;

2.1.2 Meet the Part 1.2 eligibility requirements;

2.1.3 Develop a SWPPP according to the requirements in Part 5 of this permit. The permittee must submit a copy of the SWPPP to DEC as specified in Part 9.6;

2.1.4 Select, design, install, and implement control measures in accordance with Part 4.2 to meet numeric and non-numeric effluent limits;

2.1.5 Submit a complete and accurate Notice of Intent (NOI) either using DEC's electronic Notice of Intent (eNOI) system (accessible at http://dec.alaska.gov/water/wastewater/stormwater/apdesenoi/ or using a paper form (included in Appendix F of this permit) and then submitting that paper form to the address listed in Part 2.2.2; and

2.1.6 Pay the general permit authorization fee in accordance with 18 AAC 72. Existing permittees when renewing permit coverage do not need to pay two permit authorization fees in one calendar year;

2.1.7 DEC will post on the Internet, at http://dec.alaska.gov/Applications/Water/WaterPermitSearch/Search.aspx, all authorizations issued. Late NOIs will be accepted but authorization to discharge will not be retroactive.

2.1.8 If the information on the NOI is incorrect or is missing, the NOI will be deemed incomplete and permit authorization will not be granted. A complete NOI shall include the following information, at a minimum:

2.1.8.1 The operator information includes: Organization name, contact person, complete mailing address, telephone number and fax number and email address if available;

2.1.8.2 The billing contact information includes: organization name, contact person, complete mailing address, telephone number and fax number and email address if available. If the billing contact information is the same as the operator information, check the box on the NOI indicating that it is the same;

2.1.8.3 The industrial facility information includes: facility name, physical location, the city and zip code, the borough, latitude and longitude, how the latitude and longitude were determined, an estimate of the area of industrial activity exposed to storm water, if the facility storm water discharges have been previously permitted under an APDES permit, a brief description of activity(ies) carried out on-site;

2.1.8.4 The discharge information includes: does the facility discharge to a municipal separate storm sewer system (MS4), and if so the name of the MS4 operator, outfall(s) location (latitude/longitude), the name(s) of the water bodies to which the facility discharges, does the facility discharge to a water body that is impaired or have a TMDL, if it is the discharge is consistent with the assumptions and requirements of the TMDL, and is any storm water discharge subject to federal effluent limitation guideline and sector-specific requirements, and if so which affected MSGP Sector;

2.1.8.5 The additional information includes: the four-digit Standard Industrial Classification (SIC) code or two-letter Activity Code that best represents the products or services rendered by the facility in which it is primarily engaged in and applicable sector and subsectors of industry activity, including co-located industrial activity for which coverage is requested, and is the facility presently inactive or unstaffed and if so for how long;

2.1.8.6 The SWPPP information includes: SWPPP contact name, phone, email, and URL for SWPPP (if applicable) (the SWPPP does not need to be reposted on the internet each time it is updated);

2.1.8.7 The signatory information in compliance with Appendix A, Part 1.12

2.2 How to Submit an NOI.

2.2.1 Electronically (strongly encouraged) at http://dec.alaska.gov/water/wastewater/stormwater/apdesenoi/ . Operators who submit an eNOI must pay the general permit authorization fee during a step in the eNOI process where payment is required.

2.2.2 Through use of a paper form (available at the above web site) and then submit that paper form to Permitting Program address in Appendix A, Part 1.1.1.

2.2.3 Each operator submitting the NOI via paper form[3] must include a check payable to the "State of Alaska" for the amount of the General Permit Authorization Fee, in accordance with 18 AAC 72.

(Submission Deadlines continued on next page.)

[3] Note: Electronic submittal of an NOI will likely be processed more quickly and result in faster receipt of an authorization to discharge.

2.3 Submission Deadlines.

Timeframes for discharge authorization are contained in Table 2-1.

Table 2-1: NOI Submittal Deadlines/Discharge Authorization Dates

Category	NOI Submission Deadline	Discharge Authorization Date[1]	Fee
Existing Dischargers – in operation as of March 31, 2020 and authorized for coverage under 2015 MSGP.	Existing Dischargers must submit new NOI and SWPPP no later than one hundred twenty (120) calendar days after the effective date of this permit.	The date specified in the DEC authorization letter. The permittees authorization under the 2015 MSGP is automatically continued until they have been granted coverage under this permit or an alternative permit, or coverage is otherwise terminated.	Existing Dischargers pay annual fee based on invoice from DEC
New Dischargers or New Sources - who commence discharging one hundred twenty (120) calendar days after the effective date of this permit.	A minimum of thirty (30) calendar days prior to commencing discharge.	The date specified in the DEC authorization letter.	New Discharges pay fee at time of submitting NOI
New Owner/Operator of Existing Discharger - transfer of ownership and/or operation of a facility whose discharge is authorized under this permit	New Owner shall submit a new NOI no later than thirty (30) calendar days after the date that the transfer will take place to the new owner/operator.	The date specified in the DEC authorization letter.	New Owner pays fee upon reciept of invoice from DEC
Other Eligible Dischargers - in operation prior to March 31, 2020, but not covered under the 2015 MSGP or another APDES permit.	Immediately, to minimize the time discharges from the facility will continue to be unauthorized.	The date specified in the DEC authorization letter.	New Discharges pay fee at time of submitting NOI

Note:

1. Based on a review of the permittees NOI or other information, DEC may delay their authorization for further review, notify the permittee that additional effluent limitations or control measures are necessary, or may deny coverage under this permit and require submission of an application for an individual or other APDES general permit, as detailed in Part 2.8. In these instances, DEC will notify the permittee in writing of the delay, of the need for additional effluent limits or control measures, or of the request for submission of an individual APDES permit application.
2. If the permittee has missed the deadline to submit the NOI, any and all discharges from the industrial activities will continue to be unauthorized under the CWA until they are covered by this or a different APDES permit. DEC may take enforcement action for any unpermitted discharges that occur between the commencement of discharging and discharge authorization.
3. Discharges are not authorized if the NOI is incomplete or inaccurate or if the permittee was never eligible for permit coverage.

2.4 Date of Authorization to Begin Discharge.

An operator is authorized to discharge industrial storm water under the terms and conditions of this permit upon the date specified in the issuance of the DEC authorization letter, which is posted to the DEC's website (http://dec.alaska.gov/Applications/Water/WaterPermitSearch/Search.aspx). Once the authorization is granted by the Department the applicant is then considered a permittee covered by this permit.

2.5 Continuation of Expired General Permit.

2.5.1 If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with 18 AAC 83.155 and remain in force and effect for discharges that were covered prior to expiration. The permittee is required to abide by all limitations, monitoring, and reporting included herein if the permit enters administrative extension until such time a permit is reissued authorizing the discharge or an NOT is submitted by the permittee. If a permittee is authorized to discharge under this permit prior to the expiration date, any discharges authorized under this permit will automatically remain covered by this permit until the earliest of:

2.5.1.1 Authorization for coverage under a reissued permit or a replacement of this permit following a permittee's timely and appropriate submittal of a complete NOI requesting authorization to discharge under the new permit and compliance with the requirements of the new permit;

2.5.1.2 Submittal of a NOT;

2.5.1.3 Issuance or denial of an individual permit for the facility's discharges; or

2.5.1.4 A formal decision by DEC not to reissue this general permit or not cover a particular discharger previously covered by the general permit, at which time DEC 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 cease at the end of this time period.

2.5.2 Any permittee with a discharge covered under the 2015 MSGP that the Department determines shall transition to a different APDES permit for that discharge that filed a timely and complete NOI and was granted administrative extension of the 2015 MSGP, the administrative extension (i.e., continued permit coverage) from the 2015 MSGP survives the effective date of the 2020 MSGP until the facility receives coverage under the new APDES permit.

2.6 Permit Compliance.

Any noncompliance with any of the requirements of this permit constitutes a violation of the CWA. As detailed in Part 8 (Corrective Actions) of this permit, failure to take any required corrective actions constitute an independent, additional violation of this permit and the CWA. Any actions and time periods specified for remedying noncompliance do not absolve parties of the initial underlying noncompliance. Where corrective action is triggered by an event that does not itself constitute permit noncompliance, such as an exceedance of an applicable benchmark, there is no permit violation provided the permittee takes the required corrective action within the relevant deadlines established in Part 8.3.

2.7 Submittal of Modification to Original NOI.

2.7.1 For an existing permittee, if any of the information supplied on the NOI form changes such as name of receiving waterbody, acreage of industrial area exposed to storm water, addition or deletion of industrial sectors, and facility contact information, the permittee must submit an NOI Modification form within thirty (30) calendar days after the change. See Appendix F for the modification form.

2.7.2 At facilities where there is a transfer of ownership and/or a new operator takes over operational control at an existing facility the new operator shall submit an NOI no later than thirty (30) calendar days after a change in owner/operator. The previous owner/operator must submit a NOT no later than thirty (30) calendar days after DEC authorization of the new operator. The new operator does not need to pay a permit authorization fee if the facility has paid for the year in which the transfer occurs.

2.8 Alternative Permits.

2.8.1 **DEC Requiring Coverage under an Alternative Permit**.
DEC may require a permittee to apply for and/or obtain authorization to discharge under an alternative permit, i.e., either an individual APDES permit or an alternative APDES general permit in accordance with 40 CFR 122.64 and 124.5. Any interested person may petition DEC to take action under this paragraph. If DEC requires the permittee to apply for an alternative APDES permit, DEC will notify the permittee in writing that a permit application is required. This notification will include a brief statement of the reasons for this decision and will contain alternative permit application requirements, including deadlines for completing the application.

In addition, if the permittee is an existing discharger authorized to discharge under this permit, the notice will set a deadline to file the permit application, and will include a statement that on the effective date of the individual APDES permit, or the alternative general permit as it applies to the permittee, coverage under this general permit will terminate. DEC may grant additional time to submit the application if the permittee requests it. If the permittee is covered under this permit and fails to submit an alternative APDES permit application as required by DEC, then the applicability of this permit to the permittee is terminated at the end of the day specified by DEC as the deadline for application submittal. DEC may take appropriate enforcement action for any unpermitted discharge.

2.8.2 **Permittee Requesting Coverage under an Alternative Permit**.
A permittee may request to be excluded from coverage under this general permit by applying for an individual permit. In such a case, the permittee must submit an individual permit application in accordance with the requirements of 18 AAC 83.305 – 83.385 with reasons supporting the request, to DEC at the address listed in Part 9.6 of this permit. The request may be granted by issuance of an individual permit or authorization of coverage under an alternative general permit if the permittees reasons are adequate to support the request.

When an individual APDES permit is issued to a permittee or a permittee is authorized to discharge under an alternative APDES general permit, the permittees authorization to discharge under this permit is terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit.

3. Compliance with Standards and Limits.

3.1 Requirements for all Facilities.

3.1.1 A permittee must select, install, implement, and maintain control measures (described in Part 4) at the facility that minimize pollutants in the discharge as necessary to meet WQS (18 AAC 70). A permittee must comply with all permit conditions with respect to installation and maintenance of control measures, inspections, monitoring, corrective actions, reporting, and recordkeeping.

3.1.2 In general, except in situations explained in part 3.1.3, the storm water controls planned, developed, implemented, maintained, and updated by the permittee that are consistent with the provisions of Parts 3 through 9 and Part 11 are considered to meet the requirements of this permit to ensure that the discharges do not cause or contribute to an excursion above any WQS (18 AAC 70).

3.1.3 At any time after authorization, upon a DEC determination that the permittee's storm water discharges will cause, have a reasonable potential to cause, or contribute to an excursion above any WQS, DEC may require the permittee to:

3.1.3.1 Take corrective actions and modify storm water controls in accordance with Part 8 to adequately address the identified water quality concerns;

3.1.3.2 Submit valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining WQS; or

3.1.3.3 Minimize discharges of storm water from the facility or activity, implement corrective actions, and submit an individual permit application in accordance with Part 2.8.

3.1.4 All written responses required under Part 3.1 must include a signed certification consistent with Appendix A, Part 1.12.

3.2 Water Quality-Based Effluent Limitations.

3.2.1 **Water Quality Standards (WQS).**

3.2.1.1 A permittee's discharge must be controlled as necessary to meet a WQS (18 AAC 70) in relation to the pollutants of concern.

3.2.1.2 DEC expects that compliance with the other conditions in this permit will control discharges as necessary to meet a WQS. If at any time the permittee becomes aware, or DEC determines, that the permittee's discharge causes or contributes to an exceedance of a WQS in the receiving water, the permittee must:

- Take corrective action as required in Part 8.1;
- Document the corrective actions as required in Parts 8.4 and 5.8; and
- Report the corrective actions to DEC as required in Part 9.2.

3.2.1.3 Additionally, DEC may impose additional permit stipulations on a site-specific basis, or require the permittee to obtain coverage under an individual permit, if information in a permittees NOI, required reports, or from other sources indicates that their discharges are not controlled as necessary to meet a WQS in the receiving water.

3.2.2 **Discharges to Water Quality Impaired Waters**.[4]

3.2.2.1 ***Existing Discharge to an Impaired Water with an EPA Approved or Established TMDL.*** If the permittee discharges to an impaired water with an EPA approved or established TMDL, DEC will inform the permittee if any additional limits or controls are necessary for their discharge to be consistent with the assumptions of any available wasteload allocation in the TMDL, or if coverage under an individual permit is necessary in accordance with Part 2.8.1.

3.2.2.2 ***Existing Discharge to an Impaired Water without an EPA Approved or Established TMDL***. If the permittee discharges to an impaired water without an EPA approved or established TMDL, they are required to comply with Part 3.2.1 and the monitoring requirement of Part 7.2.3. Note that this provision also applies to situations where DEC determines that the permittees discharge is not controlled as necessary to meet WQS in a downstream water segment, even if their discharge is to a receiving water that is not specifically identified on a Section 303(d) list.

3.2.2.3 ***New Discharge to an Impaired Water***. If a permittees authorization to discharge under this permit relied on Part 1.2.4.6 for a new discharge to an impaired water, the permittee must implement and maintain any control measures or conditions at the facility that enabled the permittee to become eligible under Part 1.2.4.6, and modify such measures or conditions as necessary pursuant to any Part 5 corrective actions. The permittee is also required to comply with Part 3.2.1 and the monitoring requirements of Parts 7.2.3.

[4] The project will be considered to discharge to an impaired water if the first water of the U.S. to which the discharge enters is identified by the Department pursuant to Section 303(d) of the CWA as not meeting an WQS, or is included in an EPA-approved or established total maximum daily load (TMDL). For discharges that enter a storm sewer system prior to discharge, the first water of the U.S. to which the discharge is the waterbody that receives the stormwater discharge from the storm sewer system.

4. Control Measures.

A permittee must select, design, install, and implement control measures (including best management practices) to address the selection and design considerations in Part 4.1, meet the non-numeric effluent limits in Part 4.2, and meet limits contained in applicable effluent limitations guidelines in Part 4.3. The selection, design, installation, and implementation of these control measures must be in accordance with good engineering practices and manufacturer's specifications. Note that the permittee may deviate from such manufacturer's specifications where the permittee provides justification for such deviation and includes documentation of their rationale in the part of the SWPPP that describes the permittees control measures, consistent with Part 5.2.5. If the permittee finds that their control measures are not achieving their intended effect of minimizing pollutant discharges, the permittee must modify these control measures in accordance with the corrective action requirements set forth in Part 8. Regulated storm water discharges from the permittees facility include storm water run-on that commingles with storm water discharges associated with industrial activity at the permittees facility.

In the technology-based limits included in Part 4.2 and in Part 11, the term "minimize" means reduce and/or eliminate to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.

4.1 Control Measure Selection and Design Considerations.

A permittee must use the following considerations when selecting and designing control measures:

- Preventing storm water from coming into contact with polluting materials is generally more effective, and less costly, than trying to remove pollutants from storm water;
- Using control measures in combination is more effective than using control measures in isolation for minimizing pollutants in the storm water discharge;
- Using technologically available and economically practicable and achievable in light of best industry practice;
- Assessing the type and quantity of pollutants, including their potential to impact receiving water quality, is critical to designing effective control measures that will achieve the limits in this permit;
- Minimizing impervious areas at the permittees facility and infiltrating runoff onsite (including bioretention cells, green roofs, and pervious pavement, among other approaches) can reduce runoff and improve groundwater recharge and stream base flows in local streams, although care must be taken to avoid ground water contamination;
- Attenuating flow using open vegetated swales and natural depressions can reduce in-stream impacts of erosive flows;

- Conserving and/or restoring of riparian buffers will help protect streams from storm water runoff and improve water quality; and
- Using treatment interceptors (e.g., swirl separators and sand filters) may be appropriate in some instances to minimize the discharge of pollutants.

4.2 Non-Numeric Technology-Based Effluent Limits.

In addition to complying with the non-numeric technology-based effluent limits in Part 11, the permittee must also:

4.2.1 **Minimize Exposure**.

A permittee must evaluate the facility regarding exposure of manufacturing, processing, and material storage areas (including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations) to rain, snow, snowmelt, and runoff and minimize exposure by either locating these industrial materials and activities inside or protecting them with storm resistant coverings (although significant enlargement of impervious surface area is not recommended). In minimizing exposure, the permittee should pay particular attention to the following:

- Use grading, berming, or curbing to prevent runoff of contaminated flows and divert run-on away from these areas;
- Locate materials, equipment, and activities so that leaks are contained in existing containment and diversion systems (confine the storage of leaky or leak-prone vehicles and equipment awaiting maintenance to protected areas);
- Clean up spills and leaks promptly using dry methods (e.g., absorbents) to prevent the discharge of pollutants;
- Use drip pans and absorbents under or around leaky vehicles and equipment or store indoors where feasible;
- Use spill/overflow protection equipment;
- Drain fluids from equipment and vehicles that will be decommissioned or will remain unused for extended periods of time;
- Perform all cleaning operations indoors, under cover, or in bermed areas that prevent runoff and run-on and also that capture any overspray; and
- Ensure that all washwater, with the exception of discharges from pavement wash water and routine building washdown described in Part 1.2.3 drains to a sanitary sewer, sump, or other proper collection system (i.e., not the storm water drainage system).

The discharge of vehicle and equipment washwater, including tank cleaning operations, is not authorized by this permit. These wastewaters must be covered under a separate APDES permit, discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements, or disposed of otherwise in accordance with applicable law.

4.2.2 **Good Housekeeping**. A permittee must keep clean all exposed areas that are potential sources of pollutants, including but not limited to: using such measures as sweeping at regular intervals, keeping materials orderly and labeled, keeping all dumpster lids closed when not in use, and storing materials in appropriate containers.

4.2.3 **Maintenance**. A permittee must regularly inspect, test, maintain, and repair all industrial equipment and systems to avoid situations that may result in leaks, spills, and other releases of pollutants in storm water discharged to receiving waters. This includes performing inspections and preventive maintainance of storm water control measures and cleaning catch basins when the depth of debris reaches one-half (1/2) of the sump depth and keeping the debris surface at least six inches below the lowest outlet pipe. The permittee must maintain all control measures that are used to achieve the effluent limits required by this permit in effective operating condition. Record of routine maintainance to be kept onsite and made available upon request (it does not need to be stored with the SWPPP). Nonstructural control measures must also be diligently maintained (e.g., spill response supplies available, personnel appropriately trained). If the permittee finds that their control measures need to be replaced or repaired, the permittee must make the necessary repairs or modifications within 14 days or as expeditiously as practicable.

4.2.4 **Spill Prevention and Response Procedures**. A permittee must minimize the potential for leaks, spills and other releases that may be exposed to storm water and develop plans for effective response to such spills if or when they occur. At a minimum, the permittee must implement:

4.2.4.1 Procedures for plainly labeling containers (e.g., “Used Oil,” “Spent Solvents,” “Fertilizers and Pesticides,” etc.) that could be susceptible to spillage or leakage to encourage proper handling and facilitate rapid response if spills or leaks occur;

4.2.4.2 Procedures for material storage and handling, including the use of secondary containment and barriers between material storage and traffic areas, or a similarly effective means designed to prevent the discharge of pollutants from these areas;

4.2.4.3 Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases. Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals should be a member of the permittees storm water pollution prevention team (see Part 5.1.1); and

4.2.4.4 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 established under either 40 CFR Part 110, 40 CFR Part 117, 40 CFR Part 302, AS 75.300 and 18 AAC 75 Article 3 occurs, the permittee must notify the National Response Center (NRC) at (800) 424-8802. During normal business hours call the nearest DEC Area Response Team Office – Southeast (Juneau) 465-5340; Central (Anchorage) 269-3063; or Northern (Fairbanks) 451-2121. Outside of normal business hours, the permittee must call (800) 478-9300 as soon as the permittee has knowledge of the discharge. State or local requirements may necessitate reporting spills or discharges to local emergency response, public health, or drinking water supply agencies. Contact information must be posted, where practicable, in locations that are readily accessible and available.

4.2.4.5 The permittee must provide a description of the release, the circumstances leading to the release, and the date of the release to the nearest DEC Area Response Team Office, in accordance to AS 75.300 (See Part 4.2.4.4). The permittee must also implement measures to prevent the reoccurrence of such releases and to respond to such releases.

4.2.5 **Erosion and Sediment Controls**. A permittee must stabilize exposed areas and contain runoff using structural and/or non-structural control measures to minimize onsite erosion and sedimentation, and the resulting discharge of pollutants. Among other actions the permittee must take to meet this limit, the permittee must place flow velocity dissipation devices at discharge locations and within outfall channels where necessary to reduce erosion and/or settle out pollutants. In selecting, designing, installing, and implementing appropriate control measures, the permittee is encouraged to consult with EPA's internet-based resources relating to BMPs for erosion and sedimentation, including the sector-specific Industrial Stormwater Fact Sheet Series, (https://www.epa.gov/npdes/final-2015-msgp-documents), National Menu of Stormwater BMPs (https://www.epa.gov/npdes/national-menu-best-management-practices-bmps-stormwater#edu), and National Management Measures to Control Nonpoint Source Pollution from Urban Areas (https://www.epa.gov/nps/urban-runoff-national-management-measures), and any similar State or Tribal publications such as the Alaska Storm Water guide (http://dec.alaska.gov/water/wastewater/stormwater/guidance/) and the Best Management Practices Manual for Gravel Quarries found at http://dec.alaska.gov/water/wastewater/stormwater/gravel/ .

4.2.6 **Management of Runoff**. A permittee must divert, infiltrate, reuse, contain, or otherwise reduce storm water runoff, to minimize pollutants in their discharges. In selecting, designing, installing, and implementing appropriate control measures, permittees are encouraged to consult with EPA's internet-based resources relating to runoff management, including the sector-specific Industrial Storm Water Fact Sheet Series, (https://www.epa.gov/npdes/stormwater-discharges-industrial-activities#factsheet), National Menu of Storm Water BMPs (https://www.epa.gov/npdes/national-menu-best-management-practices-bmps-stormwater#edu), and National Management Measures to Control Nonpoint Source Pollution from Urban Areas (https://www.epa.gov/nps/urban-runoff-national-management-measures), and any similar State or Tribal publications.

4.2.7 **Salt Storage Piles or Piles Containing Salt**. A permittee must enclose or cover storage piles of salt, or piles containing salt, used for deicing or other commercial or industrial purposes, including maintenance of paved surfaces. A permittee must also implement appropriate measures (e.g., good housekeeping, diversions, containment) to minimize exposure resulting from adding to or removing materials from the pile.

4.2.8 **Sector Specific Technology-Based Effluent Limits**. A permittee must achieve any additional non-numeric limits stipulated in the relevant sector-specific section(s) of Part 11.

4.2.9 **Employee Training**. A permittee must train all employees who work in areas where industrial materials or activities are exposed to storm water, or who are responsible for implementing activities necessary to meet the conditions of this permit (e.g., inspectors, maintenance personnel), including all members of the permitttee's Pollution Prevention Team. Training must cover both the specific control measures used to achieve the effluent limits in this Part, and monitoring, inspection, planning, reporting, and documentation requirements in other parts of this permit. Training shall be conducted at least annually (or more often if employee turnover is high) and documented in the SWPPP (See Part 5.8.5).

4.2.10 **Non-Storm Water Discharges**. A permittee must eliminate non-storm water discharges not authorized by an APDES permit. See Part 1.2.3 for a list of non-storm water discharges authorized by this permit.

4.2.11 **Waste, Garbage and Floatable Debris**. A permittee must ensure that waste, garbage, and floatable debris are not discharged to receiving waters by keeping exposed areas free of such materials or by intercepting them before they are discharged.

4.2.12 **Dust Generation and Vehicle Tracking of Industrial Materials**. A permittee must minimize generation of dust and off-site tracking of raw, final, or waste materials. Appropriate BMPs to minimize tracking include the establishment of stabilized access and exit points.

4.3 Numeric Effluent Limitations Based on Effluent Limitations Guidelines.

If the permittee is in an industrial category subject to one of the effluent limitations guidelines identified in Table 7-1 (see Part 7.2.2.1), the permittee must meet the effluent limits referenced in Table 4-1 below:

Table 4-1: Applicable Effluent Limitations Guidelines

Regulated Activity	40 CFR Part/Subpart	Effluent Limit
Discharges resulting from spray down or intentional wetting of logs at wet deck storage areas	Part 429, Subpart I	See Part 11.A.7
Runoff from phosphate fertilizer manufacturing facilities that comes into contact with any raw materials, finished product, by-products or waste products (SIC 2874)	Part 418, Subpart A	See Part 11.C.4
Runoff from asphalt emulsion facilities	Part 443, Subpart A	See Part 11.D.4
Runoff from material storage piles at cement manufacturing facilities	Part 411, Subpart C	See Part 11.E.5
Mine dewatering discharges at crushed stone, construction sand and gravel, or industrial sand mining facilities	Part 436, Subparts B, C, or D	See Part 11.J.9
Runoff from hazardous waste landfills	Part 445, Subpart A	See Part 11.K.6
Runoff from non-hazardous waste landfills	Part 445, Subpart B	See Part 11.L.10
Runoff from coal storage piles at steam electric generating facilities	Part 423	See Part 11.O.8
Existing and new primary airports with 1,000 or more annual jet departures that discharge wastewater associated with airfield pavement deicing that contains urea commingled with stormwater	Part 449	See Part 11.S.9

4.4 Plan Approval for Nondomestic Wastewater Treatment Works.

For all new facilities operators who construct, install or operate any part of a nondomestic wastewater treatment works shall submit a copy of the engineering plans to DEC for review at the address in Part 9.6, and pay an engineering plan review fee (see 18 AAC 72.600 and 18 AAC 72.955). Engineering plan approval must be obtained from DEC prior to construction. Nondomestic wastewater includes storm water runoff. All permanent storm water treatment devices shall receive engineering plan approval per 18 AAC 72.600. (For the purposes of Part 4.4 "permanent storm water treatment device" means a treatment device with a design life longer than two years.)

4.5 Projects near a Public Water System (PWS)

4.5.1 Where the facility intersects a PWS drinking water protection area (DWPA) (see Part 5.2.3.3), notify the PWS contact. PWS contact information can be obtained using the online application, Drinking Water Watch, http://dec.alaska.gov:8080/DWW by entering the appropriate 6-digit PWS ID (e.g., 225025).

4.5.2 Within the identified DWPA, restrict project activities that could significantly change the natural surface water drainage or groundwater gradient.

4.5.3 Immediately notify the nearby PWS of any identified potential contamination, such as reportable spills or excess erosion that intersects their PWS drinking water protection area.

5. Storm Water Pollution Prevention Plan (SWPPP).

A permittee must prepare a SWPPP for their facility before submitting their Notice of Intent (NOI) for permit coverage. If a permittee prepared a SWPPP for coverage under a previous APDES permit, the permittee must review and update the SWPPP to implement all provisions of this permit prior to submitting their NOI. The SWPPP does not contain effluent limitations; the limitations are contained in Part 4 of the permit, and for some sectors, Parts 11 of the permit. The SWPPP is intended to document the selection, design, and installation of control measures. As distinct from the SWPPP, the additional documentation requirements (see Part 5.8) are intended to document the implementation (including inspection, maintenance, monitoring, and corrective action) of the permit requirements.

5.1 Storm Water Pollution Prevention Plan (SWPPP).

For coverage under this permit, the SWPPP must contain all of the following elements:

5.1.1 Storm water pollution prevention team (see Part 5.2.2);

5.1.2 Site description (see Part 5.2.3);

5.1.3 Summary of potential pollutant sources (see Part 5.2.4);

5.1.4 Description of control measures (see Part 5.2.5);

5.1.5 Schedules and procedures (see Part 5.2.6); and

5.1.6 Signature requirements (see Part 5.2.7).

Where the SWPPP refers to procedures in other facility documents, such as a Spill Prevention, Control and Countermeasure (SPCC) Plan or an Environmental Management System (EMS) developed for a National Environmental Performance Track facility, copies of the relevant portions of those documents must be kept with the SWPPP.

5.2 Contents of the SWPPP.

5.2.1 **Permittee.**
Identify the permittee for the facility.

5.2.2 **Storm Water Pollution Prevention Team**.
Identify the staff members (by name or title) that comprise the facility's storm water pollution prevention team as well as their individual responsibilities. The storm water pollution prevention team is responsible for assisting the facility manager in developing and revising the facility's SWPPP as well as maintaining control measures and taking corrective actions where required. Each member of the storm water pollution prevention team must have ready

access to either an electronic or paper copy of applicable portions of this permit and the SWPPP.

5.2.3 **Site Description**.
The SWPPP must include the following:

5.2.3.1 **Activities at the Facility**. Provide a description of the nature of the industrial activities at the facility.

5.2.3.2 **General location map**. Provide a general location map (e.g., U.S. Geological Survey (USGS) quadrangle map) with enough detail to identify the location of the facility and all receiving waters for the storm water discharges.

5.2.3.3 **Site map**. Provide a map showing:

- the size of the property in acres;
- the boundaries of the facility or activity;
- the location and extent of significant structures and impervious surfaces;
- directions of storm water flow (use arrows);
- locations of all existing structural control measures;
- locations of all receiving waters (including wetlands) in the immediate vicinity of the permittees facility, indicating if any of the waters are impaired and, if so, whether the waters have TMDLs established for them;
- locations of all storm water conveyances including ditches, pipes, and swales;
- locations of potential pollutant sources identified under Part 5.2.4.2;
- locations where significant spills or leaks identified under Part 5.2.4.3 have occurred;
- locations of all storm water monitoring points;
- locations of storm water inlets and outfalls, with a unique identification code for each outfall (e.g., Outfall No. 1, No. 2, etc), indicating if permittees are treating one or more outfalls as "substantially identical" under Parts 6.2.3, 5.2.6.2, and 7.1.1, and an approximate outline of the areas draining to each outfall;
- areas of designated critical habitat for endangered or threatened species located within 2,000 feet, if applicable;
- municipal separate storm sewer systems, where the facilities storm water discharges to them;
- locations and descriptions of all non-storm water discharges identified under Part 4.2.10;
- Location of existing public water system (PWS) drinking water protection areas (DWPA) for PWS sources (e.g. springs, wells, or surface water intakes) that intersect the boundary of the proposed project/permit area. The DWPAs can be found using the

interactive web map application, "*Alaska DEC Drinking Water Protection Areas*", located at http://dec.alaska.gov/das/GIS/apps.htm ;

- locations of the following activities where such activities are exposed to precipitation:
  - fueling stations;
  - vehicle and equipment maintenance and/or cleaning areas;
  - loading/unloading areas;
  - locations used for the treatment, storage, or disposal of wastes;
  - liquid storage tanks;
  - processing and storage areas;
  - immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility;
  - transfer areas for substances in bulk; and
  - machinery; and
- locations and sources of run-on to the facility from adjacent property that contains significant quantities of pollutants.

5.2.4 **Summary of Potential Pollutant Sources**.

A permittee must document areas at their facility where industrial materials or activities are exposed to storm water and from which allowable non-storm water discharges are released. Industrial materials or activities include, but are not limited to: material handling equipment or activities; industrial machinery; raw materials; industrial production and processes; and intermediate products, by-products, final products, and waste products. Material handling activities include, but are not limited to: the storage, loading and unloading, transportation, disposal, or conveyance of any raw material, intermediate product, final product or waste product. For each area identified, the description must include:

5.2.4.1 Activities in the Area. A list of the industrial activities exposed to storm water (e.g., material storage; equipment fueling, maintenance, and cleaning; cutting steel beams).

5.2.4.2 Pollutants. A list of the pollutant(s) or pollutant constituents (e.g., crankcase oil, zinc, sulfuric acid, and cleaning solvents) associated with each identified activity, which could be exposed to rainfall or snowmelt and could be discharged from the facility. The pollutant list must include all significant materials that have been handled, treated, stored, or disposed, and that have been exposed to storm water in the three years prior to the date the permittee prepared or amended the SWPPP.

5.2.4.3 ***Spills and Leaks.*** A permittee must document where potential spills and leaks could occur that could contribute pollutants to storm water discharges, and the corresponding outfall(s) that would be affected by such spills and leaks. The permittee must document all significant spills and leaks[5] of oil or toxic or hazardous pollutants that occurred in the three years prior to the date the permittee prepared the SWPPP for this permit term. Specifically, include spills or leaks that occurred in areas exposed to storm water or that drained to a storm water conveyance. The spill or leak history must be maintained in the SWPPP throughout this permit term. The permit term goes from the permit effective date to the permit expiration date.

5.2.4.4 ***Non-Storm Water Discharges.*** A permittee must document that they have evaluated for the presence of non-storm water discharges and that all unauthorized discharges have been eliminated. Documentation of the evaluation must include:

- The date of any evaluation;
- A description of the evaluation criteria used;
- A list of the outfalls or onsite drainage points that were directly observed during the evaluation;
- The different types of non-storm water discharge(s) and source locations; and
- The action(s) taken, such as a list of control measures used to eliminate unauthorized discharge(s), if any were identified. For example, a floor drain was sealed, a sink drain was re-routed to sanitary, or an APDES permit application was submitted for an unauthorized cooling water discharge.

5.2.4.5 ***Salt Storage***. A permittee must document the location of any storage piles containing salt used for deicing or other commercial or industrial purposes.

5.2.4.6 ***Sampling Data***. A permittee must summarize all storm water discharge sampling data collected at their facility during the previous permit term. The summary shall include a narrative description (and may include data tables/figures) that adequately summarizes the collected sampling data to support identification of potential pollution sources at the facility.

[5] Significant spills and leaks include, but are not limited to, releases of oil or hazardous substances in excess of quantities that are reportable under CWA Section 311 (see 40 CFR 110.6 and 40 CFR 117.21) or Section 102 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC §9602. This permit does not relieve the permittee of the reporting requirements of 40 CFR 110, 40 CFR 117, 40 CFR 302, Alaska Statute 46.04 and Section 18 AAC Chapter 75 (i.e. 18 AAC 75.300) relating to spills or other releases of oils or hazardous substances. (See 4.2.4)

5.2.5 **Description of Control Measures**.

5.2.5.1 ***Control Measures to Meet Technology-Based and Water Quality-Based Effluent Limits***. A permittee must document the location and type of control measures installed and implemented at the facility to achieve the non-numeric effluent limits in Part 4.2, and where applicable in Part 11, the effluent limitations guidelines-based limits in Part 4.3, the water quality-based effluent limits in Part 3.2, and describe how the permittee addressed the control measure selection and design considerations in Part 4.1. This documentation must describe how the control measures at the facility address both the pollutant sources identified in Part 5.2.4, and any storm water run-on that commingles with any discharges covered under this permit.

5.2.6 **Schedules and Procedures.**

5.2.6.1 ***Pertaining to Control Measures Used to Comply with the Effluent Limits in Part 4***. The following must be documented in the SWPPP:

- *Good Housekeeping* (See Part 4.2.2) – A schedule for regular pickup and disposal of waste materials, along with routine inspections for leaks and conditions of drums, tanks and containers;

- *Maintenance* (See Part 4.2.3) – Preventative maintenance procedures, including regular inspections, testing, maintenance, and repair of all industrial equipment and systems, and control measures, to avoid situations that may result in leaks, spills, and other releases, and any back-up practices in place should a runoff event occur while a control measure is off-line. The SWPPP shall include the schedule or frequency for maintaining all control measures used to comply with the effluent limits in Part 4;

- *Spill Prevention and Response Procedures* (See Part 4.2.4) – Procedures for preventing and responding to spills and leaks. The permittee may reference the existence of other plans for Spill Prevention Control and Countermeasure (SPCC) developed for the facility under Section 311 of the CWA or BMP programs otherwise required by an APDES permit for the facility, provided that the permittee keeps a copy of that other plan onsite and makes it available for review consistent with Part 5.7; and

- *Employee Training* (Part 4.2.9) – The elements of the employee training plan shall include, but not be limited to, the requirements set forth in Part 4.2.9 and also the following:

    - The content of the training to include site, facility and sector-specifc details;

- The frequency/schedule of training for employees who work in areas where industrial materials or activities are exposed to storm water, or who are responsible for implementing activities necessary to meet the conditions of this permit; and
- A log of the dates on which specific employees received training (to be maintained in the SWPPP)

5.2.6.2 ***Pertaining to Monitoring and Inspection***. A permittee must document in the SWPPP procedures for conducting the four types of analytical monitoring specified by this permit, where applicable to the facility, including:

- Benchmark monitoring (see Part 7.2.1);
- Effluent limitations guidelines monitoring (see Part 7.2.2);
- Impaired waters monitoring (see Part 7.2.3); and
- Other monitoring as required by DEC (see Part 7.2.4).

For each type of monitoring, the SWPPP must document:

- Locations where samples are collected, including any determination that two or more outfalls are substantially identical;
- Parameters for sampling and the frequency of sampling for each parameter;
- Schedules for monitoring at the facility, including schedule for alternate monitoring periods for climates with irregular storm water runoff (see Part 7.1.6);
- Any numeric control values (benchmarks, effluent limitations guidelines, TMDL-related requirements, or other requirements) applicable to discharges from each outfall; and
- Procedures (e.g., responsible staff, logistics, laboratory to be used, etc.) for gathering storm event data, as specified in Part 7.1.
- If a permittee is invoking the exception for inactive and unstaffed sites for benchmark monitoring, the permittee must include in the SWPPP the information to support this claim as required by Part 7.2.1.6.

A permittee must document the following in the SWPPP if they plan to use the substantially identical outfall exception for quarterly visual assessment requirements in Part 6.2 or benchmark monitoring requirements in Part 7.2.1:

- Location of each of the substantially identical outfalls;
- Description of the general industrial activities conducted in the drainage area of each outfall;
- Description of the control measures implemented in the drainage area of each outfall;
- Description of the exposed materials located in the drainage area of each outfall that are likely to be significant contributors of pollutants to storm water discharges;
- An estimate of the runoff coefficient of the drainage areas (low = under 40%; medium = 40 to 65%; high = above 65%); and
- Why the outfalls are expected to discharge substantially identical effluents.

A permittee must document in the SWPPP their procedures for performing, as appropriate, the three types of inspections specified by this permit, including:

- Routine facility inspections (see Part 6.1);
- Quarterly visual assessment of storm water discharges (see Part 6.2); and
- Comprehensive site inspections (see Part 6.3).

For each type of inspection performed, the SWPPP must identify:

- Person(s) or positions of person(s) responsible for inspection;
- Schedules for conducting inspections, including tentative schedule for facilities in climates with irregular storm water runoff discharges (see Part 6.2.3); and
- Specific items to be covered by the inspection, including schedules for specific outfalls.

If the permittee is invoking the exception for inactive and unstaffed sites relating to routine facility inspections and quarterly visual assessments, the permittee must include in the SWPPP the information to support this claim as required by Parts 6.1.3and 6.2.3.

5.2.7 **Signature Requirements.**

A permittee must sign and date the SWPPP in accordance with Appendix A, Subsection 1.12, including the date of signature.

5.3 Inspections.

5.3.1 The SWPPP must document the procedures for performing facility inspections specified by this permit in Part 6, and where necessary, taking corrective actions, in accordance with Part 8. At a minimum the SWPPP must document the following:

5.3.1.1 Person(s) or position of person(s) responsible for conducting facility inspections;

5.3.1.2 Schedules to be followed for conducting inspections;

5.3.1.3 Any inspection checklist or form that will be used; and

5.3.1.4 How conditions that require corrective action will be addressed.

5.3.2 A record of each inspection and of any corrective actions taken in accordance with Parts 6 and 8 must be retained with the SWPPP for at least three (3) years from the date permit coverage expires or is terminated.

5.3.3 If a permittee is invoking the exception for inactive and unstaffed sites relating to routine facility inspections and quarterly visual assessments, the permittee must include in the SWPPP the information to support this claim as required by Parts 6.1.3 and 6.2.3.

5.4 Monitoring.

5.4.1 The SWPPP must document the procedures for performing facility monitoring specified by this permit in Part 7, and where necessary, taking corrective actions, in accordance with Part 8. At a minimum, the SWPPP must document the following:

5.4.1.1 Person(s) or position of person(s) responsible for conducting facility monitoring;

5.4.1.2 Schedules to be followed for conducting monitoring;

5.4.1.3 Any monitoring checklist or form that will be used; and

5.4.1.4 How conditions that require corrective action will be addressed.

5.4.2 A record of each monitoring event and of any corrective actions taken in accordance with Parts 7 and 8 must be retained with the SWPPP for at least three (3) years from the date permit coverage expires or is terminated.

5.5 Documentation of Permit Eligibility Related to a Total Maximum Daily Load.

The SWPPP must include documentation supporting determination of permit eligibility with regards to waters that have an EPA-established or approved TMDL. See Part 3.2.2 for additional information to determine permit eligibility related to a TMDL. The SWPPP must include the following:

5.5.1 Identification of whether the discharge is identified, either specifically or generally, in an EPA – established or approved TMDL and any associated allocations, requirements, and assumptions identified for the discharge;

5.5.2 Summaries of consultation with state or federal TMDL authorities on consistency of SWPPP conditions with the approved TMDL; and

5.5.3 Measures taken by the permittee to ensure that the discharge of pollutants from the facility is consistent with the assumptions and requirements of the EPA – established or approved TMDL, including any specific wasteload or load allocation that has been established that would apply to the discharge.

5.6 Maintaining and Updated SWPPP.

5.6.1 A permittee must modify the SWPPP whenever necessary to address any of the triggering conditions for corrective action in Part 8.1 and to ensure that they do not reoccur, or to reflect changes implemented when a review following the triggering conditions in Part 8.2 indicates that changes to the control measures are necessary to meet the effluent limits in this permit. Changes to the SWPPP document must be made in accordance with the corrective action deadlines in Parts 8.3 and 8.4, and must be signed and dated in accordance with Appendix A, Subsection 1.12.

5.6.2 A permittee must modify the SWPPP if inspections or investigations by facility staff or by state, federal, local or tribal officials determine that SWPPP modifications are necessary for compliance with this permit.

5.6.3 A permittee must modify the SWPPP to reflect any revisions to applicable state, federal, local or tribal law or regulations that affect the control measures implemented at the facility.

5.6.4 A permittee must keep a log showing dates, name of person authorizing the change, and a brief summary of changes for all significant SWPPP modifications (e.g. adding a new control measure, changes in facility layout or design, or significant storm events that cause for replacement of control measures).

5.6.5 A permittee must amend the SWPPP within thirty (30) calendar days whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to waters of the U.S., or if the SWPPP proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified in the SWPPP, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. The SWPPP must be updated at least annually.

5.7 SWPPP Availability.

A permittee must retain a copy of the current complete SWPPP required by this permit at the facility, and it must be immediately available to DEC or EPA at the time of an onsite inspection or upon request.

If the facility is inactive the SWPPP must be retained at a readily available location or the office of the operator. DEC may provide access to portions of the SWPPP to a member of the public upon request. Confidential Business Information (CBI) may be withheld from the public, but may not be withheld from those staff cleared for CBI review within DEC, EPA, USFWS, or NMFS.

DEC will allow electronic storage and accessibility of the SWPPP and all documents (inspection reports, training records, DMRs, and all additional documentation required by Part 5.8) where facility infrastructure supports immediate access, as long as the following conditions are met:

5.7.1 All permit required signatures must be signed by the appropriate official in accordance with Appendix A, Part 1.12. If an electronic signature is used it must be a certified electronic signature;

5.7.2 Modifications to the SWPPP must be documented with dated revision pages;

5.7.3 ALL supporting documents (required by Part 5.8) must meet permit requirements; and

5.7.4 The electronic SWPPP and all supporting documents must be available for review by a DEC or EPA inspector during a facility Inspection.

DEC encourages permittees to post their SWPPP online and provide the website address on the NOI (the SWPPP does not need to be reposted on the internet each time it is updated).

5.8 Additional Documentation Requirements.

A permittee is required to keep up-to-date copies of the following inspection, monitoring, corrective action, additional documentation, and certification records with the SWPPP:

5.8.1 A copy of the NOI submitted to DEC along with any correspondence exchanged between the permittee and DEC specific to coverage under this permit;

5.8.2 A copy of the acknowledgment letter the permittee receives from DEC or eNOI system assigning the permittees permit tracking number;

5.8.3 A copy of this permit (an electronic copy easily available to SWPPP personnel is also acceptable);

5.8.4 Descriptions and dates of any incidences of significant spills, leaks, or other releases that resulted in discharges of pollutants to waters of the U.S., through storm water or otherwise; the circumstances leading to the release and actions taken in response to the release; and measures taken to prevent the recurrence of such releases (see Part 4.2.4);

5.8.5 Records of employee training, including date training received (see Part 4.2.9);

5.8.6 Documentation of maintenance and repairs of control measures, including the date(s) of regular maintenance, date(s) of discovery of areas in need of repair/replacement, and for repairs, date(s) that the control measure(s) returned to full function, and the justification for any extended maintenance/repair schedules (see Part 4.2.3);

5.8.7 Log of SWPPP modifications;

5.8.8 All inspection reports, including the Routine Facility Inspection Reports (see Part 6.1), the Quarterly Visual Assessment Reports (see Part 6.2), and the Comprehensive Site Inspection Reports (see Part 6.3);

5.8.9 Description of any deviations from the schedule for visual assessments and/or monitoring, and the reason for the deviations (e.g., adverse weather or it was impracticable to collect samples within the first 30 minutes of discharge from a measurable storm event) (see Parts 6.2.1, 7.1.4, and 7.2.1.2);

5.8.10 Description of any corrective action taken at the permittees site shall be listed in a corrective action log, including triggering event and dates when problems were discovered and modifications occurred (see Part 8.4);

5.8.11 Documentation of any benchmark exceedances and how they were responded to, including either (1) corrective action taken, (2) a finding that the exceedence was due to natural background pollutant levels, or (3) a finding that no further pollutant reductions were technologically available and economically practicable and achievable in light of best industry practice consistent with Part 7.2.1.2;

5.8.12 Documentation of any effluent limitation exceedances and how they were responded to, including any corrective action;

5.8.13 Documentation to support any determination that pollutants of concern are not expected to be present above natural background levels if the permittee discharges directly to impaired waters, and that such pollutants were not detected in their discharge or were solely attributable to natural background sources (see Part 7.2.3.2); and

5.8.14 Documentation to support the permittees claim that the permittees facility has changed its status from active to inactive and unstaffed with respect to the requirements to conduct routine facility inspections (see Part 6.1.3), quarterly visual assessments (see Part 6.2.3), and/or benchmark monitoring (see Part 7.2.1.6).

6. Inspections.

A permittee must conduct the inspections in Parts 6.1, 6.2, and 6.3 at their facility.

6.1 Routine Facility Inspections.

6.1.1 **Routine Facility Inspection Procedures**.

During normal facility operating hours, the permittee must conduct inspections of areas of the facility covered by the requirements in this permit, including the following:

- Areas where industrial materials or activities are exposed to storm water.
- Areas identified in the SWPPP and those that are potential pollutant sources (see Part 5.1.3).
- Areas where spills and leaks have occurred in the past 3 years.
- Discharge points.
- Control measures used to comply with the effluent limits contained in this permit.

Inspections must be conducted at least quarterly (i.e., once each permit quarter), or in some instances more frequently (e.g., monthlyfor facilities that operate seasonally), as appropriate. Increased frequency may be appropriate for some types of equipment, processes, and stormwater control measures, or areas of the facility with significant activities and materials exposed to stormwater. At least one of the routine inspections must be conducted during a period when a stormwater discharge is occurring (in arid areas of the state this requirement is to be met as practicable). The permittee must specify the relevant inspection schedules in their SWPPP document as required in Part 5.2.6.

Inspections must be performed by qualified personnel (as defined in Appendix C) with at least one member of the permittee's stormwater pollution prevention team participating. Inspector(s) must consider the results of visual and analytical monitoring (if any) for the past year when planning and conducting inspections.

During the inspection the inspectors must examine or look out for the following:

- Industrial materials, residue or trash that may have or could come into contact with stormwater.
- Leaks or spills from industrial equipment, drums, tanks, and other containers.
- Offsite tracking of industrial or waste materials, or sediment where vehicles enter or exit the site.
- Tracking or blowing of raw, final or waste materials from areas of no exposure to exposed areas.
- Control measures needing replacement, maintenance, or repair.

During an inspection occurring during a stormwater discharge, control measures implemented to comply with effluent limits must be observed to ensure they are functioning correctly. Discharge points must also be observed during this inspection. If such discharge locations are inaccessible, nearby downstream locations must be inspected.

6.1.2 **Routine Facility Inspection Documentation**.

A permittee must document the findings of each routine facility inspection performed and maintain this documentation onsite with the SWPPP as required in Part 5.8. The permittee is not required to submit their routine facility inspection findings to DEC, unless specifically requested to do so. At a minimum, the permittees documentation of each routine facility inspection must include:

- The inspection date and time;
- The name(s) and signature(s) of the inspector(s);
- Weather information;
- All observations relating to the implementation of control measures at the facility, including:
  - A description of any discharges occurring at the time of the inspection;
  - Any previously unidentified discharges of pollutants from the site;
  - Any evidence of, or the potential for, pollutants entering the drainage system;
  - Observations regarding the physical condition of and around all outfalls including any flow dissipation devices, and evidence of pollutants in discharges and/or the receiving water;
  - Any control measures needing maintenance, repairs; or replacement;
- Any additional control measures needed to comply with the permit requirements; and
- Any incidents of noncompliance observed.

The inspection report must be signed and certified in accordance with Appendix A, Subsection 1.12 of the permit.

Any corrective action required as a result of a routine facility inspection must be performed consistent with Part 8 of this permit.

6.1.3 **Exceptions to Routine Facility Inspections**.

Inactive and Unstaffed Sites: The requirement to conduct routine facility inspections on a quarterly basis does not apply at a facility that is inactive and unstaffed, as long as there are no industrial materials or activities exposed to storm water. Such a facility is only required to conduct an annual comprehensive site inspection in accordance with the requirements of Part 6.3. To invoke this exception, the permittee must maintain a statement in the SWPPP pursuant to Part 5.2.6.2 indicating that the site is inactive and unstaffed, and that there are no industrial materials or activities exposed to precipitation, in accordance with the substantive requirements in 40 CFR 122.26(g)(4)(iii). The statement must be signed and certified in accordance with Appendix A, Subsection 1.12. If circumstances change and industrial materials or activities become exposed to storm water or the facility becomes active and/or staffed, this exception no longer applies and the permittee must immediately resume quarterly facility inspections. If the permittee is not qualified for this exception at the time of authorization under this permit, but during the permit term becomes qualified because their facility is inactive and unstaffed, and there are no industrial materials or activities that are

exposed to storm water, then the permittee must include the same signed and certified statement as above and retain it with the facility records pursuant to Part 5.8.

Inactive and unstaffed facilities or those undergoing winter shutdown covered under Sectors G (Metal Mining), H (Coal Mines and Coal Mining-Related Facilities), and J (Non-Metallic Mineral Mining and Dressing), are not required to meet the "no industrial materials or activities exposed to storm water" standard to be eligible for this exception from routine inspections, consistent with the requirements established in Parts 11.G.8.4, 11.H.8.1, and 11.J.8.1.

6.2 Quarterly Visual Assessment of Storm Water Discharges.

6.2.1 **Quarterly Visual Assessment Procedures**.

Once each calendar quarter for the entire permit term, the permittee must collect a storm water sample from each outfall (except as noted in Part 6.2.3) and conduct a visual assessment of each of these samples. These samples are not required to be collected consistent with 40 CFR Part 136 procedures but should be collected in such a manner that the samples are representative of the storm water discharge. If no discharge occurs during the quarterly visual assessment period, the permittee must still report no discharge for this monitoring period and follow the requirements of Part 7.1.6.

The visual assessment must be made:

- Of a sample in a clean, clear glass, or plastic container, and examined in a well-lit area;
- On samples collected within the first 30 minutes of an actual discharge from a measurable storm event. If it is not possible to collect the sample within the first 30 minutes of discharge, the sample must be collected as soon as practicable after the first 30 minutes. The permittee must document in the SWPPP why it was not possible to take samples within the first 30 minutes and document in the SWPPP their alternative method/order for collecting samples. In the case of snowmelt, samples must be taken during a period with a measurable discharge from the permittees site; and
- For storm events, on discharges that occur at least 72 hours (3 days) from the previous discharge. The 72-hour (3-day) storm interval does not apply if the permittee documents that less than a 72-hour (3-day) interval is representative for local storm events during the sampling period.

A permittee must visually inspect the sample for the following water quality characteristics:

- Color;
- Odor;
- Clarity (dimished);
- Floating solids;

- Settled solids;
- Suspended solids;
- Foam;
- Oil sheen; and
- Other obvious indicators of storm water pollution.

6.2.2 **Quarterly Visual Assessment Documentation**.
A permittee must document the results of their visual assessments and maintain this documentation onsite with the SWPPP as required in Part 6.2.3. The permittee is not required to submit their visual assessment findings to DEC, unless specifically requested to do so. At a minimum, the permittees documentation of the visual assessment must include:

- Sample location(s)
- Sample collection date and time, and visual assessment date and time for each sample;
- Personnel collecting the sample and performing visual assessment, and their signatures;
- Nature of the discharge (i.e., runoff or snowmelt);
- Results of observations of the storm water discharge;
- Photographs of sample and sample location;
- Probable sources of any observed storm water contamination, and
- If applicable, why it was not possible to take samples within the first 30 minutes.
- Quarterly Visual Assessment Documentation must be signed and certified in accordance with Appendix A, Subsection 1.12 of the permit.

Any corrective action required as a result of a quarterly visual assessment must be performed consistent with Part 8 of this permit.

6.2.3 **Exceptions to Quarterly Visual Assessments**.
Adverse Weather Conditions: When adverse weather conditions prevent the collection of samples during the quarter, the permittee must take a substitute sample during the next qualifying storm event. Documentation of the rationale for no visual assessment for the quarter must be included with the SWPPP records as described in Part 5.8. Adverse conditions are those that are dangerous or create inaccessibility for personnel, such as local flooding, high winds, or electrical storms, or situations that otherwise make sampling impractical, such as drought or extended frozen conditions.

Climates with Irregular Storm Water Runoff: If the facility is located in an area where limited rainfall occurs during many parts of the year (e.g., arid or semi-arid climate) or in an area where freezing conditions exist that prevent runoff from occurring for extended periods, then the samples for the quarterly visual assessments may be distributed during seasons when precipitation runoff occurs. (See Part 7.1.6)

Areas Subject to Snow: In areas subject to snow, at least one quarterly visual assessment must capture snowmelt discharge, as described in Part 7.1.3, taking into account the exception described above for climates with irregular storm water runoff.

Inactive and Unstaffed Sites: The requirement for a quarterly visual assessment does not apply at a facility that is inactive and unstaffed, as long as there are no industrial materials or activities exposed to storm water. To invoke this exception, the permittee must maintain a statement in the SWPPP as required in Part 5.2.6.2 indicating that the site is inactive and unstaffed, and that there are no industrial materials or activities exposed to precipitation, in accordance with the substantive requirements in 40 CFR 122.26(g)(4)(iii). The statement must be signed and certified in accordance with Appendix A, Subsection 1.12. If circumstances change and industrial materials or activities become exposed to storm water or the facility becomes active and/or staffed, this exception no longer applies and the permittee must immediately resume quarterly visual assessments. If the permittee is not qualified for this exception at the time they are authorized under this permit, but during the permit term they become qualified because their facility is inactive and unstaffed, and there are no industrial materials or activities that are exposed to storm water, then the permittee must include the same signed and certified statement as above and retain it with their records pursuant to Part 5.8.

Inactive and unstaffed facilities covered under Sectors G (Metal Mining), H (Coal Mines and Coal Mining-Related Facilities), and J (Non-Metallic Mineral Mining and Dressing), are not required to meet the "no industrial materials or activities exposed to storm water" standard to be eligible for this exception from quarterly visual assessment, consistent with the requirements established in Parts 11.G.8.4, 11.H.8.1, and 11.J.8.1.

Substantially Identical Outfalls: If a permittees facility has two or more outfalls that discharge substantially identical effluents, as documented in Part 5.2.6.2, the permittee may conduct quarterly visual assessments of the discharge at just one of the outfalls and report that the results also apply to the substantially identical outfall(s) provided that the permittee performs visual assessments on a rotating basis of each substantially identical outfall throughout the period of coverage under this permit.

If storm water contamination is identified through visual assessment performed at a substantially identical outfall, the permittee must assess and modify their control measures as appropriate for each outfall represented by the monitored outfall.

6.3 Comprehensive Site Inspections.

6.3.1 **Comprehensive Site Inspection Procedures**.

A permittee must conduct annual comprehensive site inspections while covered under this permit. Annual, as defined in this Part, means once during each of the following inspection periods beginning with the period the permittee is authorized to discharge under this permit:

Year 1:	Permit Effective Date	–	December 31, 2020
Year 2:	January 1, 2021	–	December 31, 2021
Year 3:	January 1, 2022	–	December 31, 2022
Year 4:	January 1, 2023	–	December 31, 2023
Year 5:	January 1, 2024	–	December 31, 2024

A permittee is waived from having to perform a comprehensive site inspection for an inspection period, as defined above, if authorization to discharge is obtained less than three months before the end of that inspection period.

Should a permittees coverage be administratively continued after the expiration date of this permit, the permittee must continue to perform these inspections annually until they are no longer covered.

Comprehensive site inspections must be conducted by qualified personnel with at least one member of the storm water pollution prevention team participating in the comprehensive site inspections.

The comprehensive site inspections must cover all areas of the facility affected by the requirements in this permit, including the areas identified in the SWPPP as potential pollutant sources (see Part 5.2.4) where industrial materials or activities are exposed to storm water, any areas where control measures are used to comply with the effluent limits in Part 3, and areas where spills and leaks have occurred in the past 3 years. If the permittee has documented in the SWPPP that some industrial sector sites within the facility have no exposure to storm water the comprehensive site inspection should include those sector areas as well to verify no exposure still exists. The inspections must also include a review of monitoring data collected in accordance with Part 7.2. Inspectors must use the results of the past year's visual and analytical monitoring when planning and conducting inspections. Inspectors must examine the following:

- Industrial materials, residue, or trash that may have or could come into contact with storm water;
- Leaks or spills from industrial equipment, drums, tanks, and other containers;
- Offsite tracking of industrial or waste materials, or sediment where vehicles enter or exit the site;
- Tracking or blowing of raw, final, or waste materials from areas of no exposure to exposed areas; and
- Control measures needing replacement, maintenance, or repair.

Storm water control measures required by this permit must be observed to ensure that they are functioning correctly. If discharge locations are inaccessible, nearby downstream locations must be inspected.

The annual comprehensive site inspection may also be used as one of the routine inspections, as long as all components of both types of inspections are included.

6.3.2 **Comprehensive Site Inspection Documentation**.

A permittee must document the findings of each comprehensive site inspection and maintain this documentation onsite with the SWPPP as required in Part 5.8. In addition, the permittee must submit this documentation in an annual report as required in Part 9.2. At a minimum, the permittees documentation of the comprehensive site inspection must include (see the Annual Reporting Form included in Appendix F):

- The date of the inspection;
- The name(s) and title(s) of the personnel making the inspection;
- Findings from the examination of areas of the facility identified in Part 6.3.1 including inspections of the individual industrial sectors within a facility under a single permit which have been noted as having no exposure in the SWPPP;
- All observations relating to the implementation of the permittees control measures including:
    - previously unidentified discharges from the site,
    - previously unidentified pollutants in existing discharges,
    - evidence of, or the potential for, pollutants entering the drainage system;
    - evidence of pollutants discharging to receiving waters at all facility outfall(s), and the condition of and around the outfall, including flow dissipation measures to prevent scouring, and
    - additional control measures needed to address any conditions requiring corrective action identified during the inspection.
- Any required revisions to the SWPPP resulting from the inspection;
- Any incidents of noncompliance observed or a certification stating the facility is in compliance with this permit (if there is no noncompliance); and
- A statement, signed and certified in accordance with Appendix A, Subsection 1.12 of the permit.

Any corrective action required as a result of the comprehensive site inspection must be performed consistent with Part 8 of this permit.

7. Monitoring.

A permittee must collect and analyze storm water samples and document monitoring activities consistent with the procedures described in Part 7 and Appendix A, Subsections 3.0, and any additional sector-specific requirements in Part 11. Refer to Part 9 for reporting and recordkeeping requirements.

7.1 Monitoring Procedures.

7.1.1 **Monitored Outfalls**.

Applicable monitoring requirements apply to each outfall authorized by this permit, except as otherwise exempt from monitoring as a "substantially identical outfall." If the permittees facility has two or more outfalls that they believe discharge substantially identical effluents, based on the similarities of the general industrial activities and control measures, exposed materials that may significantly contribute pollutants to storm water, and runoff coefficients of their drainage areas, they may monitor the effluent of just one of the outfalls and report that the results also apply to the substantially identical outfall(s). As required in Part 5.2.6.2, the SWPPP must identify each outfall authorized by this permit and describe the rationale for any substantially identical outfall determinations. The allowance for monitoring only one of the substantially identical outfalls is not applicable to any outfalls with numeric effluent limitations. The permittee is required to monitor each outfall covered by a numeric effluent limit as identified in Part 7.2.2.

7.1.2 **Commingled Discharges**.

If discharges authorized by this permit commingle with discharges not authorized under this permit, any required sampling of the authorized discharges must be performed at a point before they mix with other waste streams.

7.1.3 **Measurable Storm Events**.

All required monitoring must be performed on a storm event that results in an actual discharge from the facility ("measurable storm event") that follows the preceding measurable storm event by at least 72 hours (three days). The 72-hour (three-day) storm interval does not apply if the permittee is able to document that less than a 72-hour (three-day) interval is representative for local storm events during the sampling period. In the case of snowmelt, the monitoring must be performed at a time when a measurable discharge occurs at the facility.

For each monitoring event, except snowmelt monitoring, the permittee must identify the date and duration (in hours) of the rainfall event, rainfall total (in inches) for that rainfall event, and time (in days) since the previous measurable storm event. For snowmelt monitoring, the permittee must identify the date of the sampling event.

7.1.4 **Sample Type**.

A permittee must take a minimum of one grab sample from a discharge resulting from a measurable storm event as described in Part 7.1.3. Samples must be collected within the first 30 minutes of a discharge produced from a measurable storm event. If it is not possible to

collect the sample within the first 30 minutes of discharge, the sample must be collected as soon as practicable after the first 30 minutes and documentation must be kept with the SWPPP explaining why it was not possible to take samples within the first 30 minutes. In the case of snowmelt, samples must be taken during a period with a measurable discharge.

For facilities covered by Subparts 11.G, 11.H, and 11.J, they are exempt from the 30 minute requirement. These facilities must sample as soon as practical after a storm event. The SWPPP must contain a list and map of the monitoring locations and the order in which sample collection occurs.

7.1.5 **Adverse Weather Conditions**.

When adverse weather conditions as described in Part 6.2.3 prevent the collection of samples according to the relevant monitoring schedule, the permittee must take a substitute sample during the next qualifying storm event. Adverse weather does not exempt a permittee from having to file a benchmark monitoring report in accordance with their sampling schedule. The permittee must report any failure to monitor as specified in Part 9.1 indicating the basis for not sampling during the usual reporting period.

7.1.6 **Climates with Irregular Storm Water Runoff**.

If a permittees facility is located in areas where limited rainfall occurs during parts of the year (e.g., arid or semi-arid climates) or in areas where freezing conditions exist that prevent runoff from occurring for extended periods, required monitoring events may be distributed during seasons when precipitation occurs, or when snowmelt results in a measurable discharge from the facility. The permittee must still collect the required number of samples.

7.1.7 **Monitoring Periods**.

Monitoring requirements in this permit begin in the first full quarter following either April 1, 2020 or the permittees date of discharge authorization, whichever date comes later. If the permittees monitoring is required on a quarterly basis (e.g., benchmark monitoring), the permittee must monitor at least once in each of the following three-month intervals:

- **Quarter 1**: January 1 - March 31;
- **Quarter 2**: April 1 – June 30;
- **Quarter 3**: July 1 – September 30;
- **Quarter 4**: October 1 – December 31.

For example, if permit coverage was obtained on June 2, 2020, then the permittees first monitoring quarter is July 1 - September 30, 2020. This monitoring schedule may be modified in accordance with Part 7.1.6 if the revised schedule is documented with the SWPPP and provided to DEC with the first monitoring report.

7.1.8 **Monitoring for Allowable Non-Storm Water Discharges.**
The permittee is only required to monitor allowable non-storm water discharges (as delineated in Part 1.2.3) when they are commingled with storm water discharges associated with industrial activity.

7.2 Required Monitoring.

This permit includes four types of required analytical monitoring, one or more of which may apply to the permittees discharge:

- Quarterly benchmark monitoring (see Part 7.2.1)
- Annual effluent limitations guidelines monitoring (see Part 7.2.2);
- Impaired waters monitoring (see Part 7.2.3); and
- Other monitoring as required by DEC (see Part 7.2.4).

When more than one type of monitoring for the same parameter at the same outfall applies (e.g., total suspended solids once per year for an effluent limit and once per quarter for benchmark monitoring at a given outfall), the permittee may use a single sample to satisfy both monitoring requirements (i.e., one sample satisfying both the annual effluent limit sample and one of the four quarterly benchmark monitoring samples).

All required monitoring must be conducted in accordance with the procedures described in Appendix A, Subsection 3.0.

7.2.1 **Benchmark Monitoring**.
This permit stipulates pollutant benchmark concentrations that may be applicable to certain sectors / subsectors. Benchmark monitoring data are primarily for the permittees use to determine the overall effectiveness of the permittees control measures and to assist the permittee in knowing when additional corrective action(s) may be necessary to comply with the effluent limitations in Part 4.

The benchmark concentrations are not effluent limitations; a benchmark exceedance, therefore, is not a permit violation. However, if corrective action is required as a result of a benchmark exceedance, failure to conduct required corrective action is a permit violation.

At the permittee's discretion, more than four samples may be taken during separate runoff events and used to determine the average benchmark parameter concentration for facility discharges. These extra samples may be taken in any quarter of the permittees' choice.

7.2.1.1 ***Applicability of Benchmark Monitoring***. A permittee must monitor for any benchmark parameters specified for the industrial sector(s), both primary industrial activity and any co-located industrial activities, applicable to the permittees discharge. The industry-specific benchmark concentrations are listed in the sector-specific sections of Part 11. If the facility is in one of the industrial sectors subject to benchmark concentrations that are hardness-dependent, the permittee is required to submit to DEC with their first benchmark report a hardness value, established consistent with the procedures in Appendix E, which is representative of the receiving water.

Samples must be analyzed consistent with 40 CFR Part 136 analytical methods and using test procedures with quantitation limits at or below benchmark values for all benchmark parameters for which the permittee is required to sample.

7.2.1.2 ***Benchmark Monitoring Schedule***. Benchmark monitoring must be conducted quarterly, as identified in Part 7.1.7, for the permittees first four full consecutive quarters of permit coverage commencing no earlier than April 1, 2020. Facilities in climates with irregular storm water runoff, as described in Part 7.1.6, may modify this quarterly schedule provided that this revised schedule is reported to DEC when the first benchmark sample is collected and reported, and that this revised schedule is kept with the facility's SWPPP as specified in Part 5.2.6. When conditions prevent the obtaining of four samples in four consecutive quarters, continue monitoring until achieving the four samples required for calculating the benchmark monitoring average.

7.2.1.3 ***Data Not Exceeding Benchmarks.*** After collection of four quarterly samples, if the average of the four monitoring values for any parameter does not exceed the benchmark, the permittee has fulfilled their monitoring requirements for that parameter for the permit term. For averaging purposes, use a value of zero for any individual sample parameter, analyzed using procedures consistent with Part 7.2.1.1, which is determined to be less than the method detection limit. For sample values that fall between the method detection level and the quantitation limit (i.e., a confirmed detection but below the level that can be reliably quantified), use a value halfway between zero and the quantitation limit.

7.2.1.4 ***Data Exceeding Benchmarks.*** After collection of four quarterly samples, if the average of the four monitoring values for any parameter exceeds the benchmark, the permittee must, in accordance with Part 8.2, review the selection, design, installation, and implementation of their control measures to determine if modifications are necessary to meet the benchmarks in this permit, and either:

- Make the necessary modifications and continue quarterly monitoring until the permittee has completed four additional quarters of monitoring for which the average does not exceed the benchmark; or

- Make a determination that no further pollutant reductions are technologically available and economically practicable and achievable in light of best industry

practice to meet the technology-based effluent limits or are necessary to meet the water-quality-based effluent limitations in Part 3 of this permit, in which case the permittee must continue monitoring once per year. The permittee must also document their rationale for concluding that no further pollutant reductions are achievable, and retain all records related to this documentation with their SWPPP. The permittee must also notify DEC of this determination in their next benchmark monitoring report.

In accordance with Part 8.2, the permittee must review its control measures and perform any required corrective action immediately (or document why no corrective action is required), without waiting for the full four quarters of monitoring data, if an exceedance of the four quarter average is mathematically certain. If after modifying the permittees control measures and conducting four additional quarters of monitoring, their average still exceeds the benchmark (or if an exceedance of the benchmark by the four quarter average is mathematically certain prior to conducting the full four additional quarters of monitoring), the permittee must again review its control measures and take one of the two actions above.

7.2.1.5 ***Natural Background Pollutant Levels.*** Following the first four quarters of benchmark monitoring (or sooner if the exceedance is triggered by less than four quarters of data, see above), if the average concentration of a pollutant exceeds a benchmark value, and the permittee determines that exceedance of the benchmark is attributable solely to the presence of that pollutant in the natural background, the permittee is not required to perform corrective action or additional benchmark monitoring provided that:

- The average concentration of the permittees benchmark monitoring results is less than or equal to the concentration of that pollutant in the natural background;
- The permittee must document and maintain with the SWPPP, as required in Part 5.8, the supporting rationale for concluding that benchmark exceedances are in fact attributable solely to natural background pollutant levels. The permittee must include in their supporting rationale any data previously collected by the permittee or others (including literature studies) that describe the levels of natural background pollutants in their storm water discharge; and
- The permittee must notify DEC on their final quarterly benchmark monitoring report that the benchmark exceedances are attributable solely to natural background pollutant levels.

Natural background pollutants include those substances that are naturally occurring in soils or groundwater. Natural background pollutants do not include legacy pollutants from earlier activity at the facility, or pollutants in run-on from neighboring sources which are not naturally occurring.

7.2.1.6 ***Exception for Inactive and Unstaffed Sites***[6]. The requirement for benchmark monitoring does not apply at a facility that is inactive and unstaffed, as long as there are no industrial materials or activities exposed to storm water. To invoke this exception, the permittee must do the following:

- Maintain a statement onsite with the SWPPP stating that the site is inactive and unstaffed, and that there are no industrial materials or activities exposed to storm water in accordance with the substantive requirements in 40 CFR 122.26(g) and sign and certify the statement in accordance with Appendix A, Subsection 1.12; and

- If circumstances change and industrial materials or activities become exposed to storm water or the facility becomes active and/or staffed, this exception no longer applies and the permittee must immediately begin complying with the applicable benchmark monitoring requirements under Part 7.2 as if they were in their first year of permit coverage. The permittee must indicate in their first benchmark monitoring report that their facility has materials or activities exposed to storm water or has become active and/or staffed.

- If the permittee is not qualified for this exception at the time they are authorized under this permit, but during the permit term they become qualified because their facility is inactive and unstaffed, and there are no industrial materials or activities that are exposed to storm water, then the permittee must notify DEC of this change in their next benchmark monitoring report. A permittee may discontinue benchmark monitoring once they have notified DEC, and prepared and signed the certification statement described above concerning their facility's qualification for this special exception.

7.2.2 **Effluent Limitations Monitoring**.

7.2.2.1 ***Monitoring Based on Effluent Limitations Guidelines***. Table 7-1 identifies the storm water discharges subject to effluent limitation guidelines that are authorized for coverage under this permit. Beginning in the first full quarter following April 1, 2020 or the permittees date of discharge authorization, whichever date comes later, the permittee must monitor once per year at each outfall containing the discharges identified in Table 7-1 for the parameters specified in the sector-specific section of Part 11.

[6] This exception has different requirements for Sectors G, H, and J (see Part 11).

Table 7-1: Required Monitoring for Effluent Limits Based on Effluent Limitations Guidelines

Regulated Activity	Effluent Limit	Monitoring Frequency	Sample Type
Discharges resulting from spray down or intentional wetting of logs at wet deck storage areas	See Part 11.A.7	1/year	Grab
Runoff from phosphate fertilizer manufacturing facilities that comes into contact with any raw materials, finished product, by-products or waste products (SIC 2874)	See Part 11.C.4	1/year	Grab
Runoff from asphalt emulsion facilities	See Part 11.D.4	1/year	Grab
Runoff from material storage piles at cement manufacturing facilities	See Part 11.E.5	1/year	Grab
Mine dewatering discharges at crushed stone, construction sand and gravel, or industrial sand mining facilities	See Part 11.J.9	1/year	Grab
Runoff from hazardous waste landfills	See Part 11.K.6	1/year	Grab
Runoff from non-hazardous waste landfills	See Part 11.L.10	1/year	Grab
Runoff from coal storage piles at steam electric generating facilities	See Part 11.O.8	1/year	Grab
Existing and new primary airports with 1,000 or more annual jet departures that discharge wastewater associated with airfield pavement deicing that contains urea commingled with stormwater	See Part 11.S.8	1/year	Grab

7.2.2.2 ***Substantially Identical Outfalls***. A permittee must monitor each outfall discharging runoff from any regulated activity identified in Table 7-1. The substantially identical outfall monitoring provisions are not available for numeric effluent limits monitoring.

7.2.2.3 **Follow-up Actions if Discharge Exceeds Numeric Effluent Limit**. The permittee must follow-up monitoring within 30 calendar days (or during the next qualifying runoff event, should none occur within 30 days) of implementing corrective action(s) taken pursuant to Part 8 in response to exceedance of a numeric effluent limit contained in this permit. Monitoring must be performed for any pollutant(s) that exceeds the effluent limit. If this follow-up monitoring exceeds the applicable effluent limitation, you must:

- **Submit a Noncompliance Notification Form**: The permittee must submit an Noncompliance Notification Form no later than the 15th day of the following month after they have received all the lab results; and

- **Continue to Monitor**: the permittee must monitor, at least quarterly, until the discharge is in compliance with the effluent limit or until DEC waives the requirement for additional monitoring.

7.2.3 **Discharges to Impaired Waters Monitoring**.

7.2.3.1 ***Permittees Required to Monitor Discharges to Impaired Waters***. If a permittee discharges to an impaired water, the permittee must monitor for all pollutants for which the waterbody is impaired and for which a standard analytical method exists (see 40 CFR Part 136).

If the pollutant for which the waterbody is impaired is suspended solids, turbidity or sediment/sedimentation, the permittee must monitor for Total Suspended Solids (TSS) and turbidity. If the pollutant for which the waterbody is impaired is expressed in the

form of an indicator or surrogate pollutant, the permittee must monitor for that indicator or surrogate pollutant. No monitoring is required when a waterbody's biological communities are impaired but no pollutant, including indicator or surrogate pollutants, is specified as causing the impairment, or when a waterbody's impairment is related to hydrologic modifications, impaired hydrology, or other pollutant.

7.2.3.2 ***Impaired Waters Monitoring Schedule***.

Discharges to impaired waters without an EPA approved or established TMDL: Beginning in the first full calendar quarter following April 1, 2020 or the permittees date of discharge authorization, whichever date comes later, the permittee must monitor once per year at each outfall (except substantially identical outfalls) discharging storm water to impaired waters without an EPA approved or established TMDL. This monitoring requirement does not apply after one year if the pollutant for which the waterbody is impaired is not detected above natural background levels in their storm water discharge, and the permittee must document, as required in Part 5.8 (Additional Documentation Requirements), that this pollutant is not expected to be present above natural background levels in the permittees discharge.

If the pollutant for which the water is impaired is not present and not expected to be present in the permittee's discharge, or it is present but the permittee has determined that its presence is caused solely by natural background sources, they should include a notification to this effect in their first monitoring report, after which they may discontinue annual monitoring. To support a determination that the pollutant's presence is caused solely by natural background sources, the permittee must keep the following documentation with their SWPPP records:

- An explanation of why the permittee believes that the presence of the pollutant causing the impairment in their discharge is not related to the activities at their facility; and
- Data and/or studies that tie the presence of the pollutant causing the impairment in their discharge to natural background sources in the watershed.

Natural background pollutants include those substances that are naturally occurring as a result of native soils, vegetation, wildlife, or groundwater. Natural background pollutants do not include legacy pollutants from earlier activity on the site, or pollutants in run-on from neighboring sources which are not naturally occurring.

Discharges to impaired waters with an EPA approved or established TMDL WLA: For storm water discharges to waters for which there is an EPA approved or established TMDL waste load allocation (WLA), the permittee is not required to monitor for the pollutant for which the TMDL was written unless DEC informs the permittee, upon examination of the applicable TMDL and/or WLA, that they are subject to such a requirement consistent with the assumptions of the applicable TMDL and/or WLA.

DEC's notice will include specifications on which pollutant to monitor and the required monitoring frequency during the first year of permit coverage. Following the first year of monitoring:

- If the TMDL pollutant is not detected in any of the permittees first year samples, they may discontinue further sampling, unless the TMDL has specific instructions to the contrary, in which case the permittee must follow those instructions. The permittee must keep records of this finding onsite with their SWPPP.
- If the permittee detects the presence (above background levels) of the pollutant causing the impairment in their storm water discharge for any of the samples collected in the first year, the permittee must continue monitoring annually throughout the term of this permit, unless the TMDL specifies more frequent monitoring, in which case the permittee must follow the TMDL requirements.

7.2.4 **Additional Monitoring Required by DEC**.
DEC may notify the permittee of additional discharge monitoring requirements. Any such notice will briefly state the reasons for the monitoring, locations, and parameters to be monitored, frequency and period of monitoring, sample types, and reporting requirements.

8. Corrective Actions.

8.1 Conditions Requiring Review and Revision to Eliminate Problem.

If any of the following conditions occur, the permittee must review and revise the selection, design, installation, and implementation of their control measures to ensure that the condition is eliminated and will not be repeated in the future:

8.1.1 An unauthorized release or discharge (e.g., spill, leak, or discharge of non-storm water not authorized by this or another APDES permit) occurs at the permittees facility;

8.1.2 A discharge violates a numeric effluent limit;

8.1.3 The permittee becomes aware, or DEC determines, that the permittee's control measures are not stringent enough for the discharge to meet a WQS in the receiving water;

8.1.4 An inspection or evaluation of the permittees facility by an DEC or EPA official determines that modifications to the control measures are necessary to meet the non-numeric effluent limits in this permit; or

8.1.5 The permittee finds in their routine operation, facility inspection, quarterly visual assessment, or comprehensive site inspection that their control measures are not being properly installed, operated and maintained.

8.2 Conditions Requiring Review to Determine if Modifications Are Necessary.

If any of the following conditions occur, the permittee must review the selection, design, installation, and implementation of their control measures to determine if modifications are necessary to meet the effluent limits in this permit:

8.2.1 Construction or a change in design, operation, or maintenance at a permittees facility significantly changes the nature of pollutants discharged in storm water from their facility, or significantly increases the quantity of pollutants discharged; or

8.2.2 The average of four quarterly sampling results exceeds an applicable benchmark. If less than four benchmark samples have been taken, but the results are such that an exceedence of the four quarter average is mathematically certain (i.e., if the sum of quarterly sample results to date is more than four times the benchmark level) this is considered a benchmark exceedence, triggering this review.

8.3 Corrective Action Deadlines.

A permittee must document their discovery of any of the conditions listed in Parts 8.1 and 8.2 within 24 hours of making such discovery. Subsequently, the permittee must comply with Appendix A Part 3.4 to document any corrective action(s) to be taken to eliminate or further investigate the deficiency, or if no corrective action is needed, the basis for that determination. Specific documentation required is detailed in Part 8.4. If a permittee determines that changes are necessary following their review, any modifications to their control measures must be made before the next storm event if possible, or as soon as practicable following that storm event. These time intervals are not grace periods, but are schedules considered reasonable for documenting a permittees findings and for making repairs and improvements. They are included in this permit to ensure that the conditions prompting the need for these repairs and improvements are not allowed to persist indefinitely.

8.4 Corrective Action Report.

8.4.1 Comply with Appendix A Part 3.4 upon discovery of any condition listed in Parts 8.1 and 8.2, the permittee must document the following information (i.e., questions 3-5 of the Corrective Actions section in the Annual Reporting Form, provided in Appendix F):

8.4.1.1 Identification of the condition triggering the need for corrective action review;

8.4.1.2 Description of the problem identified; and

8.4.1.3 Date the problem was identified.

8.4.2 Comply with Appendix A Part 3.4 upon discovery of any condition listed in Parts 8.1 and 8.2, the permittee must document the following information (i.e., questions 7-11 of the Corrective Actions section in the Annual Reporting Form, provided in Appendix F):

8.4.2.1 Summary of corrective action taken or to be taken (or, for triggering events identified in Part 8.2 where the permittee determines that corrective action is not necessary, the basis for this determination);

8.4.2.2 Notice of whether SWPPP modifications are required as a result of this discovery or corrective action;

8.4.2.3 Date corrective action initiated; and

8.4.2.4 Date corrective action completed or expected to be completed.

8.4.3 A permittee must submit this documentation in an annual report as required in Part 9.2 and retain a copy onsite with the SWPPP as required in Part 5.8.

8.5 Effect of Corrective Action.

If the event triggering the review is a permit violation (e.g., non-compliance with an effluent limit), it must be documented using the Noncompliance Notification Form (see http://dec.alaska.gov/water/compliance/permittee/). Furthermore, correcting it does not remove the original violation. Additionally, failing to take corrective action in accordance with this section is an additional permit violation.

8.6 Substantially Identical Outfalls.

If the event triggering corrective action is linked to an outfall that represents other substantially identical outfalls, the permittees review must assess the need for corrective action for each outfall represented by the outfall that triggered the review. Any necessary changes to control measures that affect these other outfalls must also be made before the next storm event if possible, or as soon as practicable following that storm event.

9. Reporting and Recordkeeping.

9.1 Reporting Monitoring Data to DEC.

All monitoring data collected pursuant to Parts 7.2 must be submitted to DEC using the NetDMR system (Part 9.8.1 E-Reporting Rule for DMR (Phase I)) (unless a waiver from electronic reporting has been granted, in which case you may submit a paper DMR form) no later than the 15th day of the following month after the permittee has received the complete laboratory results for all monitored outfalls for the reporting period. If a waiver from electronic reporting has been granted, paper reporting forms (DMR as provided in Appendix F) must be submitted by the deadline to the appropriate address identified in Part 9.6.

For benchmark monitoring, note that the permittee is required to submit sampling results to DEC no later than the 15th day of the following month after receiving all laboratory results for each quarter that are required to collect benchmark samples, in accordance with Part 7.2.1.2. If a permittee collects multiple samples in a single quarter (e.g., due to adverse weather conditions, climates with irregular storm water runoff, or areas subject to snow), they are required to submit all sampling results to DEC no

later than the 15th day of the following month after receiving all the laboratory results. If no discharge occurs during the benchmark monitoring period, the permittee must still report no discharge for this monitoring period.

9.2 Annual Report.

A permittee must submit an annual report to DEC that includes the findings from their Part 6.3 comprehensive site inspection and any corrective action documentation as required in Part 8.4. If corrective action is not yet completed at the time of submission of this annual report, the permittee must describe the status of any outstanding corrective action(s). In addition to the information required in Parts 8.4 (Corrective Action Report) and 6.3.2 (Comprehensive Site Inspection Documentation), the permittee must include the following information with their annual report:

- Facility name;
- APDES permit tracking number;
- Facility physical address; and
- Contact person name, title, and phone number.

DEC requires the permittee submit this report using the Annual Report provided as Appendix F. The Annual Report may be submited electronically through the DEC Online Application System (OASys) located at http://www.dec.alaska.gov/water/oasys/index.html. By February 15th of the year following the reporting year, the permittee must submit the annual report to DEC to the address identified in Part 9.6 or via OASys.

9.3 Noncompliance Notification for Numeric Effluent Limits.

If follow-up monitoring pursuant to Part 7.2.2.3 exceeds a numeric effluent limit, the permittee must submit a Noncompliance Notification Form (see http://dec.alaska.gov/water/compliance/permittee/) to DEC no later than the 15th day of the following month after they have received all their lab results. The permittees report must include the following:

- APDES permit tracking number;
- Facility name, physical address and location;
- Name of receiving water;
- Monitoring data from this and the preceding monitoring event(s);
- An explanation of the situation; what the permittee has done and intend to do (should their corrective actions not yet be complete) to correct the violation; and
- An appropriate contact name and phone number.

9.4 Additional Reporting.

9.4.1 A permittee is subject to the standard permit reporting provisions of Appendix A, Subsection 3.0.

9.4.2 Where applicable, the permittee must submit, and DEC must receive, the following reports at the appropriate address in Part 9.6. If the facility discharges through an MS4, the permittee must also submit these reports to the MS4 operator (identified pursuant to Part 5.2.3).

9.4.2.1 24-hour reporting (see Appendix A, Subsection 3.4) - A permittee must report any noncompliance which may endanger health or the environment. Any information must be provided orally within 24 hours from the time the permittee becomes aware of the circumstances;

9.4.2.2 Five (5)-day follow-up reporting to the 24 hour reporting (see Appendix A, Subsection 3.4) - A written submission must also be provided within five days of the time the permittee becomes aware of the circumstances;

9.4.2.3 Reportable quantity spills (see Part 4.2.4) - A permittee must provide notification, as required under Part 4.2.4, as soon as they have knowledge of a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity.

9.4.3 Where applicable, the permittee must submit, and DEC must receive, the following reports at the appropriate address in Part 9.6:

9.4.3.1 Planned changes (see Appendix A, Subsection 2.1) – A Permittee must give notice to DEC as soon as possible of any planned physical alterations or additions to the permitted facility that qualify the facility as a new source or that could significantly change the nature or significantly increase the quantity of pollutants discharged;

9.4.3.2 Anticipated noncompliance (see Appendix A, Subsection 2.2) – A Permittee must give advance notice to DEC of any planned changes in the permitted facility or activity which they anticipate will result in noncompliance with permit requirements;

9.4.3.3 Transfer of ownership and/or operation – The new permittee must submit a complete and accurate NOI in accordance with the requirements of Appendix F of this permit and by the deadlines specified in Table 2-1;

9.4.3.4 Compliance schedules (see Appendix A, Subsection 2.4) – Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than 14 days following each schedule date;

9.4.3.5 Other noncompliance (see Appendix A, Subsection 3.5) - A permittee must report all instances of noncompliance not reported in their monitoring report (pursuant to Part 9.1), compliance schedule report, or 24-hour report at the time monitoring reports are submitted; and

9.4.3.6 Other information (see Appendix A, Subsection 2.5) – A permittee must promptly submit facts or information if they become aware that they failed to submit relevant facts in their NOI, or that they submitted incorrect information in their NOI or in any report.

9.5 Recordkeeping.

A permittee must retain copies of their SWPPP (including any modifications made during the term of this permit), additional documentation requirements pursuant to Part 5.8 (including documentation related to corrective actions taken pursuant to Part 5), all reports and certifications required by this permit, monitoring data, and records of all data used to complete the NOI to be covered by this permit, for a period of at least 3 years from the date that the permittees coverage under this permit expires or is terminated.

9.6 Addresses for Reports.

Notice of Intent, Notice of Intent modification, Notice of Termination, No Exposure Certificate, and SWPPP's should be submitted using DEC's eNOI system (http://dec.alaska.gov/water/wastewater/stormwater/apdesenoi/) or sent to the Permitting Program address in Appendix A, Part 1.1.1.

Paper copies of any reports required in Parts 7 through 9, not otherwise submitted electronically via DEC's eNOI system (http://dec.alaska.gov/water/wastewater/stormwater/apdesenoi/) must be sent to the Compliance and Enforcement Program address in Appendix A, Part 1.1.2.

9.7 Request for Submittal of Records.

The Department may request copies of all or a portion of the information collected and maintained in the SWPPP. A permittee must provide a response to written request for records to the Department within thirty (30) calendar days of receipt of a written request.

9.8 Electronic Reporting (E-Reporting) Rule

9.8.1 E-Reporting Rule for DMR (Phase I)

The Permittee must submit DMR data electronically through Network Discharge Monitoring Report (NetDMR) per Phase I of the E-Reporting Rule (40 CFR §127) upon the effective date of the Permit. Authorized persons may access permit information by logging into the NetDMR Portal (cdxnodengn.epa.gov/oeca-netdmr-web/action/login). DMRs submitted in compliance with the E-Reporting Rule are not required to be submitted as described in Appendix – A-Standard Conditions unless requested or approved by the Department. Any DMR data required by the Permit that cannot be reported in a NetDMR field (e.g., mixing zone receiving water data, etc.), shall be included as an attachment to the NetDMR submittal. DEC has established a website at dec.alaska.gov/water/compliance/electronic-reporting-rule/ that contains general information about this new reporting format. Training materials and webinars for NetDMR can be found at netdmr.zendesk.com/home/.

9.8.2 E-Reporting Rule for Other Reports (Phase II).

Phase II of the E-Reporting rule will integrate electronic reporting for all other reports required by the Permit (e.g., Annual Reports and Certifications) and implementation is expected to begin December 2020. Permittees should monitor DEC's E-Reporting Information website (dec.alaska.gov/water/compliance/electronic-reporting-rule) for updates on Phase II of the E-Reporting Rule and will be notified when they must begin submitting all other reports electronically. Until such time, other reports required by the Permit may be submitted in accordance with Appendix A – Standard Conditions.

9.9 Standard Conditions Applicable to Recording and Reporting

9.9.1 The permittee must comply with the following recording and reporting requirements, as described in Appendix A, Standard Conditions unless specified in the body of the permit:

9.9.1.1 Retention of Records, Part 1.11.2;

9.9.1.2 Records Contents, Part 1.11.3;

9.9.1.3 Special Reporting Obligations, Part 2.0; and

9.9.1.4 Monitoring, Recording, and Reporting Requirements, Part 3.0.

10. Terminating Coverage.

10.1 Submitting a Notice of Termination (NOT).

10.1.1 To terminate permit coverage, a permittee must submit a complete and accurate NOT (see Appendix F) to the Permitting Program address listed in Part 9.6. *(If a permittee submits a NOT without meeting one or more of the conditions identified in Part 10.1.2, then a permitttees NOT is not valid.)* The permittee is responsible for meeting the terms of this permit until their authorization is terminated.

10.1.2 A permittee must submit a NOT within 30 calendar days after one or more of the following conditions have been met:

10.1.2.1 A new owner or operator has taken over responsibility for the facility;

10.1.2.2 The permittee has ceased operations at the facility, there are not or no longer will be discharges of storm water associated with industrial activity from the facility, and has already implemented necessary sediment and erosion controls as required by Part 4.2.5;

10.1.2.3 The permittee is a Sector G, H, or J facility and has met the applicable termination requirements; or

10.1.2.4 The permittee has obtained coverage under an individual or alternative general permit for all discharges required to be covered by an APDES permit, unless DEC has required that they obtain such coverage under authority of Part 2.8.1, in which case coverage under this permit will terminate automatically.

10.1.3 All required reports (including DMR if applicable) and certifications have been submitted to DEC.

10.1.4 Termination is effective upon receiving written notification from the Department.

11. Sector-Specific Requirements for Industrial Activity.

11. Subpart A – Sector A – Timber Products.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.A.1 Covered Storm Water Discharges.

The requirements in Subpart A apply to storm water discharges associated with industrial activity from Timber Products facilities as identified by the SIC Codes specified under Sector A in Table D-1 of Appendix D of the permit.

11.A.2 Limitation on Coverage.

11.A.2.1 Prohibition of Discharges. (See also Part 1.2.4) Not covered by this permit: storm water discharges from areas where there may be contact with the chemical formulations sprayed to provide surface protection. These discharges must be covered by a separate APDES permit.

11.A.2.2 Authorized Non-Storm Water Discharges. (See also Part 1.2.3) Also authorized by this permit, provided the non-storm water component of the discharge is in compliance with the requirements in Part 4.2 (Non-Numeric Effluent Limits): discharges from the spray down of lumber and wood product storage yards where no chemical additives are used in the spray-down waters and no chemicals are applied to the wood during storage.

11.A.3 Additional Technology-Based Effluent Limits.

11.A.3.1 Good Housekeeping. (See also Part 4.2.2) In areas where storage, loading and unloading, and material handling occur, perform good housekeeping to limit the discharge of wood debris, minimize the leachate generated from decaying wood materials, and minimize the generation of dust.

11.A.4 Additional SWPPP Requirements.

11.A.4.1 Drainage Area Site Map. (See also Part 5.2.3) The permittee must document in their SWPPP where any of the following may be exposed to precipitation or surface runoff: processing areas, treatment chemical storage areas, treated wood and residue storage areas, wet decking areas, dry decking areas, untreated wood and residue storage areas, and treatment equipment storage areas.

11.A.4.2 Inventory of Exposed Materials. (See also Part 5.2.4.2) Document in the SWPPP areas where contaminated soils, treatment equipment, and stored materials still remain and the management practices employed to minimize the contact of these materials with storm water runoff if the facility has used chlorophenolic, creosote, or chromium-copper-arsenic formulations for wood surface protection or preserving

11.A.4.3 Description of Storm Water Management Controls. (See also Part 5.2.5) Document measures implemented to address the following activities and sources: log, lumber, and wood product storage areas; residue storage areas; loading and unloading areas; material handling areas; chemical storage areas; and equipment and vehicle maintenance, storage, and repair areas. If the permittees facility performs wood surface protection and preservation activities, address the specific control measures, including any BMPs, for these activities.

11.A.5 Additional Inspection Requirements.

See also Part 6.1. If the permittees facility performs wood surface protection and preservation activities, inspect processing areas, transport areas, and treated wood storage areas monthly to assess the usefulness of practices to minimize the deposit of treatment chemicals on unprotected soils and in areas that will come in contact with storm water discharges.

11.A.6 Sector-Specific Benchmarks.

Table 11.A.6-1 identifies benchmarks that apply to the specific subsectors of Sector A. These benchmarks apply to both the permittees primary industrial activity and any co-located industrial activities.

(Table 11.A.6-1: Sector – Specific Benchmarks – Sector A located on following page.)

Table 11.A.6-1: Sector – Specific Benchmarks – Sector A

Subsector (Permittees may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Subsector A1. General Sawmills and Planing Mills (SIC 2421)	Chemical Oxygen Demand (COD)	120.0 mg/L
	Total Suspended Solids (TSS)	100 mg/L
	Total Zinc (saltwater)[1] Total Zinc (freshwater)[2]	0.09 mg/L Hardness Dependent
Subsector A2. Wood Preserving (SIC 2491)	Total Arsenic (saltwater)[1] Total Arsenic (freshwater)[2]	0.069 mg/L 0.15 mg/L
	Total Copper (saltwater)[1] Total Copper (freshwater)[2]	0.0048 mg/L Hardness Dependent
Subsector A3. Log Storage and Handling (SIC 2411)	Total Suspended Solids (TSS)	100 mg/L
Subsector A4. Hardwood Dimension and Flooring Mills; Special Products Sawmills, not elsewhere classified; Millwork, Veneer, Plywood, and Structural Wood; Wood Pallets and Skids; Wood Containers, not elsewhere classified; Wood Buildings and Mobile Homes; Reconstituted Wood Products; and Wood Products Facilities not elsewhere classified (SIC 2426, 2429, 2431-2439 (except 2434), 2441, 2448, 2449, 2451, 2452, 2493, and 2499)	Chemical Oxygen Demand (COD)	120.0 mg/L
	Total Suspended Solids (TSS)	100.0 mg/L

Note:

1. Saltwater benchmark values apply to storm water discharges into saline waters where indicated.
2. The freshwater benchmark values of some metals are dependent on water hardness. For these parameters, permittees must determine the hardness of the receiving water (see Appendix E, "Calculating Hardness in Receiving Waters for Hardness Dependent Metals," for methodology), in accordance with Part 7.2.1.1, to identify the applicable 'hardness range' for determining their benchmark value applicable to their facility. The ranges occur in 25 mg/L increments. Hardness Dependent Benchmarks follow in the table below:

Water Hardness Range (mg/L)	Copper (mg/L)	Zinc (mg/L)
0 – < 25	0.0038	0.04
25 – < 50	0.0056	0.05
50 – < 75	0.0090	0.08
75 – < 100	0.0123	0.11
100 – < 125	0.0156	0.13
125 – < 150	0.0189	0.16
150 – < 175	0.0221	0.18
175 – < 200	0.0253	0.20
200 – < 225	0.0285	0.23
225 – < 250	0.0316	0.25
250+	0.0332	0.26

11.A.7 Effluent Limitations Based on Effluent Limitations Guidelines. (See also Part 7.2.2.1 of the permit.)

Table 11.A.7-1 identifies effluent limits that apply to the industrial activities described below. Compliance with these effluent limits is to be determined based on discharges from these industrial activities independent of commingling with any other wastestreams that may be covered under this permit.

Table 11.A.7-1: **Effluent Limitations Based on Effluent Limitations Guidelines**[1]

Industrial Activity	Parameter	Effluent Limit
Discharges resulting from spray down or intentional wetting of logs at wet deck storage areas	pH	6.5 - 8.5 standard pH (s.u.)
	Debris (woody material such as bark, twigs, branches, heartwood, or sapwood)	No discharge of debris that will not pass through a 2.54-cm (1-in.) diameter round opening

Note:
1. Monitor annually.

11. Subpart B – Sector B – Paper and Allied Products.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.B.1 Covered Storm Water Discharges.

The requirements in Subpart B apply to storm water discharges associated with industrial activity from Paper and Allied Products Manufacturing facilities, as identified by the SIC Codes specified under Sector B in Table D-1 of Appendix D of the permit.

11.B.2 Sector-Specific Benchmarks. (See also Part 7 of the permit.)

Table 11.B.2-1: Sector – Specific Benchmarks – Sector B

Subsector (Permittees may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Subsector B1. Paperboard Mills (SIC Code 2631)	Chemical Oxygen Demand (COD)	120 mg/L

11. Subpart C – Sector C – Chemical and Allied Products Manufacturing, and Refining.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.C.1 Covered Storm Water Discharges.

The requirements in Subpart C apply to storm water discharges associated with industrial activity from Chemical and Allied Products Manufacturing, and Refining facilities, as identified by the SIC Codes specified under Sector C in Table D-1 of Appendix D of the permit.

11.C.2 Limitations on Coverage.

11.C.2.1 Prohibition of Non-Storm Water Discharges. (See also Part 1.2.4) The following are not covered by this permit: non-storm water discharges containing inks, paints, or substances (hazardous, nonhazardous, etc.) resulting from an onsite spill, including materials collected in drip pans; washwater from material handling and processing areas; and washwater from drum, tank, or container rinsing and cleaning.

11.C.3 Sector-Specific Benchmarks.

Table 11.C.3-1 identifies benchmarks that apply to the specific subsectors of Sector C. These benchmarks apply to both the permittees primary industrial activity and any co-located industrial activities.

(Table 11.C.3-1: Sector – Specific Benchmarks – Sector C located on following page.)

Table 11.C.3-1: Sector – Specific Benchmarks – Sector C

Subsector (Permittees may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Subsector C1. Agricultural Chemicals (SIC 2873-2879)	Nitrate plus Nitrite Nitrogen	0.68 mg/L
	Total Lead (saltwater)[1] Total Lead (freshwater)[2]	0.21 mg/L Hardness Dependent
	Total Iron	1.0 mg/L
	Total Zinc (saltwater)[1] Total Zinc (freshwater)[2]	0.09 mg/L Hardness Dependent
	Phosphorus	2.0 mg/L
Subsector C2. Industrial Inorganic Chemicals (SIC 2812-2819)	Total Aluminum	0.75 mg/ L
	Total Iron	1.0 mg/L
	Nitrate plus Nitrite Nitrogen	0.68 mg/L
Subsector C3. Soaps, Detergents, Cosmetics, and Perfumes (SIC 2841-2844)	Nitrate plus Nitrite Nitrogen	0.68 mg/L
	Total Zinc (saltwater)[1] Total Zinc (freshwater)[2]	0.09 mg/L Hardness Dependent
Subsector C4. Plastics, Synthetics, and Resins (SIC 2821-2824)	Total Zinc (saltwater)[1] Total Zinc (freshwater)[2]	0.09 mg/L Hardness Dependent

Notes:

1. Saltwater benchmark values apply to storm water discharges into saline waters where indicated.
2. The freshwater benchmark values of some metals are dependent on water hardness. For these parameters, permittees must determine the hardness of the receiving water (see Appendix E, "Calculating Hardness in Receiving Waters for Hardness Dependent Metals," for methodology), in accordance with Part 7.2.1.1, to identify the applicable 'hardness range' for determining their benchmark value applicable to their facility. The ranges occur in 25 mg/L increments. Hardness Dependent Benchmarks follow in the table below:

Water Hardness Range (mg/L)	Lead (mg/L)	Zinc (mg/L)
0 – < 25	0.014	0.04
25 – < 50	0.023	0.05
50 – < 75	0.045	0.08
75 – < 100	0.069	0.11
100 – < 125	0.095	0.13
125 – < 150	0.122	0.16
150 – < 175	0.151	0.18
175 – < 200	0.182	0.20
200 – < 225	0.213	0.23
225 – < 250	0.246	0.25
250+	0.262	0.26

11.C.4 Effluent Limitations Based on Effluent Limitations Guidelines. (See also Part 7.2.2.1 of the permit.)

Table 11.C.4-1 identifies effluent limits that apply to the industrial activities described below. Compliance with these effluent limits is to be determined based on discharges from these industrial activities independent of commingling with any other wastestreams that may be covered under this permit.

Table 11.C.4-1: **Effluent Limitations Based on Effluent Limitations Guidelines**[1]

Industrial Activity	Parameter	Effluent Limit
Runoff from phosphate fertilizer manufacturing facilities that comes into contact with any raw materials, finished product, by-products or waste products (SIC 2874)	Total Phosphorus (as P)	105.0 mg/L, daily maximum
		35 mg/L, 30-day avg.
	Fluoride	75.0 mg/L, daily maximum
		25.0 mg/L, 30-day avg.

1 Monitor annually.

11. Subpart D – Sector D – Asphalt Paving and Roofing Materials and Lubricant Manufacturing.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.D.1 Covered Storm Water Discharges.

The requirements in Subpart D apply to storm water discharges associated with industrial activity from Asphalt Paving and Roofing Materials and Lubricant Manufacturing facilities, as identified by the SIC Codes specified under Sector D in Table D-1 of Appendix D of the permit.

11.D.2 Limitations on Coverage.

The following storm water discharges associated with industrial activity are not authorized by this permit (See also Part 1.2.4)

11.D.2.1 Discharges from petroleum refining facilities, including those that manufacture asphalt or asphalt products, that are subject to nationally established effluent limitation guidelines found in 40 CFR Part 419 (Petroleum Refining); or

11.D.2.2 Discharges from oil recycling facilities; or

11.D.2.3 Discharges associated with fats and oils rendering.

11.D.3 Sector-Specific Benchmarks.

Table 11.D.3-1 identifies benchmarks that apply to the specific subsectors of Sector D. These benchmarks apply to both the permittees primary industrial activity and any co-located industrial activities, which describe their facility activities.

Table 11.D.3-1: Sector – Specific Benchmarks – Sector D

Subsector	Parameter	Benchmark Monitoring Concentration
Subsector D1. Asphalt Paving and Roofing Materials (SIC 2951, 2952)	Total Suspended Solids (TSS)	100 mg/L

11.D.4 Effluent Limitations Based on Effluent Limitations Guidelines. (See also Part 7.2.2.1 of the permit.)

Table 11.D.4-1 identifies effluent limits that apply to the industrial activities described below. Compliance with these effluent limits is to be determined based on discharges from these industrial activities independent of commingling with any other wastestreams that may be covered under this permit.

Table 11.D.4-1:**Effluent Limitations Based on Effluent Limitations Guidelines**[1]

Industrial Activity	Parameter	Effluent Limit
Discharges from asphalt emulsion facilities.	Total Suspended Solids (TSS)	23.0 mg/L, daily maximum 15.0 mg/L, 30-day avg.
	pH	6.5 - 8.5 s.u.
	Oil and Grease	15.0 mg/L, daily maximum
		10 mg/L, 30-day avg.

1. Monitor annually.

11. Subpart E – Sector E – Glass, Clay, Cement, Concrete, and Gypsum Products.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.E.1 Covered Storm Water Discharges.

The requirements in Subpart E apply to storm water discharges associated with industrial activity from Glass, Clay, Cement, Concrete, and Gypsum Products facilities, as identified by the SIC Codes specified under Sector E in Table D-1 of Appendix D of the permit.

11.E.2 Additional Technology-Based Effluent Limits.

11.E.2.1 *Good Housekeeping Measures.* (See also Part 4.2.2) With good housekeeping, prevent or minimize the discharge of spilled cement, aggregate (including sand or gravel), kiln dust, fly ash, settled dust, or other significant material in storm water from paved portions of the site that are exposed to storm water. Sweep regularly or use other equivalent measures to minimize the presence of these materials. Indicate in the SWPPP the frequency of sweeping or equivalent measures. Determine the frequency based on the amount of industrial activity occurring in the area and the frequency of precipitation, but it must be performed at least once a week if cement, aggregate, kiln dust, fly ash, or settled dust are being handled or processed. Permittee must also prevent the exposure of fine granular solids (cement, fly ash, kiln dust, etc.) to storm water, where practicable, by storing these materials in enclosed silos, hoppers, buildings, or under other covering.

11.E.3 Additional SWPPP Requirements.

11.E.3.1 *Drainage Area Site Map.* (See also Part 5.2.3) Document in the SWPPP the locations of the following, as applicable: bag house or other dust control device; recycle/sedimentation pond, clarifier, or other device used for the treatment of process wastewater; and the areas that drain to the treatment device.

11.E.3.2 *Certification.* (See also Part 5.2.4.4) For facilities producing ready-mix concrete, concrete block, brick, or similar products, include in the non-storm water discharge certification a description of measures that ensure that process waste waters resulting from washing trucks, mixers, transport buckets, forms, or other equipment are discharged in accordance with APDES requirements or are recycled.

11.E.4 Sector-Specific Benchmarks.

Table 11.E.4-1 identifies benchmarks that apply to the specific subsectors of Sector E. These benchmarks apply to both the permittees primary industrial activity and any co-located industrial activities, which describe their facility activities.

Table 11.E.4-1: Sector – Specific Benchmarks – Sector E

Subsector (Permittees may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Cutoff Concentration
Subsector E1. Clay Product Manufacturers (SIC 3251-3259, 3261-3269)	Total Aluminum	0.75 mg/L
Subsector E2. Concrete and Gypsum Product Manufacturers (SIC 3271-3275)	Total Suspended Solids (TSS)	100 mg/L
	Total Iron	1.0 mg/L

11.E.5 Effluent Limitations Based on Effluent Limitations Guidelines. (See also Part 7.2.2.1 of the permit.)

Table 11.E.5-1 identifies effluent limits that apply to the industrial activities described below. Compliance with these limits is to be determined based on discharges from these industrial activities independent of commingling with any other wastestreams that may be covered under this permit.

Table 11.E.5-1:Effluent Limitations Based on Effluent Limitations Guidelines[1]

Industrial Activity	Parameter	Effluent Limit
Discharges from material storage piles at cement manufacturing facilities	Total Suspended Solids (TSS)	50 mg/L, daily maximum
	pH	6.5 - 8.5 s.u.

1. Monitor annually.

11. Subpart F – Sector F – Primary Metals.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.F.1 Covered Storm Water Discharges.

The requirements in Subpart F apply to storm water discharges associated with industrial activity from Primary Metals facilities, as identified by the SIC Codes specified under Sector F in Table D-1 of Appendix D of the permit.

11.F.2 Additional Technology-Based Effluent Limits.

11.F.2.1 Good Housekeeping Measures. (See also Part 4.2.2) As part of the permittees good housekeeping program, include a cleaning and maintenance program for all impervious areas of the facility where particulate matter, dust, or debris may accumulate, especially areas where material loading and unloading, storage, handling, and processing occur; and, where practicable, the paving of areas where vehicle traffic or material storage occur but where vegetative or other stabilization methods are not practicable (institute a sweeping program in these areas too). For unstabilized areas where sweeping is not practicable, use storm water management devices such as sediment traps, vegetative buffer strips, filter fabric fence, sediment filtering boom, gravel outlet protection, or other equivalent measures that effectively trap or remove sediment and debris.

11.F.3 Additional SWPPP Requirements.

11.F.3.1 Drainage Area Site Map. (See also Part 5.2.3) Identify in the SWPPP where any of the following activities may be exposed to precipitation or surface runoff: storage or disposal of wastes such as spent solvents and baths, sand, slag and dross; liquid storage tanks and drums; processing areas including pollution control equipment (e.g., baghouses); and storage areas of raw material such as coal, coke, scrap, sand, fluxes, refractories, or metal in any form. In addition, indicate where an accumulation of significant amounts of particulate matter could occur from such sources as furnace or oven emissions, pollution control devices, losses from coal and coke handling operations, etc., and could result in a discharge of pollutants to waters of the United States.

11.F.3.2 Inventory of Exposed Material. (See also Part 5.2.4.2) Include in the inventory of materials handled at the site that potentially may be exposed to precipitation or runoff, areas where deposition of particulate matter from process air emissions or losses during material-handling activities are possible

11.F.4 Additional Inspection Requirements. (See also Part 6.1) As part of conducting the permittees quarterly routine facility inspections (Part 6.1), address all potential sources of pollutants, including (if applicable) air pollution control equipment (e.g., baghouses, electrostatic precipitators, scrubbers, and cyclones), for any signs of degradation (e.g., leaks, corrosion, or improper operation) that could limit their efficiency and lead to excessive emissions. Monitor air flow at inlets and outlets (or use equivalent measures) to check for leaks (e.g., particulate deposition) or blockage in ducts. Also inspect all process and material handling equipment (e.g., conveyors, cranes, and vehicles) for leaks, drips, or the potential loss of material; and material storage areas (e.g., piles, bins, or hoppers for storing coke, coal, scrap, or slag, as well as chemicals stored in tanks and drums) for signs of material losses due to wind or storm water runoff.

11.F.5 Sector-Specific Benchmarks. (See also Part 7 of the permit.)

(Table 11.F.5-1: Sector – Specific Benchmarks –Sector F located on following page.)

Table 11.F.5-1: Sector – Specific Benchmarks –Sector F

Subsector (Permittees may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Subsector F1. Steel Works, Blast Furnaces, and Rolling and Finishing Mills (SIC 3312-3317)	Total Aluminum	0.75 mg/L
	Total Zinc (saltwater)[1] Total Zinc (freshwater)[2]	0.09 mg/L Hardness Dependent
Subsector F2. Iron and Steel Foundries (SIC 3321-3325)	Total Aluminum	0.75 mg/L
	Total Suspended Solids (TSS)	100 mg/L
	Total Copper (saltwater)[1] Total Copper (freshwater)[2]	0.0048 Mg/L Hardness Dependent
	Total Iron	1.0 mg/L
	Total Zinc (saltwater)[1] Total Zinc (freshwater)[2]	0.09 mg/L Hardness Dependent
Subsector F3. Rolling, Drawing, and Extruding of Nonferrous Metals (SIC 3351-3357)	Total Copper (saltwater)[1] Total Copper (freshwater)[2]	0.0048 mg/L Hardness Dependent
	Total Zinc (saltwater)[1] Total Zinc (freshwater)[2]	0.09 mg/L Hardness Dependent
Subsector F4. Nonferrous Foundries (SIC 3363-3369)	Total Copper (saltwater)[1] Total Copper (freshwater)[2]	0.0048 mg/L Hardness Dependent
	Total Zinc (saltwater)[1] Total Zinc (freshwater)[2]	0.09 mg/L Hardness Dependent

Notes:

1. Saltwater benchmark values apply to storm water discharges into saline waters where indicated.
2. The freshwater benchmark values of some metals are dependent on water hardness. For these parameters, permittees must determine the hardness of the receiving water (see Appendix E, "Calculating Hardness in Receiving Waters for Hardness Dependent Metals," for methodology), in accordance with Part 7.2.1.1, to identify the applicable 'hardness range' for determining their benchmark value applicable to their facility. The ranges occur in 25 mg/L increments. Hardness Dependent Benchmarks follow in the table below:

Water Hardness Range (mg/L)	Copper (mg/L)	Zinc (mg/L)
0 – < 25	0.0038	0.04
25 – < 50	0.0056	0.05
50 – < 75	0.0090	0.08
75 – < 100	0.0123	0.11
100 – < 125	0.0156	0.13
125 – < 150	0.0189	0.16
150 – < 175	0.0221	0.18
175 – < 200	0.0253	0.20
200 – < 225	0.0285	0.23
225 – < 250	0.0316	0.25
250+	0.0332	0.26

11. Subpart G – Sector G – Metal Mining.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.G.1 Covered Storm Water Discharges.

The requirements in Subpart G apply to storm water discharges associated with industrial activity from Metal Mining facilities, including mines abandoned on Federal lands, as identified by the SIC Codes specified under Sector G in Table D-1 of Appendix D. Coverage is required for metal mining facilities that discharge storm water contaminated by contact with, or that has come into contact with, any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of the operation.

11.G.1.1 Covered Discharges from Inactive Facilities. All storm water discharges.

11.G.1.2 Covered Discharges from Active and Temporarily Inactive Facilities. Only the storm water discharges from the following areas are covered:

- Waste rock and overburden piles if composed entirely of storm water and not combining with mine drainage;
- Topsoil piles;
- Offsite haul and access roads;
- Onsite haul and access roads constructed of waste rock, overburden, or spent ore if composed entirely of storm water and not combining with mine drainage;
- Onsite haul and access roads not constructed of waste rock, overburden, or spent ore except if mine drainage is used for dust control;
- Runoff from tailings dams or dikes when not constructed of waste rock or tailings and no process fluids are present;
- Runoff from tailings dams or dikes when constructed of waste rock or tailings and no process fluids are present, if composed entirely of storm water and not combining with mine drainage;
- Concentration building if no contact with material piles;
- Mill site if no contact with material piles;

- Office or administrative building and housing if mixed with storm water from industrial area;
- Chemical storage area;
- Docking facility if no excessive contact with waste product that would otherwise constitute mine drainage;
- Explosive storage;
- Fuel storage;
- Vehicle and equipment maintenance area and building;
- Parking areas if mixed with industrial areas;
- Power plant;
- Truck wash areas if no excessive contact with waste product that would otherwise constitute mine drainage;
- Unreclaimed, disturbed areas outside of active mining area;
- Reclaimed areas released from reclamation requirements prior to December 17, 1990; and
- Partially or inadequately reclaimed areas or areas not released from reclamation requirements.

11.G.1.3 Covered Discharges from Exploration and Construction of Metal Mining and/or Ore Dressing Facilities. All storm water discharges.

11.G.1.4 Covered Discharges from Facilities Undergoing Reclamation. All storm water discharges.

11.G.2 Limitations on Coverage.

11.G.2.1 Prohibition of Storm Water Discharges. Storm water discharges not authorized by this permit include discharges from active metal mining facilities that are subject to effluent limitation guidelines for the Ore Mining and Dressing Point Source Category (40 CFR Part 440).

Note: Storm water runoff from these sources are subject to 40 CFR Part 440 if they are mixed with other discharges subject to Part 440. In this case, they are not eligible for coverage under this permit.

Discharges from overburden/waste rock and overburden/waste rock-related areas are not subject to 40 CFR Part 440 unless they:

(1) drain naturally (or are intentionally diverted) to a point source; and

(2) combine with "mine drainage" that is otherwise regulated under the Part 440 regulations.

For such sources, coverage under this permit would be available if the discharge composed entirely of storm water does not combine with other sources of mine drainage that are not subject to 40 CFR Part 440, and meets the other eligibility criteria contained in Part 1.2 of the permit.

Permit applicants bear the initial responsibility for determining if they are eligible for coverage under this permit, or must seek coverage under another APDES permit. DEC recommends that permit applicants contact the DEC for assistance to determine the nature and scope of the "active mining area" on a mine-by-mine basis, as well as to determine the appropriate permitting mechanism for authorizing such discharges.

11.G.2.2 Prohibition of Non-Storm Water Discharges. Not authorized by this permit: adit drainage, and contaminated springs or seeps discharging from waste rock dumps that do not directly result from precipitation events (see also the standard Limitations on Coverage in Part 1.2.4).

11.G.3 Definitions.

The following definitions are not intended to supersede the definitions of active and inactive mining facilities established by 40 CFR 122.26(b)(14)(iii).

11.G.3.1 Mining Operation - Consists of the active and temporarily inactive phases, and the reclamation phase, but excludes the exploration and construction phases.

11.G.3.2 Exploration Phase - Entails exploration and land disturbance activities to determine the financial viability of a site. The exploration phase is not considered part of "mining operations."

11.G.3.3 Construction Phase - Includes the building of site access roads, facilities, and removal of overburden and waste rock to expose mineable minerals. The construction phase is not considered part of "mining operations."

11.G.3.4 Active Phase - Activities including the extraction, removal or recovery of metal ore. For surface mines, this definition does not include any land where grading has returned the earth to a desired contour and reclamation has begun. This definition is derived from the definition of "active mining area" found at 40 CFR 440.132(a). The active phase is considered part of "mining operations."

11.G.3.5 Reclamation Phase - Activities undertaken, in compliance with applicable mined land reclamation requirements, following the cessation of the "active phase", intended to return the land to an appropriate post-mining land use in order to meet applicable Federal and State reclamation requirements. The reclamation phase is considered part of "mining operations."

11.G.3.6 Active Metal Mining Facility - A place where work or other activity related to the extraction, removal, or recovery of metal ore is being conducted. For surface mines, this definition does not include any land where grading has returned the earth to a desired contour and reclamation has begun. This definition is derived from the definition of "active mining area" found at 40 CFR 440.132(a).

11.G.3.7 Inactive Metal Mining Facility - A site or portion of a site where metal mining and/or milling occurred in the past but is not an active facility as defined above, and where the inactive portion is not covered by an active mining permit issued by the applicable State or Federal agency. An inactive metal mining facility has an identifiable owner / operator. Sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials and sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim are not considered either active or inactive mining facilities and do not require an APDES industrial storm water permit.

11.G.3.8 Temporarily Inactive Metal Mining Facility - A site or portion of a site where metal mining and/or milling occurred in the past but currently are not being actively undertaken, and the facility is covered by an active mining permit issued by the applicable State or Federal agency.

11.G.4 Technology-Based Effluent Limits for Clearing, Grading, and Excavation Activities.

Clearing, grading, and excavation activities being conducted as part of the exploration and construction phase of mining activities are covered under this permit.

11.G.4.1 Erosion Control Measures. A permittee must comply with the erosion control measures in this Part to minimize soil exposure on the site during construction.

11.G.4.1.1 Delineation of Site. A permittee must generally delineate (e.g., with flagging, stakes, signs, silt fence, etc.,) the location of specific areas that will be left undisturbed such as trees, boundaries of sensitive areas, or buffers established under Part 11.G.4.1.3.

11.G.4.1.2 Minimize the Amount of Soil Exposed during Construction Activity. A permittee must include the following considerations in the selection of control measures and the sequence of project construction as they apply to the project site:

- Preserve areas of native topsoil on the site, unless infeasible; and

- Sequence or phase construction activities to minimize the extent and duration of exposed soils to the extent practicable.

11.G.4.1.3 Maintain Natural Buffer Areas.

The permittee must maintain natural buffer areas at stream crossings and around the edge of any waters of the U.S. that are located within or immediately adjacent to the property where the construction activity will take place in accordance with the following:

- The buffer must be a minimum of twenty-five (25) feet wide, unless infeasible based on site dimensions, or the width as required by local ordinance.
- Exceptions are allowed for water dependent activities, specific water access activities, or necessary water crossings.
- A permittee should, to the extent practicable, use perimeter controls adjacent to buffers, and direct storm water sheet flow to buffer areas to increase sediment removal and maximize storm water infiltration, unless infeasible.

11.G.4.1.4 Control Storm Water Discharges and Flow Rates. A permittee must include the following control measures to handle storm water and total storm water volume discharges as they apply to the site:

- Divert storm water around the site so that it does not flow onto the project site and cause erosion of exposed soils;
- Slow down or contain storm water that may collect and concentrate within a site and cause erosion of exposed soils;
- Avoid placement of structural control measures in active floodplains to the degree technologically and economically practicable and achievable;
- Place velocity dissipation devices (e.g., check dams, sediment traps, or riprap) along the length of any conveyance channel to provide a non-erosive flow velocity. Also place velocity dissipation devices where discharges from the conveyance channel or structure join a water course to prevent erosion and to protect the channel embankment, outlet, adjacent stream bank slopes, and downstream waters; and
- Install permanent storm water management controls, if present at a site and where practical, so that they must be functional prior to construction of site improvements (e.g., impervious surfaces).

11.G.4.1.5 Protect Steep Slopes. A permittee must include the following considerations in the selection of control measures as they apply to the project site:

- Design and construct cut-and-fill slopes in a manner that will minimize erosion. Applicable practices include, but are not limited to, reducing continuous length of slope with terracing and diversions, reducing slope steepness, and roughening slope surfaces (e.g., track walking);

- Divert concentrated flows of storm water away from and around the disturbed portion of the slope. Applicable practices include, but are not limited to interceptor dikes and swales, grass-lined channels, pipe slope drains, subsurface drains, check dams; and

- Stabilize exposed areas of the slope in accordance with Part 11.G.4.4.

11.G.4.2 Sediment Control Measures. Sediment control measures (e.g. sediment ponds, traps, filters, etc.) must be constructed as one of the first steps in grading. These control measures must be functional before other land disturbing activities take place. A permittee must install, establish and use any of the following control measures that apply to the project site.

11.G.4.2.1 Storm Drain Inlet Protection Meaures. A permittee must install appropriate protection measures (e.g. filter berms, perimeter controls, temporary diversion dikes, etc.) to minimize the discharge of sediment prior to entry into the inlet for storm drain inlets located on site or immediately downstream of the site. Inlet protection measures must be cleaned or removed and replaced when sediment has filled one-third of the available storage.

11.G.4.2.2 Water Body Protection Measures. A permittee must install appropriate protection measures (Part 11.G.4.1.4) to minimize the discharge of sediment prior to entry into the water body for water bodies located on site or immediately downstream of the site. Protection measures must be cleaned or removed and replaced when sediment has filled one-third of the available storage.

11.G.4.2.3 Down-Slope Sediment Controls. A permittee must establish and use down-slope sediment controls (e.g., silt fence, temporary diversion dike, etc.) for any portion of the down-slope and side-slope perimeter where storm water will be discharged from disturbed areas of the site.

11.G.4.2.4 Stabilized Construction Vehicle Access and Exit Points. A permittee must establish construction vehicle access and exit points which must be stabilized. Access and exit points should be limited to one route, if possible. If sediment escapes the construction site, off-site accumulations of sediment must be removed at a frequency sufficient to minimize off-site impacts.

11.G.4.2.5 Dust Generation and Track-Out from Vehicles. A permittee must minimize the generation of dust through the application of water or other dust suppression techniques and prior to vehicle exit. A permittee must provide an effective way of minimizing off-site vehicle tracking of sediment from wheels to prevent track-out onto paved surfaces.

11.G.4.2.6 Soil Stockpiles. A permittee must stabilize or cover soil stockpiles, protect with sediment trapping measures, and where possible, locate soil stockpiles away from storm drain inlets, water bodies, and conveyance channels.

11.G.4.2.7 Authorized Non-Storm Water Discharges. A permittee must minimize any non-storm water authorized by this permit.

11.G.4.2.8 Sediment Basins, where applicable:

- For common drainage locations that serve an area with ten (10) or more acres disturbed at one time, a temporary (or permanent) sediment basin that provides storage for a calculated volume of runoff from the drainage area from a 2-year, 24-hour storm, or equivalent sediment control measures, must be installed, maintained, and used where practicable until final stabilization of the site. Where no such calculation has been performed, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent sediment control measures, must be installed and used where practicable until final stabilization of the site. When computing the number of acres draining into a common location, it is not necessary to include flows from offsite areas and flows from on-site areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin. In determining whether installing a sediment basin is practicable, the permittee may consider factors such as site soils, slope, available area on-site, etc. In any event, the permittee must consider public safety, especially as it relates to children, as a design factor for the sediment basin, and alternative sediment control measures must be used where site limitations would preclude a safe design.

- For drainage locations which serve ten (10) or more disturbed acres at one time and where a temporary sediment basin or equivalent controls is not practicable, smaller sediment basins and/or sediment traps should be used. Silt fences, vegetative buffer strips, or equivalent sediment control measures are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions).

- For drainage locations serving less than ten (10) acres, smaller sediment basins and/or sediment traps should be used. Silt fences, vegetative buffer strips, or equivalent sediment control measures are required for all down slope

boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions) of the construction area unless a sediment basin providing storage for a calculated volume of runoff from a 2-year, 24-hour storm event or 3,600 cubic feet of storage per acre drained is provided.

- When discharging from basins and impoundments, utilize outlet structures that withdraw water from the surface where practicable.
- Note: installing sediment basins in the presence of permafrost is challenging and might not be practicable in some instances because permafrost creates poor surface drainage that hinders the infiltration of runoff. Also, the excavation of permafrost in summer can trigger thawing and instability.

11.G.4.3 Dewatering.

11.G.4.3.1 If a construction activity includes excavation dewatering and has a discharge that could adversely impact a local drinking water well, an DEC-identified contaminated site, or a waters of the U.S., the permittee must review the DEC Excavation Dewatering General Permit (AKG002000, or most current version) for specific requirements the permittee may have to comply with in addition to the conditions of this permit.

11.G.4.3.2 A discharge from eligible dewatering activities, including discharges from dewatering of trenches and excavations are prohibited unless treated by appropriate control measures. Appropriate control measures include, but are not limited to, sediment basins or traps, dewatering tanks, weir tanks, or filtration systems designed to remove sediment.

11.G.4.4 Soil Stabilization.

11.G.4.4.1 Minimum Requirements for Soil Stabilization. A permittee must stabilize all disturbed areas of the site to minimize on-site erosion and sedimentation and the resulting discharge of pollutants according to the requirements of this Part. A permittee must ensure that existing vegetation is preserved wherever possible and that disturbed portions of the site are stabilized. Applicable stabilization control measures include, but are not limited to: temporary and permanent seeding, sodding, mulching, rolled erosion control product, compost blanket, soil application of polyacrylamide (PAM), the early application of gravel base on areas to be paved, and dust control. A permittee should avoid using impervious surfaces for stabilization. See the Alaska Plant Materials Center's A Revegetation Manual for Alaska at http://plants.alaska.gov for help in efforts to select appropriate seed mixes and some information on methods for revegetation. Also see the manual for coastal Alaska, Coastal Revegetation & Erosion Control Guide at http://plants.alaska.gov.

11.G.4.5 Treatment Chemicals. The use of treatment chemicals to reduce turbidity in a storm water discharge is allowed provided that all of the requirements of this Part are met.

11.G.4.5.1 Use of conventional sediment controls before and after the application of treatment chemicals. Chemicals may only be applied where storm water is treated upstream and is directed to a sediment control (e.g., sediment trap, sediment basin) before discharge.

11.G.4.5.2 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 storm water flowing into the chemical treatment system or area, etc.)

11.G.4.5.3 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, spill containment pallets), with adequate spill kits available on-site to respond if the event of a discharge of treatment chemicals occurs.

11.G.4.5.4 Use chemicals in accordance with good engineering practices and specifications of the chemical provider/supplier, 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.

11.G.4.5.5 Application of treatment chemicals through the use of manufactured products (e.g., gel bars, gel logs, floc blocks, etc.) must be used in combination with adequate ditch check dams, sediment traps, sediment basins, or physical control measure designed to settle out chemically treated storm water and minimize the presence of treatment chemicals before discharges reach waters of the U.S.. At a minimum there must be adequate ditch length downstream of the last manufactured product prior to reaching the discharge point into a water of the U.S. to provide a place for sedimentation to occur.

11.G.4.5.6 Ensure proper training. Ensure that all persons who handle and use treatment chemicals at the construction site are provided with appropriate, product-specific training. Among other things, the training must cover proper dosing requirements.

11.G.4.5.7 Perform additional measures specified by the Department for the authorized use of cationic treatment chemicals. If the permittee plans to add “cationic treatment chemicals” (as defined in Appendix C) to storm water and/or authorized non-storm water prior to discharge, they must submit a request to the Department fourteen (14) calendar days in advance of proposed usage. The request must include the following:

- Operator Name, mailing address, phone number, and email address;

- Project/Site name, physical address, contact name, phone number, email address and MSGP permit authorization number;
- Site Map with all receiving waterbodies, proposed location of chemical treatment system, and proposed point of discharge into receiving waterbodies;
- Schematic drawing of the proposed treatment system; and
- Description of the proposed treatment system including; type of system being used, type of cationic chemicals being used, estimated start and finish date, sampling and recordkeeping schedule and reporting, and name of treatment system operator or company.

The permittee must perform all additional measures as conditioned by the Department authorization to ensure that the use of such chemicals will not cause an exceedance of water quality standards.

11.G.4.6 Prohibited Discharge. A permittee is prohibited from discharging the following from the site:

11.G.4.6.1 Wastewater from concrete washout, unless managed by an appropriate control measure;

11.G.4.6.2 Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;

11.G.4.6.3 Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

11.G.4.6.4 Soaps or solvents used in vehicle and equipment washing.

11.G.4.7 Good Housekeeping Measures. A permittee must design, install, implement, and maintain effective good housekeeping measures to prevent and/or minimize the discharge of pollutants. A permittee must include appropriate measures for any of the following activities that are used at the site.

11.G.4.7.1 Washing of Equipment and Vehicles and Wheel Wash-Down. If a permittee conducts washing of equipment or vehicles and/or wheel wash-down at the site the permittee must comply with the following requirements:

- Designate areas to be used for washing of equipment and vehicles and/or wheel wash-down and conduct such activities only in these areas;
- Locate such activities, to the extent practicable, away from storm water conveyance channels, storm drain inlets, and waters of the U.S.;

- Treat all wash water in a sediment basin or use alternative control measures that provide equivalent or better treatment prior to discharge; and
- To comply with the prohibition in Part 11.G.4.6.4, the discharge of soaps and solvents used in equipment and vehicle washing and/or wheel wash-down is strictly prohibited.

11.G.4.7.2 Fueling and Maintenance Areas. If a permittee conducts fueling and/or maintenance activities for equipment and vehicles at the site the permittee must comply with the following requirements:

- Designate areas to be used for fueling and/or maintenance of equipment and vehicles and conduct such activities only in these areas (the designated area may move from one location to another on linear projects);
- Locate such activities, to the extent practicable, away from storm water conveyance channels, storm drain inlets and waters of the U.S.;
- Minimize the exposure to precipitation and storm water or use secondary containment structures designed to eliminate the potential for spills or leaked chemicals; and
- To comply with the prohibition in Part 11.G.4.6.3, a permittee must:
    - Clean up spills or contaminated surfaces immediately;
    - Ensure adequate clean up supplies are available at all times to handle spills, leaks, and disposal of used liquids;
    - Use drip pans or absorbents under or around leaky equipment and vehicles; and
    - Dispose of liquid wastes or materials used for fueling and maintenance in accordance with Part 11.G.4.11.

11.G.4.8 Staging and Material Storage Areas. If a permittee maintains staging and material storage areas at the site the permittee must comply with the following requirements:

- Designate areas to be used for staging and material storage areas;
- Locate such activities, to the extent practicable, away from storm water conveyance channels, storm drain inlets, and waters of the U.S; and
- Minimize the exposure to precipitation and storm water and vandalism for all chemicals, treatment chemicals, liquid products, petroleum products, and other materials that have the potential to pose a threat to human health or the environment.

11.G.4.9 Washout of Applicators/Containers used for Paint, Concrete, and Other Materials. If a permittee conducts washing of applicators and/or containers used for paint, concrete, and other materials at the site, the permittee must comply with the following requirements:

- Designate areas to be used for washout;
- Locate such activities, to the extent practicable, away from storm water conveyance channels, storm drain inlets, and waters of the U.S.;
- Direct all concrete, paint, and other material washout activities into a lined, water-tight container or pit to ensure there is no discharge into the underlying soil and onto the surrounding areas;
- Dispose of liquid wastes in accordance with Part 11.G.4.11; and
- For concrete washout areas, remove hardened concrete waste when it has reached one-half (½) the height of the container or pit and dispose of in accordance with Part 11.G.4.11.

11.G.4.10 Fertilizer or Pesticide Use. If a permittee uses fertilizers or pesticides the permittee must comply with the following requirements:

- Application of fertilizers and pesticides in a manner and at application rates that will minimize the loss of chemical to storm water runoff. Manufacturers' label requirements for application rates and disposal requirements must be followed; and
- Use pesticides in compliance with federal, state and local requirements.

11.G.4.11 Storage, Handling, and Disposal of Construction Waste. If a permittee stores, handles and/or disposes of construction waste at the site, the permittee must comply with the following requirements:

- Locate areas dedicated for management or disposal of construction waste, to the extent practicable, away from storm water conveyance channels, storm drain inlets, and waters of the U.S.;
- Dispose of all collected sediment, asphalt and concrete millings, floating debris, paper, plastic, fabric, construction and demolition debris and other domestic wastes according to federal, state and local requirements;
- Store hazardous or toxic waste in appropriate sealed containers and dispose of these wastes in accordance with manufactures recommended method of disposal or federal, state or local requirements; and

- Provide containment of sanitation facilities (e.g., portable toilets) to prevent discharges of pollutants to the storm water drainage system or receiving water. Clean or replace sanitation facilities and inspect them regularly for leaks and spills.

11.G.4.12 Winter Considerations.

11.G.4.12.1 Winter Shutdown. A permittee who temporarily ceases construction for the winter and plans to resume construction the next summer must plan for winter shutdown. The permittee must identify the anticipated dates of fall freeze-up and spring thaw (see Appendix C) for their site and use these dates to plan for winter shutdown. For the purpose of planning ahead frozen ground by itself is not considered an acceptable control measure for stabilization. A permittee must provide for the following prior to, during, and at the conclusion of winter shutdown:

- Temporary or permanent stabilization for conveyance channels;
- Temporary or permanent stabilization for disturbed slopes, disturbed soils, and soil stockpiles; and
- Erosion and sediment control measures in anticipation of spring thaw.

11.G.4.12.2 Winter Construction. In several areas of Alaska, winter construction provides opportunities for construction not available during summer months. Permit coverage is not required for the construction of ice roads or the placement of sand or gravel on frozen tundra with no excavation or potential to pollute waters of the U.S. This permit does address those construction activities that have the potential for erosion or sediment runoff during spring thaw and summer rainfall. A permittee operating winter construction activities must plan for using appropriate control measures to minimize erosion or sediment runoff during spring thaw and summer rainfall. The Alaska Storm Water Guide, Chapters 3 and 4, provide guidance on the selection, design, and installation of winter construction practices and controls.

11.G.4.12.3 Late Winter Clearing. Cutting of trees and brush while the ground is frozen, without disturbing the vegetative mat, for the purpose of clearing in accordance with the U.S. Fish & Wildlife Service "Recommended Time Periods for Avoiding Vegetation Clearing" is allowed prior to the submittal of a project NOI. If the cutting occurs after the onset of spring thaw (as defined in Appendix C), conditions that consist of above freezing temperatures that cause melting of snow, then the permittee must develop a SWPPP and file an NOI, and receive authorization for coverage under this permit from DEC, and otherwise comply with the terms of this permit prior to such clearing.

11.G.4.13 Maintenance of Control Measures. A permittee must maintain all control measures, good housekeeping measures, and other protective measures in effective operating condition. If site inspections required by Part 6 identify control measures, good housekeeping measures, or other protective measures that are not operating effectively, the permittee must implement corrective actions in accordance with Part 8.

If existing control measures need to be modified or if additional control measures are necessary for any reason, the permittee must complete any corrective action in accordance with Part 8.3.

A permittee must remove sediment from silt fences, check dams, berms or other controls before the accumulated sediment reaches one-half (½) the distance up the above-ground height (or it reaches a lower height based on manufacturer's specifications) of the control measure. For sediment traps or sediment ponds, the permittee must remove accumulated sediment when the design capacity has been reduced by fifty (50%) percent.

11.G.4.14 Inspection of Clearing, Grading, and Excavation Activities. (See also Part 6)

11.G.4.14.1 Inspection Frequency. Inspections must be conducted at one of the following: at least once every 7 calendar days; or at least once every 14 calendar days and within 24 hours of the end of a storm event that resulted in a discharge from the site; or for areas of the state where the mean annual precipitation is forty (40) inches or greater, or relatively continuous precipitation or sequential storm events, inspect at least once every seven (7) calendar days. If the entire site is temporarily stabilized, inspection frequency may be reduced to at least once every month and within two business days of the end of a measurable storm event at actively staffed sites which resulted in a discharge from the site (pursuant to Part 11.G.4.15.2). Once active mining has begun, those areas comply with inspections according to 11.G.7. A permittee must specify in the SWPPP which schedule will be followed.

11.G.4.14.2 Winter Shutdown. If the exploration and construction phase is undergoing winter shutdown the permittee may stop inspections fourteen (14) calendar days after the anticipated fall freeze-up and must resume inspections at least twenty-one (21) calendar days prior to the anticipated spring thaw. The permittee shall identify the winter shutdown period in their SWPPP based upon the definitions of fall freeze-up and spring thaw.

11.G.4.14.3 Location of Inspections. Inspections must include all areas of the site disturbed by clearing, grading, and/or excavation activities and areas used for storage of materials that are exposed to precipitation. Sedimentation and erosion control measures must be observed to ensure proper operation. Discharge locations must be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to waters of the United States, where accessible. Where discharge locations are inaccessible, nearby downstream locations must be inspected to the extent that

such inspections are practicable. Locations where vehicles enter or exit the site must be inspected for evidence of significant off-site sediment tracking.

11.G.4.14.4 Inspection Reports. (See also Part 6.1) For each inspection required above, the permittee must complete an inspection report. At a minimum, the inspection report must include the information required in Part 6.1.

11.G.4.15 Requirements for Cessation of Clearing, Grading, and Excavation Activities.

11.G.4.15.1 Inspections and Maintenance. Inspections and maintenance of control measures, including BMPs, associated with clearing, grading, and/or excavation activities being conducted as part of the exploration and construction phase of a mining operation must continue until final stabilization has been achieved on all portions of the disturbed area, or until the commencement of the active mining phase for those areas that have been temporarily stabilized as a precursor to mining.

11.G.4.15.2 Temporary Stabilization of Disturbed Areas. Stabilization measures should be initiated immediately in portions of the site where clearing, grading and/or excavation activities have temporarily ceased, but in no case more than 14 days after the clearing, grading and/or excavation activities in that portion of the site have temporarily ceased. In arid, semi-arid, and drought-stricken areas, or in areas subject to snow or freezing conditions, where initiating perennial vegetative stabilization measures is not possible within 14 days after exploration, and/or construction activity has temporarily ceased, temporary vegetative stabilization measures must be initiated as soon as practicable.

The permittee must identify the anticipated dates of fall freeze-up and spring thaw (see Appendix C) for the site and use those dates to plan for winter shutdown. For the purpose of planning ahead frozen ground by itself is not considered an acceptable control measure for stabilization. Where temporary stabilization by the 14th day is precluded by snow cover or frozen ground conditions, stabilization measures must be initiated as soon as practicable following the actual spring thaw.

Until temporary vegetative stabilization is achieved, interim measures (e.g., surface roughening or a surface cover, including but not limited to, establishment of ground vegetation, application of mulch, or surface tackifiers with an appropriate seed base) must be employed. In areas of the site, where exploration and/or construction has permanently ceased prior to active mining, temporary stabilization measures must be implemented to minimize mobilization of sediment or other pollutants until such time as the active mining phase commences.

11.G.4.15.3 Final Stabilization of Disturbed Areas. Stabilization measures should be initiated immediately in portions of the site where mining, exploration, and/or construction activities have permanently ceased, but in no case more than 14 days after the exploration and/or construction activity in that portion of the site has permanently ceased. In arid, semi-arid, and drought-stricken areas, or in areas subject to snow or freezing conditions, where initiating perennial vegetative stabilization measures is not possible within 14 days after mining, exploration, and/or construction activity has permanently ceased, final vegetative stabilization measures must be initiated as soon as possible. Until final stabilization is achieved, temporary stabilization measures must be used.

11.G.5 Additional Technology-Based Effluent Limits.

11.G.5.1 Employee Training. (See also Part 4.2.9) Conduct employee training at least annually at active and temporarily inactive sites.

11.G.5.2 Good Housekeeping Measures. (See also Part 4.2.2) As part of the permittees good housekeeping program, implement the following, as practicable: use sweepers and covered storage, watering haul roads to minimize dust generation, and conserving vegetation (where possible) to minimize erosion.

11.G.5.3 Preventive Maintenance. (See also Part 4.2.3) Perform inspections or other equivalent measures of storage tanks and pressure lines of fuels, lubricants, hydraulic fluid, and slurry to prevent leaks due to deterioration or faulty connections.

11.G.5.4 Storm Water Controls. Apart from the control measures implemented to meet the Part 4 control measures, implement the following control measures at the facility, as practicable. The potential pollutants identified in Part 11.G.6.3 shall determine the priority and appropriateness of the control measures selected. If the permittee selects or develops a storm water control other than one described below, the permittee shall describe it in the SWPPP.

11.G.5.4.1 Storm Water Diversions. Divert storm water away from potential pollutant sources. Implement the following options, as practicable: interceptor or diversion controls (e.g., dikes, swales, curbs, or berms); pipe slope drains; subsurface drains; conveyance systems (e.g., channels or gutters, open-top box culverts, and waterbars; rolling dips and road sloping; roadway surface water deflector and culverts); or their equivalents.

11.G.5.4.2 Velocity Dissipation Devices. Place velocity dissipation devices (e.g., check dams, sediment traps, or riprap) as practicable, along the length of any conveyance channel to provide a non-erosive flow velocity. Also place velocity dissipation devices where discharges from the conveyance channel or structure join a water course to prevent erosion and to protect the channel embankment, outlet, adjacent stream bank slopes, and downstream waters.

11.G.5.4.3 Down-Slope Sediment Controls. Establish and use down-slope sediment controls (e.g., silt fence or temporary diversion dike) for any portion of the down-slope and side-slope perimeter where storm water will be discharged from disturbed areas of the site.

11.G.5.4.4 Stabilized Construction Vehicle Access and Exit Points. Establish stabilized vehicle access and exit points. Off-site accumulations of sediment must be removed at a frequency sufficient to minimize off-site impacts.

11.G.5.4.5 Capping. When capping is necessary to minimize pollutant discharges in storm water, identify the source being capped and the material used to construct the cap.

11.G.5.4.6 Treatment. If treatment of storm water (e.g., chemical or physical systems, oil and water separators, artificial wetlands) is necessary to protect water quality, describe the type and location of treatment used. All permanent storm water treatment devices shall receive engineering plan approval per 18 AAC 72.600. Passive and/or active treatment of storm water runoff is encouraged where practicable. Treated runoff may be discharged as a storm water source regulated under this permit provided the discharge is not combined with discharges subject to effluent limitation guidelines for the Ore Mining and Dressing Point Source Category (40 CFR Part 440).

11.G.5.5 Certification of Discharge Testing. (See also Part 5.2.4.4) Test or evaluate all outfalls covered under this permit for the presence of specific mining-related non-storm water discharges such as seeps or adit discharges, or discharges subject to effluent limitations guidelines (e.g., 40 CFR Part 440), such as mine drainage or process water. Alternatively (if applicable), the permittee may keep a certification with the SWPPP consistent with Part 11.G.6.6.

11.G.5.6 Overburden, Waste Rock, and Raw Material Piles. Overburden, topsoil, and waste rock, as well as raw material and intermediate and final product stockpiles, shall be located a minimum of 25 feet away from surface water, other sources of water, and from geologically unstable areas as practicable.

11.G.6 Additional SWPPP Requirements.

11.G.6.1 Nature of Industrial Activities. (See also Part 5.2.3) Document in the SWPPP the mining and associated activities that can potentially affect the storm water discharges covered by this permit, including a general description of the location of the site relative to major transportation routes and communities.

11.G.6.2 Site Map. (See also Part 5.2.3) The permittee must document in the SWPPP the locations of the following (as appropriate): mining or milling site boundaries; access and haul roads; outline of the drainage areas of each storm water outfall within the facility with indications of the types of discharges from the drainage areas; location(s) of all permitted discharges covered under an individual APDES permit, outdoor equipment storage, fueling, and maintenance areas; materials handling areas; outdoor manufacturing, outdoor storage, and material disposal areas; outdoor chemicals and explosives storage areas; overburden, materials, soils, or waste storage areas; location of mine drainage (where water leaves mine) or other process water; tailings piles and ponds (including proposed ones); heap leach pads; off-site points of discharge for mine drainage and process water; surface waters; boundary of tributary areas that are subject to effluent limitations guidelines; and location(s) of reclaimed areas.

11.G.6.3 Potential Pollutant Sources. (See also Part 5.2.4) For each area of the mine or mill site where storm water discharges associated with industrial activities occur, identify the types of pollutants (e.g., heavy metals, sediment) likely to be present in significant amounts. Monitor these factors, as relevant: the mineralogy of the ore and waste rock (e.g., acid forming); toxicity and quantity of chemicals used, produced, or discharged; the likelihood of contact with storm water; vegetation of site (if any); and history of significant leaks or spills of toxic or hazardous pollutants. Also include a summary of any existing ore or waste rock or overburden characterization data and test results for potential generation of acid rock. If any new data is acquired due to changes in ore type being mined, update the SWPPP with this information.

11.G.6.4 Documentation of Control Measures. Document all control measures that the permittee implements consistent with Part 11.G.5.4. If control measures are implemented or planned but are not listed in Part 11.G.5.4 (e.g., substituting a less toxic chemical for a more toxic one), include descriptions of them in the SWPPP.

11.G.6.5 Employee Training. To the extent practical, all supervisory personnel involved in directing the maintenance of storm water control measures shall be trained and qualified in the principles and practices of erosion and sediment control. All employee training(s) must be documented in the SWPPP.

11.G.6.6 Certification of Permit Coverage for Commingled Non-Storm Water Discharges. If a permittee determines that they are able to certify, consistent with Part 11.G.5.5, that a particular discharge composed of commingled storm water and non-storm water is covered under a separate APDES permit, and that permit subjects the non-storm water portion to effluent limitations prior to any commingling, retain such certification with the SWPPP. This certification must identify the non-storm water discharges, the applicable APDES permit(s), the effluent limitations placed on the non-storm water discharge by the permit(s), and the points at which the limitations are applied.

11.G.6.7 SWPPP Submittal. At least 45 calendar days prior to the start of initial construction of a new facility the permittee shall submit the construction phase SWPPP to DEC.

11.G.6.8 SWPPP Meeting. At least 20 calendar days before the start of initial construction for a new facility, representatives of the permittee and the prime site construction contractor shall meet with DEC in a pre-construction conference to discuss the details of storm water management during construction.

11.G.7 Additional Inspection Requirements.

(See also Part 6.1 and 11.G.4.14.) Except for areas of the site subject to clearing, grading, and/or excavation activities conducted as part of the exploration and construction phase, which are subject to Part 11.G.4.14.1, the permittee must inspect sites at least quarterly unless adverse weather conditions make the site inaccessible. Sites which discharge to waters designated as outstanding waters or waters which are impaired for sediment or nitrogen must be inspected monthly. See Part 11.G.8.4 for inspection requirements for inactive and unstaffed sites.

11.G.8 Sector-Specific Benchmarks. (See also Part 7 of the permit.)

Note: There are no Part 11.G.8 monitoring and reporting requirements for inactive and unstaffed sites.

11.G.8.1 Benchmark Monitoring for Active Copper Ore Mining and Dressing Facilities. Active copper ore mining and dressing facilities, the permittee must sample and analyze storm water discharges for the pollutants listed in Table 11.G.8-1.

Table 11.G.8-1: Benchmark Monitoring for Active Copper Ore Mining and Dressing Facilities

Subsector (Permittees may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Subsector G1. Active Copper Ore Mining and Dressing Facilities (SIC 1021)	Total Suspended Solids (TSS)	100 mg/L
	Nitrate plus Nitrite Nitrogen	0.68 mg/L
	Chemical Oxygen Demand (COD)	120 mg/L

11.G.8.2 Benchmark Monitoring Requirements for Discharges from Waste Rock and Overburden Piles at Active Metal Mining Facilities. For discharges from waste rock and overburden piles, perform benchmark monitoring once in the first year for the parameters listed in Table 11.G.8-2, and twice annually in all subsequent years of coverage under this permit for any parameters for which the benchmark has been exceeded. The permittee is also required to conduct analytic monitoring for the parameters listed in Table 11.G.8-3 in accordance with the requirements in Part 11.G.8.3. The Department may also notify the permittee that the permittee must perform additional monitoring to accurately characterize the quality and quantity of pollutants discharged from their waste rock and overburden piles.

(Table 11.G.8-2: Benchmark Monitoring Requirements for Discharges from Waste Rock and Overburden Piles at Active Metal Mining Facilities located on following page.)

Table 11.G.8-2: Benchmark Monitoring Requirements for Discharges from Waste Rock and Overburden Piles at Active Metal Mining Facilities

Subsector (Permittees may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Subsector G2. Iron Ores; Copper Ores; Lead and Zinc Ores; Gold and Silver Ores; Ferroalloy Ores, Except Vanadium; and Miscellaneous Metal Ores (SIC Codes 1011, 1021, 1031, 1041, 1044, 1061, 1081, 1094, 1099) (Note: when analyzing hardness for a suite of metals, it is more cost effective to add analysis of calcium and magnesium, and have hardness calculated than to require hardness analysis separately)	Total Suspended Solids (TSS)	100 mg/L
	Turbidity	See Note 1
	pH	6.5 - 8.5 s.u.
	Hardness (as CaCO3; calc. from Ca, Mg)[2]	no benchmark value
	Total Antimony	0.64 mg/L
	Total Arsenic (saltwater)[2] Total Arsenic (freshwater)	0.069 mg/L 0.15 mg/ L
	Total Beryllium	0.13 mg/L
	Total Cadmium (saltwater)[2] Total Cadmium (freshwater)[3]	0.04 mg/L Hardness Dependent
	Total Copper (saltwater)[2] Total Copper (freshwater)[3]	0.0048 mg/L Hardness Dependent
	Total Iron	1.0 mg/L
	Total Lead (saltwater)[2] Total Lead (freshwater)[3]	0.21 mg/L Hardness Dependent
	Total Mercury (saltwater)[2] Total Mercury (freshwater)[3]	0.0018 mg/L 0.0014 mg/L
	Total Nickel(saltwater)[2] Total Nickel (freshwater)[3]	0.074 mg/L Hardness Dependent
	Total Selenium	0.005 mg/L
	Total Silver (saltwater)[2] Total Silver (freshwater)[3]	0.0019 mg/L Hardness Dependent
	Total Zinc (saltwater)[2] Total Zinc (freshwater)[3]	0.09 mg/L Hardness Dependent

Note:

1. Turbidity in fresh water may not exceed 5 nephelometric turbidity units (NTU) above natural conditions when the natural turbidity is 50 NTU or less, and may not have more than 10% increase in turbidity when the natural turbidity is more than 50 NTU, not to exceed a maximum increase of 25 NTU. See 18 AAC 70.020(b)(12)(A)(i).
2. Saltwater benchmark values apply to storm water discharges into saline waters where indicated.
3. The freshwater benchmark values of some metals are dependent on water hardness. For these parameters, permittees must determine the hardness of the receiving water (see Appendix E, "Calculating Hardness in Receiving Waters for Hardness Dependent Metals," for methodology), in accordance with Part 7.2.1.1, to identify the applicable 'hardness range' for determining their benchmark value applicable to their facility. The ranges occur in 25 mg/L increments. Hardness Dependent Benchmarks follow in the table below:

Water Hardness Range (mg/L)	Cadmium (mg/L)	Copper (mg/L)	Lead (mg/L)	Nickel (mg/L)	Silver (mg/L)	Zinc (mg/L)
0 – < 25	0.0005	0.0038	0.014	0.15	0.0007	0.04
25 – < 50	0.0008	0.0056	0.023	0.20	0.0007	0.05
50 – < 75	0.0013	0.0090	0.045	0.32	0.0017	0.08
75 – < 100	0.0018	0.0123	0.069	0.42	0.0030	0.11
100 – < 125	0.0023	0.0156	0.095	0.52	0.0046	0.13
125 – < 150	0.0029	0.0189	0.122	0.61	0.0065	0.16
150 – < 175	0.0034	0.0221	0.151	0.71	0.0087	0.18
175 – < 200	0.0039	0.0253	0.182	0.80	0.0112	0.20
200 – < 225	0.0045	0.0285	0.213	0.89	0.0138	0.23
225 – < 250	0.0050	0.0316	0.246	0.98	0.0168	0.25
250+	0.0053	0.0332	0.262	1.02	0.0183	0.26

11.G.8.3 Additional Analytic Monitoring Requirements for Discharges from Waste Rock and Overburden Piles at Active Metal Mining Facilities. In addition to the monitoring required in Part 11.G.8.2 for discharges from waste rock and overburden piles, the permittee must also conduct monitoring for additional parameters based on the type of ore they mine at their facility. Where a parameter in Table 11.G.8-3 is the same as a pollutant the permittee is required to monitor for in Table 11.G.8-2 (i.e., for all of the metals, the permittee must use the corresponding benchmark in Table 11.G.8-2 and they may use any monitoring results conducted for Part 11.G.8.2 to satisfy the monitoring requirement for that parameter for Part 11.G.6.3. For radium and uranium, which do not have corresponding benchmarks in Table 11.G.8-2, there are no applicable benchmarks.) The frequency and schedule for monitoring for these additional parameters is the same as that specified in Part 7.2.1.2.

Table 11.G.8-3: Additional Monitoring Requirements for Discharges from Waste Rock and Overburden Piles

Supplemental Requirements			
Type of Ore Mined	Pollutants of Concern		
	Total Suspended Solids (TSS)	pH	Metals, Total
Tungsten Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H)
Nickel Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H)
Aluminum Ore	X	X	Iron
Mercury Ore	X	X	Nickel (H)
Iron Ore	X	X	Iron (Dissolved)
Platinum Ore			Cadmium (H), Copper (H), Mercury, Lead (H), Zinc (H)
Titanium Ore	X	X	Iron, Nickel (H), Zinc (H)
Vanadium Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H)
Molybdenum	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Mercury, Zinc (H)
Uranium, Radium, and Vanadium Ore	X	X	Chemical Oxygen Demand, Arsenic, Radium (Dissolved and Total), Uranium, Zinc (H)

Note: An "X" indicated for TSS and/or pH means that permittees are required to monitor for those parameters. (H) indicates that hardness must also be measured when this pollutant is measured.

11.G.8.4 Inactive and Unstaffed Sites – Conditional Exemption from No Exposure Requirements for Quarterly Visual Assessments and Routine Facility Inspections. As a Sector G facility, if the permittee is seeking to exercise a waiver from the quarterly visual assessment and routine facility inspection requirements for inactive and unstaffed sites (including temporarily inactive sites), they are conditionally exempt from the requirement to certify that "there are no industrial materials or activities exposed to storm water" in Part 6.2.3 and 7.2.1.6, respectively. Additionally, if the permittee is seeking to reduce their required quarterly routine inspection frequency to a once annual comprehensive inspection, as is allowed under Part 6.1.3, the permittee is also conditionally exempt from the requirement to certify that "there are no industrial materials or activities exposed to storm water." This exemption is conditioned on the following:

- If circumstances change and the permittees facility becomes active and/or staffed, this exception no longer applies and the permittee must immediately begin complying with the quarterly visual assessment requirements; and
- DEC retains the authority to revoke this exemption and/or the monitoring waiver where it is determined that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above a WQS, including designated uses.

Subject to the two conditions above, if the permittees facility is inactive and unstaffed, they are waived from the requirement to conduct quarterly visual assessments and routine facility inspections. The permittee is not waived from conducting the Part 6.3 comprehensive site inspection. They are encouraged to inspect their site more frequently where they have reason to believe that severe weather or natural disasters may have damaged control measures or increased discharges.

(Table 11.G.8-4: Applicability of the Multi-Sector General Permit to Storm Water Runoff from Active Mining and Dressing Sites, Temporarily Inactive Sites, and Sites Undergoing Reclamation located on the following page.)

Table 11.G.8-4: Applicability of the Multi-Sector General Permit to Storm Water Runoff from Active Mining and Dressing Sites, Temporarily Inactive Sites, and Sites Undergoing Reclamation

Discharge/Source of Discharge	Note/Comment
Piles	
Waste rock/overburden	If composed entirely of storm water and not combining with mine drainage. See note below.
Topsoil	—
Roads Constructed of Waste Rock or Spent Ore	
Onsite haul roads	If composed entirely of storm water and not combining with mine drainage. See note below.
Offsite haul and access roads	—
Roads Not Constructed of Waste Rock or Spent Ore	
Onsite haul roads	Except if mine drainage is used for dust control
Offsite haul and access roads	—
Milling/Concentrating	
Runoff from tailings dams and dikes when constructed of waste rock/tailings	Except if process fluids are present and only if composed entirely of storm water and not combining with mine drainage. See Note below.
Runoff from tailings dams/dikes when not constructed of waste rock and tailings	Except if process fluids are present
Concentration building	If storm water only and no contact with piles
Mill site	If storm water only and no contact with piles
Ancillary Areas	
Office and administrative building and housing	If mixed with storm water from the industrial area
Chemical storage area	—
Docking facility	Except if excessive contact with waste product that would otherwise constitute mine drainage
Explosive storage	—
Fuel storage (oil tanks/coal piles)	—
Vehicle and equipment maintenance area/building	—
Parking areas	But coverage unnecessary if only employee and visitor-type parking
Power Plant	
Truck wash area	Except when excessive contact with waste product that would otherwise constitute mine drainage
Reclamation-Related Areas	
Any disturbed area (unreclaimed)	Only if not in active mining area
Reclaimed areas released from reclamation requirements prior to Dec. 17, 1990	—
Partially/inadequately reclaimed areas or areas not released from reclamation requirements	—

Note: Storm water runoff from these sources are subject to the APDES program for storm water unless mixed with discharges subject to 40 CFR Part 440 that are regulated by another permit prior to mixing. Non-storm water discharges from these sources are subject to APDES permitting and may be subject to the effluent limitation guidelines under 40 CFR Part 440. Discharges from overburden/waste rock and overburden/waste rock-related areas are not subject to 40 CFR Part 440 unless:

(1) it drains naturally (or is intentionally diverted) to a point source; and

(2) combines with "mine drainage" that is otherwise regulated under the Part 440 regulations. For such sources, coverage under this permit would be available if the discharge composed entirely of storm water does not combine with other sources of mine drainage that are not subject to 40 CFR Part 440, as well as meeting other eligibility criteria contained in Part 1.2 of the permit. Permittees bear the initial responsibility for determining the applicable technology-based standard for such discharges. DEC recommends that permittees contact the Department for assistance to determine the nature and scope of the "active mining area" on a mine-by-mine basis, as well as to determine the appropriate permitting mechanism for authorizing such discharges.

11.G.9 Termination of Permit Coverage.

11.G.9.1 Termination of Permit Coverage for Sites Reclaimed After December 17, 1990. A site or a portion of a site that has been released from applicable state or federal reclamation requirements after December 17, 1990, is no longer required to maintain coverage under this permit. If the site or portion of a site reclaimed after December 17, 1990, was not subject to reclamation requirements, the site or portion of the site is no longer required to maintain coverage under this permit if the site or portion of the site has been reclaimed as defined in Part 11.G.3.5.

11.G.9.2 Termination of Permit Coverage for Sites Reclaimed Before December 17, 1990. A site or portion of a site that was released from applicable state or federal reclamation requirements before December 17, 1990, or that was otherwise reclaimed before December 17, 1990, is no longer required to maintain coverage under this permit if the site or portion of the site has been reclaimed. A site or portion of a site is considered to have been reclaimed if: (1) storm water runoff that comes into contact with raw materials, intermediate byproducts, finished products, and waste products does not have the potential to cause or contribute to violations of state WQS, (2) soil disturbing activities related to mining at the sites or portion of the site have been completed, (3) the site or portion of the site has been stabilized to minimize soil erosion, and (4) as appropriate depending on location, size, and the potential to contribute pollutants to storm water discharges, the site or portion of the site has been revegetated, will be amenable to natural revegetation, or will be left in a condition consistent with the post-mining land use.

11. Subpart H – Sector H – Coal Mines and Coal Mining-Related Facilities.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.H.1 Covered Storm Water Discharges.

The requirements in Subpart H apply to storm water discharges associated with industrial activity from Coal Mines and Coal Mining-Related facilities as identified by the SIC Codes specified under Sector H in Table D-1 of Appendix D.

11.H.2 Limitations on Coverage.

11.H.2.1 Prohibition of Non-Storm Water Discharges. (See also Part 1.2.4) Not covered by this permit: discharges from pollutant seeps or underground drainage from inactive coal mines, adit discharges and refuse disposal areas that do not result from precipitation events, and discharges from floor drains in maintenance buildings and other similar drains in mining and preparation plant areas. These unauthorized discharges should be covered under a separate APDES discharge permit.

11.H.2.2 Discharges Subject to Storm Water Effluent Guidelines. (See also Part 1.2.4.4) Not authorized by this permit: storm water discharges subject to an existing effluent limitation guideline at 40 CFR Part 434.

11.H.3 Definitions.

The following definitions are not intended to supersede the definitions of active and inactive mining facilities established by 40 CFR 122.26(b)(14)(iii).

11.H.3.1 Mining Operation - Consists of the active and temporarily inactive phases, and the reclamation phase, but excludes the exploration and construction phases.

11.H.3.2 Exploration Phase - Entails exploration and land disturbance activities to determine the financial viability of a site. The exploration phase is not considered part of "mining operations."

11.H.3.3 Construction Phase - Includes the building of site access roads, facilities, and removal of overburden and waste rock to expose mineable coal. The construction phase is not considered part of "mining operations."

11.H.3.4 *Active Phase* - Activities including the extraction, removal or recovery of coal. For surface mines, this definition does not include any land where grading has returned the earth to a desired contour and reclamation has begun. This definition is derived from the definition of "active mining area" found at 40 CFR 434.11(b). The active phase is considered part of "mining operations."

11.H.3.5 *Reclamation Phase* - Activities undertaken, in compliance with applicable mined land reclamation requirements, following the cessation of the "active phase", intended to return the land to an appropriate post-mining land use. The reclamation phase is considered part of "mining operations."

11.H.3.6 *Active Coal Mining Facility* - A place where work or other activity related to the extraction, removal, or recovery of coal is being conducted. For surface mines, this definition does not include any land where grading has returned the earth to a desired contour and reclamation has begun. This definition is derived from the definition of "active mining area" found at 40 CFR 434.11(b).

11.H.3.7 *Inactive Coal Mining Facility* - A site or portion of a site where coal mining and/or milling occurred in the past but is not an active facility as defined above, and where the inactive portion is not covered by an active mining permit issued by the applicable State or Federal agency. An inactive coal mining facility has an identifiable owner / operator. Sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials and sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim are not considered either active or inactive mining facilities and do not require an APDES industrial storm water permit.

11.H.3.8 *Temporarily Inactive Coal Mining Facility* - A site or portion of a site where coal mining and/or milling occurred in the past but currently are not being actively undertaken, and the facility is covered by an active mining permit issued by the applicable State or Federal agency.

11.H.4 Technology-Based Effluent Limits for Clearing, Grading, and Excavation Activities.

Clearing, grading, and excavation activities being conducted as part of the exploration and construction phase of mining activities are covered under this permit.

11.H.4.1 *Erosion Control Measures.* A permittee must comply with the erosion control measures in this Part to minimize soil exposure on the site during construction.

11.H.4.1.1 *Delineation of Site.* A permittee must generally delineate (e.g., with flagging, stakes, signs, silt fence, etc.,) the location of specific areas that will be left undisturbed such as trees, boundaries of sensitive areas, or buffers established under Part 11.H.4.1.3.

11.H.4.1.2 Minimize the Amount of Soil Exposed during Construction Activity. A permittee must include the following considerations in the selection of control measures and the sequence of project construction as they apply to the project site:

- Preserve areas of native topsoil on the site, unless infeasible; and
- Sequence or phase construction activities to minimize the extent and duration of exposed soils to the extent practicable.

11.H.4.1.3 Maintain Natural Buffer Areas.

The permittee must maintain natural buffer areas at stream crossings and around the edge of any waters of the U.S. that are located within or immediately adjacent to the property where the construction activity will take place in accordance with the following:

- The buffer must be a minimum of twenty-five (25) feet wide, unless infeasible based on site dimensions, or the width as required by local ordinance.
- Exceptions are allowed for water dependent activities, specific water access activities, or necessary water crossings.
- A permittee should, to the extent practicable, use perimeter controls adjacent to buffers, and direct storm water sheet flow to buffer areas to increase sediment removal and maximize storm water infiltration, unless infeasible.

11.H.4.1.4 Control Storm Water Discharges and Flow Rates. A permittee must include the following control measures to handle storm water and total storm water volume discharges as they apply to the site:

- Divert storm water around the site so that it does not flow onto the project site and cause erosion of exposed soils;
- Slow down or contain storm water that may collect and concentrate within a site and cause erosion of exposed soils;
- Avoid placement of structural control measures in active floodplains to the degree technologically and economically practicable and achievable;
- Place velocity dissipation devices (e.g., check dams, sediment traps, or riprap) along the length of any conveyance channel to provide a non-erosive flow velocity. Also place velocity dissipation devices where discharges from the conveyance channel or structure join a water course to prevent erosion and to protect the channel embankment, outlet, adjacent stream bank slopes, and downstream waters; and

- Install permanent storm water management controls, if present at a site and where practical, so that they must be functional prior to construction of site improvements (e.g., impervious surfaces).

11.H.4.1.5 Protect Steep Slopes. A permittee must include the following considerations in the selection of control measures as they apply to the project site:

- Design and construct cut-and-fill slopes in a manner that will minimize erosion. Applicable practices include, but are not limited to, reducing continuous length of slope with terracing and diversions, reducing slope steepness, and roughening slope surfaces (e.g., track walking);

- Divert concentrated flows of storm water away from and around the disturbed portion of the slope. Applicable practices include, but are not limited to interceptor dikes and swales, grass-lined channels, pipe slope drains, subsurface drains, check dams; and

- Stabilize exposed areas of the slope in accordance with Part 11.H.4.4.

11.H.4.2 Sediment Control Measures. Sediment control measures (e.g. sediment ponds, traps, filters, etc.) must be constructed as one of the first steps in grading. These control measures must be functional before other land disturbing activities take place. A permittee must install, establish and use any of the following control measures that apply to the project site.

11.H.4.2.1 Storm Drain Inlet Protection Meaures. A permittee must install appropriate protection measures (e.g. filter berms, perimeter controls, temporary diversion dikes, etc.) to minimize the discharge of sediment prior to entry into the inlet for storm drain inlets located on site or immediately downstream of the site. Inlet protection measures must be cleaned or removed and replaced when sediment has filled one-third of the available storage.

11.H.4.2.2 Water Body Protection Measures. A permittee must install appropriate protection measures (Part 11.H.4.1.4) to minimize the discharge of sediment prior to entry into the water body for water bodies located on site or immediately downstream of the site. Protection measures must be cleaned or removed and replaced when sediment has filled one-third of the available storage.

11.H.4.2.3 Down-Slope Sediment Controls. A permittee must establish and use down-slope sediment controls (e.g., silt fence, temporary diversion dike, etc.) for any portion of the down-slope and side-slope perimeter where storm water will be discharged from disturbed areas of the site.

11.H.4.2.4 Stabilized Construction Vehicle Access and Exit Points. A permittee must establish construction vehicle access and exit points which must be stabilized. Access and exit points should be limited to one route, if possible. If sediment escapes the construction site, off-site accumulations of sediment must be removed at a frequency sufficient to minimize off-site impacts.

11.H.4.2.5 Dust Generation and Track-Out from Vehicles. A permittee must minimize the generation of dust through the application of water or other dust suppression techniques and prior to vehicle exit. A permittee must provide an effective way of minimizing off-site vehicle tracking of sediment from wheels to prevent track-out onto paved surfaces.

11.H.4.2.6 Soil Stockpiles. A permittee must stabilize or cover soil stockpiles, protect with sediment trapping measures, and where possible, locate soil stockpiles away from storm drain inlets, water bodies, and conveyance channels.

11.H.4.2.7 Authorized Non-Storm Water Discharges. A permittee must minimize any non-storm water authorized by this permit.

11.H.4.2.8 Sediment Basins, where applicable:

- For common drainage locations that serve an area with ten (10) or more acres disturbed at one time, a temporary (or permanent) sediment basin that provides storage for a calculated volume of runoff from the drainage area from a 2-year, 24-hour storm, or equivalent sediment control measures, must be installed, maintained, and used where practicable until final stabilization of the site. Where no such calculation has been performed, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent sediment control measures, must be installed and used where practicable until final stabilization of the site. When computing the number of acres draining into a common location, it is not necessary to include flows from offsite areas and flows from on-site areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin. In determining whether installing a sediment basin is practicable, the permittee may consider factors such as site soils, slope, available area on-site, etc. In any event, the permittee must consider public safety, especially as it relates to children, as a design factor for the sediment basin, and alternative sediment control measures must be used where site limitations would preclude a safe design.

- For drainage locations which serve ten (10) or more disturbed acres at one time and where a temporary sediment basin or equivalent controls is not practicable, smaller sediment basins and/or sediment traps should be used. Silt fences, vegetative buffer strips, or equivalent sediment control measures are

required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions).

- For drainage locations serving less than ten (10) acres, smaller sediment basins and/or sediment traps should be used. Silt fences, vegetative buffer strips, or equivalent sediment control measures are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions) of the construction area unless a sediment basin providing storage for a calculated volume of runoff from a 2-year, 24-hour storm event or 3,600 cubic feet of storage per acre drained is provided.

- When discharging from basins and impoundments, utilize outlet structures that withdraw water from the surface where practicable.

- Note: installing sediment basins in the presence of permafrost is challenging and might not be practicable in some instances because permafrost creates poor surface drainage that hinders the infiltration of runoff. Also, the excavation of permafrost in summer can trigger thawing and instability.

11.H.4.3 Dewatering.

11.H.4.3.1 If a construction activity includes excavation dewatering and has a discharge that could adversely impact a local drinking water well, an DEC-identified contaminated site, or a waters of the U.S., the permittee must review the DEC Excavation Dewatering General Permit (AKG002000, or most current version) for specific requirements the permittee may have to comply with in addition to the conditions of this permit.

11.H.4.3.2 A discharge from eligible dewatering activities, including discharges from dewatering of trenches and excavations are prohibited unless treated by appropriate control measures. Appropriate control measures include, but are not limited to, sediment basins or traps, dewatering tanks, weir tanks, or filtration systems designed to remove sediment.

11.H.4.4 Soil Stabilization.

11.H.4.4.1 Minimum Requirements for Soil Stabilization. A permittee must stabilize all disturbed areas of the site to minimize on-site erosion and sedimentation and the resulting discharge of pollutants according to the requirements of this Part. A permittee must ensure that existing vegetation is preserved wherever possible and that disturbed portions of the site are stabilized. Applicable stabilization control measures include, but are not limited to: temporary and permanent seeding, sodding, mulching, rolled erosion control product, compost blanket, soil application of polyacrylamide (PAM), the early application of gravel base on areas to be paved,

and dust control. A permittee should avoid using impervious surfaces for stabilization. See the Alaska Plant Materials Center's A Revegetation Manual for Alaska at http://plants.alaska.gov for help in efforts to select appropriate seed mixes and some information on methods for revegetation. Also see the manual for coastal Alaska, Coastal Revegetation & Erosion Control Guide at http://plants.alaska.gov.

11.H.4.5 Treatment Chemicals. The use of treatment chemicals to reduce turbidity in a storm water discharge is allowed provided that all of the requirements of this Part are met.

11.H.4.5.1 Use of conventional sediment controls before and after the application of treatment chemicals. Chemicals may only be applied where storm water is treated upstream and is directed to a sediment control (e.g., sediment trap, sediment basin) before discharge.

11.H.4.5.2 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 storm water flowing into the chemical treatment system or area, etc.)

11.H.4.5.3 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, spill containment pallets), with adequate spill kits available on-site to respond if the event of a discharge of treatment chemicals occurs.

11.H.4.5.4 Use chemicals in accordance with good engineering practices and specifications of the chemical provider/supplier, 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.

11.H.4.5.5 Application of treatment chemicals through the use of manufactured products (e.g., gel bars, gel logs, floc blocks, etc.) must be used in combination with adequate ditch check dams, sediment traps, sediment basins, or physical control measure designed to settle out chemically treated storm water and minimize the presence of treatment chemicals before discharges reach waters of the U.S.. At a minimum there must be adequate ditch length downstream of the last manufactured product prior to reaching the discharge point into a water of the U.S. to provide a place for sedimentation to occur.

11.H.4.5.6 Ensure proper training. Ensure that all persons who handle and use treatment chemicals at the construction site are provided with appropriate, product-specific training. Among other things, the training must cover proper dosing requirements.

11.H.4.5.7 Perform additional measures specified by the Department for the authorized use of cationic treatment chemicals. If the permittee plans to add "cationic treatment chemicals" (as defined in Appendix C) to storm water and/or authorized non-storm water prior to discharge, they must submit a request to the Department fourteen (14) calendar days in advance of proposed usage. The request must include the following:

- Operator Name, mailing address, phone number, and email address;
- Project/Site name, physical address, contact name, phone number, email address and MSGP permit authorization number;
- Site Map with all receiving waterbodies, proposed location of chemical treatment system, and proposed point of discharge into receiving waterbodies;
- Schematic drawing of the proposed treatment system; and
- Description of the proposed treatment system including; type of system being used, type of cationic chemicals being used, estimated start and finish date, sampling and recordkeeping schedule and reporting, and name of treatment system operator or company.

The permittee must perform all additional measures as conditioned by the Department authorization to ensure that the use of such chemicals will not cause an exceedance of water quality standards.

11.H.4.6 Prohibited Discharge. A permittee is prohibited from discharging the following from the site:

11.H.4.6.1 Wastewater from concrete washout, unless managed by an appropriate control measure;

11.H.4.6.2 Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;

11.H.4.6.3 Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

11.H.4.6.4 Soaps or solvents used in vehicle and equipment washing.

11.H.4.7 Good Housekeeping Measures. A permittee must design, install, implement, and maintain effective good housekeeping measures to prevent and/or minimize the discharge of pollutants. A permittee must include appropriate measures for any of the following activities that are used at the site.

11.H.4.7.1 Washing of Equipment and Vehicles and Wheel Wash-Down. If a permittee conducts washing of equipment or vehicles and/or wheel wash-down at the site the permittee must comply with the following requirements:

- Designate areas to be used for washing of equipment and vehicles and/or wheel wash-down and conduct such activities only in these areas;
- Locate such activities, to the extent practicable, away from storm water conveyance channels, storm drain inlets, and waters of the U.S.;
- Treat all wash water in a sediment basin or use alternative control measures that provide equivalent or better treatment prior to discharge; and
- To comply with the prohibition in Part 11.H.4.6.4, the discharge of soaps and solvents used in equipment and vehicle washing and/or wheel wash-down is strictly prohibited.

11.H.4.7.2 Fueling and Maintenance Areas. If a permittee conducts fueling and/or maintenance activities for equipment and vehicles at the site the permittee must comply with the following requirements:

- Designate areas to be used for fueling and/or maintenance of equipment and vehicles and conduct such activities only in these areas (the designated area may move from one location to another on linear projects);
- Locate such activities, to the extent practicable, away from storm water conveyance channels, storm drain inlets and waters of the U.S.;
- Minimize the exposure to precipitation and storm water or use secondary containment structures designed to eliminate the potential for spills or leaked chemicals; and
- To comply with the prohibition in Part 11.H.4.6.3, a permittee must:
    - Clean up spills or contaminated surfaces immediately;
    - Ensure adequate clean up supplies are available at all times to handle spills, leaks, and disposal of used liquids;
    - Use drip pans or absorbents under or around leaky equipment and vehicles; and
    - Dispose of liquid wastes or materials used for fueling and maintenance in accordance with Part 11.H.4.11.

11.H.4.8 Staging and Material Storage Areas. If a permittee maintains staging and material storage areas at the site the permittee must comply with the following requirements:

- Designate areas to be used for staging and material storage areas;

- Locate such activities, to the extent practicable, away from storm water conveyance channels, storm drain inlets, and waters of the U.S; and
- Minimize the exposure to precipitation and storm water and vandalism for all chemicals, treatment chemicals, liquid products, petroleum products, and other materials that have the potential to pose a threat to human health or the environment.

11.H.4.9 Washout of Applicators/Containers used for Paint, Concrete, and Other Materials. If a permittee conducts washing of applicators and/or containers used for paint, concrete, and other materials at the site, the permittee must comply with the following requirements:

- Designate areas to be used for washout;
- Locate such activities, to the extent practicable, away from storm water conveyance channels, storm drain inlets, and waters of the U.S.;
- Direct all concrete, paint, and other material washout activities into a lined, water-tight container or pit to ensure there is no discharge into the underlying soil and onto the surrounding areas;
- Dispose of liquid wastes in accordance with Part 11.H.4.11; and
- For concrete washout areas, remove hardened concrete waste when it has reached one-half (½) the height of the container or pit and dispose of in accordance with Part 11.H.4.11.

11.H.4.10 Fertilizer or Pesticide Use. If a permittee uses fertilizers or pesticides the permittee must comply with the following requirements:

- Application of fertilizers and pesticides in a manner and at application rates that will minimize the loss of chemical to storm water runoff. Manufacturers' label requirements for application rates and disposal requirements must be followed; and
- Use pesticides in compliance with federal, state and local requirements.

11.H.4.11 Storage, Handling, and Disposal of Construction Waste. If a permittee stores, handles and/or disposes of construction waste at the site, the permittee must comply with the following requirements:

- Locate areas dedicated for management or disposal of construction waste, to the extent practicable, away from storm water conveyance channels, storm drain inlets, and waters of the U.S.;

- Dispose of all collected sediment, asphalt and concrete millings, floating debris, paper, plastic, fabric, construction and demolition debris and other domestic wastes according to federal, state and local requirements;

- Store hazardous or toxic waste in appropriate sealed containers and dispose of these wastes in accordance with manufactures recommended method of disposal or federal, state or local requirements; and

- Provide containment of sanitation facilities (e.g., portable toilets) to prevent discharges of pollutants to the storm water drainage system or receiving water. Clean or replace sanitation facilities and inspect them regularly for leaks and spills.

11.H.4.12 Winter Considerations.

11.H.4.12.1 Winter Shutdown. A permittee who temporarily ceases construction for the winter and plans to resume construction the next summer must plan for winter shutdown. The permittee must identify the anticipated dates of fall freeze-up and spring thaw (see Appendix C) for their site and use these dates to plan for winter shutdown. For the purpose of planning ahead frozen ground by itself is not considered an acceptable control measure for stabilization. A permittee must provide for the following prior to, during, and at the conclusion of winter shutdown:

- Temporary or permanent stabilization for conveyance channels;

- Temporary or permanent stabilization for disturbed slopes, disturbed soils, and soil stockpiles; and

- Erosion and sediment control measures in anticipation of spring thaw.

11.H.4.12.2 Winter Construction. In several areas of Alaska, winter construction provides opportunities for construction not available during summer months. Permit coverage is not required for the construction of ice roads or the placement of sand or gravel on frozen tundra with no excavation or potential to pollute waters of the U.S. This permit does address those construction activities that have the potential for erosion or sediment runoff during spring thaw and summer rainfall. A permittee operating winter construction activities must plan for using appropriate control measures to minimize erosion or sediment runoff during spring thaw and summer rainfall. The Alaska Storm Water Guide, Chapters 3 and 4, provide guidance on the selection, design, and installation of winter construction practices and controls.

11.H.4.12.3 Late Winter Clearing. Cutting of trees and brush while the ground is frozen, without disturbing the vegetative mat, for the purpose of clearing in accordance with the U.S. Fish & Wildlife Service "Recommended Time Periods for Avoiding Vegetation Clearing" is allowed prior to the submittal of a project NOI. If the cutting occurs after the onset of spring thaw (as defined in Appendix C), conditions that consist of above freezing temperatures that cause melting of snow, then the permittee must develop a SWPPP and file an NOI, and receive authorization for coverage under this permit from DEC, and otherwise comply with the terms of this permit prior to such clearing.

11.H.4.13 Maintenance of Control Measures. A permittee must maintain all control measures, good housekeeping measures, and other protective measures in effective operating condition. If site inspections required by Part 6 identify control measures, good housekeeping measures, or other protective measures that are not operating effectively, the permittee must implement corrective actions in accordance with Part 8.

If existing control measures need to be modified or if additional control measures are necessary for any reason, the permittee must complete any corrective action in accordance with Part 8.3.

A permittee must remove sediment from silt fences, check dams, berms or other controls before the accumulated sediment reaches one-half (½) the distance up the above-ground height (or it reaches a lower height based on manufacturer's specifications) of the control measure. For sediment traps or sediment ponds, the permittee must remove accumulated sediment when the design capacity has been reduced by fifty (50%) percent.

11.H.4.14 Inspection of Clearing, Grading, and Excavation Activities. (See also Part 6)

11.H.4.14.1 Inspection Frequency. Inspections must be conducted at one of the following: at least once every 7 calendar days; or at least once every 14 calendar days and within 24 hours of the end of a storm event that resulted in a discharge from the site; or for areas of the state where the mean annual precipitation is forty (40) inches or greater, or relatively continuous precipitation or sequential storm events, inspect at least once every seven (7) calendar days. If the entire site is temporarily stabilized, inspection frequency may be reduced to at least once every month and within two business days of the end of a measurable storm event at actively staffed sites which resulted in a discharge from the site (pursuant to Part 11.G.4.15.2). Once active mining has begun, those areas comply with inspections according to 11.G.7. A permittee must specify in the SWPPP which schedule will be followed.

11.H.4.14.2 Winter Shutdown. If the exploration and construction phase is undergoing winter shutdown the permittee may stop inspections fourteen (14) calendar days after the anticipated fall freeze-up and must resume inspections at least twenty-one (21) calendar days prior to the anticipated spring thaw. The permittee shall identify the winter shutdown period in their SWPPP based upon the definitions of fall freeze-up and spring thaw.

11.H.4.14.3 Location of Inspections. Inspections must include all areas of the site disturbed by clearing, grading, and/or excavation activities and areas used for storage of materials that are exposed to precipitation. Sedimentation and erosion control measures must be observed to ensure proper operation. Discharge locations must be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to waters of the United States, where accessible. Where discharge locations are inaccessible, nearby downstream locations must be inspected to the extent that such inspections are practicable. Locations where vehicles enter or exit the site must be inspected for evidence of significant off-site sediment tracking.

11.H.4.14.4 Inspection Reports. (See also Part 6.1) For each inspection required above, the permittee must complete an inspection report. At a minimum, the inspection report must include the information required in Part 6.1.

11.H.4.15 Requirements for Cessation of Clearing, Grading, and Excavation Activities.

11.H.4.15.1 Inspections and Maintenance. Inspections and maintenance of control measures, including BMPs, associated with clearing, grading, and/or excavation activities being conducted as part of the exploration and construction phase of a mining operation must continue until final stabilization has been achieved on all portions of the disturbed area or until the commencement of the active mining phase for those areas that have been temporarily stabilized as a precursor to mining.

11.H.4.15.2 Temporary Stabilization of Disturbed Areas. Stabilization measures should be initiated immediately in portions of the site where clearing, grading and/or excavation activities have temporarily ceased, but in no case more than 14 days after the clearing, grading and/or excavation activities in that portion of the site have temporarily ceased. In arid, semi-arid, and drought-stricken areas, or in areas subject to snow or freezing conditions, where initiating perennial vegetative stabilization measures is not possible within 14 days after exploration, and/or construction activity has temporarily ceased, temporary vegetative stabilization measures must be initiated as soon as practicable.

The permittee must identify the anticipated dates of fall freeze-up and spring thaw (see Appendix C) for the site and use those dates to plan for winter shutdown. For the purpose of planning ahead frozen ground by itself is not considered an acceptable control measure for stabilization. Where temporary stabilization by the 14th day is

precluded by snow cover or frozen ground conditions, stabilization measures must be initiated as soon as practicable following the actual spring thaw.

Until temporary vegetative stabilization is achieved, interim measures (e.g., surface roughening or a surface cover, including but not limited to, establishment of ground vegetation, application of mulch, or surface tackifiers with an appropriate seed base) must be employed. In areas of the site, where exploration and/or construction has permanently ceased prior to active mining, temporary stabilization measures must be implemented to minimize mobilization of sediment or other pollutants until such time as the active mining phase commences.

11.H.4.15.3 Final Stabilization of Disturbed Areas. Stabilization measures should be initiated immediately in portions of the site where mining, exploration, and/or construction activities have permanently ceased, but in no case more than 14 days after the exploration and/or construction activity in that portion of the site has permanently ceased. In arid, semi-arid, and drought-stricken areas, or in areas subject to snow or freezing conditions, where initiating perennial vegetative stabilization measures is not possible within 14 days after mining, exploration, and/or construction activity has permanently ceased, final vegetative stabilization measures must be initiated as soon as possible. Until final stabilization is achieved, temporary stabilization measures must be used.

11.H.5 Additional Technology-Based Effluent Limits.

11.H.5.1 Employee Training. (See also Part 4.2.9) Conduct employee training at least annually at active and temporarily inactive sites.

11.H.5.2 Good Housekeeping Measures. (See also Part 4.2.2) As part of the permittees good housekeeping program, implement the following, as practicable: use sweepers and covered storage, watering haul roads to minimize dust generation, and conserving vegetation (where possible) to minimize erosion.

11.H.5.3 Preventive Maintenance. (See also Part 4.2.3) Perform inspections or other equivalent measures of storage tanks and pressure lines of fuels, lubricants, hydraulic fluid, and slurry to prevent leaks due to deterioration or faulty connections.

11.H.5.4 Storm Water Controls. Apart from the control measures implemented to meet the Part 4 control measures, implement the following control measures at the facility, as practicable. The potential pollutants identified in Part 11.H.6.3 shall determine the priority and appropriateness of the control measures selected. If the permittee selects or develops a storm water control other than one described below, the permittee shall describe it in the SWPPP.

11.H.5.4.1 Storm Water Diversions. Diverting storm water away from potential pollutant sources. Implement the following options, as practicable: interceptor or diversion controls (e.g., dikes, swales, curbs, or berms); pipe slope drains; subsurface drains; conveyance systems (e.g., channels or gutters, open-top box culverts, and waterbars; rolling dips and road sloping; roadway surface water deflector and culverts); or their equivalents.

11.H.5.4.2 Velocity Dissipation Devices. Place velocity dissipation devices (e.g., check dams, sediment traps, or riprap) as practicable, along the length of any conveyance channel to provide a non-erosive flow velocity. Also place velocity dissipation devices where discharges from the conveyance channel or structure join a water course to prevent erosion and to protect the channel embankment, outlet, adjacent stream bank slopes, and downstream waters.

11.H.5.4.3 Down-Slope Sediment Controls. Establish and use down-slope sediment controls (e.g., silt fence or temporary diversion dike) for any portion of the down-slope and side-slope perimeter where storm water will be discharged from disturbed areas of the site.

11.H.5.4.4 Stabilized Construction Vehicle Access and Exit Points. Establish stabilized vehicle access and exit points. Off-site accumulations of sediment must be removed at a frequency sufficient to minimize off-site impacts.

11.H.5.4.5 Capping. When capping is necessary to minimize pollutant discharges in storm water, identify the source being capped and the material used to construct the cap.

11.H.5.4.6 Treatment. If treatment of storm water (e.g., chemical or physical systems, oil and water separators, artificial wetlands) is necessary to protect water quality, describe the type and location of treatment used. All permanent storm water treatment devices shall receive engineering plan approval per 18 AAC 72.600. Passive and/or active treatment of storm water runoff is encouraged where practicable. Treated runoff may be discharged as a storm water source regulated under this permit provided the discharge is not combined with discharges subject to effluent limitation guidelines for the Coal Mining Point Source Category (40 CFR Part 434).

11.H.5.5 Certification of Discharge Testing. (See also Part 5.2.4.4) Test or evaluate all outfalls covered under this permit for the presence of specific mining-related non-storm water discharges such as discharges subject to effluent limitations guidelines (e.g., 40 CFR Part 434). Alternatively (if applicable), the permittee may keep a certification with the SWPPP consistent with Part 11.H.6.6.

11.H.5.6 Overburden, Waste Rock, and Raw Material Piles. Overburden, topsoil, and waste rock, as well as raw material and intermediate and final product stockpiles, should be located a minimum of 25 feet away from surface water, other sources of water, and from geologically unstable areas as practicable.

11.H.6 Additional SWPPP Requirements.

11.H.6.1 Other Applicable Regulations. Most active coal mining-related areas (SIC Codes 1221-1241) are subject to sediment and erosion control regulations of the U.S. Office of Surface Mining (OSM) that enforces the Surface Mining Control and Reclamation Act (SMCRA). OSM has granted authority to most coal-producing states to implement SMCRA through State SMCRA regulations. All SMCRA requirements regarding control of storm water-related pollutant discharges must be addressed and then documented with the SWPPP (directly or by reference).

11.H.6.2 Site Map. (See also Part 5.2.3) The permittee must document in their SWPPP where any of the following may be exposed to precipitation or surface runoff: haul and access roads; railroad spurs, sliding, and internal hauling lines; conveyor belts, chutes, and aerial tramways; equipment storage and maintenance yards; coal handling buildings, areas, and structures; and inactive mines and related areas; acidic spoil, refuse, or unreclaimed disturbed areas; and liquid storage tanks containing pollutants such as caustics, hydraulic fluids, and lubricants.

11.H.6.3 Potential Pollutant Sources. (See also Part 5.2.4) The permittee must document in their SWPPP the following sources and activities that have potential pollutants associated with them: truck traffic on haul roads and resulting generation of sediment subject to runoff and dust generation; fuel or other liquid storage; pressure lines containing slurry, hydraulic fluid, or other potential harmful liquids; and loading or temporary storage of acidic refuse or spoil.

11.H.6.4 Employee Training. To the extent practical, all supervisory personnel involved in directing the maintenance of storm water control measures shall be trained and qualified in the principles and practices of erosion and sediment control. All employee training(s) must be documented in the SWPPP.

11.H.6.5 Certification of Permit Coverage for Commingled Non-Storm Water Discharges. If a permittee determines that they are able to certify, consistent with Part 11.G.5.5, that a particular discharge composed of commingled storm water and non-storm water is covered under a separate APDES permit, and that permit subjects the non-storm water portion to effluent limitations prior to any commingling, retain such certification with the SWPPP. This certification must identify the non-storm water discharges, the applicable APDES permit(s), the effluent limitations placed on the non-storm water discharge by the permit(s), and the points at which the limitations are applied.

11.H.6.6 SWPPP Submittal. At least 45 calendar days prior to the start of initial construction of a new facility the permittee shall submit the construction phase SWPPP to DEC for review.

11.H.6.7 SWPPP Meeting. At least 20 calendar days before the start of initial construction for a new facility, representatives of the permittee and the prime site construction contractor shall meet with DEC in a pre-construction conference to discuss the details of storm water management during construction.

11.H.7 Active Mining Additional Inspection Requirements.

11.H.7.1 Inspections of Active Mining-Related Areas. (See also Part 6) Except for areas of the site subject to clearing, grading, and/or excavation activities conducted as part of the exploration and construction phase, which are subject to Part 11.H.4.14.1 perform quarterly inspections of active mining areas covered by this permit, corresponding with the inspections as performed by SMCRA inspectors, of all mining-related areas required by SMCRA. Also maintain the records of the SMCRA authority representative. See Part 11.H.8.1 for inspection requirements for inactive and unstaffed sties.

11.H.7.2 Sediment and Erosion Control. (See also Part 4.2.5) As indicated in Part 11.H.6.1, SMCRA requirements regarding sediment and erosion control measures must be complied with for those areas subject to SMCRA authority, including inspection requirements.

11.H.7.3 Comprehensive Site Inspections. (See also Part 6.3) The permittees inspection program must include inspections for pollutants entering the drainage system from activities located on or near coal mining-related areas. Among the areas to be inspected are haul and access roads; railroad spurs, sliding, and internal hauling lines; conveyor belts, chutes, and aerial tramways; equipment storage and maintenance yards; coal handling buildings, areas, and structures; and inactive mines and related areas.

11.H.8 Sector-Specific Benchmarks. (See also Part 7 of the permit.)

Table 11.H.8-1: Sector – Specific Benchmarks – Sector H

Subsector (Permittees may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Subsector H1. Coal Mines and Related Areas (SIC 1221-1241)	Total Aluminum	0.75 mg/L
	Total Iron	1.0 mg/L
	Total Suspended Solids (TSS)	100 mg/L

11.H.8.1 Inactive and Unstaffed Sites – Conditional Exemption from No Exposure Requirement for Routine Inspections, Quarterly Visual Assessments, and Benchmark Monitoring. As a Sector H facility, if the permittee is seeking to exercise a waiver from either the quarterly visual assessment or the benchmark monitoring requirements for inactive and unstaffed sites (including temporarily inactive sites), they are conditionally exempt from the requirement to certify that "there are no industrial materials or activities exposed to storm water" in Parts 6.2.3 and 7.2.1.6, respectively. Additionally, if the permittee is seeking to reduce their required quarterly routine inspection frequency to a once annual comprehensive inspection, as is allowed under Part 6.1.3, the permittee is also conditionally exempt from the requirement to certify that "there are no industrial materials or activities exposed to storm water." These conditional exemptions are based on the following requirements:

- If circumstances change and the permittees facility becomes active and/or staffed, this exception no longer applies and the permittee must immediately begin complying with the applicable benchmark monitoring requirements as if the permittee was in their first year of permit coverage, and the quarterly visual assessment requirements; and

- DEC retains the authority to revoke this exemption and/or the monitoring waiver where it is determined that the discharge causes, has a reasonable potential to cause or contribute to an instream excursion above a WQS, including designated uses.

Subject to the two conditions above, if the permittees facility is inactive and unstaffed, they are waived from the requirement to conduct quarterly visual assessments and routine facility inspections. The permittee is not waived from conducting the Part 6.3 comprehensive site inspection. The permittee is encouraged to inspect their site more frequently where they have reason to believe that severe weather or natural disasters may have damaged control measures or increased discharges.

11.H.9 Termination of Permit Coverage.

11.H.9.1 Termination of Permit Coverage for Sites Reclaimed After December 17, 1990. A site or a portion of a site that has been released from applicable state or federal reclamation requirements after December 17, 1990, is no longer required to maintain coverage under this permit. If the site or portion of a site reclaimed after December 17, 1990, was not subject to reclamation requirements, the site or portion of the site is no longer required to maintain coverage under this permit if the site or portion of the site has been reclaimed as defined in Part 11.H.3.5.

11.H.9.2 Termination of Permit Coverage for Sites Reclaimed Before December 17, 1990. A site or portion of a site that was released from applicable state or federal reclamation requirements before December 17, 1990, or that was otherwise reclaimed before December 17, 1990, is no longer required to maintain coverage under this permit if the site or portion of the site has been reclaimed. A site or portion of a site is considered to have been reclaimed if: (1) storm water runoff that comes into contact with raw materials, intermediate byproducts, finished products, and waste products does not have the potential to cause or contribute to violations of state WQS, (2) soil disturbing activities related to mining at the sites or portion of the site have been completed, (3) the site or portion of the site has been stabilized to minimize soil erosion, and (4) as appropriate depending on location, size, and the potential to contribute pollutants to storm water discharges, the site or portion of the site has been revegetated, will be amenable to natural revegetation, or will be left in a condition consistent with the post-mining land use.

11. Subpart I – Sector I – Oil and Gas Extraction.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.I.1 Covered Storm Water Discharges.

The requirements in Subpart I apply to storm water discharges associated with industrial activity from Oil and Gas Extraction facilities as identified by the SIC Codes specified under Sector I in Table D-1 of Appendix D of the permit.

Discharges of storm water runoff from field activities or operations associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities are exempt from APDES permit coverage unless, in accordance with 40 CFR 122.26(c)(1)(iii), the facility:

- Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at anytime since November 16, 1987; or
- Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or
- Contributes to a violation of a WQS.

Any storm water discharges that require permit coverage as a result of meeting one of the conditions of 40 CFR 122.26(c)(1)(iii) may be covered under this permit unless otherwise required to obtain coverage under an alternative APDES general permit or an individual APDES permit as specified in Part 2.8.1

Oil and Gas Facilities in the North Slope Borough with industrial storm water discharges to waters of the U.S. or directly to the tundra must file under APDES permit AKG331000 rather than this permit.

11.I.2 Limitations on Coverage.

11.I.2.1 *Storm Water Discharges Subject to Effluent Limitation Guidelines.* (See also Part 1.2.4.4) This permit does not authorize storm water discharges from petroleum drilling operations that are subject to nationally established effluent limitation guidelines found at 40 CFR Part 435, respectively.

11.I.2.2 *Non-Storm Water Discharges.* Discharges of vehicle and equipment washwater, including tank cleaning operations, are not authorized by this permit. Alternatively, washwater discharges must be authorized under a separate APDES permit, or be discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements.

11.I.3 Additional Technology-Based Effluent Limits.

11.I.3.1 *Storm Water Controls.* Apart from the control measures implemented to meet Part 4 control measures, implement the following control measures at the facility, as practicable. The potential pollutants identified in Part 11.I.4.2 shall determine the priority and appropriateness of the control measures selected. If the permittee selects or develops a storm water control other than one described below, the permittee shall describe it in the SWPPP.

11.I.3.1.1 *Vegetative Controls.* Implement vegetative practices designed to preserve existing vegetation, where attainable, and revegetate open areas as soon as practicable after grade drilling. Use one or more of the following (or equivalent measures), as practicable: temporary or permanent seeding, mulching, sod stabilization, vegetative buffer strips, and tree protection practices. Begin implementing appropriate vegetative practices on all disturbed areas within 14 days following the last activity in that area.

11.I.3.1.2 *Storm Water Diversions.* Divert storm water away from potential pollutant sources. Implement the following options, as practicable: interceptor or diversion controls (e.g., dikes, swales, curbs, or berms); pipe slope drains; subsurface drains; conveyance systems (e.g., channels or gutters, open-top box culverts, and waterbars; rolling dips and road sloping; roadway surface water deflector and culverts); or their equivalents.

11.I.3.1.3 *Velocity Dissipation Devices.* (e.g., check dams, sediment traps, or riprap) along the length of any conveyance channel to provide a non-erosive flow velocity. Also place velocity dissipation devices where discharges from the conveyance channel or structure join a water course to prevent erosion and to protect the channel embankment, outlet, adjacent stream bank slopes, and downstream waters.

11.I.3.1.4 *Down-Slope Sediment Controls.* Establish and use down-slope sediment controls (e.g., silt fence or temporary diversion dike) for any portion of the down-slope and side-slope perimeter where storm water will be discharged from disturbed areas of the site.

11.I.3.1.5 *Stabilized Vehicle Access and Exit Points.* Establish stabilized vehicle access and exit points. Off-site accumulations of sediment must be removed at a frequency sufficient to minimize off-site impacts.

11.I.4 Additional SWPPP Requirements.

11.I.4.1 *Drainage Area Site Map.* (See also Part 5.2.3) Document in the SWPPP where any of the following may be exposed to precipitation or surface runoff: Reportable Quantity (RQ) releases; locations used for the treatment, storage, or disposal of wastes; processing areas and storage areas; chemical mixing areas; construction and drilling areas; all areas subject to the effluent guidelines requirements for "No Discharge" in accordance with 40 CFR 435.32; and the structural controls to achieve compliance with the "No Discharge" requirements.

11.I.4.2 *Potential Pollutant Sources.* (See also Part 5.2.4) Also document in the SWPPP the following sources and activities that have potential pollutants associated with them: chemical, cement, mud, or gel mixing activities; drilling or mining activities; and equipment cleaning and rehabilitation activities. In addition, include information about the reportable quantity (RQ) release that triggered the permit application requirements: the nature of the release (e.g., spill of oil from a drum storage area), amount of oil or hazardous substance released, amount of substance recovered, date of the release, cause of the release (e.g., poor handling techniques and lack of containment in the area), areas affected by the release (i.e., land and water), procedure to clean up release, actions or procedures implemented to prevent or improve response to a release, and remaining potential contamination of storm water from release (taking into account human health risks, the control of drinking water intakes, and the designated uses of the receiving water).

11.I.4.3 *Erosion and Sedimentation Control.* (See also Part 4.2.5) The additional documentation requirements for sediment and erosion controls for well drillings and sand/shale mining areas include the following:

11.I.4.3.1 *Site Description.* Also include a description in the SWPPP of the nature of the exploration activity, estimates of the total area of site and area disturbed due to exploration activity, an estimate of runoff coefficient of the site, a site drainage map, including approximate slopes, and the names of all receiving waters.

11.I.4.3.2 *Vegetative Controls.* Document vegetative practices used consistent with Part 11.I.3.1 in the SWPPP.

11.I.5 Additional Inspection Requirements.

11.I.5.1 All erosion and sedimentation control measures must be inspected either: 1) every 7 days; or 2) once every 14 calendar days and within 24 hours of a storm event.

11. Subpart J – Sector J – Non-Metallic Mineral Mining and Dressing.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.J.1 Covered Storm Water Discharges.

The requirements in Subpart J apply to storm water discharges associated with industrial activity from Active, Inactive, or Non-Traditional Non-Metallic Mineral Mining and Dressing facilities as identified by the SIC Codes specified under Sector J in Table D-1 of Appendix D of the permit.

11.J.1.1 *Covered Discharges from Inactive Facilities.* All storm water discharges.

11.J.1.2 *Covered Discharges from Active and Temporarily Inactive Facilities.* All storm water discharges, except for most storm water discharges subject to the existing effluent limitation guideline at 40 CFR Part 436. Mine dewatering discharges composed entirely of storm water or uncontaminated ground water seepage from: construction sand and gravel, industrial sand, and crushed stone mining facilities is covered by this permit.

11.J.1.3 *Covered Discharges from Exploration and Construction of Non-Metallic Mineral Mining Facilities.* All storm water discharges.

11.J.1.4 *Covered Discharges from Sites Undergoing Reclamation.* All storm water discharges.

11.J.2 Limitations on Coverage.

Most storm water discharges subject to an existing effluent limitation guideline at 40 CFR Part 436 are not authorized by this permit. The exceptions to this limitation, which are covered by this permit, are mine dewatering discharges composed entirely of storm water or uncontaminated ground water seepage from construction sand and gravel, industrial sand, and crushed stone mining facilities.

11.J.3 Definitions.

The following definitions are not intended to supersede the definitions of active and inactive mining facilities established by 40 CFR 122.26(b)(14)(iii).

11.J.3.1 *Mining Operations* - Consists of the active and temporarily inactive phases, and the reclamation phase, but excludes the exploration and construction phases.

11.J.3.2 *Exploration Phase* - Entails exploration and land disturbance activities to determine the financial viability of a site. The exploration phase is not considered part of "mining operations."

11.J.3.3 *Construction Phase* - Includes the building of site access roads, facilities, and removal of overburden and waste rock to expose mineable minerals. The construction phase is not considered part of "mining operations".

11.J.3.4 *Active Phase* - Activities including the extraction, removal or recovery of minerals. For surface mines, this definition does not include any land where grading has returned the earth to a desired contour and reclamation has begun. This definition is derived from the definition of "active mining area" found at 40 CFR 440.132(a). The active phase is considered part of "mining operations."

11.J.3.5 *Reclamation Phase* - Activities undertaken, in compliance with applicable mined land reclamation requirements, following the cessation of the "active phase", intended to return the land to an appropriate post-mining land use. The reclamation phase is considered part of "mining operations".

11.J.3.6 *Non-Traditional Non-Metallic Mineral Mining Facility* - Consists of non-metallic mineral mining facilities which conduct mineral mining and dressing for the sale or distribution of aggregate materials from a non-commercial establishment to be used on multiple unrelated projects. These facilities consist of operations without any permanent sales offices, scales, or other facilities being operated by a commercial establishment that would otherwise clearly fit within one of the Standard Industrial Classification (SIC) codes found in Sector J of Appendix D of the permit. These non-traditional facilities are managed by an operator, who oversees the removal of aggregate from the site, with either written contracts for specified aggregate quantities or an informal notice approving the distribution of material. The operator of these facilities who executes the contracts or provides the authority for individuals or parties to remove aggregate would meet the definition of an operator under this permit and be the sole party responsible to obtain permit coverage, maintain a SWPPP, maintain BMPs, conduct inspections and monitoring, and submit reports.

NOTE: The following definitions are not intended to supersede the definitions of active and inactive mining facilities established by 40 CFR 122.26(b)(14)(iii).

11.J.3.7 *Active Mineral Mining Facility* - A place where work or other activity related to the extraction, removal, or recovery of minerals is being conducted. For surface mines, this definition does not include any land where grading has returned the earth to a desired contour and reclamation has begun. This definition is derived from the definition of "active mining area" found at 40 CFR 440.132(a).

11.J.3.8 Inactive Mineral Mining Facility - A site or portion of a site where mineral mining and/or milling occurred in the past but is not an active facility as defined above, and where the inactive portion is not covered by an active mining permit issued by the applicable State or Federal agency. An inactive mineral mining facility has an identifiable owner / operator. Sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, and sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim are not considered either active or inactive mining facilities and do not require an APDES industrial storm water permit.

11.J.3.9 Temporarily Inactive Mineral Mining Facility - A site or portion of a site where mineral mining and/or milling occurred in the past but currently are not being actively undertaken, and the facility is covered by an active mining permit issued by the applicable State or Federal agency. A temporarily inactive facility includes sites that are temporarily stabilized and have small stockpiles of non-metallic mineral mining material (less than 250 cubic yards/year) for local use or road maintenance during the temporarily inactive phase.

11.J.4 Technology-Based Effluent Limits for Clearing, Grading, and Excavation Activities.

Clearing, grading, and excavation activities being conducted as part of the exploration and construction phase of mining activities are covered under this permit.

11.J.4.1 Erosion Control Measures. A permittee must comply with the erosion control measures in this Part to minimize soil exposure on the site during construction.

11.J.4.1.1 Delineation of Site. A permittee must generally delineate (e.g., with flagging, stakes, signs, silt fence, etc.,) the location of specific areas that will be left undisturbed such as trees, boundaries of sensitive areas, or buffers established under Part 11.J.4.1.3.

11.J.4.1.2 Minimize the Amount of Soil Exposed during Construction Activity. A permittee must include the following considerations in the selection of control measures and the sequence of project construction as they apply to the project site:

- Preserve areas of native topsoil on the site, unless infeasible; and
- Sequence or phase construction activities to minimize the extent and duration of exposed soils to the extent practicable.

11.J.4.1.3 Maintain Natural Buffer Areas.

The permittee must maintain natural buffer areas at stream crossings and around the edge of any waters of the U.S. that are located within or immediately adjacent to the property where the construction activity will take place in accordance with the following:

- The buffer must be a minimum of twenty-five (25) feet wide, unless infeasible based on site dimensions, or the width as required by local ordinance.
- Exceptions are allowed for water dependent activities, specific water access activities, or necessary water crossings.
- A permittee should, to the extent practicable, use perimeter controls adjacent to buffers, and direct storm water sheet flow to buffer areas to increase sediment removal and maximize storm water infiltration, unless infeasible.

11.J.4.1.4 Control Storm Water Discharges and Flow Rates. A permittee must include the following control measures to handle storm water and total storm water volume discharges as they apply to the site:

- Divert storm water around the site so that it does not flow onto the project site and cause erosion of exposed soils;
- Slow down or contain storm water that may collect and concentrate within a site and cause erosion of exposed soils;
- Avoid placement of structural control measures in active floodplains to the degree technologically and economically practicable and achievable;
- Place velocity dissipation devices (e.g., check dams, sediment traps, or riprap) along the length of any conveyance channel to provide a non-erosive flow velocity. Also place velocity dissipation devices where discharges from the conveyance channel or structure join a water course to prevent erosion and to protect the channel embankment, outlet, adjacent stream bank slopes, and downstream waters; and
- Install permanent storm water management controls, if present at a site and where practical, so that they must be functional prior to construction of site improvements (e.g., impervious surfaces).

11.J.4.1.5 Protect Steep Slopes. A permittee must include the following considerations in the selection of control measures as they apply to the project site:

- Design and construct cut-and-fill slopes in a manner that will minimize erosion. Applicable practices include, but are not limited to, reducing continuous length of slope with terracing and diversions, reducing slope steepness, and roughening slope surfaces (e.g., track walking);
- Divert concentrated flows of storm water away from and around the disturbed portion of the slope. Applicable practices include, but are not limited to

interceptor dikes and swales, grass-lined channels, pipe slope drains, subsurface drains, check dams; and

- Stabilize exposed areas of the slope in accordance with Part 11.J.4.4.

11.J.4.2 Sediment Control Measures. Sediment control measures (e.g. sediment ponds, traps, filters, etc.) must be constructed as one of the first steps in grading. These control measures must be functional before other land disturbing activities take place. A permittee must install, establish and use any of the following control measures that apply to the project site.

11.J.4.2.1 Storm Drain Inlet Protection Measures. A permittee must install appropriate protection measures (e.g. filter berms, perimeter controls, temporary diversion dikes, etc.) to minimize the discharge of sediment prior to entry into the inlet for storm drain inlets located on site or immediately downstream of the site. Inlet protection measures must be cleaned or removed and replaced when sediment has filled one-third of the available storage.

11.J.4.2.2 Water Body Protection Measures. A permittee must install appropriate protection measures (Part 11.J.4.1.4) to minimize the discharge of sediment prior to entry into the water body for water bodies located on site or immediately downstream of the site. Protection measures must be cleaned or removed and replaced when sediment has filled one-third of the available storage.

11.J.4.2.3 Down-Slope Sediment Controls. A permittee must establish and use down-slope sediment controls (e.g., silt fence, temporary diversion dike, etc.) for any portion of the down-slope and side-slope perimeter where storm water will be discharged from disturbed areas of the site.

11.J.4.2.4 Stabilized Construction Vehicle Access and Exit Points. A permittee must establish construction vehicle access and exit points which must be stabilized. Access and exit points should be limited to one route, if possible. If sediment escapes the construction site, off-site accumulations of sediment must be removed at a frequency sufficient to minimize off-site impacts.

11.J.4.2.5 Dust Generation and Track-Out from Vehicles. A permittee must minimize the generation of dust through the application of water or other dust suppression techniques and prior to vehicle exit. A permittee must provide an effective way of minimizing off-site vehicle tracking of sediment from wheels to prevent track-out onto paved surfaces.

11.J.4.2.6 Soil Stockpiles. A permittee must stabilize or cover soil stockpiles, protect with sediment trapping measures, and where possible, locate soil stockpiles away from storm drain inlets, water bodies, and conveyance channels.

11.J.4.2.7 Authorized Non-Storm Water Discharges. A permittee must minimize any non-storm water authorized by this permit.

11.J.4.2.8 Sediment Basins, where applicable:

- For common drainage locations that serve an area with ten (10) or more acres disturbed at one time, a temporary (or permanent) sediment basin that provides storage for a calculated volume of runoff from the drainage area from a 2-year, 24-hour storm, or equivalent sediment control measures, must be installed, maintained, and used where practicable until final stabilization of the site. Where no such calculation has been performed, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent sediment control measures, must be installed and used where practicable until final stabilization of the site. When computing the number of acres draining into a common location, it is not necessary to include flows from offsite areas and flows from on-site areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin. In determining whether installing a sediment basin is practicable, the permittee may consider factors such as site soils, slope, available area on-site, etc. In any event, the permittee must consider public safety, especially as it relates to children, as a design factor for the sediment basin, and alternative sediment control measures must be used where site limitations would preclude a safe design.

- For drainage locations which serve ten (10) or more disturbed acres at one time and where a temporary sediment basin or equivalent controls is not practicable, smaller sediment basins and/or sediment traps should be used. Silt fences, vegetative buffer strips, or equivalent sediment control measures are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions).

- For drainage locations serving less than ten (10) acres, smaller sediment basins and/or sediment traps should be used. Silt fences, vegetative buffer strips, or equivalent sediment control measures are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions) of the construction area unless a sediment basin providing storage for a calculated volume of runoff from a 2-year, 24-hour storm event or 3,600 cubic feet of storage per acre drained is provided.

- When discharging from basins and impoundments, utilize outlet structures that withdraw water from the surface where practicable.

- Note: installing sediment basins in the presence of permafrost is challenging and might not be practicable in some instances because permafrost creates poor surface drainage that hinders the infiltration of runoff. Also, the excavation of permafrost in summer can trigger thawing and instability.

11.J.4.3 Dewatering.

11.J.4.3.1 If a construction activity includes excavation dewatering and has a discharge that could adversely impact a local drinking water well, an DEC-identified contaminated site, or a waters of the U.S., the permittee must review the DEC Excavation Dewatering General Permit (AKG002000, or most current version) for specific requirements the permittee may have to comply with in addition to the conditions of this permit.

11.J.4.3.2 A discharge from eligible dewatering activities, including discharges from dewatering of trenches and excavations are prohibited unless treated by appropriate control measures. Appropriate control measures include, but are not limited to, sediment basins or traps, dewatering tanks, weir tanks, or filtration systems designed to remove sediment.

11.J.4.4 Soil Stabilization.

11.J.4.4.1 Minimum Requirements for Soil Stabilization. A permittee must stabilize all disturbed areas of the site to minimize on-site erosion and sedimentation and the resulting discharge of pollutants according to the requirements of this Part. A permittee must ensure that existing vegetation is preserved wherever possible and that disturbed portions of the site are stabilized. Applicable stabilization control measures include, but are not limited to: temporary and permanent seeding, sodding, mulching, rolled erosion control product, compost blanket, soil application of polyacrylamide (PAM), the early application of gravel base on areas to be paved, and dust control. A permittee should avoid using impervious surfaces for stabilization. See the Alaska Plant Materials Center's *A Revegetation Manual for Alaska* at http://plants.alaska.gov for help in efforts to select appropriate seed mixes and some information on methods for revegetation. Also see the manual for *Coastal Alaska, Coastal Revegetation & Erosion Control Guide* at http://plants.alaska.gov.

11.J.4.5 Treatment Chemicals. The use of treatment chemicals to reduce turbidity in a storm water discharge is allowed provided that all of the requirements of this Part are met.

11.J.4.5.1 Use of conventional sediment controls before and after the application of treatment chemicals. Chemicals may only be applied where storm water is treated upstream and is directed to a sediment control (e.g., sediment trap, sediment basin) before discharge.

11.J.4.5.2 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 storm water flowing into the chemical treatment system or area, etc.)

11.J.4.5.3 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, spill containment pallets), with adequate spill kits available on-site to respond if the event of a discharge of treatment chemicals occurs.

11.J.4.5.4 Use chemicals in accordance with good engineering practices and specifications of the chemical provider/supplier, 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.

11.J.4.5.5 Application of treatment chemicals through the use of manufactured products (e.g., gel bars, gel logs, floc blocks, etc.) must be used in combination with adequate ditch check dams, sediment traps, sediment basins, or physical control measure designed to settle out chemically treated storm water and minimize the presence of treatment chemicals before discharges reach waters of the U.S.. At a minimum there must be adequate ditch length downstream of the last manufactured product prior to reaching the discharge point into a water of the U.S. to provide a place for sedimentation to occur.

11.J.4.5.6 Ensure proper training. Ensure that all persons who handle and use treatment chemicals at the construction site are provided with appropriate, product-specific training. Among other things, the training must cover proper dosing requirements.

11.J.4.5.7 Perform additional measures specified by the Department for the authorized use of cationic treatment chemicals. If the permittee plans to add “cationic treatment chemicals” (as defined in Appendix C) to storm water and/or authorized non-storm water prior to discharge, they must submit a request to the Department fourteen (14) calendar days in advance of proposed usage. The request must include the following:

- Operator Name, mailing address, phone number, and email address;
- Project/Site name, physical address, contact name, phone number, email address and MSGP permit authorization number;
- Site Map with all receiving waterbodies, proposed location of chemical treatment system, and proposed point of discharge into receiving waterbodies;
- Schematic drawing of the proposed treatment system; and

- Description of the proposed treatment system including; type of system being used, type of cationic chemicals being used, estimated start and finish date, sampling and recordkeeping schedule and reporting, and name of treatment system operator or company.

The permittee must perform all additional measures as conditioned by the Department authorization to ensure that the use of such chemicals will not cause an exceedance of water quality standards.

11.J.4.6 Prohibited Discharge. A permittee is prohibited from discharging the following from the site:

11.J.4.6.1 Wastewater from concrete washout, unless managed by an appropriate control measure;

11.J.4.6.2 Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;

11.J.4.6.3 Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

11.J.4.6.4 Soaps or solvents used in vehicle and equipment washing.

11.J.4.7 Good Housekeeping Measures. A permittee must design, install, implement, and maintain effective good housekeeping measures to prevent and/or minimize the discharge of pollutants. A permittee must include appropriate measures for any of the following activities that are used at the site.

11.J.4.7.1 Washing of Equipment and Vehicles and Wheel Wash-Down. If a permittee conducts washing of equipment or vehicles and/or wheel wash-down at the site the permittee must comply with the following requirements:

- Designate areas to be used for washing of equipment and vehicles and/or wheel wash-down and conduct such activities only in these areas;
- Locate such activities, to the extent practicable, away from storm water conveyance channels, storm drain inlets, and waters of the U.S.;
- Treat all wash water in a sediment basin or use alternative control measures that provide equivalent or better treatment prior to discharge; and
- To comply with the prohibition in Part 11.J.4.6.4, the discharge of soaps and solvents used in equipment and vehicle washing and/or wheel wash-down is strictly prohibited.

11.J.4.7.2 Fueling and Maintenance Areas. If a permittee conducts fueling and/or maintenance activities for equipment and vehicles at the site the permittee must comply with the following requirements:

- Designate areas to be used for fueling and/or maintenance of equipment and vehicles and conduct such activities only in these areas (the designated area may move from one location to another on linear projects);
- Locate such activities, to the extent practicable, away from storm water conveyance channels, storm drain inlets and waters of the U.S.;
- Minimize the exposure to precipitation and storm water or use secondary containment structures designed to eliminate the potential for spills or leaked chemicals; and
- To comply with the prohibition in Part 11.J.4.6.3, a permittee must:
    - Clean up spills or contaminated surfaces immediately;
    - Ensure adequate clean up supplies are available at all times to handle spills, leaks, and disposal of used liquids;
    - Use drip pans or absorbents under or around leaky equipment and vehicles; and
    - Dispose of liquid wastes or materials used for fueling and maintenance in accordance with Part 11.J.4.11.

11.J.4.8 Staging and Material Storage Areas. If a permittee maintains staging and material storage areas at the site the permittee must comply with the following requirements:

- Designate areas to be used for staging and material storage areas;
- Locate such activities, to the extent practicable, away from storm water conveyance channels, storm drain inlets, and waters of the U.S; and
- Minimize the exposure to precipitation and storm water and vandalism for all chemicals, treatment chemicals, liquid products, petroleum products, and other materials that have the potential to pose a threat to human health or the environment.

11.J.4.9 Washout of Applicators/Containers used for Paint, Concrete, and Other Materials. If a permittee conducts washing of applicators and/or containers used for paint, concrete, and other materials at the site, the permittee must comply with the following requirements:

- Designate areas to be used for washout;

- Locate such activities, to the extent practicable, away from storm water conveyance channels, storm drain inlets, and waters of the U.S.;
- Direct all concrete, paint, and other material washout activities into a lined, water-tight container or pit to ensure there is no discharge into the underlying soil and onto the surrounding areas;
- Dispose of liquid wastes in accordance with Part 11.J.4.11; and
- For concrete washout areas, remove hardened concrete waste when it has reached one-half (½) the height of the container or pit and dispose of in accordance with Part 11.J.4.11.

11.J.4.10 Fertilizer or Pesticide Use. If a permittee uses fertilizers or pesticides the permittee must comply with the following requirements:

- Application of fertilizers and pesticides in a manner and at application rates that will minimize the loss of chemical to storm water runoff. Manufacturers' label requirements for application rates and disposal requirements must be followed; and
- Use pesticides in compliance with federal, state and local requirements.

11.J.4.11 Storage, Handling, and Disposal of Construction Waste. If a permittee stores, handles and/or disposes of construction waste at the site, the permittee must comply with the following requirements:

- Locate areas dedicated for management or disposal of construction waste, to the extent practicable, away from storm water conveyance channels, storm drain inlets, and waters of the U.S.;
- Dispose of all collected sediment, asphalt and concrete millings, floating debris, paper, plastic, fabric, construction and demolition debris and other domestic wastes according to federal, state and local requirements;
- Store hazardous or toxic waste in appropriate sealed containers and dispose of these wastes in accordance with manufactures recommended method of disposal or federal, state or local requirements; and
- Provide containment of sanitation facilities (e.g., portable toilets) to prevent discharges of pollutants to the storm water drainage system or receiving water. Clean or replace sanitation facilities and inspect them regularly for leaks and spills.

11.J.4.12 Winter Considerations.

11.J.4.12.1 Winter Shutdown. A permittee who temporarily ceases construction for the winter and plans to resume construction the next summer must plan for winter shutdown. The permittee must identify the anticipated dates of fall freeze-up and spring thaw (see Appendix C) for their site and use these dates to plan for winter shutdown. For the purpose of planning ahead frozen ground by itself is not considered an acceptable control measure for stabilization. A permittee must provide for the following prior to, during, and at the conclusion of winter shutdown:

- Temporary or permanent stabilization for conveyance channels;
- Temporary or permanent stabilization for disturbed slopes, disturbed soils, and soil stockpiles; and
- Erosion and sediment control measures in anticipation of spring thaw.

11.J.4.12.2 Winter Construction. In several areas of Alaska, winter construction provides opportunities for construction not available during summer months. Permit coverage is not required for the construction of ice roads or the placement of sand or gravel on frozen tundra with no excavation or potential to pollute waters of the U.S. This permit does address those construction activities that have the potential for erosion or sediment runoff during spring thaw and summer rainfall. A permittee operating winter construction activities must plan for using appropriate control measures to minimize erosion or sediment runoff during spring thaw and summer rainfall. The Alaska Storm Water Guide, Chapters 3 and 4, provide guidance on the selection, design, and installation of winter construction practices and controls.

11.J.4.12.3 Late Winter Clearing. Cutting of trees and brush while the ground is frozen, without disturbing the vegetative mat, for the purpose of clearing in accordance with the U.S. Fish & Wildlife Service "Recommended Time Periods for Avoiding Vegetation Clearing" is allowed prior to the submittal of a project NOI. If the cutting occurs after the onset of spring thaw (as defined in Appendix C), conditions that consist of above freezing temperatures that cause melting of snow, then the permittee must develop a SWPPP and file an NOI, and receive authorization for coverage under this permit from DEC, and otherwise comply with the terms of this permit prior to such clearing.

11.J.4.13 Maintenance of Control Measures. A permittee must maintain all control measures, good housekeeping measures, and other protective measures in effective operating condition. If site inspections required by Part 6 identify control measures, good housekeeping measures, or other protective measures that are not operating effectively, the permittee must implement corrective actions in accordance with Part 8.

If existing control measures need to be modified or if additional control measures are necessary for any reason, the permittee must complete any corrective action in accordance with Part 8.3.

A permittee must remove sediment from silt fences, check dams, berms or other controls before the accumulated sediment reaches one-half (½) the distance up the above-ground height (or it reaches a lower height based on manufacturer's specifications) of the control measure. For sediment traps or sediment ponds, the permittee must remove accumulated sediment when the design capacity has been reduced by fifty (50%) percent.

11.J.4.14 Inspection of Clearing, Grading, and Excavation Activities. (See also Part 6)

11.J.4.14.1 Inspection Frequency. Inspections must be conducted at one of the following: at least once every 7 calendar days; or at least once every 14 calendar days and within 24 hours of the end of a storm event that resulted in a discharge from the site; or for areas of the state where the mean annual precipitation is forty (40) inches or greater, or relatively continuous precipitation or sequential storm events, inspect at least once every seven (7) calendar days. If the entire site is temporarily stabilized, inspection frequency may be reduced to at least once every month and within two business days of the end of a measurable storm event at actively staffed sites which resulted in a discharge from the site (pursuant to Part 11.G.4.15.2). Once active mining has begun, those areas comply with inspections according to 11.G.7. A permittee must specify in the SWPPP which schedule will be followed.

11.J.4.14.2 Winter Shutdown. If the exploration and construction phase is undergoing winter shutdown the permittee may stop inspections fourteen (14) calendar days after the anticipated fall freeze-up and must resume inspections at least twenty-one (21) calendar days prior to the anticipated spring thaw. The permittee shall identify the winter shutdown period in their SWPPP based upon the definitions of fall freeze-up and spring thaw.

11.J.4.14.3 Location of Inspections. Inspections must include all areas of the site disturbed by clearing, grading, and/or excavation activities and areas used for storage of materials that are exposed to precipitation. Sedimentation and erosion control measures must be observed to ensure proper operation. Discharge locations must be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to waters of the United States, where accessible. Where discharge locations are inaccessible, nearby downstream locations must be inspected to the extent that such inspections are practicable. Locations where vehicles enter or exit the site must be inspected for evidence of significant off-site sediment tracking.

11.J.4.14.4 Inspection Reports. (See also Part 6.1) For each inspection required above, the permittee must complete an inspection report. At a minimum, the inspection report must include the information required in Part 6.1.

11.J.4.15 ***Requirements for Cessation of Clearing, Grading, and Excavation Activities***.

11.J.4.15.1 Inspections and Maintenance. Inspections and maintenance of control measures, including any BMPs, associated with clearing, grading, and/or excavation activities being conducted as part of the exploration and construction phase of a mining operation must continue until final stabilization has been achieved on all portions of the disturbed area or until the commencement of the active mining phase for those areas that have been temporarily stabilized as a precursor to mining.

11.J.4.15.2 Temporary Stabilization of Disturbed Areas. Stabilization measures should be initiated immediately in portions of the site where clearing, grading and/or excavation activities have temporarily ceased, but in no case more than 14 days after the clearing, grading and/or excavation activities in that portion of the site have temporarily ceased. In arid, semi-arid, and drought-stricken areas, or in areas subject to snow or freezing conditions, where initiating perennial vegetative stabilization measures is not possible within 14 days after exploration and/or construction activity has temporarily ceased, temporary vegetative stabilization measures must be initiated as soon as practicable.

The permittee must identify the anticipated dates of fall freeze-up and spring thaw (see Appendix C) for the site and use those dates to plan for winter shutdown. For the purpose of planning ahead frozen ground by itself is not considered an acceptable control measure for stabilization. Where temporary stabilization by the 14th day is precluded by snow cover or frozen ground conditions, stabilization measures must be initiated as soon as practicable following the actual spring thaw.

Until temporary vegetative stabilization is achieved, interim measures (e.g., surface roughening or a surface cover, including but not limited to, establishment of ground vegetation, application of mulch, or surface tackifiers with an appropriate seed base) must be employed. In areas of the site, where exploration and/or construction has permanently ceased prior to active mining, temporary stabilization measures must be implemented to minimize mobilization of sediment or other pollutants until such time as the active mining phase commences.

11.J.4.15.3 Final Stabilization of Disturbed Areas. Stabilization measures should be initiated immediately in portions of the site where mining, exploration, and/or construction activities have permanently ceased, but in no case more than 14 days after the exploration and/or construction activity in that portion of the site has permanently ceased. In arid, semi-arid, and drought-stricken areas, or in areas subject to snow or freezing conditions, where initiating perennial vegetative stabilization measures is not possible within 14 days after mining, exploration, and/or construction activity has permanently ceased, final vegetative stabilization measures must be initiated as soon as possible. Until final stabilization is achieved, temporary stabilization measures must be used.

11.J.5 Additional Technology-Based Effluent Limits.

11.J.5.1 Employee Training. (See also Part 4.2.9) Conduct employee training at least annually at active and temporarily inactive sites.

11.J.5.2 Good Housekeeping Measures. (See also Part 4.2.2) As part of the permittees good housekeeping program, implement the following, as practicable: use sweepers and covered storage, watering haul roads to minimize dust generation, and conserving vegetation (where possible) to minimize erosion.

11.J.5.3 Preventive Maintenance. (See also Part 4.2.3) Perform inspections or other equivalent measures of storage tanks and pressure lines of fuels, lubricants, and hydraulic fluid to prevent leaks due to deterioration or faulty connections.

11.J.5.4 Storm Water Controls. Apart from the control measures implemented to meet the Part 4 control measures, implement the following control measures at the facility as practicable. The potential pollutants identified in Part 11.J.5.5 shall determine the priority and appropriateness of the control measures selected. . If the permittee selects or develops a storm water control other than one described below, the permittee shall describe it in the SWPPP.

11.J.5.4.1 Storm Water Diversions. Divert storm water away from potential pollutant sources. Implement the following options, as practicable: interceptor or diversion controls (e.g., dikes, swales, curbs, or berms); pipe slope drains; subsurface drains; conveyance systems (e.g., channels or gutters, open-top box culverts, and waterbars; rolling dips and road sloping; roadway surface water deflector and culverts); or their equivalents.

11.J.5.4.2 Velocity Dissipation Devices. Place velocity dissipation devices (e.g., check dams, sediment traps, or riprap) as practicable, along the length of any conveyance channel to provide a non-erosive flow velocity. Also place velocity dissipation devices where discharges from the conveyance channel or structure join a water course to prevent erosion and to protect the channel embankment, outlet, adjacent stream bank slopes, and downstream waters.

11.J.5.4.3 Down-Slope Sediment Controls. Establish and use down-slope sediment controls (e.g., silt fence or temporary diversion dike) for any portion of the down-slope and side-slope perimeter where storm water will be discharged from disturbed areas of the site.

11.J.5.4.4 Stabilized Construction Vehicle Access and Exit Points. Establish stabilized vehicle access and exit points. Off-site accumulations of sediment must be removed at a frequency sufficient to minimize off-site impacts.

11.J.5.4.5 Capping. When capping is necessary to minimize pollutant discharges in storm water, identify the source being capped and the material used to construct the cap.

11.J.5.4.6 Treatment. If treatment of storm water (e.g., chemical or physical systems, oil and water separators, artificial wetlands) is necessary to protect water quality, describe the type and location of treatment used. All permanent storm water treatment devices shall receive engineering plan approval per 18 AAC 72.600. Passive and/or active treatment of storm water runoff is encouraged where practicable. Treated runoff may be discharged as a storm water source regulated under this permit provided the discharge is not combined with discharges subject to effluent limitation guidelines for the Mineral Mining and Processing Point Source Category (40 CFR Part 436).

11.J.5.5 Certification of Discharge Testing. (See also Part 5.2.4.4) Test or evaluate all outfalls covered under this permit for the presence of specific mining-related non-storm water discharges such as discharges subject to effluent limitations guidelines (e.g., 40 CFR Part 436). Alternatively (if applicable), the permittee may keep a certification with the SWPPP consistent with 11.J.6.5.

11.J.5.6 Overburden, Waste Rock, and Raw Material Piles. Overburden, topsoil, and waste rock, as well as raw material and intermediate and final product stockpiles, should be located a minimum of 25 feet away from surface water, other sources of water, and from geologically unstable areas as practicable.

11.J.6 Additional SWPPP Requirements.

The requirements in Part 11.J.6 are applicable for sites undergoing exploration and construction, active mineral mining facilities, temporarily inactive mineral mining facilities, and sites undergoing reclamation. The requirements in Part 11.J.6 are not applicable to inactive mineral mining facilities.

11.J.6.1 Nature of Industrial Activities. (See also Part 5.2.3) Document in the SWPPP the mining and associated activities that can potentially affect the storm water discharges covered by this permit, including a general description of the location of the site relative to major transportation routes and communities.

11.J.6.2 *Site Map.* (See also Part 5.2.3) The permittee must document in the SWPPP the locations of the following (as appropriate): mining or milling site boundaries; access and haul roads; outline of the drainage areas of each storm water outfall within the facility with indications of the types of discharges from the drainage areas; location(s) of all permitted discharges covered under an individual APDES permit, outdoor equipment storage, fueling, and maintenance areas; materials handling areas; outdoor manufacturing, outdoor storage, and material disposal areas; outdoor chemicals and explosives storage areas; overburden, materials, soils, or waste storage areas; location of mine drainage dewatering or other process water; heap leach pads; off-site points of discharge for mine dewatering and process water; surface waters; boundary of tributary areas that are subject to effluent limitations guidelines; and location(s) of reclaimed areas.

11.J.6.3 *Potential Pollutant Sources.* (See also Part 5.2.4) For each area of the mine or mill site where storm water discharges associated with industrial activities occur, document in the SWPPP the types of pollutants (e.g., heavy metals, sediment) likely to be present in significant amounts. For example, phosphate mining facilities will likely need to document pollutants such as selenium, which can be present in significant amounts in their discharges. Consider these factors: the mineralogy of the waste rock (e.g., acid forming); toxicity and quantity of chemicals used, produced, or discharged; the likelihood of contact with storm water; vegetation of site (if any); and history of significant leaks or spills of toxic or hazardous pollutants. Also include a summary of any existing waste rock or overburden characterization data and test results for potential generation of acid rock drainage.

11.J.6.4 *Storm Water Controls.* To the extent that a permittee uses any of the control measures in Part 11.J.5.4, document them in the SWPPP pursuant to Part 5.2.5. If control measures are implemented or planned but are not listed here (e.g., substituting a less toxic chemical for a more toxic one), include descriptions of them in the SWPPP.

11.J.6.5 *Certification of Permit Coverage for Commingled Non-Storm Water Discharges.* If a permittee determines that they are able to certify, consistent with Part 11.J.5.5, that a particular discharge composed of commingled storm water and non-storm water is covered under a separate APDES permit, and that permit subjects the non-storm water portion to effluent limitations prior to any commingling, the permittee must retain such certification with their SWPPP. This certification must identify the non-storm water discharges, the applicable APDES permit(s), the effluent limitations placed on the non-storm water discharge by the permit(s), and the points at which the limitations are applied.

11.J.6.6 *Dewatering.* Mine dewatering discharges composed entirely of storm water or ground water seepage from mines located within fifteen hundred feet of a DEC-identified contaminated site are required to have additional discharge authorization under the DEC Excavation Dewatering General Permit (AKG002000), or most current version. The Notice of Intent, NOI, application for authorization to discharge mine dewatering which may influence a contaminated area can be completed through the DEC's online application system at *http://www.dec.alaska.gov/water/oasys/index.html*.

11.J.7 Additional Inspection Requirements.

Except for areas of the site subject to clearing, grading, and/or excavation activities conducted as part of the exploration and construction phase, which are subject to Part 11.J.4.14.1, the permittee must inspect sites at least quarterly unless adverse weather conditions make the site inaccessible. Sites which discharge to waters which are designated as outstanding waters or waters which are impaired for sediment or nitrogen must be inspected monthly. See Part 11.J.8.1 for inspection requirements for inactive and unstaffed sites. (See also Part 6.1 and 11.J.4.14.)

11.J.8 Sector-Specific Benchmarks.

Table 11.J.8-1 identifies benchmarks that apply to the specific subsectors of Sector J. These benchmarks apply to both the permittees primary industrial activity and any co-located industrial activities, which describe their site activities.

Table 11.J.8-1: Sector – Specific Benchmarks – Sector J

Subsector (Permittees may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Subsector J1. Sand and Gravel Mining (SIC 1442, 1446)	Nitrate plus Nitrite Nitrogen	0.68 mg/L
	Total Suspended Solids (TSS)	100 mg/L
Subsector J2. Dimension and Crushed Stone and Nonmetallic Minerals (except fuels) (SIC 1411, 1422-1429, 1481, 1499)	Total Suspended Solids (TSS)	100 mg/L

11.J.8.1 *Inactive and Unstaffed Sites – Conditional Exemption from No Exposure Requirement for Routine Inspections, Quarterly Visual Assessments, and Benchmark Monitoring.* As a Sector J facility, if the permittee is seeking to exercise a waiver from either the routine inspection, quarterly visual assessment or the benchmark monitoring requirements for inactive and unstaffed sites (including temporarily inactive sites), they are conditionally exempt from the requirement to certify that "there are no industrial materials or activities exposed to storm water" in Parts 6.2.3 and 7.2.1.6, respectively. Additionally, if the permittee is seeking to reduce their required quarterly routine inspection frequency to a once annual comprehensive inspection, as is allowed under Part 6.1.3, the permittee is also conditionally exempt from the requirement to certify that "there are no industrial materials or activities exposed to storm water." This exemption is conditioned on the following:

- If circumstances change and the permittees facility becomes active and/or staffed, this exception no longer applies and the permittee must immediately begin complying with the applicable benchmark monitoring requirements as if they were in their first year of permit coverage, and the quarterly visual assessment requirements; and

- DEC retains the authority to revoke this exemption and/or the monitoring waiver where it is determined that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above a WQS, including designated uses.

Subject to the two conditions above, if the permittees facility is inactive and unstaffed, they are waived from the requirement to conduct quarterly visual assessments and routine facility inspections. The permittee is not waived from conducting the Part 6.3 comprehensive site inspection. The permittee is encouraged to inspect their site more frequently where they have reason to believe that severe weather or natural disasters may have damaged control measures or increased discharges.

11.J.9 Effluent Limitations Based on Effluent Limitations Guidelines. (See also Part 7.2.2.1 of the permit)

Table 11.J.9-1 identifies effluent limits that apply to the industrial activities described below. Compliance with these effluent limits is to be determined based on discharges from these industrial activities independent of commingling with any other wastestreams that may be covered under this permit.

Table 11.J.9-1: Effluent Limitations Based on Effluent Limitations Guidelines

Industrial Activity	Parameter	Effluent Limit[1]
Mine dewatering discharges at crushed stone mining facilities (SIC 1422 - 1429)	pH	6.5 – 8.5[2]
Mine dewatering discharges at construction sand and gravel mining facilities (SIC 1442)	pH	6.5 – 8.5[2]
Mine dewatering discharges at industrial sand mining facilities (SIC 1446)	Total Suspended Solids (TSS)	25 mg/L, monthly avg.
		45 mg/L, daily maximum
	pH	6.5 – 8.5[2]

Note:
1. Monitor annually.
2. pH shall be within the limits specified above.

11.J.10 Termination of Permit Coverage.

11.J.10.1 Termination of Permit Coverage for Sites Reclaimed After December 17, 1990. A site or a portion of a site that has been released from applicable state or federal reclamation requirements after December 17, 1990, is no longer required to maintain coverage under this permit. If the site or portion of a site reclaimed after December 17, 1990, was not subject to reclamation requirements, the site or portion of the site is no longer required to maintain coverage under this permit if the site or portion of the site has been reclaimed as defined in Part 11.J.3.5.

11.J.10.2 Termination of Permit Coverage for Sites Reclaimed Before December 17, 1990. A site or portion of a site that was released from applicable state or federal reclamation requirements before December 17, 1990, or that was otherwise reclaimed before December 17, 1990, is no longer required to maintain coverage under this permit if the site or portion of the site has been reclaimed. A site or portion of a site is considered to have been reclaimed if: (1) storm water runoff that comes into contact with raw materials, intermediate byproducts, finished products, and waste products does not have the potential to cause or contribute to violations of state WQS, (2) soil disturbing activities related to mining at the sites or portion of the site have been completed, (3) the site or portion of the site has been stabilized to minimize soil erosion, and (4) as appropriate depending on location, size, and the potential to contribute pollutants to storm water discharges, the site or portion of the site has been revegetated, will be amenable to natural revegetation, or will be left in a condition consistent with the post-mining land use.

11. Subpart K – Sector K – Hazardous Waste Treatment, Storage, or Disposal Facilities.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.K.1 Covered Storm Water Discharges.

The requirements in Subpart K apply to storm water discharges associated with industrial activity from Hazardous Waste Treatment, Storage, or Disposal facilities (TSDFs) as identified by the Activity Code specified under Sector K in Table D-1 of Appendix D of the permit.

11.K.2 Industrial Activities Covered by Sector K.

This permit authorizes storm water discharges associated with industrial activity from facilities that treat, store, or dispose of hazardous wastes, including those that are operating under interim status or a permit under subtitle C of Resource Conservation and Recovery Act (RCRA).

Disposal facilities that have been properly closed and capped, and have no significant materials exposed to storm water, are considered inactive and do not require permits.

11.K.3 Limitations on Coverage.

11.K.3.1 Prohibition of Non-Storm Water Discharges. (See also Part 1.2.4) The following are not authorized by this permit: leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory-derived wastewater, and contact washwater from washing truck and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

11.K.4 Definitions.

11.K.4.1 Contaminated Storm Water - Storm water that comes into direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined in Part 11.K.4.5. Some specific areas of a landfill that may produce contaminated storm water include (but are not limited to) the open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; trucks, equipment, or machinery that has been in direct contact with the waste; and waste dumping areas.

11.K.4.2 Drained Free Liquids - Aqueous wastes drained from waste containers (e.g., drums) prior to landfilling.

11.K.4.3 *Landfill* - An area of land or an excavation in which wastes are placed for permanent disposal, but that is not a land application or land treatment unit, surface impoundment, underground injection well, waste pile, salt dome formation, salt bed formation, underground mine, or cave as these terms are defined in 40 CFR 257.2, 258.2, and 260.10.

11.K.4.4 *Landfill Wastewater* - As defined in 40 CFR Part 445 (Landfills Point Source Category), all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, non-contaminated storm water, contaminated groundwater, and wastewater from recovery pumping wells. Landfill wastewater includes, but is not limited to, leachate, gas collection condensate, drained free liquids, laboratory derived wastewater, contaminated storm water, and contact washwater from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

11.K.4.5 *Leachate* - Liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

11.K.4.6 *Non-Contaminated Storm Water* - Storm water that does not come into direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined in Part 11.K.4.4. Non-contaminated storm water includes storm water that flows off the cap, cover, intermediate cover, daily cover, and/or final cover of the landfill.

11.K.5 Sector-Specific Benchmarks.

Table 11.K.5-1 identifies benchmarks that apply to the specific subsectors of Sector K. These benchmarks apply to both the permittees primary industrial activity and any co-located industrial activities, which describe their site activities.

(Table 11.K.5-1: Sector – Specific Benchmarks – Sector K located on following page.)

Table 11.K.5-1: Sector – Specific Benchmarks – Sector K

Subsector (Permittees may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Subsector K1. ALL - Industrial Activity Code "HZ" (Note: permit coverage limited in some States). Benchmarks only applicable to discharges not subject to effluent limitations in 40 CFR Part 445 Subpart A (see below).	Ammonia	2.14 mg/L
	Total Magnesium	0.064 mg/L
	Chemical Oxygen Demand (COD)	120 mg/L
	Total Arsenic (saltwater)[1] Total Arsenic (freshwater)[2]	0.069 mg/L 0.15 mg/L
	Total Cadmium (saltwater)[1] Total Cadmium (freshwater)[2]	0.04 mg/L Hardness Dependent
	Total Cyanide (saltwater)[1] Total Cyanide (freshwater)[2]	0.001 mg/L 0.022 mg/ L
	Total Lead (saltwater)[1] Total Lead (freshwater)[2]	0.21 mg/L Hardness Dependent
	Total Mercury (saltwater)[1] Total Mercury (freshwater)[2]	0.0018 mg/L 0.0014 mg/ L
	Total Selenium (saltwater)[1] Total Selenium (freshwater)[2]	0.29 mg/L 0.005 mg/L
	Total Silver (saltwater)[1] Total Silver (freshwater)[2]	0.0019 mg/L Hardness Dependent

Note:

1. Saltwater benchmark values apply to storm water discharges into saline waters where indicated.
2. The freshwater benchmark values of some metals are dependent on water hardness. For these parameters, permittees must determine the hardness of the receiving water (see Appendix E, "Calculating Hardness in Receiving Waters for Hardness Dependent Metals," for methodology), in accordance with Part 7.2.1.1, to identify the applicable 'hardness range' for determining their benchmark value applicable to their facility. The ranges occur in 25 mg/L increments. Hardness Dependent Benchmarks follow in the table below:

Water Hardness Range (mg/L)	Cadmium (mg/L)	Lead (mg/L)	Silver (mg/L)
0 – < 25	0.0005	0.014	0.0007
25 – < 50	0.0008	0.023	0.0007
50 – < 75	0.0013	0.045	0.0017
75 – < 100	0.0018	0.069	0.0030
100 – < 125	0.0023	0.095	0.0046
125 – < 150	0.0029	0.122	0.0065
150 – < 175	0.0034	0.151	0.0087
175 – < 200	0.0039	0.182	0.0112
200 – < 225	0.0045	0.213	0.0138
225 – < 250	0.0050	0.246	0.0168
250+	0.0053	0.262	0.0183

11.K.6 Effluent Limitations Based on Effluent Limitations Guidelines. (See also Part 7.2.2.1 of the permit.)

Table 11.K.6-1 identifies effluent limits that apply to the industrial activities described below. Compliance with these effluent limits is to be determined based on discharges from these industrial activities independent of commingling with any other wastestreams that may be covered under this permit.

Table 11.K.6-1: Effluent Limitations Based on Effluent Limitations Guidelines

Industrial Activity	Parameter	Effluent Limit
Discharges from hazardous waste landfills subject to effluent limitations in 40 CFR Part 445 Subpart A (see footnote).	Biochemical Oxygen Demand (BOD_5)	220 mg/L, daily maximum
		56 mg/L, monthly avg. maximum
	Total Suspended Solids (TSS)	88 mg/L, daily maximum
		27 mg/L, monthly avg. maximum
	Ammonia	10 mg/L, daily maximum
		4.9 mg/L, monthly avg. maximum
	Alpha Terpineol	0.042 mg/L, daily maximum
		0.019 mg/L, monthly avg. maximum
	Aniline	0.024 mg/L, daily maximum
		0.015 mg/L, monthly avg. maximum
	Benzoic Acid	0.119 mg/L, daily maximum
		0.073 mg/L, monthly avg. maximum
	Naphthalene	0.059 mg/L, daily maximum
		0.022 mg/L, monthly avg. maximum
	p-Cresol	0.024 mg/L, daily maximum
		0.015 mg/L, monthly avg. maximum
	Phenol	0.048 mg/L, daily maximum
		0.029 mg/L, monthly avg. maximum
	Pyridine	0.072 mg/L, daily maximum
		0.025 mg/L, monthly avg. maximum
	Total Arsenic	1.1 mg/L, daily maximum
		0.54 mg/L, monthly avg. maximum
	Total Chromium	1.1 mg/L, daily maximum
		0.46 mg/L, monthly avg. maximum
	Total Zinc	0.535 mg/L, daily maximum
		0.296 mg/L, monthly avg. maximum
	pH	6.5 - 8.5 s.u. and within 0.5 s.u. of background level

Note:

1. Monitor annually. As set forth at 40 CFR Part 445 Subpart A, these numeric limitations apply to contaminated storm water discharges from hazardous waste landfills subject to the provisions of RCRA Subtitle C at 40 CFR Parts 264 (Subpart N) and 265 (Subpart N) except for any of the following facilities:
   a. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives only wastes generated by the industrial or commercial operation directly associated with the landfill;
   b. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes, provided that the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N as the industrial or commercial operation or that the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation;
   c. Landfills operated in conjunction with Centralized Waste Treatment (CWT) facilities subject to 40 CFR Part 437, so long as the CWT facility commingles the landfill wastewater with other non-landfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills; or
   d. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities, so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

11. Subpart L – Sector L – Landfills, Land Application Sites, and Open Dumps.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.L.1 Covered Storm Water Discharges.

The requirements in Subpart L apply to storm water discharges associated with industrial activity from Landfills and Land Application Sites and Open Dumps as identified by the Activity Code specified under Sector L in Table D-1 of Appendix D of the permit.

11.L.2 Industrial Activities Covered by Sector L.

This permit may authorize storm water discharges for Sector L facilities associated with waste disposal at landfills, land application sites, and open dumps that receive or have received industrial waste, including sites subject to regulation under Subtitle D of Resource Conservation and Recovery Act (RCRA). This permit does not cover discharges from landfills that receive only municipal wastes.

11.L.3 Limitations on Coverage.

11.L.3.1 Prohibition of Non-Storm Water Discharges. (See also Part 1.2.4) The following discharges are not authorized by this permit: leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory wastewater, and contact washwater from washing truck and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility. Discharges from open dumps as defined under RCRA are also not authorized under this permit.

11.L.4 Definitions.

11.L.4.1 Contaminated Storm Water - Storm water that comes into direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater. Some areas of a landfill that may produce contaminated storm water include (but are not limited to) the open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; trucks, equipment, or machinery that has been in direct contact with the waste; and waste dumping areas.

11.L.4.2 Drained Free Liquids - Aqueous wastes drained from waste containers (e.g., drums) prior to landfilling.

11.L.4.3 Landfill Wastewater - As defined in 40 CFR Part 445 (Landfills Point Source Category) all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, non-contaminated storm water, contaminated groundwater, and wastewater from recovery pumping wells. Landfill process wastewater includes, but is not limited to, leachate; gas collection condensate; drained free liquids; laboratory-derived wastewater; contaminated storm water; and contact washwater from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

11.L.4.4 Leachate - Liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

11.L.4.5 Non-Contaminated Storm Water - Storm water that does not come into direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater. Non-contaminated storm water includes storm water that flows off the cap, cover, intermediate cover, daily cover, and/or final cover of the landfill.

11.L.5 Additional Technology-Based Effluent Limits.

11.L.5.1 Preventive Maintenance Program. (See also Part 4.2.3) As part of a permittees preventive maintenance program, maintain the following: all elements of leachate collection and treatment systems, to prevent commingling of leachate with storm water; the integrity and effectiveness of any intermediate or final cover (including repairing the cover as necessary), to minimize the effects of settlement, sinking, and erosion.

11.L.5.2 Erosion and Sedimentation Control. (See also Part 4.2.5) Provide temporary stabilization (e.g., temporary seeding, mulching, and placing geotextiles on the inactive portions of stockpiles) for the following: materials stockpiled for daily, intermediate, and final cover; inactive areas of the landfill or open dump; landfills or open dump areas that have gotten final covers but where vegetation has yet to establish itself; and land application sites where waste application has been completed but final vegetation has not yet been established.

11.L.5.3 Storm Water Diversions. Divert storm water away from potential pollutant sources. Implement the following options, as practicable: interceptor or diversion controls (e.g., dikes, swales, curbs, or berms); pipe slope drains; subsurface drains; conveyance systems (e.g., channels or gutters, open-top box culverts, and waterbars; rolling dips and road sloping; roadway surface water deflector and culverts); or their equivalents.

11.L.5.4 Place Velocity Dissipation Devices: (e.g., check dams, sediment traps, or riprap) along the length of any conveyance channel to provide a non-erosive flow velocity. Also place velocity dissipation devices where discharges from the conveyance channel or structure join a water course to prevent erosion and to protect the channel embankment, outlet, adjacent stream bank slopes, and downstream waters.

11.L.5.5 Unauthorized Discharge Test Certification. (See also Part 5.2.4.4) The discharge test and certification must also be conducted for the presence of leachate and vehicle washwater.

11.L.6 Additional SWPPP Requirements.

11.L.6.1 Drainage Area Site Map. (See also Part 5.2.3) The permittee must document in their SWPPP where any of the following may be exposed to precipitation or surface runoff: active and closed landfill cells or trenches, active and closed land application areas, locations where open dumping is occurring or has occurred, locations of any known leachate springs or other areas where uncontrolled leachate may commingle with runoff, and leachate collection and handling systems.

11.L.6.2 Summary of Potential Pollutant Sources. (See also Part 5.2.4) Document in the permittees SWPPP the following sources and activities that have potential pollutants associated with them: fertilizer, herbicide, and pesticide application; earth and soil moving; waste hauling and loading or unloading; outdoor storage of significant materials, including daily, interim, and final cover material stockpiles as well as temporary waste storage areas; exposure of active and inactive landfill and land application areas; uncontrolled leachate flows; and failure or leaks from leachate collection and treatment systems.

11.L.7 Additional Inspection Requirements. (See also Part 6)

11.L.7.1 Inspections of Active Sites. Except in arid and semi-arid climates, inspect operating landfills, open dumps, and land application sites at least once every seven (7) days. Focus on areas of landfills that have not yet been finally stabilized; active land application areas, areas used for storage of material and wastes that are exposed to precipitation, stabilization, and structural control measures; leachate collection and treatment systems; and locations where equipment and waste trucks enter and exit the site. Ensure that sediment and erosion control measures are operating properly. For stabilized sites and areas where land application has been completed, or where the climate is arid or semi-arid, conduct inspections at least once every month.

11.L.7.2 Inspections of Inactive Sites. Inspect inactive landfills, open dumps, and land application sites at least quarterly. Qualified Personnel must inspect landfill (or open dump) stabilization and structural erosion control measures, leachate collection and treatment systems, and all closed land application areas.

11.L.8 Additional Post-Authorization Documentation Requirements.

11.L.8.1 Recordkeeping and Internal Reporting. Keep records with the SWPPP of the types of wastes disposed of in each cell or trench of a landfill or open dump. For land application sites, track the types and quantities of wastes applied in specific areas.

11.L.9 Sector-Specific Benchmarks.

Table 11.L.9-1 identifies benchmarks that apply to the specific subsectors of Sector L. These benchmarks apply to both the permittees primary industrial activity and any co-located industrial activities. If the results of four quarters of benchmark monitoring exceeds the benchmark monitoring concentration specified in Table 11.L.9-1, then the permittee must take samples to monitor compliance with the concentrations specified in Table 11.L.10-1.

Table 11.L.9-1: Sector – Specific Benchmarks – Sector L

Subsector (Permittees may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration[1]
Subsector L1. All Landfill, Land Application Sites and Open Dumps (Industrial Activity Code "LF")	Total Suspended Solids (TSS)	100 mg/L
Subsector L2. All Landfill, Land Application Sites and Open Dumps, except Municipal Solid Waste Landfill (MSWLF) Areas Closed in Accordance with 40 CFR 258.60 (Industrial Activity Code "LF")	Total Iron	1.0 mg/L

Note:
1. Benchmark monitoring required only for discharges not subject to effluent limitations in 40 CFR Part 445 Subpart B (see Table 11.L 10-1).

11.L.10 Effluent Limitations Based on Effluent Limitations Guidelines. (See also Part 7.2.2.1 of the permit.)

Table 11.L.10-1 identifies effluent limits that apply to the industrial activities described below. Compliance with these effluent limits is to be determined based on discharges from these industrial activities independent of commingling with any other wastestreams that may be covered under this permit.

(Table 11.L.10-1: Effluent Limitations Based on Effluent Limitations Guidelines located on following page.)

Table 11.L.10-1: Effluent Limitations Based on Effluent Limitations Guidelines[1]

Industrial Activity	Parameter	Effluent Limit
Discharges from non-hazardous waste landfills subject to effluent limitations in 40 CFR Part 445 Subpart B.	Biochemical Oxygen Demand (BOD_5)	140 mg/L, daily maximum
		37 mg/L, monthly avg. maximum
	Total Suspended Solids (TSS)	88 mg/L, daily maximum
		27 mg/L, monthly avg. maximum
	Ammonia	10 mg/L, daily maximum
		4.9 mg/L, monthly avg. maximum
	Alpha Terpineol	0.033 mg/L, daily maximum
		0.016 mg/L monthly avg. maximum
	Benzoic Acid	0.12 mg/L, daily maximum
		0.071 mg/L, monthly avg. maximum
	p-Cresol	0.025 mg/L, daily maximum
		0.014 mg/L, monthly avg. maximum
	Phenol	0.026 mg/L, daily maximum
		0.015 mg/L, monthly avg. maximum
	Total Zinc	0.20 mg/L, daily maximum
		0.11 mg/L, monthly avg. maximum
	pH	6.5 - 8.5 s.u.

Note:

1. Monitor annually. As set forth at 40 CFR Part 445 Subpart B, these numeric limitations apply to contaminated storm water discharges from MSWLFs that have not been closed in accordance with 40 CFR 258.60, and to contaminated storm water discharges from those landfills that are subject to the provisions of 40 CFR Part 257 except for discharges from any of the following facilities:
   a. Landfills operated in conjunction with other industrial or commercial operations, when the landfill receives only wastes generated by the industrial or commercial operation directly associated with the landfill;
   b. Landfills operated in conjunction with other industrial or commercial operations, when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes, provided that the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N as the industrial or commercial operation, or that the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation;
   c. Landfills operated in conjunction with Centralized Waste Treatment (CWT) facilities subject to 40 CFR Part 437, so long as the CWT facility commingles the landfill wastewater with other non-landfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills; or
   d. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities, so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

11. Subpart M – Sector M – Automobile Salvage Yards.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.M.1 Covered Storm Water Discharges.

The requirements in Subpart M apply to storm water discharges associated with industrial activity from Automobile Salvage Yards as identified by the SIC Code specified under Sector M in Table D-1 of Appendix D of this permit.

11.M.2 Additional Technology-Based Effluent Limits.

11.M.2.1 Spill and Leak Prevention Procedures. (See also Part 4.2.4) Drain vehicles intended to be dismantled of all fluids upon arrival at the site (or as soon thereafter as feasible), or employ some other equivalent means to prevent spills and leaks. Collected automotive fluids should be containerized, labeled, and stored to minimize exposure to storm water. Salvage yard operators should develop and implement a mercury switch removal and disposal procedure to remove mercury as a potential pollutant source. All facilities should be provided with a nearby spill containment kit and fluids managed in accordance with all applicable state and federal regulations.

11.M.2.2 Employee Training. (See also Part 4.2.9) If applicable to the facility, address the following areas (at a minimum) in the permittees employee training program: proper handling (collection, storage, and disposal) of oil, used mineral spirits, anti-freeze, mercury switches, and solvents.

11.M.2.3 Management of Runoff. (See also Part 4.2.6) Use the following management practices, as practicable: berms or drainage ditches on the property line (to help prevent run-on from neighboring properties); berms for uncovered outdoor storage of oily parts, engine blocks, and above-ground liquid storage; installation of detention ponds; and installation of filtering devices and oil and water separators.

11.M.2.4 Vehicle Crushing Activities. If a crusher is used on-site provide timely maintenance and inspection of the crusher to prevent any fluid leaks and document in the SWPPP. The crusher should be provided with a device to capture any automotive fluids generated during crushing.

11.M.3 Additional SWPPP Requirements.

11.M.3.1 Drainage Area Site Map. (See also Part 5.2.3) Identify locations used for dismantling, storage, and maintenance of used motor vehicle parts. Also identify where any of the following may be exposed to precipitation or surface runoff: dismantling areas, parts (e.g., engine blocks, tires, hub caps, batteries, hoods, mufflers) storage areas, and liquid storage tanks and drums for fuel and other fluids.

11.M.3.2 Potential Pollutant Sources. (See also Part 5.2.4) Assess the potential for the following to contribute pollutants to storm water discharges: vehicle storage areas, dismantling areas, parts storage areas (e.g., engine blocks, tires, hub caps, batteries, hoods, mufflers), and fueling stations.

11.M.4 Additional Inspection Requirements. (See also Part 6.1) Immediately (or as soon thereafter as feasible) inspect vehicles arriving at the site for leaks and inspect area designated for the draining and collecting of automotive fluids. Inspect quarterly for signs of leakage of all equipment containing oily parts, hydraulic fluids, any other types of fluids, or mercury switches. Also, inspect quarterly for signs of leakage of all vessels and areas where hazardous materials and general automotive fluids are stored, including, but not limited to, mercury switches, brake fluid, transmission fluid, radiator water, and antifreeze.

(Table 11.M.5-1: Sector – Specific Benchmarks – Sector M located on the following page.)

11.M.5 Sector-Specific Benchmarks. (See also Part 7 of the permit.)

Table 11.M.5-1: Sector – Specific Benchmarks – Sector M

Subsector (Permittees may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Subsector M1. Automobile Salvage Yards (SIC 5015)	Total Suspended Solids (TSS)	100 mg/L
	Total Aluminum	0.75 mg/L
	Total Iron	1.0 mg/L
	Total Lead (saltwater)[1] Total Lead (freshwater)[2]	0.21 mg/L Hardness Dependent

Note:

1. Saltwater benchmark values apply to storm water discharges into saline waters where indicated.
2. The freshwater benchmark values of some metals are dependent on water hardness. For these parameters, permittees must determine the hardness of the receiving water (see Appendix E, "Calculating Hardness in Receiving Waters for Hardness Dependent Metals," for methodology), in accordance with Part 7.2.1.1, to identify the applicable 'hardness range' for determining their benchmark value applicable to their facility. The ranges occur in 25 mg/L increments. Hardness Dependent Benchmarks follow in the table below:

Water Hardness Range (mg/L)	Lead (mg/L)
0 – < 25	0.014
25 – < 50	0.023
50 – < 75	0.045
75 – < 100	0.069
100 – < 125	0.095
125 – < 150	0.122
150 – < 175	0.151
175 – < 200	0.182
200 – < 225	0.213
225 – < 250	0.246
250+	0.262

11. Subpart N – Sector N – Scrap Recycling and Waste Recycling Facilities.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.N.1 Covered Storm Water Discharges.

The requirements in Subpart N apply to storm water discharges associated with industrial activity from Scrap Recycling and Waste Recycling facilities as identified by the SIC Code specified under Sector N in Table D-1 of Appendix D of the permit.

11.N.2 Limitation on Coverage.

Separate permit requirements have been established for recycling facilities that only receive source-separated recyclable materials primarily from non-industrial and residential sources (i.e., common consumer products including paper, newspaper, glass, cardboard, plastic containers, and aluminum and tin cans). This includes recycling facilities commonly referred to as material recovery facilities (MRF). See Part 11.N.3.3

11.N.2.1 Prohibition of Non-Storm Water Discharges. (See also Part 1.2.4) Non-storm water discharges from turnings containment areas are not covered by this permit (see also Part 11.N.3.2.3). Discharges from containment areas as well as all others in the absence of a storm event are prohibited unless covered by a separate APDES permit.

11.N.3 Additional Technology-Based Effluent Limits.

11.N.3.1 Scrap and Waste Recycling Facilities (Non-Source Separated, Nonliquid Recyclable Materials). Requirements for facilities that receive, process, and do wholesale distribution of nonliquid recyclable wastes (e.g., ferrous and nonferrous metals, plastics, glass, cardboard, and paper). These facilities may receive both nonrecyclable and recyclable materials. This section is not intended for those facilities that accept recyclables only from primarily non-industrial and residential sources.

11.N.3.1.1 Inbound Recyclable and Waste Material Control Program. Minimize the chance of accepting materials that could be significant sources of pollutants by conducting inspections of inbound recyclables and waste materials. Following are some control measure options: (a) provide information and education to suppliers of scrap and recyclable waste materials on draining and properly disposing of residual fluids (e.g., from vehicles and equipment engines, radiators and transmissions, oil filled transformers, and individual containers or drums) and removal of mercury switches from vehicles before delivery to the facility; (b) establish procedures to minimize the potential of any residual fluids from coming into contact with precipitation or runoff; (c) establish procedures for accepting scrap lead-acid batteries (additional requirements for the handling, storage, and disposal or recycling of batteries are contained in the scrap lead-acid battery program provisions in Part 11.N.3.1.6); (d) provide training targeted for those personnel engaged in the inspection and acceptance of inbound recyclable materials; and (e) establish procedures to ensure that liquid wastes, including used oil, are stored in materially compatible and non-leaking containers and are disposed of or recycled in accordance with the Resource Conservation and Recovery Act (RCRA).

11.N.3.1.2 Scrap and Waste Material Stockpiles and Storage (Outdoor). Minimize contact of storm water runoff with stockpiled materials, processed materials, and nonrecyclable wastes. Following are some control measure options: (a) permanent or semi-permanent covers; (b) sediment traps, vegetated swales and strips, catch basin filters, and sand filters to facilitate settling or filtering of pollutants; (c) dikes, berms, containment trenches, culverts, and surface grading to divert runoff from storage areas; (d) silt fencing; and (e) oil and water separators, sumps, and dry absorbents for areas where potential sources of residual fluids are stockpiled (e.g., automobile engine storage areas).

11.N.3.1.3 Stockpiling of Turnings Exposed to Cutting Fluids (Outdoor Storage). Minimize contact of surface runoff with residual cutting fluids by: (a) storing all turnings exposed to cutting fluids under some form of permanent or semi-permanent cover, or (b) establishing dedicated containment areas for all turnings that have been exposed to cutting fluids. Any containment areas must be constructed of concrete, asphalt, or other equivalent types of impermeable material and include a barrier (e.g., berms, curbing, elevated pads) to prevent contact with storm water run-on. Storm Water runoff from these areas can be discharged, provided that any runoff is first collected and treated by an oil and water separator or its equivalent. The permittee must regularly maintain the oil and water separator (or its equivalent) and properly dispose of or recycle collected residual fluids.

11.N.3.1.4 Scrap and Waste Material Stockpiles and Storage (Covered or Indoor Storage). Minimize contact of residual liquids and particulate matter from materials stored indoors or under cover with surface runoff. Following are some control measure options: (a) good housekeeping measures, including the use of dry absorbents or wet vacuuming to contain, dispose of, or recycle residual liquids originating from recyclable containers, or mercury spill kits for spills from storage of mercury switches; (b) not allowing washwater from tipping floors or other processing areas to discharge to the storm sewer system; and (c) disconnecting or sealing off all floor drains connected to the storm sewer system.

11.N.3.1.5 Scrap and Recyclable Waste Processing Areas. Minimize surface runoff from coming in contact with scrap processing equipment. Pay attention to operations that generate visible amounts of particulate residue (e.g., shredding) to minimize the contact of accumulated particulate matter and residual fluids with runoff (i.e., through good housekeeping, preventive maintenance, etc.). Following are some control measure options: (a) regularly inspect equipment for spills or leaks and malfunctioning, worn, or corroded parts or equipment; (b) establish a preventive maintenance program for processing equipment; (c) use dry-absorbents or other cleanup practices to collect and dispose of or recycle spilled or leaking fluids or use mercury spill kits for spills from storage of mercury switches; (d) on unattended hydraulic reservoirs over 150 gallons in capacity, install protection devices such as low-level alarms or equivalent devices, or secondary containment that can hold the entire volume of the reservoir; (e) containment or diversion structures such as dikes, berms, culverts, trenches, elevated concrete pads, and grading to minimize contact of storm water runoff with outdoor processing equipment or stored materials; (f) oil and water separators or sumps; (g) permanent or semi-permanent covers in processing areas where there are residual fluids and grease; (h) retention or detention ponds or basins; sediment traps, and vegetated swales or strips (for pollutant settling and filtration); (i) catch basin filters or sand filters.

11.N.3.1.6 Scrap Lead-Acid Battery Program. Properly handle, store, and dispose of scrap lead-acid batteries. Following are some control measure options (a) segregate scrap lead-acid batteries from other scrap materials; (b) properly handle, store, and dispose of cracked or broken batteries; (c) collect and dispose of leaking lead-acid battery fluid; (d) minimize or eliminate (if possible) exposure of scrap lead-acid batteries to precipitation or runoff; and (e) provide employee training for the management of scrap batteries.

11.N.3.1.7 Spill Prevention and Response Procedures. (See also Part 4.2.4) Install alarms and/or pump shutoff systems on outdoor equipment with hydraulic reservoirs exceeding 150 gallons in the event of a line break. Alternatively, a secondary containment system capable of holding the entire contents of the reservoir plus room for precipitation can be used. Use a mercury spill kit for any release of mercury from switches, anti-lock brake systems, and switch storage areas.

11.N.3.1.8 Supplier Notification Program. As appropriate, notify major suppliers which scrap materials will not be accepted at the facility or will be accepted only under certain conditions.

11.N.3.2 Waste Recycling Facilities (Liquid Recyclable Materials).

11.N.3.2.1 Waste Material Storage (Indoor). Minimize or eliminate contact between residual liquids from waste materials stored indoors and from surface runoff. The plan may refer to applicable portions of other existing plans, such as Spill Prevention, Control, and Countermeasure (SPCC) plans required under 40 CFR Part 112. Following are some control measure options (a) procedures for material handling (including labeling and marking); (b) clean up spills and leaks with dry absorbent materials, a wet vacuum system; (c) appropriate containment structures (trenching, curbing, gutters, etc.); and (d) a drainage system, including appurtenances (e.g., pumps or ejectors, manually operated valves), to handle discharges from diked or bermed areas. Drainage should be discharged to an appropriate treatment facility or sanitary sewer system, or otherwise disposed of properly. These discharges may require coverage under a separate APDES wastewater permit or industrial user permit under the pretreatment program.

11.N.3.2.2 Waste Material Storage (Outdoor). Minimize contact between stored residual liquids and precipitation or runoff. The plan may refer to applicable portions of other existing plans, such as SPCC plans required under 40 CFR Part 112. Discharges of precipitation from containment areas containing used oil must also be in accordance with applicable sections of 40 CFR Part 112. Following are some control measure options (a) appropriate containment structures (e.g., dikes, berms, curbing, pits) to store the volume of the largest tank, with sufficient extra capacity for precipitation; (b) drainage control and other diversionary structures; (c) corrosion protection and/or leak detection systems for storage tanks; and (d) dry-absorbent materials or a wet vacuum system to collect spills.

11.N.3.2.3 Trucks and Rail Car Waste Transfer Areas. Minimize pollutants in discharges from truck and rail car loading and unloading areas. Include measures to clean up minor spills and leaks resulting from the transfer of liquid wastes. Following are two control measure options: (a) containment and diversionary structures to minimize contact with precipitation or runoff, and (b) dry clean-up methods, wet vacuuming, roof coverings, or runoff controls.

11.N.3.3 Recycling Facilities (Source-Separated Materials). The following identifies considerations for facilities that receive only source-separated recyclables, primarily from non-industrial and residential sources.

11.N.3.3.1 Inbound Recyclable Material Control. Minimize the chance of accepting nonrecyclables (e.g., hazardous materials) that could be a significant source of pollutants by conducting inspections of inbound materials. Following are some control measure options: (a) providing information and education measures to inform suppliers of recyclables about acceptable and non-acceptable materials, (b) training drivers responsible for pickup of recycled material, (c) clearly marking public drop-off containers regarding which materials can be accepted, (d) rejecting nonrecyclable wastes or household hazardous wastes at the source, and (e) establishing procedures for handling and disposal of nonrecyclable material.

11.N.3.3.2 Outdoor Storage. Minimize exposure of recyclables to precipitation and runoff. Use good housekeeping measures to prevent accumulation of particulate matter and fluids, particularly in high traffic areas. Following are some control measure options (a) provide totally enclosed drop-off containers for the public; (b) install a sump and pump with each container pit and treat or discharge collected fluids to a sanitary sewer system; (c) provide dikes and curbs for secondary containment (e.g., around bales of recyclable waste paper); (d) divert surface water runoff away from outside material storage areas; (e) provide covers over containment bins, dumpsters, and roll-off boxes; and (f) store the equivalent of one day's volume of recyclable material indoors.

11.N.3.3.3 Indoor Storage and Material Processing. Minimize the release of pollutants from indoor storage and processing areas. Following are some control measure options (a) schedule routine good housekeeping measures for all storage and processing areas, (b) prohibit tipping floor washwater from draining to the storm sewer system, and (c) provide employee training on pollution prevention practices.

11.N.3.3.4 Vehicle and Equipment Maintenance. Following are some control measure options for areas where vehicle and equipment maintenance occur outdoors (a) prohibit vehicle and equipment washwater from discharging to the storm sewer system, (b) minimize or eliminate outdoor maintenance areas whenever practicable, (c) establish spill prevention and clean-up procedures in fueling areas, (d) avoid topping off fuel tanks, (e) divert runoff from fueling areas, (f) store lubricants and hydraulic fluids indoors, and (g) provide employee training on proper handling and storage of hydraulic fluids and lubricants.

11.N.4 Additional SWPPP Requirements.

11.N.4.1 Drainage Area Site Map. (See also Part 5.2.3) The permittee must document in the SWPPP the locations of any of the following activities or sources that may be exposed to precipitation or surface runoff: scrap and waste material storage, outdoor scrap and waste processing equipment; and containment areas for turnings exposed to cutting fluids.

11.N.4.2 Maintenance Schedules/Procedures for Collection, Handling, and Disposal or Recycling of Residual Fluids at Scrap and Waste Recycling Facilities. If the permittee is subject to Part 11.N.3.1.3, the SWPPP must identify any applicable maintenance schedule and the procedures to collect, handle, and dispose of or recycle residual fluids.

11.N.5 Additional Inspection Requirements.

11.N.5.1 Inspections for Waste Recycling Facilities. The inspections must be performed quarterly, pursuant to Part 6.1, and include, at a minimum, all areas where waste is generated, received, stored, treated, or disposed of and that are exposed to either precipitation or storm water runoff.

11.N.6 Sector-Specific Benchmarks. (See also Part 7 of the permit.)

(Table 11.N.6-1: Sector – Specific Benchmarks – Sector N located on following page.)

Table 11.N.6-1: Sector – Specific Benchmarks – Sector N

Subsector (Permittees may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Subsector N1. Scrap Recycling and Waste Recycling Facilities except Source-Separated Recycling (SIC 5093)	Chemical Oxygen Demand (COD)	120 mg/L
	Total Suspended Solids (TSS)	100 mg/L
	Total Recoverable Aluminum	0.75 mg/L
	Total Copper (saltwater)[1] Total Copper (freshwater)[2]	0.0048 mg/L Hardness Dependent
	Total Recoverable Iron	1.0 mg/L
	Total Lead (saltwater)[1] Total Lead (freshwater)[2]	0.21 mg/L Hardness Dependent
	Total Zinc (saltwater)[1] Total Zinc (freshwater)[2]	0.09 mg/L Hardness Dependent

Note:

1. Saltwater benchmark values apply to storm water discharges into saline waters where indicated.
2. The freshwater benchmark values of some metals are dependent on water hardness. For these parameters, permittees must determine the hardness of the receiving water (see Appendix E, "Calculating Hardness in Receiving Waters for Hardness Dependent Metals," for methodology), in accordance with Part 7.2.1.1, to identify the applicable 'hardness range' for determining their benchmark value applicable to their facility. The ranges occur in 25 mg/L increments. Hardness Dependent Benchmarks follow in the table below:

Water Hardness Range (mg/L)	Copper (mg/L)	Lead (mg/L)	Zinc (mg/L)
0 – < 25	0.0038	0.014	0.04
25 – < 50	0.0056	0.023	0.05
50 – < 75	0.0090	0.045	0.08
75 – < 100	0.0123	0.069	0.11
100 – < 125	0.0156	0.095	0.13
125 – < 150	0.0189	0.122	0.16
150 – < 175	0.0221	0.151	0.18
175 – < 200	0.0253	0.182	0.20
200 – < 225	0.0285	0.213	0.23
225 – < 250	0.0316	0.246	0.25
250+	0.0332	0.262	0.26

11. Subpart O – Sector O – Steam Electric Generating Facilities.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.O.1 Covered Storm Water Discharges.

The requirements in Subpart O apply to storm water discharges associated with industrial activity from Steam Electric Power Generating Facilities as identified by the Activity Code specified under Sector O in Table D-1 of Appendix D.

11.O.2 Industrial Activities Covered by Sector O.

This permit authorizes storm water discharges from the following industrial activities at Sector O facilities:

11.O.2.1 Steam electric power generation using coal, natural gas, oil, nuclear energy, etc., to produce a steam source, including coal handling areas;

11.O.2.2 Coal pile runoff, including effluent limitations established by 40 CFR Part 423; and

11.O.2.3 Dual fuel facilities that could employ a steam boiler.

11.O.3 Limitations on Coverage.

11.O.3.1 Prohibition of Non-Storm Water Discharges. Non-storm water discharges subject to effluent limitations guidelines are not covered by this permit.

11.O.3.2 Prohibition of Storm Water Discharges. Storm water discharges from the following are not covered by this permit:

11.O.3.2.1 Ancillary Facilities (e.g., fleet centers and substations) that are not contiguous to a stream electric power generating facility;

11.O.3.2.2 Gas Turbine Facilities (providing the facility is not a dual-fuel facility that includes a steam boiler), and combined-cycle facilities where no supplemental fuel oil is burned (and the facility is not a dual-fuel facility that includes a steam boiler); and

11.O.3.2.3 Cogeneration (combined heat and power) facilities utilizing a gas turbine.

11.O.4 Additional Technology-Based Effluent Limits. The following good housekeeping measures are required in addition to Part 4.2.2:

11.O.4.1 Fugitive Dust Emissions. Minimize fugitive dust emissions from coal handling areas. To minimize the tracking of coal dust offsite, adopt, as practicable, procedures such as installing specially designed tires or washing vehicles in a designated area before they leave the site and controlling the wash water.

11.O.4.2 Delivery Vehicles. Minimize contamination of storm water runoff from delivery vehicles arriving at the plant site. Adopt procedures to inspect delivery vehicles arriving at the plant site and ensure overall integrity of the body or container and procedures to deal with leakage or spillage from vehicles or containers.

11.O.4.3 Fuel Oil Unloading Areas. Minimize contamination of precipitation or surface runoff from fuel oil unloading areas. Use containment curbs in unloading areas, have personnel familiar with spill prevention and response procedures present during deliveries to ensure that any leaks or spills are immediately contained and cleaned up, and use spill and overflow protection devices (e.g., drip pans, drip diapers, or other containment devices placed beneath fuel oil connectors to contain potential spillage during deliveries or from leaks at the connectors).

11.O.4.4 Chemical Loading and Unloading. Minimize contamination of precipitation or surface runoff from chemical loading and unloading areas. Use containment curbs at chemical loading and unloading areas to contain spills, have personnel familiar with spill prevention and response procedures present during deliveries to ensure that any leaks or spills are immediately contained and cleaned up, and loading and unloading in covered areas and storing chemicals indoors.

11.O.4.5 Miscellaneous Loading and Unloading Areas. Minimize contamination of precipitation or surface runoff from loading and unloading areas. Use the following, as practicable, cover the loading area; grade, berm, or curb around the loading area to divert run-on; locate the loading and unloading equipment and vehicles so that leaks are contained in existing containment and flow diversion systems; or equivalent procedures.

11.O.4.6 Liquid Storage Tanks. Minimize contamination of surface runoff from above-ground liquid storage tanks. Use the following, as practicable, protective guards around tanks, containment curbs, spill and overflow protection, dry cleanup methods, or equivalent measures.

11.O.4.7 Large Bulk Fuel Storage Tanks. Minimize contamination of surface runoff from large bulk fuel storage tanks. Use containment berms (or their equivalent) as required by applicable State and Federal Laws. The permittee must also comply with applicable State and Federal laws, including Spill Prevention, Control and Countermeasure (SPCC) Plan requirements.

11.O.4.8 Spill Reduction Measures. Minimize the potential for an oil or chemical spill, or reference the appropriate part of the permittees SPCC plan. Visually inspect as part of the routine facility inspection the structural integrity of all above-ground tanks, pipelines, pumps, and related equipment that may be exposed to storm water, and make any necessary repairs immediately.

11.O.4.9 Oil-Bearing Equipment in Switchyards. Minimize contamination of surface runoff from oil-bearing equipment in switchyard areas. Use level grades and gravel surfaces to retard flows and limit the spread of spills, or collect runoff in perimeter ditches.

11.O.4.10 Residue-Hauling Vehicles. Inspect all residue-hauling vehicles for proper covering over the load, adequate gate sealing, and overall integrity of the container body. Repair vehicles without load covering or adequate gate sealing, or with leaking containers or beds.

11.O.4.11 Ash Loading Areas. Reduce or control the tracking of ash and residue from ash loading areas. Clear the ash building floor and immediately adjacent roadways of spillage, debris, and excess water before departure of each loaded vehicle.

11.O.4.12 Areas Adjacent to Disposal Ponds or Landfills. Minimize contamination of surface runoff from areas adjacent to disposal ponds or landfills. Reduce ash residue that may be tracked on to access roads traveled by residue handling vehicles, and reduce ash residue on exit roads leading into and out of residue handling areas.

11.O.4.13 Landfills, Scrap yards, Surface Impoundments, Open Dumps, General Refuse Sites. Minimize the potential for contamination of runoff from these areas.

11.O.5 Additional SWPPP Requirements.

11.O.5.1 Drainage Area Site Map. (See also Part 5.2.3) The permittee must document in the SWPPP the locations of any of the following activities or sources that may be exposed to precipitation or surface runoff: storage tanks, scrap yards, and general refuse areas; short- and long-term storage of general materials (including but not limited to supplies, construction materials, paint equipment, oils, fuels, used and unused solvents, cleaning materials, paint, water treatment chemicals, fertilizer, and pesticides); landfills and construction sites; and stock pile areas (e.g., coal or limestone piles).

11.O.5.2 Documentation of Good Housekeeping Measures. The permittee must document in the SWPPP the good housekeeping measures implemented to meet the effluent limits in Part 11.O.4.

11.O.6 Additional Inspection Requirements.

11.O.6.1 Comprehensive Site Compliance Inspection. (See also Part 6.3) As part of the permittees inspection, inspect the following areas monthly: coal handling areas, loading or unloading areas, switchyards, fueling areas, bulk storage areas, ash handling areas, areas adjacent to disposal ponds and landfills, maintenance areas, liquid storage tanks, and long term and short term material storage areas.

11.O.7 Sector-Specific Benchmarks

Table 11.O.7-1 identifies benchmarks that apply to the specific subsectors of Sector O. These benchmarks apply to both the permittees primary industrial activity and any co-located industrial activities, which describe their facility activities.

Table 11.O.7-1: Sector – Specific Benchmarks – Sector O

Subsector (Permittees may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Subsector O1. Steam Electric Generating Facilities (Industrial Activity Code "SE")	Total Iron	1.0 mg/L

11.O.8 Effluent Limitations Based on Effluent Limitations Guidelines. (See also Part 7.2.2.1 of the permit.)

Table 11.O.8-1 identifies effluent limits that apply to the industrial activities described below. Compliance with these effluent limits is to be determined based on discharges from these industrial activities independent of commingling with any other wastestreams that may be covered under this permit.

Table 11.O.8-1: Effluent Limitations Based on Effluent Limitations Guidelines[1]

Industrial Activity	Parameter	Effluent Limit
Discharges from coal storage piles at Steam Electric Generating Facilities	TSS	50 mg/l [2]
	pH	6.5 - 8.5 s.u.

Notes:
1. Monitor annually.
2. If the permittees facility is designed, constructed, and operated to treat the volume of coal pile runoff that is associated with a 10-year, 24-hour rainfall event, any untreated overflow of coal pile runoff from the treatment unit is not subject to the 50 mg/L limitation for total suspended solids.

11. Subpart P – Sector P – Land Transportation and Warehousing.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.P.1 Covered Storm Water Discharges.

The requirements in Subpart P apply to storm water discharges associated with industrial activity from Land Transportation and Warehousing facilities as identified by the SIC Codes specified under Sector P in Table D-1 of Appendix D of the permit.

11.P.2 Limitation on Coverage.

11.P.2.1 Prohibited Discharges. (See also Part 1.2.4) This permit does not authorize the discharge of vehicle/equipment/surface washwater, including tank cleaning operations. Such discharges must be authorized under a separate APDES permit, discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements, or recycled on-site.

11.P.3 Additional Technology-Based Effluent Limits.

11.P.3.1 Good Housekeeping Measures. (See also Part 4.2.2) In addition to the Good Housekeeping requirements in Part 4.2.2, the permittee must do the following. Recommended control measures are discussed as indicated:

11.P.3.1.1 Vehicle and Equipment Storage Areas. Minimize the potential for storm water exposure to leaky or leak-prone vehicles/equipment awaiting maintenance. Implement the following (or other equivalent measures), as practicable: use of drip pans under vehicles/equipment, indoor storage of vehicles and equipment, installation of berms or dikes, use of absorbents, roofing or covering storage areas, and cleaning pavement surfaces to remove oil and grease.

11.P.3.1.2 Fueling Areas. Minimize contamination of storm water runoff from fueling areas. Implement the following (or other equivalent measures), as practicable: Covering the fueling area; using spill/overflow protection and cleanup equipment; minimizing storm water run-on/runoff to the fueling area; using dry cleanup methods; and treating and/or recycling collected storm water runoff.

11.P.3.1.3 Material Storage Areas. Maintain all material storage vessels (e.g., for used oil/oil filters, spent solvents, paint wastes, hydraulic fluids) to prevent contamination of storm water and plainly label them (e.g., "Used Oil," "Spent Solvents," etc.). Implement the following (or other equivalent measures), as practicable: storing the materials indoors; installing berms/dikes around the areas; minimizing runoff of storm water to the areas; using dry cleanup methods; and treating and/or recycling collected storm water runoff.

11.P.3.1.4 Vehicle and Equipment Cleaning Areas. Minimize contamination of storm water runoff from all areas used for vehicle/equipment cleaning. Implement the following (or other equivalent measures), as practicable: performing all cleaning operations indoors; covering the cleaning operation, ensuring that all washwater drains to a proper collection system (i.e., not the storm water drainage system); treating and/or recycling collected washwater, or other equivalent measures.

11.P.3.1.5 Vehicle and Equipment Maintenance Areas. Minimize contamination of storm water runoff from all areas used for vehicle/equipment maintenance. Implement the following (or other equivalent measures), as practicable: performing maintenance activities indoors; using drip pans; keeping an organized inventory of materials used in the shop; draining all parts of fluid prior to disposal; prohibiting wet clean up practices if these practices would result in the discharge of pollutants to storm water drainage systems; using dry cleanup methods; treating and/or recycling collected storm water runoff, minimizing run on/runoff of storm water to maintenance areas.

11.P.3.1.6 Locomotive Sanding (Loading Sand for Traction) Areas. Implement the following (or other equivalent measures), as practicable: covering sanding areas; minimizing storm water run on/runoff; or appropriate sediment removal practices to minimize the offsite transport of sanding material by storm water.

11.P.3.2 Employee Training. (See also Part 4.2.9) Train personnel at least once a year and address the following activities, as applicable: used oil and spent solvent management; fueling procedures; general good housekeeping practices; proper painting procedures; and used battery management.

11.P.4 Additional SWPPP Requirements.

11.P.4.1 Drainage Area Site Map. (See also Part 5.2.3) The permittee must document in the SWPPP the following areas of the facility and indicate whether activities occurring there may be exposed to precipitation/surface runoff: Fueling stations; vehicle/equipment maintenance or cleaning areas; storage areas for vehicle/equipment with actual or potential fluid leaks; loading/unloading areas; areas where treatment, storage or disposal of wastes occur; liquid storage tanks; processing areas; and storage areas.

11.P.4.2 Potential Pollutant Sources. (See also Part 5.2.4) Assess the potential for the following activities and facility areas to contribute pollutants to storm water discharges: Onsite waste storage or disposal; dirt/gravel parking areas for vehicles awaiting maintenance; illicit plumbing connections between shop floor drains and the storm water conveyance system(s); and fueling areas. Describe these activities in the SWPPP.

11.P.4.3 Description of Good Housekeeping Measures. The permittee must document in the SWPPP the good housekeeping measures they implement consistent with Part 11.P.3.

11.P.4.4 Vehicle and Equipment Washwater Requirements. If applicable, attach to or reference in the SWPPP, a copy of the APDES permit issued for vehicle/ equipment washwater; if an APDES permit has not been issued, a copy of the pending application. If an industrial user permit is issued under a local pretreatment program, attach a copy to the SWPPP. In any case, implement all non-storm water discharge permit conditions or pretreatment conditions in the SWPPP. If washwater is handled in another manner (e.g., hauled offsite), describe the disposal method and attach all pertinent documentation/ information (e.g., frequency, volume, destination, etc.) in the plan.

11.P.5 Additional Inspection Requirements. (See also Part 6.1) Inspect all the following areas/activities: storage areas for vehicles/equipment awaiting maintenance, fueling areas, indoor and outdoor vehicle/equipment maintenance areas, material storage areas, vehicle/equipment cleaning areas, loading/unloading areas, and any petroleum bulk fuel storage areas. Quarterly visual assessment of the bulk fuel storage areas should focus on identifying any potential leaks in tanks, pipelines, valves, etc. and implementing temporary spill containment measures until permanent corrective actions can be made.

11. Subpart Q – Sector Q – Water Transportation.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.Q.1 Covered Storm Water Discharges.

The requirements in Subpart Q apply to storm water discharges associated with industrial activity from Water Transportation facilities as identified by the SIC Codes specified under Sector Q in Table D-1 of Appendix D of the permit.

11.Q.2 Limitations on Coverage.

11.Q.2.1 Prohibition of Non-Storm Water Discharges. (See also Part 1.2.4) Not covered by this permit: bilge and ballast water, sanitary wastes, pressure wash water, and cooling water originating from vessels.

11.Q.3 Additional Technology-Based Effluent Limits.

11.Q.3.1 Good Housekeeping Measures. A permittee must implement the following good housekeeping measures in addition to the requirements of Part 4.2.2:

11.Q.3.1.1 Pressure Washing Area. If pressure washing is used to remove marine growth from vessels, the discharge water must be permitted by a separate APDES permit. Collect or contain the discharges from the pressure washing areas so that they are not co-mingled with storm water discharges authorized by this permit.

11.Q.3.1.2 Blasting and Painting Area. Minimize the potential for spent abrasives, paint chips, and overspray to discharge into receiving waters or the storm sewer systems. Contain all blasting and painting activities or use other measures to minimize the discharge of contaminants (e.g., hanging plastic barriers or tarpaulins during blasting or painting operations to contain debris). When necessary, regularly clean storm water conveyances of deposits of abrasive blasting debris and paint chips.

11.Q.3.1.3 Material Storage Areas. Store and plainly label all containerized materials (e.g., fuels, paints, solvents, waste oil, antifreeze, batteries) in a protected, secure location away from drains. Minimize the contamination of precipitation or surface runoff from the storage areas. Specify which materials are stored indoors, and consider containment or enclosure for those stored outdoors. If abrasive blasting is performed, discuss the storage and disposal of spent abrasive materials generated at the facility. Implement an inventory control plan to limit the presence of potentially hazardous materials onsite.

11.Q.3.1.4 Engine Maintenance and Repair Areas. Minimize the contamination of precipitation or surface runoff from all areas used for engine maintenance and repair. Implement the following (or their equivalents), as practicable: performing all maintenance activities indoors, maintaining an organized inventory of materials used in the shop, draining all parts of fluid prior to disposal, prohibiting the practice of hosing down the shop floor, using dry cleanup methods, and treating and/or recycling storm water runoff collected from the maintenance area.

11.Q.3.1.5 Material Handling Area. Minimize the contamination of precipitation or surface runoff from material handling operations and areas (e.g., fueling, paint and solvent mixing, disposal of process wastewater streams from vessels). Implement the following (or their equivalents), as practicable: covering fueling areas, using spill and overflow protection, mixing paints and solvents in a designated area (preferably indoors or under a shed), and minimizing runoff of storm water to material handling areas.

11.Q.3.1.6 Drydock Activities. Routinely maintain and clean the drydock to minimize pollutants in storm water runoff. Address the cleaning of accessible areas of the drydock prior to flooding, and final cleanup following removal of the vessel and raising the dock. Include procedures for cleaning up oil, grease, and fuel spills occurring on the drydock. Implement the following (or their equivalents), as practicable: sweeping rather than hosing off debris and spent blasting material from accessible areas of the drydock prior to flooding and making absorbent materials and oil containment booms readily available to clean up or contain any spills.

11.Q.3.2 Storm Water Diversions. Divert storm water away from potential pollutant sources. Implement the following options, as practicable: interceptor or diversion controls (e.g., dikes, swales, curbs, or berms); pipe slope drains; subsurface drains; conveyance systems (e.g., channels or gutters, open-top box culverts, and waterbars; rolling dips and road sloping; roadway surface water deflector and culverts); or their equivalents.

11.Q.3.3 Velocity Dissipation Devices. (e.g., check dams, sediment traps, or riprap) Place velocity dissipation devices, as practicable, along the length of any conveyance channel to provide a non-erosive flow velocity. Also place velocity dissipation devices where discharges from the conveyance channel or structure join a water course to prevent erosion and to protect the channel embankment, outlet, adjacent stream bank slopes, and downstream waters.

11.Q.3.4 Employee Training. (See also Part 4.2.9) As part of the permittees employee training program, address, at a minimum, the following activities (as practicable): used oil management, spent solvent management, disposal of spent abrasives, disposal of vessel wastewaters, spill prevention and control, fueling procedures, general good housekeeping practices, painting and blasting procedures, and used battery management.

11.Q.3.5 Preventive Maintenance. (See also Part 4.2.3) As part of the permittees preventive maintenance program, perform timely inspection and maintenance of storm water management devices (e.g., cleaning oil and water separators and sediment traps to ensure that spent abrasives, paint chips, and solids will be intercepted and retained prior to entering the storm drainage system), as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

11.Q.4 Additional SWPPP Requirements.

11.Q.4.1 Drainage Area Site Map. (See also Part 5.2.3) The permittee must document in the SWPPP where any of the following may be exposed to precipitation or surface runoff: fueling; engine maintenance and repair; vessel maintenance and repair; pressure washing; painting; sanding; blasting; welding; metal fabrication; loading and unloading areas; locations used for the treatment, storage, or disposal of wastes; liquid storage tanks; liquid storage areas (e.g., paint, solvents, resins); and material storage areas (e.g., blasting media, aluminum, steel, scrap iron).

11.Q.4.2 Summary of Potential Pollutant Sources. (See also Part 5.2.4) The permittee must document in the SWPPP the following additional sources and activities that have potential pollutants associated with them: outdoor manufacturing or processing activities (e.g., welding, metal fabricating) and significant dust or particulate generating processes (e.g., abrasive blasting, sanding, and painting.)

11.Q.5 Additional Inspection Requirements. (See also Part 6.1) Include the following in all quarterly routine facility inspections: pressure washing area; blasting, sanding, and painting areas; material storage areas; engine maintenance and repair areas; material handling areas; drydock area; and general yard area.

11.Q.6 Sector-Specific Benchmarks. (See also Part 7 of the permit.)

(Table 11.N.6-1: Sector – Specific Benchmarks – Sector N located on following page.)

Table 11.Q.6-1: Sector – Specific Benchmarks – Sector Q

Subsector (Permittees may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Subsector Q1. Water Transportation Facilities (SIC 4412-4499)	Total Aluminum	0.75 mg/L
	Total Iron	1.0 mg/L
	Total Lead (saltwater)[1]	0.21 mg/L
	Total Lead (freshwater)[2]	Hardness Dependent
	Total Zinc (saltwater)[1]	0.09 mg/L
	Total Zinc (freshwater)[2]	Hardness Dependent

Note:

1. Saltwater benchmark values apply to storm water discharges into saline waters where indicated.
2. The freshwater benchmark values of some metals are dependent on water hardness. For these parameters, permittees must determine the hardness of the receiving water (see Appendix E, "Calculating Hardness in Receiving Waters for Hardness Dependent Metals," for methodology), in accordance with Part 7.2.1.1, to identify the applicable 'hardness range' for determining their benchmark value applicable to their facility. The ranges occur in 25 mg/L increments. Hardness Dependent Benchmarks follow in the table below:

Water Hardness Range (mg/L)	Lead (mg/L)	Zinc (mg/L)
0 – < 25	0.014	0.04
25 – < 50	0.023	0.05
50 – < 75	0.045	0.08
75 – < 100	0.069	0.11
100 – < 125	0.095	0.13
125 – < 150	0.122	0.16
150 – < 175	0.151	0.18
175 – < 200	0.182	0.20
200 – < 225	0.213	0.23
225 – < 250	0.246	0.25
250+	0.262	0.26

11. Subpart R – Sector R – Ship and Boat Building and Repair Yards.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.R.1 Covered Storm Water Discharges.

The requirements in Subpart R apply to storm water discharges associated with industrial activity from Ship and Boat Building and Repair Yards as identified by the SIC Codes specified under Sector R in Table D-1 of Appendix D of the permit.

11.R.2 Limitations on Coverage.

11.R.2.1 Prohibition of Non-Storm Water Discharges. (See also Part 1.2.4) Discharges containing bilge and ballast water, sanitary wastes, pressure wash water, and cooling water originating from vessels are not covered by this permit.

11.R.3 Additional Technology-Based Effluent Limits.

11.R.3.1 Good Housekeeping Measures. (See also Part 4.2.2)

11.R.3.1.1 Pressure Washing Area. If pressure washing is used to remove marine growth from vessels, the discharged water must be permitted as a process wastewater by a separate APDES permit.

11.R.3.1.2 Blasting and Painting Area. Minimize the potential for spent abrasives, paint chips, and overspray to discharging into the receiving water or the storm sewer systems. To the extent practicable contain all blasting and painting activities, or use other measures to prevent the discharge of the contaminants (e.g., hanging plastic barriers or tarpaulins during blasting or painting operations to contain debris). When necessary, regularly clean storm water conveyances of deposits of abrasive blasting debris and paint chips.

11.R.3.1.3 Material Storage Areas. Store and plainly label all containerized materials (e.g., fuels, paints, solvents, waste oil, antifreeze, batteries) in a protected, secure location away from drains. Minimize the contamination of precipitation or surface runoff from the storage areas. If abrasive blasting is performed, discuss the storage and disposal of spent abrasive materials generated at the facility. Implement an inventory control plan to limit the presence of potentially hazardous materials onsite.

11.R.3.1.4 Engine Maintenance and Repair Areas. Minimize the contamination of precipitation or surface runoff from all areas used for engine maintenance and repair. Implement the following (or their equivalents), as practicable: perform all maintenance activities indoors, maintain an organized inventory of materials used in the shop, drain all parts of fluid prior to disposal, prohibit the practice of hosing down the shop floor, use dry cleanup methods, and treat and/or recycle storm water runoff collected from the maintenance area.

11.R.3.1.5 Material Handling Area. Minimize the contamination of precipitation or surface runoff from material handling operations and areas (e.g., fueling, paint and solvent mixing, disposal of process wastewater streams from vessels). Implement the following (or their equivalents), as practicable: cover fueling areas, use spill and overflow protection, mix paints and solvents in a designated area (preferably indoors or under a shed), and minimize storm water run-on to material handling areas.

11.R.3.1.6 Drydock Activities. Routinely maintain and clean the drydock to minimize pollutants in storm water runoff. Clean accessible areas of the drydock prior to flooding and final cleanup following removal of the vessel and raising the dock. Include procedures for cleaning up oil, grease, or fuel spills occurring on the drydock. Implement the following (or their equivalents), as practicable: sweep rather than hosing off debris and spent blasting material from accessible areas of the drydock prior to flooding, and have absorbent materials and oil containment booms readily available to clean up and contain any spills.

11.R.3.2 Storm Water Diversions. Divert storm water away from potential pollutant sources. Implement the following options, as practicable: interceptor or diversion controls (e.g., dikes, swales, curbs, or berms); pipe slope drains; subsurface drains; conveyance systems (e.g., channels or gutters, open-top box culverts, and waterbars; rolling dips and road sloping; roadway surface water deflector and culverts); or their equivalents.

11.R.3.3 Velocity Dissipation Devices. (e.g., check dams, sediment traps, or riprap) Place along the length of any conveyance channel to provide a non-erosive flow velocity. Also place velocity dissipation devices where discharges from the conveyance channel or structure join a water course to prevent erosion and to protect the channel embankment, outlet, adjacent stream bank slopes, and downstream waters.

11.R.3.4 Employee Training. (See also Part 4.2.9) As part of the permittees employee training program, address, at a minimum, the following activities (as applicable): used oil management, spent solvent management, disposal of spent abrasives, disposal of vessel wastewaters, spill prevention and control, fueling procedures, general good housekeeping practices, painting and blasting procedures, and used battery management.

11.R.3.5 Preventive Maintenance. (See also Part 4.2.3) As part of the permittees preventive maintenance program, perform timely inspection and maintenance of storm water management devices (e.g., cleaning oil and water separators and sediment traps to ensure that spent abrasives, paint chips, and solids will be intercepted and retained prior to entering the storm drainage system), as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

11.R.4 Additional SWPPP Requirements.

11.R.4.1 Drainage Area Site Map. (See also Part 5.2.3) The permittee must document in the SWPPP where any of the following may be exposed to precipitation or surface runoff: fueling; engine maintenance or repair; vessel maintenance or repair; pressure washing; painting; sanding; blasting; welding; metal fabrication; loading and unloading areas; treatment, storage, and waste disposal areas; liquid storage tanks; liquid storage areas (e.g., paint, solvents, resins); and material storage areas (e.g., blasting media, aluminum, steel, scrap iron).

11.R.4.2 Potential Pollutant Sources. (See also Part 5.2.4) The Permittee must document in the SWPPP the following additional sources and activities that have potential pollutants associated with them (if applicable): outdoor manufacturing or processing activities (e.g., welding, metal fabricating) and significant dust or particulate generating processes (e.g., abrasive blasting, sanding, and painting).

11.R.4.3 Documentation of Good Housekeeping Measures. The permittee must document in the SWPPP any good housekeeping measures implemented to meet the effluent limits in Part 11.R.3.

11.R.4.3.1 Blasting and Painting Areas. The permittee must document in the SWPPP any standard operating practices relating to blasting and painting (e.g., prohibiting uncontained blasting and painting over open water or prohibiting blasting and painting during windy conditions, which can render containment ineffective).

11.R.4.3.2 Storage Areas. Specify in the permittees SWPPP which materials are stored indoors, anddescribe containment or enclosure practices for those stored outdoors.

11.R.5 Additional Inspection Requirements.

(See also Part 6.1) Include the following in all quarterly routine facility inspections: pressure washing area; blasting, sanding, and painting areas; material storage areas; engine maintenance and repair areas; material handling areas; drydock area; and general yard area.

11. Subpart S – Sector S – Air Transportation.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.S.1 Covered Storm Water Discharges.

The requirements in Subpart S apply to storm water discharges associated with industrial activity from Air Transportation facilities identified by the SIC Codes specified under Sector S in Table D-1 of Appendix D of the permit at primary airports.

11.S.2 Limitation on Coverage.

11.S.2.1 *Limitations on Coverage.* This permit authorizes storm water discharges from only those portions of the air transportation facility that are involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), equipment cleaning operations or deicing operations.

Note: "deicing" will generally be used to imply both deicing (removing frost, snow or ice) and anti-icing (preventing accumulation of frost, snow or ice) activities, unless specific mention is made regarding anti-icing and/or deicing activities.

11.S.2.2 *Prohibition of Non-Storm Water Discharges.* (See also Part 1.2.4 and Part 11.S.3) This permit does not authorize the discharge of aircraft, ground vehicle, runway and equipment washwaters; nor the dry weather discharge of deicing chemicals. Such discharges must be covered by separate APDES permit(s). Note that a discharge resulting from snowmelt is not a dry weather discharge.

11.S.3 Multiple Operators at Air Transportation Facilities

Air transportation facilities often have more than one operator who could discharge stormwater associated with industrial activity. Operators include the airport authority and airport tenants, including air passenger or cargo companies, fixed based operators, and other parties who routinely perform industrial activities on airport property.

11.S.3.1 *Permit Coverage/Submittal of NOIs.* Where an airport transportation facility has multiple industrial operators that discharge stormwater, each individual operator must obtain coverage under an APDES stormwater permit. To obtain coverage under the MSGP, all such operators must meet the eligibility requirements in Part 1.2 and must submit an NOI, per Part 2.2 (or, if appropriate, a no exposure certification per Part 1.3).

11.S.3.2 *MSGP Implementation Responsibilities for Airport Authority and Tenants.* The airport authority, in collaboration with its tenants, may choose to implement certain MSGP requirements on behalf of its tenants in order to increase efficiency and eliminate redundancy or duplication of effort. Options available to the airport authority and its tenants for implementation of MSGP requirements include:

11.S.3.2.1 The airport authority performs certain activities on behalf of itself and its tenants and reports on its activities*;*

11.S.3.2.2 Tenants provide the airport authority with relevant inputs about tenants' activities, including deicing chemical usage*, and the airport authority compiles and reports on tenants' and its own activities; or

11.S.3.2.3 Tenants independently perform, document and submit required information on their activities*.*

**Tenants who report their deicing chemical usage to the airport authority and rely on the airport authority to perform monitoring should not check the glycol and urea use box on their NOI forms.*

11.S.3.3 SWPPP Requirements. A SWPPP must be developed for all stormwater discharges associated with industrial activity at the airport before submittal of any NOIs. The airport authority, in collaboration with its tenants, may choose to develop a single comprehensive SWPPP, or they may choose to develop individual SWPPP. The comprehensive SWPPP should be developed collaboratively by the airport authority and tenants. If any operator develops a SWPPP for discharges from its own areas of the airport, that SWPPP must be coordinated and integrated with the comprehensive SWPPP. All operators and their separate SWPPP contributions and compliance responsibilities must be clearly identified in the comprehensive SWPPP, which all operators must sign and certify per Part 5.2.7. As applicable, the comprehensive SWPPP must clearly specify the MSGP requirements to be complied with by*:*

- The airport authority for itself;
- The airport authority on behalf of its tenants;
- Tenants for themselves.

For each activity that an operator (e.g., the airport authority) conducts on behalf of another operator (e.g., a tenant), the comprehensive SWPPP must describe a process for reporting results to the latter operator and for ensuring appropriate follow-up, if necessary, by all affected operators. This is to ensure all actions are taken to correct any potential deficiencies or permit violations. For example, where the airport authority is conducting monitoring for itself and its tenants, the comprehensive SWPPP must identify how the airport authority will share the monitoring results with its tenants, and then follow-up with its tenants where there are any exceedances of benchmarks, effluent limits, or water quality standards. In turn, the comprehensive SWPPP must describe how the tenants will also follow-up to ensure permit compliance. If the airport authority and its tenants choose to use a comprehensive SWPPP, they have one hundred eighty (180) days after the effective date of this permit to develop a comprehensive SWPPP and file the NOI according to Part 2.1.

11.S.3.4 Duty to Comply. All individual operators are responsible for implementing their assigned portion of the comprehensive SWPPP, and operators must ensure that their individual activities do not render another operator's stormwater controls ineffective. In addition, the standard permit conditions found in Appendix A apply to each individual operator, including 1.2 Duty to Comply (which states, in part, "A permittee [each individual operator] shall comply with all conditions of the permittee's APDES permit."). For multiple operators at an airport this means that each individual operator remains responsible for ensuring all requirements of its own MSGP are met regardless of whether the comprehensive SWPPP allocates the actual implementation of any of those responsibilities to another entity. That is, the failure of the entity allocated responsibility in the SWPPP to implement an MSGP requirement on behalf of other operators does not negate the other operators' ultimate liability.

11.S.4 Additional Technology-Based Effluent Limits.

11.S.4.1 Good Housekeeping Measures. (See also Part 4.2.2) Implement control measures (as described in 11.S.4.1.1 through 11.S.4.1.7–each list is not exclusive) where determined to be practicable and that accommodate considerations of safety, space, operational constraints, and flight considerations.

11.S.4.1.1 Aircraft, Ground Vehicle and Equipment Maintenance Areas. Minimize the contamination of storm water runoff from all areas used for aircraft, ground vehicle and equipment maintenance (including the maintenance conducted on the terminal apron and in dedicated hangers). Consider the following control measures: performing maintenance activities indoors; maintaining an organized inventory of material used in the maintenance areas; draining all parts of fluids prior to disposal; prohibiting the practice of hosing down the apron or hanger floor; using dry cleanup methods; and collecting the storm water runoff from the maintenance area and providing treatment or recycling.

11.S.4.1.2 Aircraft, Ground Vehicle and Equipment Cleaning Areas. Clearly demarcate these areas on the ground using signage or other appropriate means. Minimize the contamination of storm water runoff from cleaning areas.

11.S.4.1.3 Aircraft, Ground Vehicle and Equipment Storage Areas. Store all aircraft, ground vehicles and equipment awaiting maintenance in designated areas only and minimize the contamination of storm water runoff from these storage areas. Consider the following control measures, including any BMPs: store aircraft and ground vehicles indoors; use drip pans for the collection of fluid leaks; and perimeter drains, dikes or berms surrounding the storage areas.

11.S.4.1.4 Material Storage Areas. Maintain the vessels of stored materials (e.g., used oils, hydraulic fluids, spent solvents, and waste aircraft fuel) in good condition, to prevent or minimize contamination of storm water. Also plainly label the vessels (e.g., "used oil," "Contaminated Jet A," etc.). Minimize contamination of precipitation/runoff from these areas. Consider the following control measures: store materials indoors; store waste materials in a centralized location; and install berms/dikes around storage areas.

11.S.4.1.5 Airport Fuel System and Fueling Areas. Minimize the discharge of fuel to the storm sewer/surface waters resulting from fuel servicing activities or other operations conducted in support of the airport fuel system. Consider the following control measures: implement spill and overflow practices; use only dry cleanup methods; and collect storm water runoff.

11.S.4.1.6 Source Reduction. Minimize, and where practicable, eliminate the use of urea and glycol-based deicing chemicals, in order to reduce the aggregate amount of deicing chemicals used and/or lessen the environmental impact. Chemical options to replace ethylene glycol, propylene glycol and urea include: potassium acetate; magnesium acetate; calcium acetate; and anhydrous sodium acetate.

- *Runway Deicing Operation:* Minimize contamination of storm water runoff from runways as a result of deicing operations. Evaluate whether over-application of deicing chemicals occurs by analyzing application rates, and adjust as necessary, consistent with considerations of flight safety. Consider these control measure options: metered application of chemicals; pre-wetting dry chemical constituents prior to application; install a runway ice detection system; implement anti-icing operations as a preventive measure against ice buildup.

- *Aircraft Deicing Operations.* Minimize contamination of storm water runoff from aircraft deicing operations. Determine whether excessive application of deicing chemicals occurs and adjust as necessary, consistent with considerations of flight safety. Evaluate using alternative deicing/anti-icing

agents as well as containment measures for all applied chemicals. Consider these control measure options for reducing deicing fluid use: forced-air deicing systems, computer-controlled fixed-gantry systems, infrared technology, hot water, varying glycol content to air temperature, enclosed-basket deicing trucks, mechanical methods, solar radiation, hangar storage, aircraft covers, and thermal blankets for MD-80s and DC-9s. Also consider using ice-detection systems and airport traffic flow strategies and departure slot allocation systems. The evaluations and determinations required by this Part should be carried out by the personnel most familiar with the particular aircraft and flight operations and related systems in question (versus an outside entity such as the airport authority).

11.S.4.1.7 Management of Runoff.

(See also 4.2.6) Where deicing operations occur, implement a program to control or manage contaminated runoff to minimize the amount of pollutants being discharged from the site. Consider these control measure options: a dedicated deicing facility with a runoff collection/recovery system; using vacuum/collection trucks; storing contaminated storm water/deicing fluids in tanks and releasing controlled amounts to a publicly owned treatment works; collecting contaminated runoff in a wet pond for biochemical decomposition (be aware of attracting wildlife that may prove hazardous to flight operations); or directing runoff into vegetative swales or other infiltration measures. Also consider recovering deicing materials when these materials are applied during non-precipitation events (e.g., covering storm sewer inlets, using booms, installing absorptive interceptors in the drains, etc.) to prevent these materials from later becoming a source of storm water contamination. Deicing operations should be developed with an emphasis on using a combination of the BMPs listed above to contain, capture, and reuse deicing materials. Used deicing fluid should be recycled whenever practicable.

11.S.4.2 Deicing Season. (See also Part 11.S.7.) The permittee must determine the seasonal timeframe (e.g., December- February, October - March, etc.) during which deicing activities typically occur at the facility. Implementation of control measures, including any BMPs, facility inspections and monitoring must be conducted with particular emphasis throughout the defined deicing season. If the permittee meets the deicing chemical usage thresholds of 100,000 gallons glycol and/or 100 tons of urea, the deicing season they identified is the timeframe during which the permittee must obtain the four required benchmark monitoring event results for deicing-related parameters, i.e., BOD, COD, ammonia and pH.

11.S.5 Additional SWPPP Requirements.

An airport authority and tenants of the airport are encouraged to work in partnership in the development of a SWPPP. If an airport tenant obtains authorization under this permit and develops a SWPPP for

discharges from his or her own areas of the airport, prior to authorization, that SWPPP must be coordinated and integrated with the SWPPP for the entire airport. Tenants of the airport facility include air passenger or cargo companies, fixed based operators and other parties who have contracts with the airport authority to conduct business operations on airport property and whose operations result in storm water discharges associated with industrial activity.

11.S.5.1 Drainage Area Site Map. (See also Part 5.2.3) The permittee must document in the SWPPP the following areas of the facility and indicate whether activities occurring there may be exposed to precipitation/surface runoff: aircraft and runway deicing operations; fueling stations; aircraft, ground vehicle and equipment maintenance/cleaning areas; storage areas for aircraft, ground vehicles and equipment awaiting maintenance.

11.S.5.2 Potential Pollutant Sources. (See also Part 5.2.4) In the permittees inventory of exposed materials, describe in the SWPPP the potential for the following activities and facility areas to contribute pollutants to storm water discharges: aircraft, runway, ground vehicle and equipment maintenance and cleaning; aircraft and runway deicing operations (including apron and centralized aircraft deicing stations, runways, taxiways and ramps). If the permittee uses deicing chemicals, they must maintain a record of the types (including the Material Safety Data Sheets [MSDS]) used and the monthly quantities, either as measured or, in the absence of metering, as estimated to the best of the permittees knowledge. This includes all deicing chemicals, not just glycols and urea (e.g., potassium acetate), because large quantities of these other chemicals can still have an adverse impact on receiving waters. Tenants or other fixed-based operations that conduct deicing operations must provide the above information to the airport authority for inclusion with any comprehensive airport SWPPPs.

11.S.5.3 Vehicle and Equipment Washwater Requirements. Attach to or reference in the SWPPP, a copy of the APDES permit issued for vehicle/equipment washwater or, if an APDES permit has not been issued, a copy of the pending application. If an industrial user permit is issued under a local pretreatment program, include a copy in the SWPPP. In any case, if the permittee is subject to another permit, describe the control measures for implementing all non-storm water discharge permit conditions or pretreatment requirements in the SWPPP. If washwater is handled in another manner (e.g., hauled offsite, retained onsite), describe the disposal method and attach all pertinent documentation/information (e.g., frequency, volume, destination, etc.) in the SWPPP.

11.S.5.4 Documentation of Control Measures Used for Management of Runoff. Document in the SWPPP the control measures used for collecting or containing contaminated melt water from collection areas used for disposal of contaminated snow.

11.S.6 Additional Inspection Requirements.

11.S.6.1 Inspections. (See also Part 6.1) At a minimum, conduct routine facility inspections at least monthly during the deicing season (e.g., October through April for most airports). If a permittees facility needs to deice before or after this period, expand the monthly inspections to include all months during which deicing chemicals may be used. The Department may specifically require the permittee to increase inspection frequencies.

11.S.6.2 Comprehensive Site Inspections. (See also Part 6.3) Using only qualified personnel, conduct the annual site inspection during periods of actual deicing operations, if possible. If not practicable during active deicing because of weather, conduct the inspection during the season when deicing operations occur and the materials and equipment for deicing are in place.

11.S.7 Sector-Specific Benchmarks. (See also Part 7 of the permit.)

Monitor per the requirements in Table 11.S.7-1.

Table 11.S.7-1: Sector – Specific Benchmarks – Sector S

Subsector (Permittees may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
For airports where a single permittee, or a combination of permitted facilities use more than 100,000 gallons of pure glycol in glycol-based deicing fluids and/or 100 tons or more of urea on an average annual basis, monitor the first four parameters in ONLY those outfalls that collect runoff from areas where deicing activities occur (SIC 4512-4581).	Biochemical Oxygen Demand (BOD_5)[1]	30 mg/L
	Chemical Oxygen Demand (COD)[1]	120 mg/L
	Ammonia[1, 2]	2.14 mg/L
	pH[1]	6.5 – 8.5 s.u.

Note:
1. These are deicing-related parameters. Collect the four benchmark samples, and any required follow-up benchmark samples, during the timeframe defined in Part 11.S.4.2 when deicing activities are occurring.
2. If a permittee certifies annually that it does not use airfield deicing products that contain urea, then the permittee does not need to sample for ammonia.

11.S.8 Sector-Specific Effluent Limitation Guideline.

There shall be no discharge of airfield pavement deicers containing urea, unless there is monitoring. To comply with this limitation, any existing point source must certify annually that it does not use airfield deicing products that contain urea or alternatively, airfield pavement discharges at every discharge point must achieve the numeric limitations for ammonia in Table 11.S.8-1, prior to any dilution or commingling with any non-deicing discharge. The certification statement shall be maintained in the SWPPP and signed in accordance with Appendix A, Part 1.12. Monitor per the requirements in Table 11.S.8-1.

Table 11.S.8-1: Effluent Limitations Based on 40 CFR Part 449 BAT Limitations

Wastestream	Paramter	Daily Maximum
Runoff containing urea from airfield pavement deicing at existing primary airports with 1,000 or more annual non-propeller aircraft[1] departures.	Ammonia as Nitrogen[2]	14.7 mg/l

Note:
1. Annual non-propellar aircraft is the average annual aircraft departures of commercial turbine-engine aircraft that are propelled by jet, i.e., turbojet or turbofan as tabulated by the Federal Aviation Administration.
2. Monitor twice a deicing season during the timeframe defined in Part 11.S.4.2 when deicing activities are occuring.

11.S.9 Technology Based – Effluent Limits for New Sources with At Least 1,000 Annual Non-Propellar Aircraft Departures.

A new airport with at least 1,000 annual non-propeller aircraft departures must apply for an individual APDES permit.

11. Subpart T – Sector T – Treatment Works.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.T.1 Covered Storm Water Discharges.

The requirements in Subpart T apply to storm water discharges associated with industrial activity from Treatment Works as identified by the Activity Code specified under Sector T in Table D-1 of Appendix D of the permit.

11.T.2 Industrial Activities Covered by Sector T.

The requirements listed under this part apply to all existing point source storm water discharges associated with the following activities:

11.T.2.1 *Treatment works treating domestic sewage,* or any other sewage sludge or wastewater treatment device or system used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge; that are located within the confines of a facility with a design flow of 1.0 million gallons per day (MGD) or more; or are required to have an approved pretreatment program under 40 CFR Part 403.

11.T.2.2 *The following are not required to have permit coverage:* farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located within the facility, or areas that are in compliance with Section 405 of the CWA.

11.T.3 Limitations on Coverage.

11.T.3.1 *Prohibition of Non-Storm Water Discharges.* (See also Part 1.2.4) Sanitary and industrial wastewater and equipment and vehicle washwater are not authorized by this permit.

11.T.4 Additional Technology-Based Effluent Limits.

11.T.4.1 *Control Measures.* (See also the non-numeric effluent limits in Part 4.2) In addition to the other control measures, implement the following, as practicable: routing storm water to the treatment works; or covering exposed materials (i.e., from the following areas: grit, screenings, and other solids handling, storage, or disposal areas; sludge drying beds; dried sludge piles; compost piles; and septage or hauled waste receiving station).

11.T.4.2 Employee Training. (See also Part 4.2.9) At a minimum, training must address the following areas when applicable to a facility: petroleum product management; process chemical management; spill prevention and controls; fueling procedures; general good housekeeping practices; and proper procedures for using fertilizer, herbicides, and pesticides.

11.T.5 Additional SWPPP Requirements.

11.T.5.1 Site Map. (See also Part 5.2.3) The permittee must document in the SWPPP where any of the following may be exposed to precipitation or surface runoff: grit, screenings, and other solids handling, storage, or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station; and storage areas for process chemicals, petroleum products, solvents, fertilizers, herbicides, and pesticides.

11.T.5.2 Potential Pollutant Sources. (See also Part 5.2.4) Document in the SWPPP the following additional sources and activities that have potential pollutants associated with them, as applicable: grit, screenings, and other solids handling, storage, or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station; and access roads and rail lines.

11.T.5.3 Wastewater and Washwater Requirements. Keep a copy of all the permittees current APDES permits issued for wastewater and industrial, vehicle and equipment washwater discharges or, if an APDES permit has not yet been issued, a copy of the pending application(s) with the SWPPP. If the washwater is handled in another manner, the disposal method must be described and all pertinent documentation must be retained onsite.

11.T.6 Additional Inspection Requirements.

(See also Part 6.1) Include the following areas in all inspections: access roads and rail lines; grit, screenings, and other solids handling, storage, or disposal areas; sludge drying beds; dried sludge piles; compost piles; and septage or hauled waste receiving station.

11. Subpart U – Sector U – Food and Kindred Products.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.U.1 Covered Storm Water Discharges.

The requirements in Subpart U apply to storm water discharges associated with industrial activity from Food and Kindred Products facilities as identified by the SIC Codes specified in Table D-1 of Appendix D of the permit.

11.U.2 Limitations on Coverage.

11.U.2.1 Prohibition of Non-Storm Water Discharges. (See also Part 1.2.4) The following discharges are not authorized by this permit: discharges containing boiler blowdown, cooling tower overflow and blowdown, ammonia refrigeration purging, and vehicle washing and clean-out operations.

11.U.3 Additional Technology-Based Limitations.

11.U.3.1 Employee Training. (See also Part 4.2.9) Address pest control in the permittees employee training program.

11.U.4 Additional SWPPP Requirements.

11.U.4.1 Drainage Area Site Map. (See also Part 5.2.3) The permittee must document in the SWPPP the locations of the following activities if they are exposed to precipitation or runoff: vents and stacks from cooking, drying, and similar operations; dry product vacuum transfer lines; animal holding pens; spoiled product; and broken product container storage areas.

11.U.4.2 Potential Pollutant Sources. (See also Part 5.2.4) The permittee must document in the SWPPP, in addition to food and kindred products processing-related industrial activities, application and storage of pest control chemicals (e.g., rodenticides, insecticides, fungicides) used on plant grounds.

11.U.5 Additional Inspection Requirements.

(See also Part 6.1) Inspect on a quarterly basis, at a minimum, the following areas where the potential for exposure to storm water exists: loading and unloading areas for all significant materials; storage areas, including associated containment areas; waste management units; vents and stacks emanating from industrial activities; spoiled product and broken product container holding areas; animal holding pens; staging areas; and air pollution control equipment.

11.U.6 Sector-Specific Benchmarks. (See also Part 7 of the permit.)

Table 11.U.6-1: Sector – Specific Benchmarks – Sector U

Subsector (Permittees may be subject to requirements for more than one Sector / Subsector)	Parameter	Benchmark Monitoring Concentration
Subsector U1. Grain Mill Products (SIC 2041-2048)	Total Suspended Solids (TSS)	100 mg/L
Subsector U2. Fats and Oils Products (SIC 2074-2079)	Biochemical Oxygen Demand (BOD_5)	30 mg/L
	Chemical Oxygen Demand (COD)	120 mg/L
	Nitrate plus Nitrite Nitrogen	0.68 mg/L
	Total Suspended Solids (TSS)	100 mg/L

11. Subpart V – Sector V – Textile Mills, Apparel, and Other Fabric Products.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.V.1 Covered Storm Water Discharges.

The requirements in Subpart V apply to storm water discharges associated with industrial activity from Textile Mills, Apparel, and Other Fabric Product manufacturing as identified by the SIC Codes specified under Sector V in Table D-1 of Appendix D of the permit.

11.V.2 Limitations on Coverage.

11.V.2.1 Prohibition of Non-Storm Water Discharges. (See also Part 1.2.4) The following are not authorized by this permit: discharges of wastewater (e.g., wastewater resulting from wet processing or from any processes relating to the production process), reused or recycled water, and waters used in cooling towers. If the permittee has these types of discharges from the facility, the permittee must cover them under a separate APDES permit.

11.V.3 Additional Technology-Based Limitations.

11.V.3.1 Good Housekeeping Measures. (See also Part 4.2.2)

11.V.3.1.1 Material Storage Areas. Plainly label and store all containerized materials (e.g., fuels, petroleum products, solvents, and dyes) in a protected area, away from drains. Minimize contamination of the storm water runoff from such storage areas. Implement an inventory control plan to prevent excessive purchasing of potentially hazardous substances. For storing empty chemical drums or containers, ensure that the drums and containers are clean (consider triple-rinsing) and that there is no contact of residuals with precipitation or runoff. Collect and dispose of washwater from these cleanings properly.

11.V.3.1.2 Material Handling Areas. Minimize contamination of storm water runoff from material handling operations and areas. Implement the following (or their equivalents), as practicable: use of spill and overflow protection; cover fueling areas; and cover or enclose areas where the transfer of material may occur. When applicable, address the replacement or repair of leaking connections, valves, transfer lines, and pipes that may carry chemicals, dyes, or wastewater.

11.V.3.1.3 Fueling Areas. Minimize contamination of storm water runoff from fueling areas. Implement the following (or their equivalents), as practicable: cover the fueling area, use of spill and overflow protection, minimize run-on of storm water to the fueling areas, use of dry cleanup methods, and treating and/or recycling storm water runoff collected from the fueling area.

11.V.3.1.4 Above-Ground Storage Tank Area. Minimize contamination of the storm water runoff from above-ground storage tank areas, including the associated piping and valves. Implement the following (or their equivalents), as practicable: regular cleanup of these areas; include measures for tanks, piping and valves explicitly in the permittees SPCC program; minimize runoff of storm water from adjacent areas; restrict access to the area; insert filters in adjacent catch basins; provide absorbent booms in unbermed fueling areas; use dry cleanup methods; and permanently sealing drains within critical areas that may discharge to a storm drain.

11.V.3.2 Employee Training. (See also Part 4.2.9) As part of the permittees employee training program, address, at a minimum, the following activities (as applicable): use of reused and recycled waters, solvents management, proper disposal of dyes, proper disposal of petroleum products and spent lubricants, spill prevention and control, fueling procedures, and general good housekeeping practices.

11.V.4 Additional SWPPP Requirements.

11.V.4.1 Potential Pollutant Sources. (See also Part 5.2.4) The permittee must document in the SWPPP the following additional sources and activities that have potential pollutants associated with them: industry-specific significant materials and industrial activities (e.g., backwinding, beaming, bleaching, backing bonding, carbonizing, carding, cut and sew operations, desizing, drawing, dyeing locking, fulling, knitting, mercerizing, opening, packing, plying, scouring, slashing, spinning, synthetic-felt processing, textile waste processing, tufting, turning, weaving, web forming, winging, yarn spinning, and yarn texturing).

11.V.4.2 Description of Good Housekeeping Measures for Material Storage Areas. The permittee must document in the SWPPP the containment area or enclosure for materials stored outdoors in connection with Part 11.V.3.1.1 above.

11.V.5 Additional Inspection Requirements.

(See also Part 6.1) Inspect, at least monthly, the following activities and areas (at a minimum): transfer and transmission lines, spill prevention, good housekeeping practices, management of process waste products, and all structural and nonstructural management practices.

11. Subpart W – Sector W – Furniture and Fixtures.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of a permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.W.1 Covered Storm Water Discharges.

The requirements in Subpart W apply to storm water discharges associated with industrial activity from Furniture and Fixtures facilities as identified by the SIC Codes specified under Sector W in Table D-1 of Appendix D of the permit.

11.W.2 Additional SWPPP Requirements.

11.W.2.1 Drainage Area Site Map. (See also Part 5.2.3) The permittee must document in the SWPPP where any of the following may be exposed to precipitation or surface runoff: material storage (including tanks or other vessels used for liquid or waste storage) areas; outdoor material processing areas; areas where wastes are treated, stored, or disposed of; access roads; and rail spurs.

11. Subpart X – Sector X – Printing and Publishing.

The permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.X.1 Covered Storm Water Discharges.

The requirements in Subpart X apply to storm water discharges associated with industrial activity from Printing and Publishing facilities as identified by the SIC Codes specified under Sector X in Table D-1 of Appendix D of the permit.

11.X.2 Additional Technology-Based Effluent Limits.

11.X.2.1 Good Housekeeping Measures. (See also Part 4.2.2)

11.X.2.1.1 Material Storage Areas. Plainly label and store all containerized materials (e.g., skids, pallets, solvents, bulk inks, hazardous waste, empty drums, portable and mobile containers of plant debris, wood crates, steel racks, and fuel oil) in a protected area, away from drains. Minimize contamination of the storm water runoff from such storage areas. Implement an inventory control plan to prevent excessive purchasing of potentially hazardous substances. In order to minimize storm water exposure materials should be stored indoors or under cover.

11.X.2.1.2 Material Handling Area. Minimize contamination of storm water runoff from material handling operations and areas (e.g., blanket wash, mixing solvents, loading and unloading materials). Implement the following (or their equivalents), as practicable: use spill and overflow protection, cover fueling areas, and cover or enclose areas where the transfer of materials may occur. When applicable, address the replacement or repair of leaking connections, valves, transfer lines, and pipes that may carry chemicals or wastewater.

11.X.2.1.3 Fueling Areas. Minimize contamination of storm water runoff from fueling areas. Implement the following (or their equivalents), as practicable: cover the fueling area, use spill and overflow protection, minimize runoff of storm water to the fueling areas, use dry cleanup methods, and treat aor recycle storm water runoff collected from the fueling area.

11.X.2.1.4 Above Ground Storage Tank Area. Minimize contamination of the storm water runoff from above-ground storage tank areas, including the associated piping and valves. Implement the following (or their equivalents), as practicable: regularly clean these areas, explicitly address tanks, piping and valves in the SPCC program, minimize storm water runoff from adjacent areas, restrict access to the area, insert filters in adjacent catch basins, provide absorbent booms in unbermed fueling areas, use dry cleanup methods, and permanently seal drains within critical areas that may discharge to a storm drain.

11.X.2.2 Employee Training. (See also Part 4.2.9) As part of the permittees employee training program, address, at a minimum, the following activities (as applicable): spent solvent management, spill prevention and control, used oil management, fueling procedures, and general good housekeeping practices.

11.X.3 Additional SWPPP Requirements.

11.X.3.1 Description of Good Housekeeping Measures for Material Storage Areas. In connection with Part 11.X.2.1.1, describe in the SWPPP the containment area or enclosure for materials stored outdoors.

11. Subpart Y – Sector Y – Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.Y.1 Covered Storm Water Discharges.

The requirements in Subpart Y apply to storm water discharges associated with industrial activity from Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries facilities as identified by the SIC Codes specified under Sector Y in Table D-1 of Appendix D of the permit.

11.Y.2 Additional Technology-Based Effluent Limits.

11.Y.2.1 Controls for Rubber Manufacturers. (See also Part 4.2) Minimize the discharge of zinc in a permittees storm water discharges. Parts 11.Y.2.1.1 to 11.Y.2.1.5 give possible sources of zinc to be reviewed and list some specific control measures to be considered for implementation (or their equivalents). Following are some general control measure options to consider: using chemicals purchased in pre-weighed, sealed polyethylene bags; storing in-use materials in sealable containers, ensuring an airspace between the container and the cover to minimize "puffing" losses when the container is opened, and using automatic dispensing and weighing equipment.

11.Y.2.1.1 Zinc Bags. Ensure proper handling and storage of zinc bags at the permittees facility. Following are some control measure options: employee training on the handling and storage of zinc bags, indoor storage of zinc bags, cleanup of zinc spills without washing the zinc into the storm drain, and the use of 2,500-pound sacks of zinc rather than 50- to 100-pound sacks.

11.Y.2.1.2 Dumpsters. Minimize discharges of zinc from dumpsters. Following are some control measure options: covering the dumpster, moving the dumpster indoors, or providing a lining for the dumpster.

11.Y.2.1.3 Dust Collectors and Baghouses. Minimize contributions of zinc to storm water from dust collectors and baghouses. Replace or repair, as appropriate, improperly operating dust collectors and baghouses.

11.Y.2.1.4 Grinding Operations. Minimize contamination of storm water as a result of dust generation from rubber grinding operations. One control measure option is to install a dust collection system.

11.Y.2.1.5 Zinc Stearate Coating Operations. Minimize the potential for storm water contamination from drips and spills of zinc stearate slurry that may be released to the storm drain. One control measure option is to use alternative compounds to zinc stearate.

11.Y.2.2 Controls for Plastic Products Manufacturers. Minimize the discharge of plastic resin pellets in the storm water discharges. Control measures to be considered for implementation (or their equivalents) include minimizing spills, cleaning up of spills promptly and thoroughly, sweeping thoroughly, pellet capturing, employee education, and disposal precautions.

11.Y.3 Additional SWPPP Requirements.

11.Y.3.1 Potential Pollutant Sources for Rubber Manufacturers. (See also Part 5.2.4) The permittee must document in the SWPPP the use of zinc at their facility and the possible pathways through which zinc may be discharged in storm water runoff.

11.Y.4 Sector-Specific Benchmarks. (See also Part 7 of the permit.)

Table 11.Y.4-1: Sector – Specific Benchmarks – Sector Y

Subsector (Permittees may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Subsector Y1. Rubber Products Manufacturing (SIC 3011, 3021, 3052, 3053, 3061, 3069)	Total Zinc (saltwater)[1] Total Zinc (freshwater)[2]	0.09 mg/L Hardness Dependent

Note:
1. Saltwater benchmark values apply to storm water discharges into saline waters where indicated.
2. The freshwater benchmark values of some metals are dependent on water hardness. For these parameters, permittees must determine the hardness of the receiving water (see Appendix E, "Calculating Hardness in Receiving Waters for Hardness Dependent Metals," for methodology), in accordance with Part 7.2.1.1, to identify the applicable 'hardness range' for determining their benchmark value applicable to their facility. The ranges occur in 25 mg/L increments. Hardness Dependent Benchmarks follow in the table below:

Water Hardness Range (mg/L)	Zinc (mg/L)
0 – < 25	0.04
25 – < 50	0.05
50 – < 75	0.08
75 – < 100	0.11
100 – < 125	0.13
125 – < 150	0.16
150 – < 175	0.18
175 – < 200	0.20
200 – < 225	0.23
225 – < 250	0.25
250+	0.26

11. Subpart Z – Sector Z – Leather Tanning and Finishing.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.Z.1 Covered Storm Water Discharges.

The requirements in Subpart Z apply to storm water discharges associated with industrial activity from Leather Tanning and Finishing facilities as identified by the SIC Code specified under Sector Z in Table D-1 of Appendix D of the permit.

11.Z.2 Additional Technology-Based Effluent Limits.

11.Z.2.1 Good Housekeeping Measures. (See also Part 4.2.2)

11.Z.2.1.1 Storage Areas for Raw, Semiprocessed, or Finished Tannery By-products. Minimize contamination of storm water runoff from pallets and bales of raw, semiprocessed, or finished tannery by-products (e.g., splits, trimmings, shavings). Use indoor storage or protection with polyethylene wrapping, tarpaulins, roofed storage, etc. Place materials on an impermeable surface and enclose or put berms (or equivalent measures) around the area to prevent storm water run-on and runoff.

11.Z.2.1.2 Material Storage Areas. Label storage containers of all materials (e.g., specific chemicals, hazardous materials, spent solvents, waste materials) minimize contact of such materials with storm water.

11.Z.2.1.3 Buffing and Shaving Areas. Minimize contamination of storm water runoff with leather dust from buffing and shaving areas. Use dust collection enclosures, preventive inspection and maintenance programs, or other appropriate preventive measures.

11.Z.2.1.4 Receiving, Unloading, and Storage Areas. Minimize contamination of storm water runoff from receiving, unloading, and storage areas. If these areas are exposed, use the following (or their equivalents): covering all hides and chemical supplies, diverting drainage to the process sewer, or grade berming or curbing the area to prevent storm water runoff.

11.Z.2.1.5 Outdoor Storage of Contaminated Equipment. Minimize contact of storm water with contaminated equipment. Use the following (or their equivalents): covering equipment, diverting drainage to the process sewer, or cleaning thoroughly prior to storage.

11.Z.2.1.6 Waste Management. Minimize contamination of storm water runoff from waste storage areas. Use the following (or their equivalents): covering dumpsters, moving waste management activities indoors, covering waste piles with temporary covering material such as tarpaulins or polyethylene, or minimizing storm water runoff by enclosing the area or building berms around the area.

11.Z.3 Additional SWPPP Requirements.

11.Z.3.1 Drainage Area Site Map. (See also Part 5.2.3) The permittee must document in the SWPPP where any of the following may be exposed to precipitation or surface runoff: processing and storage areas of the beamhouse, tanyard, and re-tan wet finishing and dry finishing operations.

11.Z.3.2 Potential Pollutant Sources. (See also Part 5.2.4) The permittee must document in the SWPPP the following sources and activities that have potential pollutants associated with them (as appropriate): temporary or permanent storage of fresh and brine-cured hides; extraneous hide substances and hair; leather dust, scraps, trimmings, and shavings.

11. Subpart AA – Sector AA – Fabricated Metal Products.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.AA.1 Covered Storm Water Discharges.

The requirements in Subpart AA apply to storm water discharges associated with industrial activity from Fabricated Metal Products facilities as identified by the SIC Codes specified under Sector AA in Table D-1 of Appendix D of the permit.

11.AA.2 Additional Technology-Based Effluent Limits.

11.AA.2.1 Good Housekeeping Measures. (See also Part 4.2.2)

11.AA.2.1.1 Raw Steel Handling Storage. Minimize the generation of and/or recover and properly manage scrap metals, fines, and iron dust. Include measures for containing materials within storage handling areas.

11.AA.2.1.2 Paints and Painting Equipment. Minimize exposure of paint and painting equipment to storm water.

11.AA.2.2 Spill Prevention and Response Procedures. (See also Part 4.2.4) Ensure that the necessary equipment to implement a cleanup is available to personnel. The following areas should be addressed:

11.AA.2.2.1 Metal Fabricating Areas. Maintain clean, dry, orderly conditions in these areas. Use dry clean-up techniques.

11.AA.2.2.2 Storage Areas for Raw Metal. Keep these areas free of conditions that could cause, or impede appropriate and timely response to, spills or leakage of materials. Implement the following (or their equivalents): maintaining storage areas so that there is easy access in the event of a spill, and labeling stored materials to aid in identifying spill contents.

11.AA.2.2.3 Metal Working Fluid Storage Areas. Minimize the potential for storm water contamination from storage areas for metal working fluids.

11.AA.2.2.4 Cleaners and Rinse Water. Control and clean up spills of solvents and other liquid cleaners, control sand buildup and disbursement from sand-blasting operations, and prevent exposure of recyclable wastes. Substitute environmentally benign cleaners when possible.

11.AA.2.2.5 Lubricating Oil and Hydraulic Fluid Operations. Minimize the potential for storm water contamination from lubricating oil and hydraulic fluid operations. Use appropriate monitoring methods or equipment or other devices to detect and control leaks and overflows. Install perimeter controls such as dikes, curbs, grass filter strips, or equivalent measures, as practicable.

11.AA.2.2.6 Chemical Storage Areas. Minimize storm water contamination and accidental spillage in chemical storage areas. Include a program to inspect containers and identify proper disposal methods.

11.AA.2.3 Spills and Leaks. (See also Part 5.2.4.3) In the permittees spill prevention and response procedures, required by Part 4.2.4, pay attention to the following materials (at a minimum): chromium, toluene, pickle liquor, sulfuric acid, zinc and other water priority chemicals, and hazardous chemicals and wastes.

11.AA.3 Additional SWPPP Requirements.

11.AA.3.1 Drainage Area Site Map. (See also Part 5.2.3) The permittee must document in the SWPPP where any of the following may be exposed to precipitation or surface runoff: raw metal storage areas; finished metal storage areas; scrap disposal collection sites; equipment storage areas; retention and detention basins; temporary and permanent diversion dikes or berms; right-of-way or perimeter diversion devices; sediment traps and barriers; processing areas, including outside painting areas; wood preparation; recycling; and raw material storage.

11.AA.3.2 Potential Pollutant Sources. (See also Part 5.2.4) The permittee must document in the SWPPP the following additional sources and activities that have potential pollutants associated with them: loading and unloading operations for paints, chemicals, and raw materials; outdoor storage activities for raw materials, paints, empty containers, corn cobs, chemicals, and scrap metals; outdoor manufacturing or processing activities such as grinding, cutting, degreasing, buffing, and brazing; onsite waste disposal practices for spent solvents, sludge, pickling baths, shavings, ingot pieces, and refuse and waste piles.

11.AA.4 Additional Inspection Requirements.

11.AA.4.1 Inspections. (See also Part 6) At a minimum, include the following areas in all inspections: raw metal storage areas, finished product storage areas, material and chemical storage areas, recycling areas, loading and unloading areas, equipment storage areas, paint areas, and vehicle fueling and maintenance areas.

11.AA.4.2 Comprehensive Site Inspections. (See also Part 6.3) As part of the permittees inspections, also inspect areas associated with the storage of raw metals, spent solvents and chemicals storage areas, outdoor paint areas, and drainage from roof. Potential pollutants include chromium, zinc, lubricating oil, solvents, aluminum, oil and grease, methyl ethyl ketone, steel, and related materials.

11.AA.5 Sector-Specific Benchmarks. (See also Part 7 of the permit.)

Table 11.AA.5-1: Sector – Specific Benchmarks – Sector AA

Subsector (Permittees may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Subsector AA1. Fabricated Metal Products, except Coating (SIC 3411-3499; 3911-3915)	Total Aluminum	0.75 mg/L
	Total Iron	1.0 mg/L
	Total Zinc (saltwater)[1] Total Zinc (freshwater)[2]	0.09 mg/L Hardness Dependent
	Nitrate plus Nitrite Nitrogen	0.68 mg/L
Subsector AA2. Fabricated Metal Coating and Engraving (SIC 3479)	Total Zinc (saltwater)[1] Total Zinc (freshwater)[2]	0.09 mg/L Hardness Dependent
	Nitrate plus Nitrite Nitrogen	0.68 mg/L

Note:

1. Saltwater benchmark values apply to storm water discharges into saline waters where indicated.
2. The freshwater benchmark values of some metals are dependent on water hardness. For these parameters, permittees must determine the hardness of the receiving water (see Appendix E, "Calculating Hardness in Receiving Waters for Hardness Dependent Metals," for methodology), in accordance with Part 7.2.1.1, to identify the applicable 'hardness range' for determining their benchmark value applicable to their facility. The ranges occur in 25 mg/L increments. Hardness Dependent Benchmarks follow in the table below:

Water Hardness Range (mg/L)	Zinc (mg/L)
0 – < 25	0.04
25 – < 50	0.05
50 – < 75	0.08
75 – < 100	0.11
100 – < 125	0.13
125 – < 150	0.16
150 – < 175	0.18
175 – < 200	0.20
200 – < 225	0.23
225 – < 250	0.25
250+	0.26

11. Subpart AB – Sector AB — Transportation Equipment, Industrial or Commercial Machinery Facilities.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.AB.1 Covered Storm Water Discharges.

The requirements in Subpart AB apply to storm water discharges associated with industrial activity from Transportation Equipment, Industrial or Commercial Machinery facilities as identified by the SIC Codes specified under Sector AB in Table D-1 of Appendix D of the permit.

11.AB.2 Additional SWPPP Requirements.

11.AB.2.1 Drainage Area Site Map. (See also Part 5.2.3) Identify in the permittees SWPPP where any of the following may be exposed to precipitation or surface runoff: vents and stacks from metal processing and similar operations.

11. Subpart AC– Sector AC –Electronic and Electrical Equipment and Components, Photographic and Optical Goods.

A Permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.AC.1 Covered Storm Water Discharges.

The requirements in Subpart AC apply to storm water discharges associated with industrial activity from facilities that manufacture Electronic and Electrical Equipment and Components, Photographic and Optical goods as identified by the SIC Codes specified in Table D-1 of Appendix D of the permit.

11.AC.2 Additional Requirements.

No additional sector-specific requirements apply.

11. Subpart AD – Sector AD – Discharges Designated by the Director as Requiring Permits.

A permittee must comply with Part 11 sector-specific requirements associated with their primary industrial activity and any co-located industrial activities, as defined in Appendix C. The sector-specific requirements apply to those areas of the permittees facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

11.AD.1 Covered Discharges.

Sector AD is used to provide permit coverage for facilities designated by the Department.

11.AD.1.1 Eligibility for Permit Coverage. Because this sector is primarily intended for use by discharges designated by the Department as needing a permit (which is an atypical circumstance), the permittee must obtain the Department's written permission to use this permit prior to submitting an NOI. If a permittee is authorized to use this permit, they will still be required to ensure that their discharges meet the basic eligibility provisions of this permit at Part 1.2.

11.AD.3 Sector-Specific Benchmarks and Effluent Limits. (See also Part 7 of the permit.)

The Department will establish any additional monitoring and reporting requirements for the permittees facility prior to authorizing the permittee to be covered by this permit. Additional monitoring requirements would be based on the nature of activities at the facility and the storm water discharges.

Appendix A – Standard Conditions

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Appendix A of the permit contains standard regulatory language that must be included in all APDES permits. These requirements are based on the regulations and cannot be challenged in the context of an individual APDES permit action. The standard regulatory language covers requirements such as monitoring, recording, reporting requirements, compliance responsibilities, and other general requirements. Appendix A, Standard Conditoins is an integral and enforceable part of the permit. Failure to comply with a Standard Condition in this Appendix constitutes a violation of the permit and is subject to enforcement.

1.0 Standard Conditions Applicable to All Permits

1.1. Contact Information and Addresses

1.1.1. Permitting Program

Documents, reports, and plans required under the permit and Appendix A are to be sent to the following address:

State of Alaska
Department of Environmental Conservation
Division of Water
Wastewater Discharge Authorization Program
555 Cordova Street
Anchorage, Alaska 99501
Telephone (907) 269-6285
Fax (907) 269-3487
Email: DEC.Water.WQPermit@alaska.gov

1.1.2. Compliance and Enforcement Program

Documents and reports required under the permit and Appendix A relating to compliance are to be sent to the following address:

State of Alaska
Department of Environmental Conservation
Division of Water
Compliance and Enforcement Program
555 Cordova Street
Anchorage, Alaska 99501
Telephone Nationwide (877) 569-4114
Anchorage Area / International (907) 269-4114
Fax (907) 269-4604
Email: dec-wqreporting@alaska.gov

1.2. Duty to Comply

A permittee shall comply with all conditions of the permittee's APDES permit. Any permit noncompliance constitutes a violation of 33 U.S.C. 1251-1387 (Clean Water Act) and state law and is grounds for enforcement action including termination, revocation and reissuance, or modification of a permit, or denial of a permit renewal application. A permittee shall comply with effluent standards or prohibitions established under 33 U.S.C. 1317(a) for toxic pollutants

within the time provided in the regulations that establish those effluent standards or prohibitions even if the permit has not yet been modified to incorporate the requirement.

1.3. Duty to Reapply

If a permittee wishes to continue an activity regulated by this permit after its expiration date, the permittee must apply for and obtain a new permit. In accordance with 18 AAC 83.105(b), a permittee with a currently effective permit shall reapply by submitting a new application at least 180 days before the existing permit expires, unless the Department has granted the permittee permission to submit an application on a later date. However, the Department will not grant permission for an application to be submitted after the expiration date of the existing permit.

1.4. Need to Halt or Reduce Activity Not a Defense

In an enforcement action, a permittee may not assert as a defense that compliance with the conditions of the permit would have made it necessary for the permittee to halt or reduce the permitted activity.

1.5. Duty to Mitigate

A permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

1.6. Proper Operation and Maintenance

1.6.1. A permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances that the permittee installs or uses to achieve compliance with the conditions of the permit. The permittee's duty to operate and maintain properly includes using adequate laboratory controls and appropriate quality assurance procedures. However, a permittee is not required to operate back-up or auxiliary facilities or similar systems that a permittee installs unless operation of those facilities is necessary to achieve compliance with the conditions of the permit.

1.6.2. Operation and maintenance records shall be retained and made available at the site.

1.7. Permit Actions

A permit may be modified, revoked and reissued, or terminated for cause as provided in 18 AAC 83.130. If a permittee files a request to modify, revoke and reissue, or terminate a permit, or gives notice of planned changes or anticipated noncompliance, the filing or notice does not stay any permit condition.

1.8. Property Rights

A permit does not convey any property rights or exclusive privilege.

1.9. Duty to Provide Information

A permittee shall, within a reasonable time, provide to the Department any information that the Department requests to determine whether a permittee is in compliance with the permit, or whether cause exists to modify, revoke and reissue, or terminate the permit. A permittee shall also provide to the Department, upon request, copies of any records the permittee is required to keep under the permit.

1.10. Inspection and Entry

A permittee shall allow the Department, or an authorized representative, including a contractor acting as a representative of the Department, at reasonable times and on presentation of credentials establishing authority and any other documents required by law, to:

1.10.1. Enter the premises where a permittee's regulated facility or activity is located or conducted, or where permit conditions require records to be kept;

1.10.2. Have access to and copy any records that permit conditions require the permittee to keep;

1.10.3. Inspect any facilities, equipment, including monitoring and control equipment, practices, or operations regulated or required under a permit; and

1.10.4. Sample or monitor any substances or parameters at any location for the purpose of assuring permit compliance or as otherwise authorized by 33 U.S.C. 1251-1387 (Clean Water Act).

1.11. Monitoring and Records

A permittee must comply with the following monitoring and recordkeeping conditions:

1.11.1. Samples and measurements taken for the purpose of monitoring must be representative of the monitored activity.

1.11.2. The permittee shall retain records in Alaska of all monitoring information for at least three years, or longer at the Department's request at any time, from the date of the sample, measurement, report, or application. Monitoring records required to be kept include:

1.11.2.1. All calibration and maintenance records,

1.11.2.2. All original strip chart recordings or other forms of data approved by the Department for continuous monitoring instrumentation,

1.11.2.3. All reports required by a permit,

1.11.2.4. Records of all data used to complete the application for a permit,

1.11.2.5. Field logbooks or visual monitoring logbooks,

1.11.2.6. Quality assurance chain of custody forms,

1.11.2.7. Copies of discharge monitoring reports, and

1.11.2.8. A copy of this APDES permit.

1.11.3. Records of monitoring information must include:

1.11.3.1. The date, exact place, and time of any sampling or measurement;

1.11.3.2. The name(s) of any individual(s) who performed the sampling or measurement(s);

1.11.3.3. The date(s) and time any analysis was performed;

1.11.3.4. The name(s) of any individual(s) who performed any analysis;

1.11.3.5. Any analytical technique or method used; and

1.11.3.6. The results of the analysis.

1.11.4. Monitoring Procedures

Analyses of pollutants must be conducted using test procedures approved under 40 CFR Part 136, adopted by reference at 18 AAC 83.010, for pollutants with approved test procedures, and using test procedures specified in the permit for pollutants without approved methods.

1.12. Signature Requirement and Penalties

1.12.1. Any application, report, or information submitted to the Department in compliance with a permit requirement must be signed and certified in accordance with 18 AAC 83.385. Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, or other document filed or required to be maintained under a permit, or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be subject to penalties under 33 U.S.C. 1319(c)(4), AS 12.55.035(c)(1)(B), (c)(2) and (c)(3), and AS 46.03.790(g).

1.12.2. In accordance with 18 AAC 83.385, an APDES permit application must be signed as follows:

1.12.2.1. For a corporation, a responsible corporate officer shall sign the application; in this subsection, a responsible corporate officer means:

1.12.2.1.1. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or

1.12.2.1.2. The manager of one of more manufacturing, production, or operating facilities, if

1.12.2.1.2.1. The manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental statutes and regulations;

1.12.2.1.2.2. The manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and

1.12.2.1.3. Authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

1.12.2.2. For a partnership or sole proprietorship, by the general partner or the proprietor, respectively, shall sign the application.

1.12.2.3. For a municipality, state, federal, or other public agency, either a principal executive officer or ranking elected official shall sign the application; in this subsection, a principal executive officer of an agency means:

1.12.2.3.1. The chief executive officer of the agency; or

1.12.2.3.2. A senior executive officer having responsibility for the overall operations of a principal geographic unit or division of the agency.

1.12.3. Any report required by an APDES permit, and a submittal with any other information requested by the Department, must be signed by a person described in Appendix A, Part 1.12.2, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1.12.3.1. The authorization is made in writing by a person described in Appendix A, Part 1.12.2;

1.12.3.2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, including the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility; or an individual or position having overall responsibility for environmental matters for the company; and

1.12.3.3. The written authorization is submitted to the Department to the Permitting Program address in Appendix A, Part 1.1.1.

1.12.4. If an authorization under Appendix A, Part 1.12.3 is no longer effective because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Appendix A, Part 1.12.3 must be submitted to the Department before or together with any report, information, or application to be signed by an authorized representative.

1.12.5. Any person signing a document under Appendix A, Part 1.12.2 or Part 1.12.3 shall certify as follows:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

1.13. Proprietary or Confidential Information

1.13.1. A permit applicant or permittee may assert a claim of confidentiality for proprietary or confidential business information by stamping the words “confidential business information” on each page of a submission containing proprietary or confidential business information. The Department will treat the stamped submissions as confidential if the information satisfies the test in 40 CFR §2.208, adopted by reference at 18 AAC 83.010, and is not otherwise required to be made public by state law.

1.13.2. A claim of confidentiality under Appendix A, Part 1.13.1 may not be asserted for the name and address of any permit applicant or permittee, a permit application, a permit, effluent data, sewage sludge data, and information required by APDES or NPDES application forms provided by the Department, whether submitted on the forms themselves or in any attachments used to supply information required by the forms.

1.13.3. A permittee's claim of confidentiality authorized under Appendix A, Part 1.13.1 is not waived if the Department provides the proprietary or confidential business information to the EPA or to other agencies participating in the permitting process. The Department will supply any information obtained or used in the administration of the state APDES program to the EPA upon request under 40 CFR §123.41, as revised as of July 1, 2005. When providing information submitted to the Department with a claim of confidentiality to the EPA, the Department will notify the EPA of the confidentiality claim. If the Department provides the EPA information that is not claimed to be confidential, the EPA may make the information available to the public without further notice.

1.14. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any action or relieve a permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject to under state laws addressing oil and hazardous substances.

1.15. Cultural and Paleontological Resources

If cultural or paleontological resources are discovered because of this disposal activity, work that would disturb such resources is to be stopped, and the Office of History and Archaeology, a Division of Parks and Outdoor Recreation of the Alaska Department of Natural Resources (http://www.dnr.state.ak.us/parks/oha/), is to be notified immediately at (907) 269-8721.

1.16. Fee

A permittee must pay the appropriate permit fee described in 18 AAC 72.

1.17. Other Legal Obligations

This permit does not relieve the permittee from the duty to obtain any other necessary permits from the Department or from other local, state, or federal agencies and to comply with the requirements contained in any such permits. All activities conducted and all plan approvals implemented by the permittee pursuant to the terms of this permit shall comply with all applicable local, state, and federal laws and regulations.

2.0 Special Reporting Obligations

2.1. Planned Changes

2.1.1. The permittee shall give notice to the Department as soon as possible of any planned physical alteration or addition to the permitted facility if:

2.1.1.1. The alteration or addition may make the facility a "new source" under one or more of the criteria in 18 AAC 83.990(44); or

2.1.1.2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged if those pollutants are not subject to effluent limitations in the permit or to notification requirements under 18 AAC 83.610.

2.1.2. If the proposed changes are subject to plan review, then the plans must be submitted at least 30 days before implementation of changes (see 18 AAC 15.020 and 18 AAC 72 for plan review requirements). Written approval is not required for an emergency repair or routine maintenance.

2.1.3. Written notice must be sent to the Permitting Program address in Appendix A, Part 1.1.1.

2.2. Anticipated Noncompliance

2.2.1. A permittee shall give seven days' notice to the Department before commencing any planned change in the permitted facility or activity that may result in noncompliance with permit requirements.

2.2.2. Written notice must be sent to the Compliance and Enforcement Program address in Appendix A, Part 1.1.2.

2.3. Transfers

2.3.1. A permittee may not transfer a permit for a facility or activity to any person except after notice to the Department in accordance with 18 AAC 83.150. The Department may modify or revoke and reissue the permit to change the name of the permittee and incorporate such other requirements under 33 U.S.C. 1251-1387 (Clean Water Act) or state law.

2.3.2. Written notice must be sent to the Permitting Program address in Appendix A, Part 1.1.1.

2.4. Compliance Schedules

2.4.1. A permittee must submit progress or compliance reports on interim and final requirements in any compliance schedule of a permit no later than 14 days following the scheduled date of each requirement.

2.4.2. Written notice must be sent to the Compliance and Enforcement Program address in Appendix A, Part 1.1.2.

2.5. Corrective Information

2.5.1. If a permittee becomes aware that it failed to submit a relevant fact in a permit application or submitted incorrect information in a permit application or in any report to the Department, the permittee shall promptly submit the relevant fact or the correct information.

2.5.2. Information must be sent to the Permitting Program address in Appendix A, Part 1.1.1.

2.6. Bypass of Treatment Facilities

2.6.1. **Prohibition of Bypass**

Bypass is prohibited. The Department may take enforcement action against a permittee for any bypass, unless:

2.6.1.1. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

2.6.1.2. There were no feasible alternatives to the bypass, including use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. However, this condition is not satisfied if the permittee, in the exercise of reasonable engineering judgment, should have installed adequate back-up equipment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

2.6.1.3. The permittee provides notice to the Department of a bypass event in the manner, as appropriate, under Appendix A, Part 2.6.2.

2.6.2. **Notice of bypass**

2.6.2.1. For an anticipated bypass, the permittee submits notice at least 10 days before the date of the bypass. The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the conditions of Appendix A, Parts 2.6.1.1 and 2.6.1.2.

2.6.2.2. For an unanticipated bypass, the permittee submits 24-hour notice, as required in 18 AAC 83.410(f) and Appendix A, Part 3.4, Twenty-four Hour Reporting.

2.6.2.3. Written notice must be sent to the Compliance and Enforcement Program address in Appendix A, Part 1.1.2.

2.6.3. Notwithstanding Appendix A, Part 2.6.1, a permittee may allow a bypass that:

2.6.3.1. Does not cause an effluent limitation to be exceeded, and

2.6.3.2. Is for essential maintenance to assure efficient operation.

2.7. Upset Conditions

2.7.1. In any enforcement action for noncompliance with technology-based permit effluent limitations, a permittee may claim upset as an affirmative defense. A permittee seeking to establish the occurrence of an upset has the burden of proof to show that the requirements of Appendix A, Part 2.7.2 are met.

2.7.2. To establish the affirmative defense of upset, the permittee must demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that:

2.7.2.1. An upset occurred and the permittee can identify the cause or causes of the upset;

2.7.2.2. The permitted facility was at the time being properly operated;

2.7.2.3. The permittee submitted 24-hour notice of the upset, as required in 18 AAC 83.410(f) and Appendix A, Part 3.4, Twenty-four Hour Reporting; and

2.7.2.4. The permittee complied with any mitigation measures required under 18 AAC 83.405(e) and Appendix A, Part 1.5, Duty to Mitigate.

2.7.3. Any determination made in administrative review of a claim that noncompliance was caused by upset, before an action for noncompliance is commenced, is not final administrative action subject to judicial review.

2.8. Existing Manufacturing, Commercial, Mining, and Silvicultural Discharges

2.8.1. In addition to the reporting requirements under 18 AAC 83.410, an existing manufacturing, commercial, mining, and silvicultural discharger shall notify the Department as soon as that discharger knows or has reason to believe that any activity has occurred or will occur that would result in:

2.8.1.1. The discharge, on a routine or frequent basis, of any toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

2.8.1.1.1. One hundred micrograms per liter (100 µg/L);

2.8.1.1.2. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile, 500 micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol, and one milligram per liter (1 mg/L) for antimony;

2.8.1.1.3. Five times the maximum concentration value reported for that pollutant in the permit application in accordance with 18 AAC 83.310(c)-(g); or

2.8.1.1.4. The level established by the Department in accordance with 18 AAC 83.445.

2.8.1.2. Any discharge, on a non-routine or infrequent basis, of a toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

2.8.1.2.1. Five hundred micrograms per liter (500 µg/L);

2.8.1.2.2. One milligram per liter (1 mg/L) for antimony;

2.8.1.2.3. Ten times the maximum concentration value reported for that pollutant in the permit application in accordance with 18 AAC 83.310(c)-(g); or

2.8.1.2.4. The level established by the Department in accordance with 18 AAC 83.445.

3.0 Monitoring, Recording, and Reporting Requirements

3.1. Representative Sampling

A permittee must collect effluent samples from the effluent stream after the last treatment unit before discharge into the receiving waters. Samples and measurements must be representative of the volume and nature of the monitored activity or discharge.

3.2. Reporting of Monitoring Results

At intervals specified in the permit, monitoring results must be reported on the EPA discharge monitoring report (DMR) form, as revised as of March 1999, adopted by reference.

3.2.1. Monitoring results shall be summarized each month on the DMR or an approved equivalent report. The permittee must submit reports monthly postmarked by the 15th day of the following month.

3.2.2. The permittee must sign and certify all DMRs and all other reports in accordance with the requirements of Appendix A, Part 1.12, Signature Requirement and Penalties. All signed and certified legible original DMRs and all other documents and reports must be submitted

to the Department at the Compliance and Enforcement Program address in Appendix A, Part 1.1.2.

3.2.3. If, during the period when this permit is effective, the Department makes available electronic reporting, the permittee may, as an alternative to the requirements of Appendix A, Part 3.2.2, submit monthly DMRs electronically by the 15th day of the following month in accordance with guidance provided by the Department. The permittee must certify all DMRs and other reports, in accordance with the requirements of Appendix A, Part 1.12, Signature Requirement and Penalties. The permittee must retain the legible originals of these documents and make them available to the Department upon request.

3.3. Additional Monitoring by Permittee

If the permittee monitors any pollutant more frequently than the permit requires using test procedures approved in 40 CFR Part 136, adopted by reference at 18 AAC 83.010, or as specified in this permit, the results of that additional monitoring must be included in the calculation and reporting of the data submitted in the DMR or annual report required by Appendix A, Part 3.2. All limitations that require averaging of measurements must be calculated using an arithmetic means unless the Department specifies another method in the permit. Upon request by the Department, the permittee must submit the results of any other sampling and monitoring regardless of the test method used.

3.4. Twenty-four Hour Reporting

A permittee shall report any noncompliance event that may endanger health or the environment as follows:

3.4.1. A report must be made:

3.4.1.1. Orally within 24 hours after the permittee becomes aware of the circumstances, and

3.4.1.2. In writing within five days after the permittee becomes aware of the circumstances.

3.4.2. A report must include the following information:

3.4.2.1. A description of the noncompliance and its causes, including the estimated volume or weight and specific details of the noncompliance;

3.4.2.2. The period of noncompliance, including exact dates and times;

3.4.2.3. If the noncompliance has not been corrected, a statement regarding the anticipated time the noncompliance is expected to continue; and

3.4.2.4. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

3.4.3. An event that must be reported within 24 hours includes:

3.4.3.1. An unanticipated bypass that exceeds any effluent limitation in the permit (see Appendix A, Part 2.6, Bypass of Treatment Facilities).

3.4.3.2. An upset that exceeds any effluent limitation in the permit (see Appendix A, Part 2.7, Upset Conditions).

3.4.3.3. A violation of a maximum daily discharge limitation for any of the pollutants listed in the permit as requiring 24-hour reporting.

3.4.4. The Department may waive the written report on a case-by-case basis for reports under Appendix A, Part 3.4 if the oral report has been received within 24 hours of the permittee becoming aware of the noncompliance event.

3.4.5. The permittee may satisfy the written reporting submission requirements of Appendix A, Part 3.4 by submitting the written report via e-mail, if the following conditions are met:

3.4.5.1. The Noncompliance Notification Form or equivalent form is used to report the noncompliance;

3.4.5.2. The written report includes all the information required under Appendix A, Part 3.4.2;

3.4.5.3. The written report is properly certified and signed in accordance with Appendix A, Parts 1.12.3 and 1.12.5;

3.4.5.4. The written report is scanned as a PDF (portable document format) document and transmitted to the Department as an attachment to the e-mail; and

3.4.5.5. The permittee retains in the facility file the original signed and certified written report and a printed copy of the conveying email.

3.4.6. The e-mail and PDF written report will satisfy the written report submission requirements of this permit provided the e-mail is received by the Department within five days after the time the permittee becomes aware of the noncompliance event and the e-mail and written report satisfy the criteria of Part 3.4.5. The e-mail address to report noncompliance is: dec-wqreporting@alaska.gov.

3.5. Other Noncompliance Reporting

A permittee shall report all instances of noncompliance not required to be reported under Appendix A, Parts 2.4 (Compliance Schedules), 3.3 (Additional Monitoring by Permittee), and 3.4 (Twenty-four Hour Reporting) at the time the permittee submits monitoring reports under Appendix A, Part 3.2. (Reporting of Monitoring Results). A report of noncompliance under this part must contain the information listed in Appendix A, Part 3.4.2 and be sent to the Compliance and Enforcement Program address in Appendix A, Part 1.1.2.

4.0 Penalties for Violations of Permit Conditions

Alaska laws allow the State to pursue both civil and criminal actions concurrently. The following is a summary of Alaska law. Permittees should read the applicable statutes for further substantive and procedural details.

4.1. Civil Action

Under AS 46.03.760(e), a person who violates or causes or permits to be violated a regulation, a lawful order of the Department, or a permit, approval, or acceptance, or term or condition of a permit, approval or acceptance issued under the program authorized by AS 46.03.020 (12) is liable, in a civil action, to the State for a sum to be assessed by the court of not less than $500

nor more than $100,000 for the initial violation, nor more than $10,000 for each day after that on which the violation continues, and that shall reflect, when applicable:

4.1.1. Reasonable compensation in the nature of liquated damages for any adverse environmental effects caused by the violation, that shall be determined by the court according to the toxicity, degradability, and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality;

4.1.2. Reasonable costs incurred by the State in detection, investigation, and attempted correction of the violation;

4.1.3. The economic savings realized by the person in not complying with the requirements for which a violation is charged; and

4.1.4. The need for an enhanced civil penalty to deter future noncompliance.

4.2. Injunctive Relief

4.2.1. Under AS 46.03.820, the Department can order an activity presenting an imminent or present danger to public health or that would be likely to result in irreversible damage to the environment be discontinued. Upon receipt of such an order, the activity must be immediately discontinued.

4.2.2. Under AS 46.03.765, the Department can bring an action in Alaska Superior Court seeking to enjoin ongoing or threatened violations for Department-issued permits and Department statutes and regulations.

4.3. Criminal Action

Under AS 46.03.790(h), a person is guilty of a Class A misdemeanor if the person negligently:

4.3.1. Violates a regulation adopted by the Department under AS 46.03.020(12);

4.3.2. Violates a permit issued under the program authorized by AS 46.03.020(12);

4.3.3. Fails to provide information or provides false information required by a regulation adopted under AS 46.03.020(12);

4.3.4. Makes a false statement, representation, or certification in an application, notice, record, report, permit, or other document filed, maintained, or used for purposes of compliance with a permit issued under or a regulation adopted under AS 46.03.020(12); or

4.3.5. Renders inaccurate a monitoring device or method required to be maintained by a permit issued or under a regulation adopted under AS 46.03.020(12).

4.4. Other Fines

Upon conviction of a violation of a regulation adopted under AS 46.03.020(12), a defendant who is not an organization may be sentenced to pay a fine of not more than $10,000 for each separate violation (AS 46.03.790(g)). A defendant that is an organization may be sentenced to pay a fine not exceeding the greater of: (1) $200,00; (2) three times the pecuniary gain realized by the defendant as a result of the offense; or (3) three times the pecuniary damage or loss

caused by the defendant to another, or the property of another, as a result of the offense (AS 12.55.035(c)(B), (c)(2), and (c)(3)).

APPENDIX B
ABBREVIATIONS AND ACRONYMS

Appendix B – Abbreviations and Acronyms

BOD_5 – Biochemical Oxygen Demand (5-day test)

BMP – Best Management Practice

CERCLA – Comprehensive Environmental Response, Compensation and Liability Act

CGP – Construction General Permit

COD – Chemical Oxygen Demand

CWA – Clean Water Act (or the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq)

CWT – Centralized Waste Treatment

DMR – Discharge Monitoring Report

EPA – U. S. Environmental Protection Agency

ESA – Endangered Species Act

FWS – U. S. Fish and Wildlife Service

LA – Load Allocations

MDMR – MSGP Discharge Monitoring Report

MGD – Million Gallons per Day

MOS – Margin of Safety

MS4 – Municipal Separate Storm Sewer System

MSDS – Material Safety Data Sheet

MSGP – Multi-Sector General Permit

NAICS – North American Industry Classification System

NEPA – National Environmental Policy Act

NHPA – National Historic Preservation Act

NMFS – U. S. National Marine Fisheries Service

NOI – Notice of Intent

NOT – Notice of Termination

NPDES – National Pollutant Discharge Elimination System

NRC – National Response Center

NRHP – National Register of Historic Places

NSPS – New Source Performance Standard

NTU – Nephelometric Turbidity Unit

OMB – U. S. Office of Management and Budget

ORW – Outstanding Resource Water

OSM – U. S. Office of Surface Mining

POTW – Publicly Owned Treatment Works

RCRA – Resource Conservation and Recovery Act

RQ – Reportable Quantity

SARA – Superfund Amendments and Reauthorization Act

SHPO – State Historic Preservation Officer

SIC – Standard Industrial Classification

SMCRA – Surface Mining Control and Reclamation Act

SPCC – Spill Prevention, Control, and Countermeasures

SWPPP – Stormwater Pollution Prevention Plan

THPO – Tribal Historic Preservation Officer

TMDL – Total Maximum Daily Load

TSDF – Treatment, Storage, or Disposal Facility

TSS – Total Suspended Solids

USGS – United States Geological Survey

WLA – Wasteload Allocation

WQS – Water Quality Standard

APPENDIX C
DEFINITIONS

Appendix C – Definitions (for the purposes of this permit).

Action Area – all areas to be affected directly or indirectly by the storm water discharges, allowable non-storm water discharges, and storm water discharge-related activities, and not merely the immediate area involved in these discharges and activities.

Arid Climate – areas where annual rainfall averages from 0 to 10 inches.

Best Management Practices (BMPs) – schedules of activities, practices (and prohibitions of practices), structures, vegetation, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. See 40 CFR 122.2.

Cationic Treatment Chemical – For the purposes of this permit, means polymers, flocculants, or other chemicals that contain an overall positive charge. Among other things, they are used to reduce turbidity in storm water discharges by chemically bonding to the overall negative charge of suspended silts and other soil materials and causing them to bind together and settle out. Common examples of cationic treatment chemicals are chitosan and cationic PAM.

Co-Located Industrial Activities – Any industrial activities, excluding your primary industrial activity(ies), located on-site that are defined by the storm water regulations at 122.26(b)(14)(i)-(ix) and (xi). An activity at a facility is not considered co-located if the activity, when considered separately, does not meet the description of a category of industrial activity covered by the storm water regulations or identified by the SIC code list in Appendix D.

Control Measure – refers to any BMP or other method (including effluent limitations) used to prevent or reduce the discharge of pollutants to waters of the United States.

Director – a Director of the Division of Water within the Department of Environmental Conservation.

Discharge – when used without qualification, means the "discharge of a pollutant." See 40 CFR 122.2.

Discharge of a Pollutant – any addition of any “pollutant” or combination of pollutants to “waters of the United States” from any “point source,” or any addition of any pollutant or combination of pollutants to the waters of the “contiguous zone” or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. This includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. See 40 CFR 122.2.

Discharge-Related Activities – activities that cause, contribute to, or result in storm water and allowable non-storm water point source discharges, and measures such as the siting, construction and operation of BMPs to control, reduce, or prevent pollution in the discharges.

Drought-Stricken Area – a period of below average water content in streams, reservoirs, ground-water aquifers, lakes and soils.

EPA Approved or Established Total Maximum Daily Loads (TMDLs) – "EPA Approved TMDLs" are those that are developed by a State and approved by EPA. "EPA Established TMDLs" are those that are developed by EPA.

Existing Discharger – an operator applying for coverage under this permit for discharges authorized previously under an NPDES general or individual permit.

Facility or Activity – any NPDES "point source" (including land or appurtenances thereto) that is subject to regulation under the NPDES program. See 40 CFR 122.2.

Fall Freeze-up –For the purposes of this permit, means for planning purposes in the development of the SWPPP and initial planning of the control measure maintenance the date in the fall that air temperatures will be predominately below freezing. It is the date in the fall that has an 80% probability that a minimum temperature below a threshold of 32.5 degrees Fahrenheit will occur on or after the given date. This date can be found by looking up the "Fall 'Freeze' Probabilities" for the weather station closest to the facility on the website www.wrcc.dri.edu/summary/Climsmak.html. NOTE: This estimation of "Fall Freeze-up" is for planning purposes only. During construction and operation the permittee will need to maintain control measures based on actual conditions.

Federal Facility – any buildings, installations, structures, land, public works, equipment, aircraft, vessels, and other vehicles and property, owned by, or constructed or manufactured for the purpose of leasing to, the federal government.

Final Stabilization - For the purposes of this permit, means that:

1. All soil disturbing activities at the site have been completed and either of the two following criteria shall be met:

    a. a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70 percent of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or

    b. equivalent non vegetative permanent stabilization measures have been employed (such as the use of riprap, gabions, porous backfill (ADOT&PF Specification 703-2.10), railroad ballast or subballast, ditch lining (ADOT&PF Specification 610-2.01 with <3% smaller than #200 sieve), geotextiles, or fill material with low erodibility as determined by an engineer familiar with the site and documented in the SWPPP).

2. When background native vegetation will cover less than 100 percent of the ground (e.g., arid areas, beaches), the 70 percent coverage criteria is adjusted as follows: if the native vegetation covers 50 percent of the ground, then 70 percent of 50 percent (0.70 X 0.50 = 0.35) would

require 35 percent total cover for final stabilization. On a beach with no natural vegetation, no stabilization is required.

3. In arid and semi-arid areas only, all soil disturbing activities at the site have been completed and both of the following criteria have been met:

    a. Temporary erosion control measures (e.g., degradable rolled erosion control product) are selected, designed, and installed along with an appropriate seed base to provide erosion control for at least three years without active maintenance by the permittee;

    b. The temporary erosion control measures are selected, designed, and installed to achieve 70 percent vegetative coverage within three years.

Impaired Water (or "Water Quality Impaired Water" or "Water Quality Limited Segment") – A water is impaired for purposes of this permit if it has been identified by a State or EPA pursuant to Section 303(d) of the Clean Water Act as not meeting applicable State water quality standards (these waters are called "water quality limited segments" under 40 CFR 30.2(j)). Impaired waters include both waters with approved or established TMDLs, and those for which a TMDL has not yet been approved or established.

Indian Country – (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (b) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. This definition includes all land held in trust for an Indian tribe. (18 U.S.C. 1151)

Industrial Activity – the 10 categories of industrial activities included in the definition of "storm water discharges associated with industrial activity" as defined in 40 CFR 122.26(b)(14)(i)-(ix) and (xi).

Industrial Storm Water – storm water runoff from industrial activity.

Measurable Storm Event - a storm event that results in an actual discharge from the facility that follows the preceding measurable storm event by at least 72 hours (3 days). No specific storm magnitude (i.e., 0.1 inches or greater) is specified, only an event which results in a discharge. For snowmelt, an event which some point in time produces a measurable discharge from the facility.

Minimize – To reduce and/or eliminate to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.

Municipal Separate Storm Sewer System (MS4) – a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

a. Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;

b. Designed or used for collecting or conveying storm water;

c. Which is not a combined sewer; and

d. Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2. See 40 CFR 122.26(b)(4) and (b)(7).

New Discharger – a facility from which there is a discharge, that did not commence the discharge at a particular site prior to August 13, 1979, which is not a new source, and which has never received a finally effective NPDES permit for discharges at that site. See 40 CFR 122.2.

New Source – any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced:

- after promulgation of standards of performance under section 306 of the CWA which are applicable to such source, or

- after proposal of standards of performance in accordance with section 306 of the CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal. See 40 CFR 122.2.

New Source Performance Standards (NSPS) – technology-based standards for facilities that qualify as new sources under 40 CFR 122.2 and 40 CFR 122.29.

No exposure – all industrial materials or activities are protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. See 40 CFR 122.26(g).

Operator – any entity with a storm water discharge associated with industrial activity that meets either of the following two criteria:

a. The entity has operational control over industrial activities, including the ability to modify those activities;

b. The entity has day-to-day operational control of activities at a facility necessary to ensure compliance with the permit (e.g., the entity is authorized to direct workers at a facility to carry out activities required by the permit); or

c. The entity is either the owner or leasee of a parcel of land which is being used as a Non-Traditional Non-Metallic Mineral Mining facility.

Permittee – Is a person who is authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements of this permit.

Person – an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof. See 40 CFR 122.2.

Point Source – any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. See 40 CFR 122.2.

Pollutant – dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal and agricultural waste discharged into water. See 40 CFR 122.2.

Pollutant of Concern – A pollutant which causes or contributes to a violation of a water quality standard, including a pollutant which is identified as causing an impairment in a state's 303(d) list.

Polymer – For the purposes of this permit, means coagulants and flocculants used to enhance sediment removal capabilities of check dams, sediment traps, or basins. Common construction site polymers include polyacrylamide (PAM), chitosan, alum, polyaluminum, chloride, and gypsum.

Practicable – For the purposes of this permit, means capable of being done after taking into consideration costs, existing technology, standards of construction practice, impacts to water quality, site conditions, and logistics in light of the overall project purpose.

Primary Airport – are publicly owned airports that receive scheduled passenger service and have more than 10,000 passengers boarding each year.

Primary Industrial Activity – includes any activities performed on-site which are (1) identified by the facility's primary SIC code; or (2) included in the narrative descriptions of 122.26(b)(14)(i), (iv), (v), or (vii), and (ix). [For co-located activities covered by multiple SIC codes, it is recommended that the primary industrial determination be based on the value of receipts or revenues or, if such information is not available for a particular facility, the number of employees or production rate for each process may be compared. The operation that generates the most revenue or employs the most personnel is the operation in which the facility is primarily engaged. In situations where the vast majority of on-site activity falls within one SIC code, that activity may be the primary industrial activity.] Narrative descriptions in 40 CFR 122.26(b)(14) identified above include: (i) activities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards; (iv) hazardous waste treatment storage, or disposal facilities including those that are operating under interim status or a permit under subtitle C of the Resource Conservation and Recovery Act (RCRA); (v) landfills, land application sites and open dumps that receive or have received industrial wastes; (vii)

steam electric power generating facilities; and (ix) sewage treatment works with a design flow of 1.0 mgd or more.

Qualified Personnel – Qualified personnel are those who possess the knowledge and skills to assess conditions and activities that could impact storm water quality at your facility, and who can also evaluate the effectiveness of control measures.

Reportable Quantity Release – a release of a hazardous substance at or above the established legal threshold that requires emergency notification. Refer to 40 CFR Parts 110, 117, and 302 for complete definitions and reportable quantities for which notification is required.

Runoff Coefficient – the fraction of total rainfall that will appear at the conveyance as runoff. See 40 CFR 122.26(b)(11).

Saline Water – salinity equal or exceed 0.5 parts per thousand (by mass).

Semi-Arid Climate – areas where annual rainfall averages from 10 to 20 inches.

Significant Materials – includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges. See 40 CFR 122.26(b)(12).

Special Aquatic Sites – sites identified in 40 CFR 230 Subpart E. These are geographic areas, large or small, possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted ecological values. These areas are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire ecosystem of a region.

Spring Thaw –For the purposes of this permit, means for planning purposes in the development of the SWPPP and initial planning of the control measure maintenance the date in the spring that air temperatures will be predominately above freezing. It is the date in the spring that has a 20% probability that a minimum temperature below a threshold of 32.5 degrees Fahrenheit will occur on or after the given date. This date can be found by looking up the "Spring 'Freeze' Probabilities" for the weather station closest to the facility on the website www.wrcc.dri.edu/summary/Climsmak.html NOTE: This estimation of "Spring Thaw" is for planning purposes only. During construction and operation the permittee will need to maintain control measures based on actual conditions.

Storm Water – storm water runoff, snow melt runoff, and surface runoff and drainage. See 40 CFR 122.26(b)(13).

Storm Water Discharges Associated with Construction Activity – a discharge of pollutants in storm water runoff from areas where soil disturbing activities (e.g., clearing, grading, or excavating),

construction materials, or equipment storage or maintenance (e.g., fill piles, borrow areas, concrete truck washout, fueling), or other industrial storm water directly related to the construction process (e.g., concrete or asphalt batch plants) are located. See 40 CFR 122.26(b)(14)(x) and 40 CFR 122.26(b)(15).

Storm Water Discharges Associated with Industrial Activity – the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under Part 122. For the categories of industries identified in this section, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at part 401 of this chapter); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities include those that are federally, State, or municipally owned or operated that meet the description of the facilities listed in 40 CFR 122.26(b)(14). The term also includes those facilities designated under the provisions of 40 CFR 122.26(a)(1)(v). See 40 CFR 122.26(b)(14).

Tackifier and Soil Stabilizer (binder) – For the purposes of this permit, means hydraulically applied chemicals derived from natural and synthetic sources used to promote adhesion among soil particles or mulch materials. In general soil stabilizers (also known as soil binders) are used to increase soil adhesion, which improves soil stabilization by reducing water and wind driven erosion. Tackifiers are used as “glue” to bind and immobilize straw, cellulose products, pine needles, or other mulch that has been applied to a seeded area. Common examples include polyacrylamide (PAM), guar, chloride compounds, psyllium, resins, enzymes, surfactants, and various polymers, starches, and other compounds.

Temporary Stabilization – measures taken to protect soils from erosion by rainfall, snow melt, runoff, or wind, with surface roughening or a surface cover, including, but not limited to, establishment of ground vegetation, application of mulch, surface tackifers, rolled erosion control products, gravel or paving.

Total Maximum Daily Loads (TMDLs) – A TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges; load allocations (LAs) for nonpoint sources and/or natural background, and must include a

margin of safety (MOS) and account for seasonal variations. (See Section 303(d) of the Clean Water Act and 40 CFR 130.2 and 130.7).

Treatment Chemicals – For the purposes of this permit, means polymers, flocculants, or other chemicals used to reduce turbidity in storm water. Tackifier and soil stabilizers (binders) are not considered treatment chemicals.

Uncontaminated – Free from the presence of pollutants attributable to industrial activity.

Water Quality Impaired – See 'Impaired Water'.

Water Quality Standards – For the purposes of this permit, means the Alaska Water Quality Standards (18 AAC 70) as approved by U.S. EPA. As defined in 40 CFR §131.3 water quality standards are provisions of State or Federal law which consist of a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act.

Winter Shutdown – The cessation of soil disturbing or soil stabilizing construction activity for the winter. Typically this period is from October/November to April/May and is approximately from fall freeze-up to spring thaw.

"You" and "Your" – as used in this permit are intended to refer to the permittee, the operator, or the discharger as the context indicates and that party's facility or responsibilities. The use of "you" and "your" refers to a particular facility and not to all facilities operated by a particular entity. For example, "you must submit" means the permittee must submit something for that particular facility. Likewise, "all your discharges" would refer only to discharges at that one facility.

APPENDIX D
ACTIVITIES COVERED

Appendix D – Facilities and Activities Covered

Your permit eligibility is limited to discharges from facilities in the "sectors" of industrial activity summarized in Table D-1. These sector descriptions are based on Standard Industrial Classification (SIC) Codes and Industrial Activity Codes. References to "sectors" in this permit (e.g., sector-specific monitoring requirements) refer to these groupings.

Table D-1. Sectors of Industrial Activity Covered by This Permit

Subsector (May be subject to more than one sector/subsector)	SIC Code or Activity Code[1]	Activity Represented
SECTOR A: TIMBER PRODUCTS		
A1	2421	General Sawmills and Planing Mills
A2	2491	Wood Preserving
A3	2411	Log Storage and Handling
A4	2426	Hardwood Dimension and Flooring Mills
	2429	Special Product Sawmills, Not Elsewhere Classified
	2431-2439 (except 2434)	Millwork, Veneer, Plywood, and Structural Wood (see Sector W)
	2448	Wood Pallets and Skids
	2449	Wood Containers, Not Elsewhere Classified
	2451, 2452	Wood Buildings and Mobile Homes
	2493	Reconstituted Wood Products
	2499	Wood Products, Not Elsewhere Classified
A5	2441	Nailed and Lock Corner Wood Boxes and Shook
SECTOR B: PAPER AND ALLIED PRODUCTS		
B1	2631	Paperboard Mills
B2	2611	Pulp Mills
	2621	Paper Mills
	2652-2657	Paperboard Containers and Boxes
	2671-2679	Converted Paper and Paperboard Products, Except Containers and Boxes
SECTOR C: CHEMICALS AND ALLIED PRODUCTS		
C1	2873-2879	Agricultural Chemicals
C2	2812-2819	Industrial Inorganic Chemicals
C3	2841-2844	Soaps, Detergents, and Cleaning Preparations; Perfumes, Cosmetics, and Other Toilet Preparations
C4	2821-2824	Plastics Materials and Synthetic Resins, Synthetic Rubber, Cellulosic and Other Manmade Fibers Except Glass
C5	2833-2836	Medicinal Chemicals and Botanical Products; Pharmaceutical Preparations; in vitro and in vivo Diagnostic Substances; and Biological Products, Except Diagnostic Substances
	2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products
	2861-2869	Industrial Organic Chemicals
	2891-2899	Miscellaneous Chemical Products
C5	3952 (limited to list of inks and paints)	Inks and Paints, Including China Painting Enamels, India Ink, Drawing Ink, Platinum Paints for Burnt Wood or Leather Work, Paints for China Painting, Artist's Paints and Artist's Watercolors
	2911	Petroleum Refining

Table D-1. Sectors of Industrial Activity Covered by This Permit

Subsector (May be subject to more than one sector/subsector)	SIC Code or Activity Code[1]	Activity Represented
SECTOR D: ASPHALT PAVING AND ROOFING MATERIALS AND LUBRICANTS		
D1	2951, 2952	Asphalt Paving and Roofing Materials
D2	2992, 2999	Miscellaneous Products of Petroleum and Coal
SECTOR E: GLASS, CLAY, CEMENT, CONCRETE, AND GYPSUM PRODUCTS		
E1	3251-3259	Structural Clay Products
	3261-3269	Pottery and Related Products
E2	3271-3275	Concrete, Gypsum, and Plaster Products
E3	3211	Flat Glass
	3221, 3229	Glass and Glassware, Pressed or Blown
	3231	Glass Products Made of Purchased Glass
	3241	Hydraulic Cement
	3281	Cut Stone and Stone Products
	3291-3299	Abrasive, Asbestos, and Miscellaneous Nonmetallic Mineral Products
SECTOR F: PRIMARY METALS		
F1	3312-3317	Steel Works, Blast Furnaces, and Rolling and Finishing Mills
F2	3321-3325	Iron and Steel Foundries
F3	3351-3357	Rolling, Drawing, and Extruding of Nonferrous Metals
F4	3363-3369	Nonferrous Foundries (Castings)
F5	3331-3339	Primary Smelting and Refining of Nonferrous Metals
	3341	Secondary Smelting and Refining of Nonferrous Metals
	3398, 3399	Miscellaneous Primary Metal Products
SECTOR G: METAL MINING (ORE MINING AND DRESSING)		
G1	1021	Copper Ore and Mining Dressing Facilities
G2	1011	Iron Ores
	1021	Copper Ores
	1031	Lead and Zinc Ores
	1041, 1044	Gold and Silver Ores
	1061	Ferroalloy Ores, Except Vanadium
	1081	Metal Mining Services
	1094, 1099	Miscellaneous Metal Ores
SECTOR H: COAL MINES AND COAL MINING-RELATED FACILITIES		
H1	1221-1241	Coal Mines and Coal Mining-Related Facilities
SECTOR I: OIL AND GAS EXTRACTION AND REFINING		
I1	1311	Crude Petroleum and Natural Gas
	1321	Natural Gas Liquids
	1381-1389	Oil and Gas Field Services
SECTOR J: MINERAL MINING AND DRESSING		
J1	1442	Construction Sand and Gravel
	1446	Industrial Sand
J2	1411	Dimension Stone
	1422-1429	Crushed and Broken Stone, Including Rip Rap
	1481	Nonmetallic Minerals Services, Except Fuels
	1499	Miscellaneous Nonmetallic Minerals, Except Fuels
J3	1455, 1459	Clay, Ceramic, and Refractory Materials
	1474-1479	Chemical and Fertilizer Mineral Mining

Table D-1. Sectors of Industrial Activity Covered by This Permit

Subsector (May be subject to more than one sector/subsector)	SIC Code or Activity Code[1]	Activity Represented
SECTOR K: HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES		
K1	HZ	Hazardous Waste Treatment, Storage, or Disposal Facilities, including those that are operating under interim status or a permit under subtitle C of RCRA
SECTOR L: LANDFILLS, LAND APPLICATION SITES, AND OPEN DUMPS		
L1	LF	All Landfill, Land Application Sites and Open Dumps
L2	LF	All Landfill, Land Application Sites and Open Dumps, except Municipal Solid Waste Landfill (MSWLF) Areas Closed in Accordance with 40 CFR 258.60
SECTOR M: AUTOMOBILE SALVAGE YARDS		
M1	5015	Automobile Salvage Yards
SECTOR N: SCRAP RECYCLING FACILITIES		
N1	5093	Scrap Recycling and Waste Recycling Facilities except Source-Separated Recycling
N2	5093	Source-separated Recycling Facility
SECTOR O: STEAM ELECTRIC GENERATING FACILITIES		
O1	SE	Steam Electric Generating Facilities, including coal handling sites
SECTOR P: LAND TRANSPORTATION AND WAREHOUSING		
P1	4011, 4013	Railroad Transportation
	4111-4173	Local and Highway Passenger Transportation
	4212-4231	Motor Freight Transportation and Warehousing
	4311	United States Postal Service
	5171	Petroleum Bulk Stations and Terminals
SECTOR Q: WATER TRANSPORTATION		
Q1	4412-4499	Water Transportation Facilities
SECTOR R: SHIP AND BOAT BUILDING AND REPAIRING YARDS		
R1	3731, 3732	Ship and Boat Building or Repairing Yards
SECTOR S: AIR TRANSPORTATION FACILITIES		
S1	4512-4581	Air Transportation Facilities
SECTOR T: TREATMENT WORKS		
T1	TW	Treatment Works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR Part 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with section 405 of the CWA
SECTOR U: FOOD AND KINDRED PRODUCTS		
U1	2041-2048	Grain Mill Products
U2	2074-2079	Fats and Oils Products
U3	2011-2015	Meat Products
	2021-2026	Dairy Products

Table D-1. Sectors of Industrial Activity Covered by This Permit

Subsector (May be subject to more than one sector/subsector)	SIC Code or Activity Code[1]	Activity Represented
U3	2032-2038	Canned, Frozen, and Preserved Fruits, Vegetables, and Food Specialties
	2051-2053	Bakery Products
	2061-2068	Sugar and Confectionery Products
	2082-2087	Beverages
	2091-2099	Miscellaneous Food Preparations and Kindred Products
	2111-2141	Tobacco Products
SECTOR V: TEXTILE MILLS, APPAREL, AND OTHER FABRIC PRODUCT MANUFACTURING; LEATHER AND LEATHER PRODUCTS		
V1	2211-2299	Textile Mill Products
	2311-2399	Apparel and Other Finished Products Made from Fabrics and Similar Materials
	3131-3199	Leather and Leather Products (note: see Sector Z1 for Leather Tanning and Finishing)
SECTOR W: FURNITURE AND FIXTURES		
W1	2434	Wood Kitchen Cabinets
	2511-2599	Furniture and Fixtures
SECTOR X: PRINTING AND PUBLISHING		
X1	2711-2796	Printing, Publishing, and Allied Industries
SECTOR Y: RUBBER, MISCELLANEOUS PLASTIC PRODUCTS, AND MISCELLANEOUS MANUFACTURING INDUSTRIES		
Y1	3011	Tires and Inner Tubes
	3021	Rubber and Plastics Footwear
	3052, 3053	Gaskets, Packing and Sealing Devices, and Rubber and Plastic Hoses and Belting
	3061, 3069	Fabricated Rubber Products, Not Elsewhere Classified
Y2	3081-3089	Miscellaneous Plastics Products
	3931	Musical Instruments
	3942-3949	Dolls, Toys, Games, and Sporting and Athletic Goods
	3951-3955 (except 3952 – see Sector C)	Pens, Pencils, and Other Artists' Materials
	3961, 3965	Costume Jewelry, Costume Novelties, Buttons, and Miscellaneous Notions, Except Precious Metal
	3991-3999	Miscellaneous Manufacturing Industries
SECTOR Z: LEATHER TANNING AND FINISHING		
Z1	3111	Leather Tanning and Finishing
SECTOR AA: FABRICATED METAL PRODUCTS		
AA1	3411-3499 (except 3479)	Fabricated Metal Products, Except Machinery and Transportation Equipment, and Coating, Engraving, and Allied Services.
	3911-3915	Jewelry, Silverware, and Plated Ware
AA2	3479	Fabricated Metal Coating and Engraving
SECTOR AB: TRANSPORTATION EQUIPMENT, INDUSTRIAL OR COMMERCIAL MACHINERY		
AB1	3511-3599 (except 3571-3579)	Industrial and Commercial Machinery, Except Computer and Office Equipment (see Sector AC)

Table D-1. Sectors of Industrial Activity Covered by This Permit

Subsector (May be subject to more than one sector/subsector)	SIC Code or Activity Code[1]	Activity Represented
AB1	3711-3799 (except 3731, 3732)	Transportation Equipment Except Ship and Boat Building and Repairing (see Sector R)
SECTOR AC: ELECTRONIC, ELECTRICAL, PHOTOGRAPHIC, AND OPTICAL GOODS		
AC1	3571-3579	Computer and Office Equipment
	3812-3873	Measuring, Analyzing, and Controlling Instruments; Photographic and Optical Goods, Watches, and Clocks
	3612-3699	Electronic and Electrical Equipment and Components, Except Computer Equipment
SECTOR AD: NON-CLASSIFIED FACILITIES		
AD1	Other stormwater discharges designated by the Director as needing a permit (see 40 CFR 122.26(a)(9)(i)(C) & (D)) or any facility discharging stormwater associated with industrial activity not described by any of Sectors A-AC. NOTE: Facilities may not elect to be covered under Sector AD. Only the Director may assign a facility to Sector AD.	

[1] A complete list of SIC Codes (and conversions from the newer North American Industry Classification System" (NAICS)) can be obtained from the Internet at www.census.gov/epcd/www/naics.html or in paper form from various locations in the document titled *Handbook of Standard Industrial Classifications*, Office of Management and Budget, 1987.

Appendix E
Calculating Hardness in Receiving Waters for Hardness Dependent Metals

Appendix E – Calculating Hardness in Receiving Waters for Hardness Dependent Metals

E.1 Overview

DEC adjusted the benchmarks for six hardness-dependent metals (i.e., cadmium, copper, lead, nickel, silver, and zinc) to further ensure compliance with water quality standards and provide additional protection for endangered species and their critical habitat. For any sectors required to conduct benchmark samples for a hardness-dependent metal, DEC includes 'hardness ranges' from which benchmark values are determined. To determine which hardness range to use, you must collect data on the hardness of your receiving water(s). Once the site-specific hardness data have been collected, the corresponding benchmark value for each metal is determined by comparing where the hardness data fall within 25 mg/L ranges, as shown in Table E.1.

Table E.1: Hardness Ranges to Be Used to Determine Benchmark Values for Cadmium, Copper, Lead, Nickel, Silver, and Zinc.

	Benchmark Values (mg/L, total)					
Hardness (mg/L)	**Cadmium**	**Copper**	**Lead**	**Nickel**	**Silver**	**Zinc**
0 - 25	0.0005	0.0038	0.014	0.15	0.0007	0.04
25 - 50	0.0008	0.0056	0.023	0.20	0.0007	0.05
50 - 75	0.0013	0.0090	0.045	0.32	0.0017	0.08
75 - 100	0.0018	0.0123	0.069	0.42	0.0030	0.11
100 - 125	0.0023	0.0156	0.095	0.52	0.0046	0.13
125 - 150	0.0029	0.0189	0.122	0.61	0.0065	0.16
150 - 175	0.0034	0.0221	0.151	0.71	0.0087	0.18
175 - 200	0.0039	0.0253	0.182	0.80	0.0112	0.20
200 - 225	0.0045	0.0285	0.213	0.89	0.0138	0.23
225 - 250	0.0050	0.0316	0.246	0.98	0.0168	0.25
250+	0.0053	0.0332	0.262	1.02	0.0183	0.26

E.2 How to Determine Hardness for Hardness-Dependent Parameters.

You may select one of three methods to determine hardness, including; individual grab sampling, grab sampling by a group of operators which discharge to the same receiving water, or using third-party data. Regardless of the method used, you are responsible for documenting the procedures used for determining hardness values. Once the hardness value is established, you are required to include this information in your first benchmark report submitted to DEC so that the Department can make appropriate comparisons between your benchmark monitoring results and the corresponding benchmark. You must retain all report and monitoring data in accordance with Part 9.5 of the permit. The three method options for determining hardness are detailed in the following sections.

(1) Permittee Samples for Receiving Stream Hardness

This method involves collecting samples in the receiving water and submitting these to a laboratory for analysis. If you elect to sample your receiving water(s) and submit samples for analysis, hardness must be determined from the closest intermittent or perennial stream downstream of your point of discharge.

The sample can be collected during either dry or wet weather. Collection of the sample during wet weather is more representative of conditions during stormwater discharges; however, collection of in-stream samples during wet weather events may be impracticable or present safety issues.

Hardness must be sampled and analyzed using approved methods as described in 40 CFR Part 136 (Guidelines Establishing Test Procedures for the Analysis of Pollutants).

(2) Group Monitoring for Receiving Stream Hardness

You can be part of a group of permittees discharging to the same receiving waters and collect samples that are representative of the hardness values for all members of the group. In this scenario, hardness of the receiving water must be determined using 40 CFR Part 136 procedures and the results shared by group members. To use the same results, hardness measurements must be taken on a stream reach within a reasonable distance of the discharge points of each of the group members.

(3) Collection of Third-Party Hardness Data

You can submit receiving stream hardness data collected by a third party provided the results are collected consistent with the approved 40 CFR Part 136 methods. These data may come from a local water utility, previously conducted stream reports, TMDLs, peer reviewed literature, other government publications, or data previously collected by the permittee. Data should be less than 10 years old.

Water quality data for many of the nation's surface waters are available on-line or by contacting EPA or a state environmental agency. EPA's data system STORET, short for STOrage and RETrieval, is a repository for receiving water quality, biological, and physical data and is used by state environmental agencies, EPA and other federal agencies, universities, private citizens, and many others. Similarly, state environmental agencies and the U.S. Geological Service (USGS) also have water quality data available that, in some instances, can be accessed online. "Legacy STORET" codes for hardness include: 259 hardness, carbonate; 260 hardness, noncarbonated; and 261 calcium + magnesium, while more recent, "Modern STORET" data codes include: 00900 hardness, 00901 carbonate hardness, and 00902 noncarbonate hardness; or the discrete measurements of calcium (00915) and magnesium (00925) can be used to calculate hardness. Hardness data historically has been reported as "carbonate," "noncarbonate," or "Ca + Mg." If these are unavailable, then individual results for calcium (Ca) and magnesium (Mg) may be used to calculate hardness using the following equation:

$$\frac{mg}{L}CAO_3 = 2.497\left(Ca\frac{mg}{L}\right) + 4.118\left(Mg\ \frac{mg}{L}\right)$$

When interpreting the data for carbonate and non-carbonate hardness, note that total hardness is equivalent to the sum of carbonate and noncarbonate hardness if both forms are reported. If only carbonate hardness is reported, it is more than likely that noncarbonate hardness is absent and the total hardness is equivalent to the available carbonate hardness.

Appendix F – MSGP Forms

Notice of Intent (NOI) Form

To obtain coverage under this permit, you must submit a Notice of Intent (NOI). You must submit an NOI using either:

(1) DEC's Electronic Notice of Intent (eNOI) system, available at http://dec.alaska.gov/water/wastewater/stormwater/apdesenoi/, or

(2) file a paper copy of the NOI.

Notice of Termination (NOT) Form

To terminate coverage under this permit, you must submit a Notice of Termination (NOT). You must either

(1) terminate coverage using DEC's online eNOI system, available at http://dec.alaska.gov/water/wastewater/stormwater/apdesenoi/ or

(2) file a paper copy of the NOT.

The following forms are available at:

http://dec.alaska.gov/water/wastewater/stormwater/forms

- Notice of Intent (NOI) Form
- Notice of Termination (NOT) Form
- Annual Report Form
- Corrective Action Form
- NOI Modification Form
- No Exposure Certification Form
- Noncompliance Notification Form
- MSGP Industrial Discharge Monitoring Report (DMR)

Notice of Intent (NOI) for Storm Water Discharges Associated with Industrial Activity under the APDES Multi-Sector General Permit (MSGP)

Facility Information

Facility Name:

Have storm water discharges from your site been covered previously under an APDES Permit? ☐ Yes ☐ No

If Yes, provide the permit authorization number: _____

Street Location

Street:	Borough or similar government subdivision	
City:	State: Alaska	Zip:
Latitude:	Longitude:	Determined By: ☐ GPS ☐ Internet Map Service ☐ Other:

Estimated area of industrial activity at your site exposed to storm water: _____ (acres)

Briefly describe the nature of the industrial activities at the facility:

Identify the 4-digit Standard Industrial Classification (SIC) code or 2-letter Activity Code that best represents the products produced or services rendered for which your facility is primarily engaged, as defined in the MSGP.

Primary SIC Code: _____ or Primary Activity Code: _____

Is your site presently inactive or unstaffed?* ☐ Yes ☐ No

** Note that if your facility becomes inactive and unstaffed during the permit term, you must submit an NOI modification to reflect the change.*

If Yes, is your site expected to be inactive and unstaffed for the entire permit term? ☐ Yes ☐ No

If No, indicate the length of time that you expect your facility to be inactive and unstaffed. _____

Federal Effluent Limitation Guidelines and Sector-Specific Requirements

Are you requesting permit coverage for storm water discharges subject to effluent limitation guidelines? ☐ Yes ☐ No

If yes, which effluent limitation guidelines apply to your storm water discharge?

40 CFR Part/Subpart	Eligible Discharges	Affected MSGP Sector	Check if applicable
Part 411, Subpart C	Runoff from material storage piles at cement manufacturing facilities.	E	☐
Part 418, Subpart A	Runoff from phosphate fertilizer manufacturing facilities that comes into contact with any raw materials, finished products, by-products, or waste products (SIC 2874).	C	☐
Part 423	Coal pile runoff at steam electric generating facilities.	O	☐
Part 429, Subpart I	Discharges resulting from spray down or intentional wetting of logs at wet deck storage areas.	A	☐
Part 436, Subpart B, C, or D	Mine dewatering discharges at crushed stone mines, construction sand and gravel mines, or industrial sand mines.	J	☐
Part 443, Subpart A	Runoff from asphalt emulsion facilities.	D	☐
Part 445, Subparts A & B	Runoff from hazardous waste and non-hazardous waste landfills.	K, L	☐
Part 449, Subpart A	Runoff from Air Transportation	S	☐

If you are a Sector S (Air Transportation facility, do you anticipate using more than 100,000 gallons of glycol-based deicing/anti-icing chemicals and/or 100 tons or more of urea on an average annual basis? ☐ Yes ☐ No

Identify the applicable sector(s) and subsector(s) of industrial activity, including co-located industrial activity, for which you are requesting coverage:

Sector	Subsector	Sector	Subsector	Sector	Subsector	Sector	Subsector	Sector	Subsector	Sector	Subsector

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Discharge Information

Does your facility discharge into a Municipal Separate Storm Sewer System (MS4)? ☐ Yes ☐ No

If Yes, provide the name of the MS4 Operator: _____

If you are subject to benchmark monitoring requirements for a hardness-dependent metal:

- What is the hardness of your receiving water(s) (See Appendix E)? _____
- Does your facility discharge into any saltwater receiving waters? ☐ Yes ☐ No

Outfalls: *(Attach a separate list if necessary)*

List all of the storm water outfalls from your facility. Each outfall must be identified by a unique 3-digit ID (e.g., 001, 002). Also provide the latitude and longitude in decimal degrees for each outfall.		**For each outfall, provide the following receiving water information**: Provide the name of the first water of the U.S. that receives storm water directly from the outfall and/or from the MS4 that the outfall discharges to:	If the receiving water is impaired (on the CWA 303(d) list), list the pollutants that are causing the impairment:	Are the pollutant(s) causing the impairment present in your discharge? Yes	No	If a TMDL has been completed for this receiving waterbody, provide the following information:
Outfall ID	001A			☐	☐	TMDL ID#:
Latitude						TMDL Name:
Longitude						Pollutant(s) for which there is a TMDL:
If substantially identical to other outfall, list identical outfall ID: _____						
Outfall ID				☐	☐	TMDL ID#:
Latitude						TMDL Name:
Longitude						Pollutant(s) for which there is a TMDL:
If substantially identical to other outfall, list identical outfall ID: _____						
Outfall ID				☐	☐	TMDL ID#:
Latitude						TMDL Name:
Longitude						Pollutant(s) for which there is a TMDL:
If substantially identical to other outfall, list identical outfall ID: _____						
Outfall ID				☐	☐	TMDL ID#:
Latitude						TMDL Name:
Longitude						Pollutant(s) for which there is a TMDL:
If substantially identical to other outfall, list identical outfall ID: _____						
Outfall ID				☐	☐	TMDL ID#:
Latitude						TMDL Name:
Longitude						Pollutant(s) for which there is a TMDL:
If substantially identical to other outfall, list identical outfall ID: _____						

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Operator Information

Contact Name:	Organization:	Title:
Phone:	Fax (optional):	Email:

Mailing Address ☐ Check if same as Operator Information	Street (PO Box)		
	City	State	Zip

Storm Water Pollution Prevention Plan (SWPPP) Contact / Location Information

Contact Name:	Organization:	Title:
Phone:	Fax (optional):	Email:

Mailing Address ☐ Check if same as Operator Information	Street (PO Box)		
	City	State	Zip

Universal Resource Locator or URL:

Billing Contact / Location Information

Contact Name:	Organization:	Title:
Phone:	Fax (optional):	Email:

Mailing Address ☐ Check if same as Operator Information	Street (PO Box)		
	City	State	Zip

NOI Preparer Contact / Location Information *(Complete if NOI was prepared by someone other than the Certifier)*

Contact Name:	Organization:	Title:
Phone:	Fax (optional):	Email:

Mailing Address ☐ Check if same as Operator Information	Street (PO Box)		
	City	State	Zip

Document Attachments

Documents attached with this application:

☐ Storm Water Pollution Prevention Plan (SWPPP)

☐ Other:

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Certification Information

An Alaska Pollutant Discharge Elimination System (APDES) permit application or report must be signed by an individual with the appropriate authority per 18 AAC 83.385. For additional information, please refer to 18 AAC 83.385 at the following link: http://www.legis.state.ak.us/basis/aac.asp#18.83.385.

Corporate Executive Officer 18 AAC 83.385 (a)(1)(A)	For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation.
Corporate Operations Manager 18 AAC 83.385 (a)(1)(B)	For a corporation, the manager of one or more manufacturing, production, or operating facilities, if (i) the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental statutes and regulations; (ii) the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and (iii) authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
Sole Proprietor or General Partner 18 AAC 83.385 (a)(2)	For a partnership or sole proprietorship, the general partner or the proprietor respectively.
Public Agency, Chief Executive Officer 18 AAC 83.385 (a)(3)(A)	For a municipality, state, or other public agency, the chief executive officer of the agency.
Public Agency, Senior Executive Officer 18 AAC 83.385 (a)(3)(B)	For a municipality, state, or other public agency, a senior executive officer having responsibility for the overall operations of a principal geographic unit or division of the agency.

Any report required by an APDES permit, and a submittal with any other information requested by the department, must be signed by a person described in above, or by a duly authorized representative of that person.
**For Delegated Authority: the delegation must be made in writing and submitted to the DEC.*
Your signature will not be approved until DEC receives the written delegation.
An Example of written authorization delegating authority can be found on the Division of Water website:
http://dec.alaska.gov/media/13316/delegation-of-signatory-authority.pdf

Operations Manager *(Delegated Authority)** 18 AAC 83.385 (b)(2)(A)	For a duly authorized representative, an individual or a position having responsibility for the overall operation of the regulated facility or activity, including the position of plant manager, operator of a well or a well field, superintendent or position of equivalent responsibility.
Environmental Manager *(Delegated Authority)** 18 AAC 83.385 (b)(2)(B)	For a duly authorized representative, an individual or position having overall responsibility for environmental matters for the company.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Organization:	Name:	Title:
Phone:	Fax (optional):	Email:

Mailing Address: ☐ Check if same as Operator Information	Street (PO Box):		
	City:	State:	Zip:

Signature/Responsible Official _____ Date _____

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Instructions for Completing the Notice of Intent (NOI) for Storm Water Discharges Associated with Industrial Activity under the Multi-Sector General Permit (MSGP)

Who must file a NOI?

Under section 402(p) of the Clean Water Act (CWA) and regulations at 40 CFR Part 122.26, adopted by reference at 18 AAC 83.010 (3) storm water discharges associated with industrial activity are prohibited to waters of the United States unless authorized under an Alaska Pollutant Discharge Elimination System (APDES) permit. You can obtain coverage under the MSGP by submitting a completed NOI if you operate a facility that:

- is located in a jurisdiction where DEC is the permitting authority, listed in Part 1.1 of the MSGP;
- discharges storm water associated with industrial activities, identified in Appendix D of the MSGP;
- meet the eligibility requirements in Part 1.2 of the permit;
- develop a storm water pollution prevention plan (SWPPP) in accordance with Part 5 of the MSGP; and
- install and implement control measures in accordance with Part 4 to meet numeric and non-numeric effluent limits.

If you are unsure if you need an APDES storm water permit, contact your APDES storm water permit program. Contacts are listed at:

http://dec.alaska.gov/water/wastewater/stormwater/

One NOI must be submitted for each facility or site for which you are seeking permit coverage. You do not need to submit separate NOIs for each type of industrial activity present at your facility, provided your SWPPP covers all activities.

When to File the NOI Form

Do not file your NOI until you have obtained and thoroughly read a copy of the MSGP. A copy of the MSGP is located on the DEC website (http://dec.alaska.gov/water/wastewater/stormwater/multisector/). The MSGP describes procedures to ensure your eligibility, prepare your SWPPP, install and implement appropriate storm water control measures, and complete the NOI form questions – all of which must be done before you sign the NOI certification statement attesting to the accuracy and completeness of your NOI. You will also need a copy of the MSGP once you have obtained coverage so that you can comply with the implementation requirements of the permit.

Completing the NOI Form

To complete this form, type or print in the appropriate areas only. Please make sure you complete all questions. Make sure you make a photocopy for your records before you send the completed form to the address below. You may also use this paper form as a checklist for the information you will need when filing an NOI electronically via DEC's OASys system. http://dec.alaska.gov/water/oasys.aspx.

Facility Information

Enter the facility's official or legal name. Unless the name of your facility has changed, please use the same name provided on prior NOIs or permit applications.

Indicate if industrial storm water discharges from your facility were previously covered by an APDES permit.

If your facility was previously covered by the MSGP, please include the tracking number that you received in your confirmation letter or email from DEC's Storm water Program. You can find the tracking number assigned to your previous NOI on DEC's Online Permit Search: http://dec.alaska.gov/Applications/Water/WaterPermitSearch/search.

Enter the street address, including city, state, zip code, borough or similar government subdivision of the actual physical location of the facility. Do NOT use a P.O. Box.

Provide the facility latitude and longitude in decimal degrees format. You can obtain your facility's latitude and longitude though Global Positioning System (GPS) receivers, internet map service, U.S. Geological Survey (USGS) quadrangle or topographic maps, or EPA's web-based siting-tools, among other methods. For consistency, DEC requests that measurements be taken from the approximate center of the facility. Specify which method you used to determine latitude and longitude.

Identify the data source that you used to determine the facility latitude and longitude. If you did not use a USGS quadrangle or topographic map or GPS receivers, then select "Other" and write the method used on the line provided. If you used a USGS quadrangle or topographic map, write the map scale on the line provided. Scale should be identified on the map.

Enter the estimated area of industrial activity at your site exposed to storm water, in acres.

Briefly describe the nature of the industrial activities present at your facility.

Indicate whether your facility is currently inactive and unstaffed. If so then indicate whether your facility will be inactive and unstaffed for the entire permit term; or, if not, specify the specific length of time in units of days, weeks, months, or years (e.g. 3 months) that you expect the facility to be inactive and unstaffed.

Federal Effluent Limitation Guidelines and Sector-Specific Requirements

Depending on your industrial activities, your facility may be subject to effluent limitation guidelines which include additional effluent limits and monitoring requirements for your facility. Please review these requirements, described in Part 4.3 of the MSGP and check any appropriate boxes on the NOI form.

For Sector S facilities (Air Transportation), indicate whether you anticipate that the entire airport facility will use more than 100,000 gallons of glycol-based deicing/anti-icing chemicals and/or 100 tons or more of urea on an average annual basis. If so, additional effluent limits and monitoring conditions apply to your discharge (see Part 11 Sector S of the MSGP).

List the four-digit Standard Industrial Classification (SIC) code and/or two character activity code that best describes the primary industrial activities performed by your facility under which you are required to obtain permit coverage. Your primary industrial activity includes any activities performed on-site which are (1) identified by the facility's one SIC code for which the facility is primarily engaged; and (2) included in the narrative descriptions of 40 CFR 122.26(b)(14)(i), (iv), (v), or (vii), and (ix). See Appendix D of the MSGP for a complete list of SIC codes and activities codes.

If your site has co-located industrial activities that are not identified as your primary industrial activity, identify the sector and subsector codes that describe these other industrial activities. For a complete list of sector and subsector codes, see Appendix D of the MSGP.

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Discharge Information

Receiving Waters and Wetlands

You must identify all the outfalls from your facility that discharge storm water. Each outfall must be assigned a unique 3-digit ID (e.g., 001, 002, 003). You must also provide the latitude and longitude for each outfall from your facility. Indicate whether any outfalls are substantially identical to an outfall already listed, and identify the outfall it is identical to. For each unique outfall you list, you must specify the name of the first water of the U.S. that receives storm water directly from the outfall and/or the Municipal Separate Storm Sewer System (MS4) that the outfall discharges to.

Your receiving water may be a lake, stream, river, ocean, wetland, or other waterbody, and may or may not be located adjacent to your facility. Your storm water may discharge directly to the receiving water or indirectly via a storm sewer system, an open drain or ditch, or other conveyance structure. Do NOT list a man-made conveyance, such as a storm sewer system, as your receiving water. Indicate the first receiving water your storm water discharge enters. For example, if your discharge enters a storm sewer system that empties into Trout Creek, which flows into Pine River, your receiving water is Trout Creek, because it is the first waterbody your discharge will reach. Similarly, a discharge into a ditch that feeds Spring Creek should be identified as "Spring Creek" since the ditch is a manmade conveyance. If you discharge into a MS4, you must identify the waterbody into which that portion of the storm sewer discharges and also provide the name of the MS4 operator. That information should be readily available from the operator of the MS4. If you are uncertain of the MS4 operator, contact DEC Division of Water for that information.

You must specify whether any receiving waters that you discharge to are listed as "impaired" as defined in Appendix C, and the pollutants for which the water is impaired. You must also check/identify any Total Maximum Daily Loads (TMDL) that have been completed for any of the waters of the U.S. that you discharge to. You must also provide information about the outfall latitude/ longitude. Further information regarding impaired waters and TMDLs can be found at http://dec.alaska.gov/water/water-quality/impaired-waters.

If you are subject to any benchmark monitoring requirements for metals (see the requirements applicable to your Sector(s) in Part 11 of the permit), indicate the hardness for your receiving water(s). See Appendix E of the permit for information about determining waterbody hardness.

If you are subject to benchmark monitoring requirements for hardness-dependent metals, you must also answer whether your facility discharges into any saltwater receiving waters.

Operator Information

Provide the name of the contact person and the legal name of the firm, public organization, or any other public entity that operates the facility described in this application. An operator of a facility is a legal entity that controls the operation of the facility.

Provide the operator's mailing address, telephone number, fax number (optional), and email address. Correspondence will be sent to this address.

Storm Water Pollution Prevention Plan (SWPPP) Contact Information

Identify the name, telephone number, and email address of the person who will serve as a contact for DEC on issues related to storm water management at your facility. This person should be able to answer questions related to storm water discharges, the SWPPP, and other issues related to storm water permit coverage or have immediate access to individuals with that knowledge. This person does not have to be the facility operator but should have intimate knowledge of storm water management activities at the facility.

If you are making your SWPPP publicly available on a website, provide the appropriate Internet URL address.

Billing Contact Information

Provide the name of the contact person and the legal name of the firm, public organization, or any other public entity that is responsible for accounts payable for this facility.

Provide the billing contact's mailing address, telephone number, fax number (optional), and email address. Correspondence for billing purposes will be sent to this address. If the billing contact address is the same as the operator, check the box and continue to Section III Facility Information. See 18 AAC 72.956 for applicable authorization fee to be paid with the submittal of the NOI.

Certification Information

The NOIs, must be signed as follows:

(1) For a corporation, a responsible corporate officer shall sign the NOI, a responsible corporate officer means:

  (A) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or

  (B) the manager of one or more manufacturing, production, or operating facilities, if

    (i) the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental statutes and regulations;

    (ii) the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and

    (iii) authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship, the general partner or the proprietor, respectively; or

(3) for a municipality, state, or other public agency, either a principal executive officer or ranking elected official shall sign the application; in this subsection, a principal executive officer of an agency means

  (A) the chief executive officer of the agency; or

  (B) a senior executive officer having responsibility for the overall operations of a principal geographic unit or division of the agency.

Include the name, title, organization, and email address of the person signing the form and the date of signing. An unsigned or undated NOI form will not be considered valid application for permit coverage.

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If the NOI was prepared by someone other than the certifier (for example, if the NOI was prepared by the facility SWPPP contact or a consultant for the certifier's signature), include the name, organization, telephone number, and email address of the NOI preparer.

Where to File the NOI Form

DEC encourages you to complete the NOI form and SWPPP electronically via the Internet. DEC's Online Application System (OASys) can be found at http://dec.alaska.gov/water/oasys.aspx. Filing electronically is the fastest way to obtain permit coverage and help ensure that your NOI is complete. If you choose not to file electronically, you must send the NOI to the address listed below.

If you file by mail, remember to retain a copy for your records.

NOIs sent by mail:

Alaska Dept. of Environmental Conservation
Wastewater Discharge Authorization Program
Storm Water NOI
555 Cordova Street
Anchorage, AK 99501
Phone: (907) 269-6285
dec.water.wqpermit@alaska.gov

Your SWPPP needs to be submitted with the NOI as required in Part 5 of the MSGP. You must keep a copy of your SWPPP on-site or otherwise make it available to facility personnel responsible for implementing provisions of the permit.

For Agency Use

Permit #_____

Notice of Termination (NOT) of Coverage for Storm Water Discharges Associated with Industrial Activity under an APDES General Permit

Submission of this Notice of Termination constitutes notice that the party identified in Section II of this form is no longer authorized to discharge storm water associated with industrial activity under the APDES program for the facility identified in Section III of this form. All necessary information must be included on the form. The NOT must be submitted within 30 days of one of the conditions in Section 10 of the MSGP being met. Refer to the instructions at the end of this form for information on submitting a Notice of Termination.

I. Permit Information

Permit Tracking Number:

Reason for Termination (Check only one):

- ☐ You transferred operational control to another operator.
- ☐ You no longer have storm water discharge associated with industrial activity subject to regulation under the APDES program, and you have already implemented necessary sediment and erosion controls as required by Part 4.2.5.
- ☐ You are a Sector G, H, or J facility and you have met the applicable termination requirements.
- ☐ You obtained coverage under an alternative APDES permit.

☐ All required reports (including DMR if applicable) and certifications have been submitted to DEC.

II. Operator Information

Contact Name:	Organization:	Title:
Phone:	Fax (optional):	Email:
Mailing Address — Street (PO Box)		
City	State	Zip

III. Facility Information

Facility Name:

Location Address:

City: State: Alaska Zip:

Borough or Similar Government Subdivision:

IV. Certification Information

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Organization:	Name:	Title:
Phone:	Fax (optional):	Email:
Mailing Address: ☐ Check if same as Operator Information — Street (PO Box):		
City:	State:	Zip:

_____ Signature/Responsible Official

_____ Date

Instructions for Completing a Notice of Termination Form for Storm Water Discharges Associated with INDUSTRIAL ACTIVITY under the Multi-Sector General Permit (MSGP)

Who May File Notice of Termination (NOT) Form
A permittee currently covered by Alaska's APDES Storm water Multi-Sector General Permit may submit a Notice of Termination (NOT) form. You must submit an NOT within 30 days after one or more of the following conditions have been met:

- *a new owner or operator has assumed responsibility for the facility;*
- *you have ceased operations at the facility and there are nt or no longer will be discharges of storm water associated with industrial activity from the facility, and you have already implemented necessary sediment and erosion controls as required by Part 4.2.5;*
- *you are a Sector G, H, or J facility, and you have met the applicable termination requirements; or*
- *you have obtained coverage under an individual or alternative general permit for all discharges required to be covered by an APDES permit.*

See the MSGP Part 10 for more information.

Completing the Form

Type or print, in the appropriate areas only. "NA" can be entered in areas that are not applicable. If you have any questions about how or when to use this form, contact the DEC Storm Water Program at (907) 269-6285 or online at http://dec.alaska.gov/water/wastewater/stormwater/.

Section I. Permit Information
Enter the existing APDES Storm water General Permit Tracking Number assigned to the facility by DEC's Storm Water Program. If you do not know the tracking number, you can find the tracking number assigned to your facility on DEC's Water Permit Search http://dec.alaska.gov/Applications/Water/WaterPermitSearch//Search.aspx.

Indicate your reason for submitting the NOT by checking the appropriate box. (See MSGP Part 10 for more information) Check only one box.

Section II. Operator Information
Provide the legal name of the person, firm, public organization, or any other entity that operates the facility described in this application and is covered by the permit tracking number identified in Section I. The operator is the legal entity that controls the facility's operation, rather than the site manager. Enter the operator's complete mailing address, telephone number, email address, and. the fax number (optional) of the operator.

Section III. Facility Information
Enter the official or legal name and complete street address, including city, state, zip code, and borough or similar government subdivision of the facility.

Section IV. Certification Information
The NOTs, must be signed as follows:

(1) For a corporation, a responsible corporate officer shall sign the NOT, a responsible corporate officer means:

(A) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or

(B) the manager of one or more manufacturing, production, or operating facilities, if

(i) the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental statutes and regulations;

(ii) the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and

(iii) authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship, the general partner or the proprietor, respectively; or

(3) for a municipality, state, or other public agency, either a principal executive officer or ranking elected official shall sign the application; in this subsection, a principal executive officer of an agency means

(A) the chief executive officer of the agency; or

(B) a senior executive officer having responsibility for the overall operations of a principal geographic unit or division of the agency.

Include the name, title, and email address of the person signing the form and the date of signing. An unsigned or undated NOT form will not be considered valid termination of permit coverage.

Where to File NOT form
DEC encourages you to complete the NOT form electronically via the Internet. DEC's Online Application System (OASys) can be found at http://dec.alaska.gov/water/oasys.aspx .Filing electronically is the fastest way to terminate permit coverage and help ensure that your NOT is complete. If you choose not to file electronically, you must send the NOT to the address listed below.

If you file by mail, please remember to retain a copy for your records.

NOTs sent by mail:

Alaska Dept. of Environmental Conservation
Wastewater Discharge Authorization Program
555 Cordova Street
Anchorage, AK 99501
Phone: (907) 269-6285

For Agency Use

Permit Tracking #: _____

Alaska Department of Environmental Conservation
MSGP Annual Reporting Form

Section I. General Information

Facility Name	APDES Permit Tracking Number

Facility Physical Address

Street	City	State	Zip Code
		Alaska	

Contact Person	Title	Phone	Email

Lead Inspector's Name	Additional Inspector's Name	Additional Inspector's Name	Inspection Date

Section II. General Inspection Findings

1. As part of this comprehensive site inspection, did you inspect all potential pollutant sources, including areas where industrial activity may be exposed to storm water? ☐ Yes ☐ No

   If NO, describe why not:

***Note**: Complete Section III of this form for each industrial activity area inspected and included in your SWPPP or as newly defined, in Section II parts 2 and 3 below, where pollutants may be exposed to storm water.*

2. Did this inspection identify any storm water or non-storm water outfalls not previously identified in your SWPPP? ☐ Yes ☐ No

   If YES, for each location, describe the sources of those storm water and non-storm water discharges and any associated control measures in place:

3. Did this inspection identify any sources of storm water or non-storm water discharges not previously identified in your SWPPP? ☐ Yes ☐ No

   If YES, describe these sources of storm water or non-storm water pollutants expected to be present in these discharges, and any control measures in place:

4. Did you review storm water monitoring data as part of this inspection to identify potential pollutant hotspots? ☐ Yes ☐ No ☐ NA, no monitoring performed

   If YES, summarize the findings of that review and describe any additional inspection activities resulting from this review:

5. Describe any evidence of pollutants entering the drainage system or discharging to surface waters, and the condition of and around outfalls, including flow dissipation measure to prevent scouring:

6. Have you taken or do you plan to take corrective actions, as specified in Part 8 of the permit, since your last annual report submission (or since you received authorization to discharge under this permit if this is your first annual report), including any corrective actions identified as a result of this annual comprehensive site inspection? ☐ Yes ☐ No

   If YES, how many conditions requiring review for corrective action as specified in Parts 8.1 and 8.2 of the MSGP were addressed by these corrective actions?

***Note**: Complete the attached Corrective Action Form (Section IV) for each condition identified, including any conditions identified as a result of this comprehensive storm water inspection.*

Section III. Industrial Activity Area Specific Findings

Complete one block for each industrial activity area where pollutants may be exposed to storm water*. Copy this page for additional industrial activity areas. In reviewing each area, you should consider:*

- *Industrial materials, residue, or trash that may have or could come into contact with storm water;*
- *Leaks or spills from industrial equipment, drums, tanks, and other containers;*
- *Offsite tracking of industrial or waste materials from areas of no exposure to exposed areas; and*
- *Tracking or blowing of raw, final, or waste material from areas of no exposure to exposed areas.*

Industrial Activity Area:

1. Brief Description:

2. Are any control measures in need of maintenance or repair?	☐ Yes	☐ No
3. Have any control measures failed and require replacement?	☐ Yes	☐ No
4. Are any additional/revised control measures necessary in this area?	☐ Yes	☐ No

If YES, to any of these three questions, provide a description of the problem: *(Any necessary corrective actions should be described on the attached Corrective Action Form.)*

Industrial Activity Area:

1. Brief Description:

2. Are any control measures in need of maintenance or repair?	☐ Yes	☐ No
3. Have any control measures failed and require replacement?	☐ Yes	☐ No
4. Are any additional/revised control measures necessary in this area?	☐ Yes	☐ No

If YES, to any of these three questions, provide a description of the problem: *(Any necessary corrective actions should be described on the attached Corrective Action Form.)*

Industrial Activity Area:

1. Brief Description:

2. Are any control measures in need of maintenance or repair?	☐ Yes	☐ No
3. Have any control measures failed and require replacement?	☐ Yes	☐ No
4. Are any additional/revised control measures necessary in this area?	☐ Yes	☐ No

If YES, to any of these three questions, provide a description of the problem: *(Any necessary corrective actions should be described on the attached Corrective Action Form.)*

Industrial Activity Area:

1. Brief Description:

2. Are any control measures in need of maintenance or repair?	☐ Yes	☐ No
3. Have any control measures failed and require replacement?	☐ Yes	☐ No
4. Are any additional/revised control measures necessary in this area?	☐ Yes	☐ No

If YES, to any of these three questions, provide a description of the problem: *(Any necessary corrective actions should be described on the attached Corrective Action Form.)*

Section IV. Corrective Actions

Complete this page for each specific condition requiring a corrective action or a review determining that no corrective action is needed. Copy this page for additional corrective actions or reviews.

Include both corrective actions that have been initiated or completed since the last annual report, and future corrective actions needed to address problems identified in the comprehensive storm water inspection. Include an update on any outstanding corrective actions that had not been completed at the time of your previous annual report.

1. Corrective Action # of for this reporting period.

2. Is this corrective action:

- ☐ An update on a corrective action from a previous annual report; or
- ☐ A new corrective action?

3. Identify the condition(s) triggering the need for this review:

- ☐ Unauthorized release of discharge
- ☐ Numeric effluent limitation exceedance
- ☐ Control measures inadequate to meet applicable water quality standards
- ☐ Control measures inadequate to meet non-numeric effluent limitations
- ☐ Control measures not properly operated or maintained
- ☐ Change in facility operations necessitated change in control measures
- ☐ Average benchmark value exceedance
- ☐ Other (describe):

4. Briefly describe the nature of the problem identified:

5. Date problem identified:

6. How problem was identified:

- ☐ Comprehensive site inspection
- ☐ Quarterly visual assessment
- ☐ Routine facility inspection
- ☐ Notification by EPA or DEC
- ☐ Other (describe):

7. Description of corrective action(s) taken or to be taken to eliminate or further investigate the problem (e.g., describe modifications or repairs to control measures, analysis to be conducted, etc.) or if no modification is needed, basis for that determination.

8. Did/will this corrective action require modification of your SWPPP? ☐ Yes ☐ No

9. Date corrective action initiated:

10. Date corrective action completed: Or expected to be completed:

11. If corrective action not yet completed, provide the status of the corrective action as the time of the comprehensive site inspections and describe any remaining steps (including timeframes associated with each step) necessary to complete the corrective action:

Section V. Annual Report Certification

Compliance Certification

Do you certify that your annual inspection has met the requirements of Part 6.3 of the permit, and that, based upon the results of this inspection, to the best of your knowledge, you are in compliance with the permit? ☐ Yes ☐ No

If NO, summarize why you are not in compliance with the permit:

Annual Report Certification

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those person directly responsible for gathering the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Name of Authorized Representative | Title | Email

Signature | Date Signed

For Agency Use

Permit Tracking #: _____

Alaska Department of Environmental Conservation
MSGP Corrective Action Form

Section I. General Information

Facility Name			APDES Permit Tracking Number
Facility Physical Address			
Street	City	State	Zip Code
		Alaska	

Contact Person	Title	Phone	Email

Lead Inspector's Name	Additional Inspector's Name	Additional Inspector's Name	Inspection Date

Section II. Corrective Actions

Complete this page for each specific condition requiring a corrective action or a review determining that no corrective action is needed. Copy this page for additional corrective actions or reviews.

Include both corrective actions that have been initiated or completed since the last annual report, and future corrective actions needed to address problems identified in the comprehensive storm water inspection. Include an update on any outstanding corrective actions that had not been completed at the time of your previous annual report.

1. Corrective Action # of for this reporting period.

2. Is this corrective action:
   - ☐ An update on a corrective action from a previous annual report; or
   - ☐ A new corrective action?

3. Identify the condition(s) triggering the need for this review:
   - ☐ Unauthorized release of discharge
   - ☐ Numeric effluent limitation exceedance
   - ☐ Control measures inadequate to meet applicable water quality standards
   - ☐ Control measures inadequate to meet non-numeric effluent limitations
   - ☐ Control measures not properly operated or maintained
   - ☐ Change in facility operations necessitated change in control measures
   - ☐ Average benchmark value exceedance
   - ☐ Other (describe):

4. Briefly describe the nature of the problem identified:

5. Date problem identified:

6. How problem was identified:
   - ☐ Comprehensive site inspection
   - ☐ Quarterly visual assessment
   - ☐ Routine facility inspection
   - ☐ Notification by EPA or DEC
   - ☐ Other (describe):

7. Description of corrective action(s) taken or to be taken to eliminate or further investigate the problem (e.g., describe modifications or repairs to control measures, analysis to be conducted, etc.) or if no modification is needed, basis for that determination.

8. Did/will this corrective action require modification of your SWPPP? ☐ Yes ☐ No

9. Date corrective action initiated:

10. Date corrective action completed: Or expected to be completed:

11. If corrective action not yet completed, provide the status of the corrective action as the time of the comprehensive site inspections and describe any remaining steps (including timeframes associated with each step) necessary to complete the corrective action:

Section III. Certification

Do you certify that your annual inspection has met the requirements of Part 6.3 of the permit, and that, based upon the results of this inspection, to the best of your knowledge, you are in compliance with the permit? ☐ Yes ☐ No

If NO, summarize why you are not in compliance with the permit:

Certification Statement

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those person directly responsible for gathering the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Name of Authorized Representative | Title | Email

Signature | Date Signed

Notice of Intent (NOI) Modification Form for Storm Water Discharges Associated with Industrial Activity under the APDES Multi-Sector General Permit (MSGP)

Current NOI Information (Please copy content exactly from your NOI. Indicate changes on the next pages.)

Permit Number:

Facility Information (as it appears on your NOI):

Facility Name:				
Street Location	Street:		Borough or similar government subdivision	
	City:		State: Alaska	Zip:
	Latitude:	Longitude:	Determined By: ☐ GPS ☐ Internet Map Service ☐ Other:	

Operator Information (as it appears on your NOI):

Contact Name:	Organization:	Title:	
Phone:	Fax (optional):	Email:	
Mailing Address	Street (PO Box)		
	City	State	Zip

Instructions for Completing a Modification to an APDES Notice of Intent (NOI)

Use the form on the subsequent pages to indicate the items for which you are submitting this modification. Only enter information you wish to change. You may use this form to modify an NOI that you submitted to DEC for coverage under the Multi-Sector General Permit (MSGP) If you have any questions about modifying your NOI, call the DEC Storm Water Program at (907) 269-6285.

When Should You Modify Your Notice of Intent (NOI)?

You can use this form to update or correct information on your NOI, including:

- Owner/Operator address and contact information
- Changes to the SWPPP Contact
- Facility/Site information
- Acreage of industrial area exposed to storm water
- Changes in SIC code or industrial sector designation; or
- Changes to discharge information

When must you Submit a Notice of Termination (NOT) Instead of a Modification Form?

- The owner/operator has changed: You must submit an NOT when you transfer control of a site to a new owner/operator.
- The new owner/operator must then file a new NOI to obtain coverage under the MSGP. Coverage is not transferable.
- You have ceased operations at the facility and there are no longer discharges associated with industrial activity at the facility.
- You are a Sector G, H, or J facility and you have met the applicable termination requirements; or
- You have obtained coverage under an individual or alternative general permit for all discharges required to be covered by an APDES permit, unless ADEC has required that you obtain such coverage under authority of Part 2.8.1 of the MSGP, in which case coverage under this permit will terminate automatically.

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Notice of Intent (NOI) for Storm Water Discharges Associated with Industrial Activity under the APDES Multi-Sector General Permit (MSGP)

Facility Information

Facility Name:

Have storm water discharges from your site been covered previously under an APDES Permit? ☐ Yes ☐ No

If Yes, provide the permit authorization number: _____

Street Location

Street:	Borough or similar government subdivision	
City:	State: Alaska	Zip:
Latitude:	Longitude:	Determined By: ☐ GPS ☐ Internet Map Service ☐ Other:

Estimated area of industrial activity at your site exposed to storm water: _____ (acres)

Briefly describe the nature of the industrial activities at the facility:

Identify the 4-digit Standard Industrial Classification (SIC) code or 2-letter Activity Code that best represents the products produced or services rendered for which your facility is primarily engaged, as defined in the MSGP.

Primary SIC Code: _____ or Primary Activity Code: _____

Is your site presently inactive or unstaffed?* ☐ Yes ☐ No

** Note that if your facility becomes inactive and unstaffed during the permit term, you must submit an NOI modification to reflect the change.*

If Yes, is your site expected to be inactive and unstaffed for the entire permit term? ☐ Yes ☐ No

If No, indicate the length of time that you expect your facility to be inactive and unstaffed. _____

Federal Effluent Limitation Guidelines and Sector-Specific Requirements

Are you requesting permit coverage for storm water discharges subject to effluent limitation guidelines? ☐ Yes ☐ No

If yes, which effluent limitation guidelines apply to your storm water discharge?

40 CFR Part/Subpart	Eligible Discharges	Affected MSGP Sector	Check if applicable
Part 411, Subpart C	Runoff from material storage piles at cement manufacturing facilities.	E	☐
Part 418, Subpart A	Runoff from phosphate fertilizer manufacturing facilities that comes into contact with any raw materials, finished products, by-products, or waste products (SIC 2874).	C	☐
Part 423	Coal pile runoff at steam electric generating facilities.	O	☐
Part 429, Subpart I	Discharges resulting from spray down or intentional wetting of logs at wet deck storage areas.	A	☐
Part 436, Subpart B, C, or D	Mine dewatering discharges at crushed stone mines, construction sand and gravel mines, or industrial sand mines.	J	☐
Part 443, Subpart A	Runoff from asphalt emulsion facilities.	D	☐
Part 445, Subparts A & B	Runoff from hazardous waste and non-hazardous waste landfills.	K, L	☐
Part 449, Subpart A	Runoff from Air Transportation	S	☐

If you are a Sector S (Air Transportation facility, do you anticipate using more than 100,000 gallons of glycol-based deicing/anti-icing chemicals and/or 100 tons or more of urea on an average annual basis? ☐ Yes ☐ No

Identify the applicable sector(s) and subsector(s) of industrial activity, including co-located industrial activity, for which you are requesting coverage:

Sector	Subsector	Sector	Subsector	Sector	Subsector	Sector	Subsector	Sector	Subsector	Sector	Subsector

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Discharge Information

Does your facility discharge into a Municipal Separate Storm Sewer System (MS4)? ☐ Yes ☐ No

If Yes, provide the name of the MS4 Operator: _____

If you are subject to benchmark monitoring requirements for a hardness-dependent metal:

- What is the hardness of your receiving water(s) (See Appendix E)? _____
- Does your facility discharge into any saltwater receiving waters? ☐ Yes ☐ No

Outfalls: *(Attach a separate list if necessary)*

List all of the storm water outfalls from your facility. Each outfall must be identified by a unique 3-digit ID (e.g., 001, 002). Also provide the latitude and longitude in decimal degrees for each outfall.		**For each outfall, provide the following receiving water information**: Provide the name of the first water of the U.S. that receives storm water directly from the outfall and/or from the MS4 that the outfall discharges to:	If the receiving water is impaired (on the CWA 303(d) list), list the pollutants that are causing the impairment:	Are the pollutant(s) causing the impairment present in your discharge? Yes	No	If a TMDL has been completed for this receiving waterbody, provide the following information:
Outfall ID	001A			☐	☐	TMDL ID#:
Latitude						TMDL Name:
Longitude						Pollutant(s) for which there is a TMDL:
If substantially identical to other outfall, list identical outfall ID: _____						
Outfall ID				☐	☐	TMDL ID#:
Latitude						TMDL Name:
Longitude						Pollutant(s) for which there is a TMDL:
If substantially identical to other outfall, list identical outfall ID: _____						
Outfall ID				☐	☐	TMDL ID#:
Latitude						TMDL Name:
Longitude						Pollutant(s) for which there is a TMDL:
If substantially identical to other outfall, list identical outfall ID: _____						
Outfall ID				☐	☐	TMDL ID#:
Latitude						TMDL Name:
Longitude						Pollutant(s) for which there is a TMDL:
If substantially identical to other outfall, list identical outfall ID: _____						
Outfall ID				☐	☐	TMDL ID#:
Latitude						TMDL Name:
Longitude						Pollutant(s) for which there is a TMDL:
If substantially identical to other outfall, list identical outfall ID: _____						

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Operator Information

Contact Name:	Organization:	Title:
Phone:	Fax (optional):	Email:

Mailing Address ☐ Check if same as Operator Information	Street (PO Box)		
	City	State	Zip

Storm Water Pollution Prevention Plan (SWPPP) Contact / Location Information

Contact Name:	Organization:	Title:
Phone:	Fax (optional):	Email:

Mailing Address ☐ Check if same as Operator Information	Street (PO Box)		
	City	State	Zip

Universal Resource Locator or URL:

Billing Contact / Location Information

Contact Name:	Organization:	Title:
Phone:	Fax (optional):	Email:

Mailing Address ☐ Check if same as Operator Information	Street (PO Box)		
	City	State	Zip

NOI Preparer Contact / Location Information *(Complete if NOI was prepared by someone other than the Certifier)*

Contact Name:	Organization:	Title:
Phone:	Fax (optional):	Email:

Mailing Address ☐ Check if same as Operator Information	Street (PO Box)		
	City	State	Zip

Document Attachments

Documents attached with this application:

☐ Storm Water Pollution Prevention Plan (SWPPP)

☐ Other:

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Certification Information

An Alaska Pollutant Discharge Elimination System (APDES) permit application or report must be signed by an individual with the appropriate authority per 18 AAC 83.385. For additional information, please refer to 18 AAC 83.385 at the following link: http://www.legis.state.ak.us/basis/aac.asp#18.83.385.

Corporate Executive Officer 18 AAC 83.385 (a)(1)(A)	For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation.
Corporate Operations Manager 18 AAC 83.385 (a)(1)(B)	For a corporation, the manager of one or more manufacturing, production, or operating facilities, if (i) the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental statutes and regulations; (ii) the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and (iii) authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
Sole Proprietor or General Partner 18 AAC 83.385 (a)(2)	For a partnership or sole proprietorship, the general partner or the proprietor respectively.
Public Agency, Chief Executive Officer 18 AAC 83.385 (a)(3)(A)	For a municipality, state, or other public agency, the chief executive officer of the agency.
Public Agency, Senior Executive Officer 18 AAC 83.385 (a)(3)(B)	For a municipality, state, or other public agency, a senior executive officer having responsibility for the overall operations of a principal geographic unit or division of the agency.

Any report required by an APDES permit, and a submittal with any other information requested by the department, must be signed by a person described in above, or by a duly authorized representative of that person.
**For Delegated Authority: the delegation must be made in writing and submitted to the DEC.*
Your signature will not be approved until DEC receives the written delegation.
An Example of written authorization delegating authority can be found on the Division of Water website:
http://dec.alaska.gov/media/13316/delegation-of-signatory-authority.pdf

Operations Manager *(Delegated Authority)** 18 AAC 83.385 (b)(2)(A)	For a duly authorized representative, an individual or a position having responsibility for the overall operation of the regulated facility or activity, including the position of plant manager, operator of a well or a well field, superintendent or position of equivalent responsibility.
Environmental Manager *(Delegated Authority)** 18 AAC 83.385 (b)(2)(B)	For a duly authorized representative, an individual or position having overall responsibility for environmental matters for the company.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Organization:	Name:	Title:
Phone:	Fax (optional):	Email:

Mailing Address: ☐ Check if same as Operator Information	Street (PO Box):		
	City:	State:	Zip:

Signature/Responsible Official _____ Date _____

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Instructions for Completing the Notice of Intent (NOI) for Storm Water Discharges Associated with Industrial Activity under the Multi-Sector General Permit (MSGP)

Who must file a NOI?

Under section 402(p) of the Clean Water Act (CWA) and regulations at 40 CFR Part 122.26, adopted by reference at 18 AAC 83.010 (3) storm water discharges associated with industrial activity are prohibited to waters of the United States unless authorized under an Alaska Pollutant Discharge Elimination System (APDES) permit. You can obtain coverage under the MSGP by submitting a completed NOI if you operate a facility that:

- is located in a jurisdiction where DEC is the permitting authority, listed in Part 1.1 of the MSGP;
- discharges storm water associated with industrial activities, identified in Appendix D of the MSGP;
- meet the eligibility requirements in Part 1.2 of the permit;
- develop a storm water pollution prevention plan (SWPPP) in accordance with Part 5 of the MSGP; and
- install and implement control measures in accordance with Part 4 to meet numeric and non-numeric effluent limits.

If you are unsure if you need an APDES storm water permit, contact your APDES storm water permit program. Contacts are listed at:

http://dec.alaska.gov/water/wastewater/stormwater/

One NOI must be submitted for each facility or site for which you are seeking permit coverage. You do not need to submit separate NOIs for each type of industrial activity present at your facility, provided your SWPPP covers all activities.

When to File the NOI Form

Do not file your NOI until you have obtained and thoroughly read a copy of the MSGP. A copy of the MSGP is located on the DEC website (http://dec.alaska.gov/water/wastewater/stormwater/multisector/). The MSGP describes procedures to ensure your eligibility, prepare your SWPPP, install and implement appropriate storm water control measures, and complete the NOI form questions – all of which must be done before you sign the NOI certification statement attesting to the accuracy and completeness of your NOI. You will also need a copy of the MSGP once you have obtained coverage so that you can comply with the implementation requirements of the permit.

Completing the NOI Form

To complete this form, type or print in the appropriate areas only. Please make sure you complete all questions. Make sure you make a photocopy for your records before you send the completed form to the address below. You may also use this paper form as a checklist for the information you will need when filing an NOI electronically via DEC's OASys system. http://dec.alaska.gov/water/oasys.aspx.

Facility Information

Enter the facility's official or legal name. Unless the name of your facility has changed, please use the same name provided on prior NOIs or permit applications.

Indicate if industrial storm water discharges from your facility were previously covered by an APDES permit.

If your facility was previously covered by the MSGP, please include the tracking number that you received in your confirmation letter or email from DEC's Storm water Program. You can find the tracking number assigned to your previous NOI on DEC's Online Permit Search: http://dec.alaska.gov/Applications/Water/WaterPermitSearch/search.

Enter the street address, including city, state, zip code, borough or similar government subdivision of the actual physical location of the facility. Do NOT use a P.O. Box.

Provide the facility latitude and longitude in decimal degrees format. You can obtain your facility's latitude and longitude though Global Positioning System (GPS) receivers, internet map service, U.S. Geological Survey (USGS) quadrangle or topographic maps, or EPA's web-based siting-tools, among other methods. For consistency, DEC requests that measurements be taken from the approximate center of the facility. Specify which method you used to determine latitude and longitude.

Identify the data source that you used to determine the facility latitude and longitude. If you did not use a USGS quadrangle or topographic map or GPS receivers, then select "Other" and write the method used on the line provided. If you used a USGS quadrangle or topographic map, write the map scale on the line provided. Scale should be identified on the map.

Enter the estimated area of industrial activity at your site exposed to storm water, in acres.

Briefly describe the nature of the industrial activities present at your facility.

Indicate whether your facility is currently inactive and unstaffed. If so then indicate whether your facility will be inactive and unstaffed for the entire permit term; or, if not, specify the specific length of time in units of days, weeks, months, or years (e.g. 3 months) that you expect the facility to be inactive and unstaffed.

Federal Effluent Limitation Guidelines and Sector-Specific Requirements

Depending on your industrial activities, your facility may be subject to effluent limitation guidelines which include additional effluent limits and monitoring requirements for your facility. Please review these requirements, described in Part 4.3 of the MSGP and check any appropriate boxes on the NOI form.

For Sector S facilities (Air Transportation), indicate whether you anticipate that the entire airport facility will use more than 100,000 gallons of glycol-based deicing/anti-icing chemicals and/or 100 tons or more of urea on an average annual basis. If so, additional effluent limits and monitoring conditions apply to your discharge (see Part 11 Sector S of the MSGP).

List the four-digit Standard Industrial Classification (SIC) code and/or two character activity code that best describes the primary industrial activities performed by your facility under which you are required to obtain permit coverage. Your primary industrial activity includes any activities performed on-site which are (1) identified by the facility's one SIC code for which the facility is primarily engaged; and (2) included in the narrative descriptions of 40 CFR 122.26(b)(14)(i), (iv), (v), or (vii), and (ix). See Appendix D of the MSGP for a complete list of SIC codes and activities codes.

If your site has co-located industrial activities that are not identified as your primary industrial activity, identify the sector and subsector codes that describe these other industrial activities. For a complete list of sector and subsector codes, see Appendix D of the MSGP.

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Discharge Information

Receiving Waters and Wetlands

You must identify all the outfalls from your facility that discharge storm water. Each outfall must be assigned a unique 3-digit ID (e.g., 001, 002, 003). You must also provide the latitude and longitude for each outfall from your facility. Indicate whether any outfalls are substantially identical to an outfall already listed, and identify the outfall it is identical to. For each unique outfall you list, you must specify the name of the first water of the U.S. that receives storm water directly from the outfall and/or the Municipal Separate Storm Sewer System (MS4) that the outfall discharges to.

Your receiving water may be a lake, stream, river, ocean, wetland, or other waterbody, and may or may not be located adjacent to your facility. Your storm water may discharge directly to the receiving water or indirectly via a storm sewer system, an open drain or ditch, or other conveyance structure. Do NOT list a man-made conveyance, such as a storm sewer system, as your receiving water. Indicate the first receiving water your storm water discharge enters. For example, if your discharge enters a storm sewer system that empties into Trout Creek, which flows into Pine River, your receiving water is Trout Creek, because it is the first waterbody your discharge will reach. Similarly, a discharge into a ditch that feeds Spring Creek should be identified as "Spring Creek" since the ditch is a manmade conveyance. If you discharge into a MS4, you must identify the waterbody into which that portion of the storm sewer discharges and also provide the name of the MS4 operator. That information should be readily available from the operator of the MS4. If you are uncertain of the MS4 operator, contact DEC Division of Water for that information.

You must specify whether any receiving waters that you discharge to are listed as "impaired" as defined in Appendix C, and the pollutants for which the water is impaired. You must also check/identify any Total Maximum Daily Loads (TMDL) that have been completed for any of the waters of the U.S. that you discharge to. You must also provide information about the outfall latitude/ longitude. Further information regarding impaired waters and TMDLs can be found at http://dec.alaska.gov/water/water-quality/impaired-waters.

If you are subject to any benchmark monitoring requirements for metals (see the requirements applicable to your Sector(s) in Part 11 of the permit), indicate the hardness for your receiving water(s). See Appendix E of the permit for information about determining waterbody hardness.

If you are subject to benchmark monitoring requirements for hardness-dependent metals, you must also answer whether your facility discharges into any saltwater receiving waters.

Operator Information

Provide the name of the contact person and the legal name of the firm, public organization, or any other public entity that operates the facility described in this application. An operator of a facility is a legal entity that controls the operation of the facility.

Provide the operator's mailing address, telephone number, fax number (optional), and email address. Correspondence will be sent to this address.

Storm Water Pollution Prevention Plan (SWPPP) Contact Information

Identify the name, telephone number, and email address of the person who will serve as a contact for DEC on issues related to storm water management at your facility. This person should be able to answer questions related to storm water discharges, the SWPPP, and other issues related to storm water permit coverage or have immediate access to individuals with that knowledge. This person does not have to be the facility operator but should have intimate knowledge of storm water management activities at the facility.

If you are making your SWPPP publicly available on a website, provide the appropriate Internet URL address.

Billing Contact Information

Provide the name of the contact person and the legal name of the firm, public organization, or any other public entity that is responsible for accounts payable for this facility.

Provide the billing contact's mailing address, telephone number, fax number (optional), and email address. Correspondence for billing purposes will be sent to this address. If the billing contact address is the same as the operator, check the box and continue to Section III Facility Information. See 18 AAC 72.956 for applicable authorization fee to be paid with the submittal of the NOI.

Certification Information

The NOIs, must be signed as follows:

(1) For a corporation, a responsible corporate officer shall sign the NOI, a responsible corporate officer means:

  (A) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or

  (B) the manager of one or more manufacturing, production, or operating facilities, if

    (i) the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental statutes and regulations;

    (ii) the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and

    (iii) authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship, the general partner or the proprietor, respectively; or

(3) for a municipality, state, or other public agency, either a principal executive officer or ranking elected official shall sign the application; in this subsection, a principal executive officer of an agency means

  (A) the chief executive officer of the agency; or

  (B) a senior executive officer having responsibility for the overall operations of a principal geographic unit or division of the agency.

Include the name, title, organization, and email address of the person signing the form and the date of signing. An unsigned or undated NOI form will not be considered valid application for permit coverage.

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If the NOI was prepared by someone other than the certifier (for example, if the NOI was prepared by the facility SWPPP contact or a consultant for the certifier's signature), include the name, organization, telephone number, and email address of the NOI preparer.

Where to File the NOI Form

DEC encourages you to complete the NOI form and SWPPP electronically via the Internet. DEC's Online Application System (OASys) can be found at http://dec.alaska.gov/water/oasys.aspx. Filing electronically is the fastest way to obtain permit coverage and help ensure that your NOI is complete. If you choose not to file electronically, you must send the NOI to the address listed below.

If you file by mail, remember to retain a copy for your records.

NOIs sent by mail:

Alaska Dept. of Environmental Conservation
Wastewater Discharge Authorization Program
Storm Water NOI
555 Cordova Street
Anchorage, AK 99501
Phone: (907) 269-6285
dec.water.wqpermit@alaska.gov

Your SWPPP needs to be submitted with the NOI as required in Part 5 of the MSGP. You must keep a copy of your SWPPP on-site or otherwise make it available to facility personnel responsible for implementing provisions of the permit.

For Agency Use

Permit Tracking #: _____

No Exposure Certification for Exclusion from APDES Storm Water Permitting

Submission of this No Exposure Certification constitutes notice that the entity identified in Section I does not require permit authorization for its storm water discharges associated with industrial activity in Alaska identified in Section II under ADEC's Storm Water Multi-Sector General Permit (MSGP) due to the existence of a condition of no exposure.

A condition of no exposure exists at an industrial facility when all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, or waste product. A storm resistant shelter is not required for the following industrial materials and activities:

- drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak. "Sealed" means banded or otherwise secured and without operational taps or valves;
- adequately maintained vehicles used in material handling; and
- final products, other than products that would be mobilized in storm water discharges (e.g., rock salt).

A No Exposure Certification must be provided for each facility qualifying for the no exposure exclusion. In addition, the exclusion from APDES permitting is available on a facility-wide basis only, not for individual outfalls. If any industrial activities or materials are or will be exposed to precipitation, the facility is not eligible for the no exposure exclusion.

By signing and submitting this No Exposure Certification form, the entity in Section I is certifying that a condition of no exposure exists at its facility or site, and is obligated to comply with the terms and conditions of 40 CFR 122.26(g), adopted by reference at 18 AAC 83.010(b)(3).

ALL INFORMATION MUST BE PROVIDED ON THIS FORM.

Detailed instructions for completing this form and obtaining the no exposure exclusion are provided on page 3.

Section I. Facility Operator Information

Organization: Contact Person:

Mailing Address:

Street (PO Box):

City: State: Zip:

Phone: Fax (optional): Mobile:

Email:

Section II. Facility Location Information

Facility Name:

Location Address:

Street: Borough or Similar Government Subdivision

City: State: Alaska Zip:

Latitude: Longitude: Determined By:

☐ GPS ☐ USGS Topographic Map

☐ Other:

If you used a USGS Topographic map, what was the scale?

Estimated area of industrial activity at your site exposed to storm water: (acres)

Is this a federal facility? ☐ Yes ☐ No Is this facility located on Indian Lands? ☐ Yes ☐ No

Identify the 4-digit Standard Industrial Classification (SIC) code or 2-letter Activity Code that best represents the products produced or services rendered for which your facility is primarily engaged, as define in MSGP:

Primary SIC Code: or
Primary Activity Code:

Was the facility or site previously covered under an NPDES or APDES storm water permit? ☐ Yes ☐ No

a. If Yes, enter the NPDES or APDES permit number or tracking number:

Have you paved or roofed over a formerly exposed pervious area in order to qualify for the no exposure exclusion? ☐ Yes ☐ No

If yes, please indicate approximately how much area was paved or roofed over. Completing this question does not disqualify you for the no exposure exclusion. However, your permitting authority may use this information in considering whether storm water discharges from your site are likely to have an adverse impact on water quality, in which case you could be required to obtain permit coverage.

☐ Less than one acre ☐ One to five acres ☐ More than five acres

Section III. Exposure Checklist

Are any of the following materials or activities exposed to precipitation, now or in the foreseeable future? (Please check either "Yes" of "No" in the appropriate box.) **If you answer "Yes" to any of these questions, (1) through (11), you are not eligible for the no exposure exclusion.**	Yes	No
(1) Using, storing, or cleaning industrial machinery or equipment, and areas where residuals from using, storing, or cleaning industrial machinery or equipment remain and are exposed to storm water.	☐	☐
(2) Materials or residuals on the ground or in storm water inlets from spills/leaks.	☐	☐
(3) Materials or products from past industrial activity.	☐	☐
(4) Material handling equipment (except adequately maintained vehicles).	☐	☐
(5) Materials or products during loading/unloading or transporting activities.	☐	☐
(6) Materials or products stored outdoors (except final products intended for outside use [e.g., new cars] where exposure to storm water does not result in the discharge of pollutants).	☐	☐
(7) Materials contained in open, deteriorated, or leaking storage drums, barrels, tanks, and similar containers.	☐	☐
(8) Materials or products handled/stored on roads or railways owned or maintained by the discharger.	☐	☐
(9) Waste material (except waste in covered, non-leaking containers [e.g., dumpsters]).	☐	☐
(10) Application or disposal of process wastewater (unless otherwise permitted).	☐	☐
(11) Particulate matter or visible deposits of residuals from roof stacks and/or vents not otherwise regulated (i.e., under an air quality control permit) and evident in the storm water outflow.	☐	☐

Section VIII. Certification Information

I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from APDES storm water permitting under DEC Multi-Sector General Permit.

I certify under penalty of law that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility or site identified in this document (except as allowed under 40 CFR 122.26(g)(2)).

I understand that I am obligated to submit a no exposure certification form once every five years to the APDES permitting authority and, if requested, to the operator of the local municipal separate storm sewer system (MS4) into which the facility discharges (where applicable). I understand that I must allow the APDES permitting authority, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under an APDES permit prior to any point source discharge of storm water from the facility.

Additionally, I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Printed Name of Authorized Official _____ Title _____

Signature _____ Date _____

Email _____

Instructions for the No Exposure Certification for Exclusion from APDES Storm Water Permitting

Who May File a No Exposure Certification

Federal law at 40 CFR Part 122.26, adopted by reference at 18 AAC 83.010(b)(3), prohibits point source discharges of storm water associated with industrial activity to waters of the U.S. without an Alaska Pollutant Discharge Elimination System (APDES) permit. However, APDES permit coverage is not required for discharges of storm water associated with industrial activities identified at 40 CFR 122.26(b)(14)(i)-(ix) and (xi) if the discharger can certify that a condition of "no exposure" exists at the industrial facility or site.

Storm water discharges from construction activities identified in 40 CFR 122.26(b)(14)(x) and (b)(15) are not eligible for the no exposure exclusion.

Obtaining and Maintaining the No Exposure Exclusion

This form is used to certify that a condition of no exposure exists at the industrial facility or site described herein. This certification is only applicable in jurisdictions where DEC is the NPDES permitting authority and must be re-submitted at least once every five years.

The industrial facility operator must maintain a condition of no exposure at its facility or site in order for the no exposure exclusion to remain applicable. If conditions change resulting in the exposure of materials and activities to storm water, the facility operator must obtain coverage under an APDES storm water permit immediately.

Completing the Form

You must type or print in appropriate areas only. One form must be completed for each facility or site for which you are seeking to certify a condition of no exposure. Additional guidance on completing this form can be accessed at DEC's Storm water Program website: http://dec.alaska.gov/water/wnpspc/stormwater/index.htm.

Please make sure you have addressed all applicable questions and have made a photocopy for your records before sending the completed form to this address.

Section I. Facility Operator Information

- Provide the legal name of the person, firm, public organization, or any other entity that operates the facility or site described in this certification. The name of the operator may or may not be the same as the name of the facility. The operator is the legal entity that controls the facility's operation, rather than the plant or site manager.
- Provide the telephone number of the facility operator.
- Provide the email address of the facility operator.
- Provide the mailing address of the operator (P.O. Box numbers may be used). Include the city, state, and zip code. All correspondence will be sent to this address.

Section II. Facility/Site Location Information

- Enter the official or legal name of the facility or site.
- Enter the complete street address (if no street address exists, provide a geographic description [e.g., Intersection of Routes 9 and 55]), city, state, zip code, and borough or similar government subdivision. Do not use a P.O. Box number.
- Indicate whether the facility is located on Indian Lands.
- Indicate whether the industrial facility is operated by a department or agency of the Federal Government (see also Section 313 of the Clean Water Act).
- Enter the latitude and longitude of the approximate center of the facility or site. The latitude and longitude of your facility can be determined in several different ways, including through the use of global positioning system (GPS) receivers, U.S. Geological Survey (U.S.G.S.) topographic or quadrangle maps, among others.
- Indicate whether the facility was previously covered under an NPDES or APDES storm water permit. If so, include the permit number or permit tracking number.
- List the four-digit Standard Industrial Classification (SIC) code and/or two character activity code that best describes the primary industrial activities performed by your facility. Your primary industrial activity includes any activities performed on-site which are:
  - (1) identified by the facility's one SIC code for which the facility is primarily engaged; and
  - (2) included in the narrative descriptions of 40 CFR 122.26(b)(14)(i), (iv), (v), or (vii), and (ix). See Appendix D of the MSGP for a complete list of SIC codes and activities codes.
- Enter the total size of the site associated with industrial activity in acres. Acreage may be determined by dividing square footage by 43,560.
- Check "Yes" or "No" as appropriate to indicate whether you have paved or roofed over a formerly exposed, pervious area (e.g., lawn, meadow, dirt or gravel road/parking lot) in order to qualify for no exposure. If yes, also indicate approximately how much area was paved or roofed over and is now impervious area.

Section III. Exposure Checklist

Check "Yes" or "No" as appropriate to describe the exposure condition at your facility. If you answer "Yes" to **ANY** of the questions, (1) through (11), in this section, a potential for exposure exists at your site and you cannot certify to a condition of no exposure. You must obtain (or already have) coverage under an APDES storm water permit. After obtaining permit coverage, you can institute modifications to eliminate the potential for a discharge of storm water exposed to industrial activity and then certify to a condition of no exposure.

Section IV. Certification Information

The Certification of No Exposure, must be signed as follows:

(1) For a corporation, a responsible corporate officer shall sign the Certification, a responsible corporate officer means:

  (A) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or

  (B) the manager of one or more manufacturing, production, or operating facilities, if

    (i) the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental statutes and regulations;

    (ii) the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and

    (iii) authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship, the general partner or the proprietor, respectively; or

(3) for a municipality, state, or other public agency, either a principal executive officer or ranking elected official shall sign the application; in this subsection, a principal executive officer of an agency means

  (A) the chief executive officer of the agency; or

  (B) a senior executive officer having responsibility for the overall operations of a principal geographic unit or division of the agency.

Include the name, title, and email address of the person signing the form and the date of signing. An unsigned or undated Certification form will not be considered valid exclusion from permit coverage.

Where to File Certification form

Please submit the Certification to DEC as follows:

If you file by mail, please submit the original form with a signature in ink. DEC will not accept a photocopied signature. Remember to retain a copy for your records.

Certifications sent by mail:

Alaska Dept. of Environmental Conservation
Wastewater Discharge Authorization Program
555 Cordova Street
Anchorage, AK 99501
Phone: (907) 269-6285

Alaska Department of Environmental Conservation

Division of Water, Compliance and Enforcement Program
555 Cordova Street
Anchorage, Alaska 99501
Nationwide Toll Free: 1(877) 569-4114 Anchorage/International: (907) 269-4114
Fax: (907) 269-4604 E-mail address: dec-wqreporting@alaska.gov.

NONCOMPLIANCE NOTIFICATION

GENERAL INFORMATION	PERMIT# (if any):	
Owner or Operator:	**Facility Name:**	**Facility Location:**
Person Reporting:	**Phone Numbers of Person Reporting:**	**Reported How? (e.g. by phone):**
Date/Time Event was Noticed:	**Date/Time Reported:**	**Name of DEC Staff Contacted:**

VERBAL NOTIFICATION MUST BE MADE TO ADEC WITHIN 24 HOURS OF DISCOVERY OF NONCOMPLIANCE

INCIDENT DETAILS (attach additional sheets, lab reports, and photos as necessary)

Period of Noncompliance	**Start Date/Time** (exact)**:**	**End Date/Time** (exact)**:**

If noncompliance has not been corrected, provide a statement regarding the anticipated time the noncompliance is expected to continue:

Estimated Quantity involved (volume or weight):

Description of the noncompliance and its cause (be specific):

Actions taken to reduce, eliminate, and prevent reoccurrence of noncompliance and Actual/Potential Impact on Environmental Health (describe in detail) (e.g. Supplied drinking water to nearby well owners and informed well owners not to drink from wells until further notice)

Permit Condition Deviation (Identify each permit condition exceeded during the event.)

Parameter (e.g. BOD pH)	Permit Limit	Exceedance (sample result)	Sample Date

Corrective Actions (Attach a description of corrective actions taken to restore the system to normal operation and to minimize or eliminate chances of recurrence.)

Environmental Damage: (if yes, provide details below) ☐ **Yes** ☐ **No** ☐ **Unknown**

Actual /Potential Impact on Environment/Public Health (describe in detail)

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Name: **Title:** **Signature:** **Date:**

FORMS MUST BE SENT TO ADEC WITHIN FIVE DAYS OF BECOMING AWARE OF THE EVENT.

Alaska Department of Environmental Conservation
Multi-Sector General Permit (MSGP)

Discharge Monitoring Report (DMR)

Part 9.1 requires you to use the electronic NetDMR system to prepare and submit your Discharge Monitoring Report (DMR) form. However, if you are given approval by the DEC (Permitting Program or Compliance and Enforcement Program, see Standard Conditions, Appendix A, Part 1.1 Contact Information and Addresses) to use a paper DMR form, and you elect to use it, you must complete and submit the following form.

Reason(s) for Submission *(Check all that apply)*

- ☐ Submitting monitoring data (fill in all Sections).
- ☐ Reporting no discharge for all outfalls for this monitoring period (fill in Sections I, II, III, IV, and VI).
- ☐ Reporting that your site status has changed to inactive and unstaffed (fill in Sections I, II, VI and include date of status change in comments field in Section V).
- ☐ Reporting that your site status has changed to active (fill in all sections and include date of status change in comments field in Section V).
- ☐ Reporting that no further pollutant reductions are achievable for all outfalls and for all pollutants via Part 7.2.1.4 of the MSGP (fill in Sections I, II, and VI).

Section I. Permit Information

Permit Authorization Number:

Section II. Facility Information

Facility Name:			
Street Location	Street:		
	City:	State: Alaska	Zip:

Contact Name:	Organization:	Title:
Phone:	Fax (optional):	Email:

DMR Preparer (Complete if DMR was prepared by someone other than the person signing the certification in Section VI):

Name:	Organization:	Title:
Phone:	Fax (optional):	Email:

Section III. Discharge Information

Identify Monitoring Period:	Check here if proposing alternative monitoring periods due to irregular storm water runoff. Identify alternative monitoring schedule and indicate for which alternative period you are reporting monitoring data.	
☐ Quarter 1 (January 1 – March 31)	Quarter 1: From:	To:
☐ Quarter 2 (April 1 – June 30)	Quarter 2: From:	To:
☐ Quarter 3 (July 1 – September 30)	Quarter 3: From:	To:
☐ Quarter 4 (October 1 – December 31)	Quarter 4: From:	To:

Are you required to monitor for cadmium, copper, chromium, lead, nickel, silver, or zinc? ☐ Yes, ☐ No (Skip to Section IV)
What is the hardness level of the receiving water? _____ mg/L

Section IV. Outfall Information

How many outfalls are identified in your SWPPP? _____ List names of outfalls required to be monitored in the table below.
Do any of your outfalls discharge substantially identifical effluents? ☐ Yes, ☐ No
If YES, for each monitored outfall, indicate outfall names that are substantially identical in the table below.

a. Monitored Outfall Name*	b. Substantially Identical Outfalls [List name(s) of outfall(s) that are substantially identical to outfall in a.]	c. No Discharge?

* Reference attachment if additional space is needed to complete the table.

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Section V. Monitoring Information

Permit Tracking Number:

Nature of Discharge: ☐ Rainfall (complete a, b. and c below) ☐ Snowmelt

a. Duration of the rainfall event (hours):_____ b. Rainfall amount (inches): _____ c. Time since previous measurable storm event (days): _____

Outfall Name	Monitoring Type (QBM, ELG, S, I, O)*	Parameter	Quality or Concentration	Units	Results Description	Collection Date	Exceedance due to natural background pollutant levels	No further pollutant reductions achievable?

* (QBM) – Quarterly benchmark monitoring; (ELG) – Annual effluent limitation guidelines monitoring; (S) – State specific monitoring; (I) – Impaired waters monitoring; (O) – Other monitoring as required by DEC

Comment and/or Explanation of any Violations (Reference all attachments here)

Section VI. Certification

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Organization:		Name:	Title:
Phone:	Fax (optional):	Email:	
Mailing Address:	Street (PO Box):		
	City:	State:	Zip:

_____ _____

Signature/Responsible Official Date

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Instructions for Completing the MSGP Industrial Discharge Monitoring Report (DMR)

Who Must Submit A Discharge Monitoring Report to DEC?

- An operator or owner of a facility covered under the Multi-Sector General Permit (MSGP or permit) that are required to monitor pursuant to Parts 7.2.1, 7.2.2, 7.2.3, and 7.2.4 of the permit must submit the MSGP Discharge Monitoring Report (DMR) consistent with the reporting requirements specified in Part 9.1 of the permit.

Completing the Form

- Type or print, in the appropriate areas only. "NA" can be entered in areas that are not applicable. If you have any questions about how or when to use this form, contact the DEC Storm Water Program at (907) 269-6285 or online at http://dec.alaska.gov/water/wastewater/stormwater/.

Reasons for Submission

- Indicate your reason(s) for submitting this DMR by checking all boxes that apply. The reasons for submission are defined as follows:
- *Submitting monitoring data*: For each storm event sampled, submit one DMR form with data for all outfalls sampled. Select this reason even if you only have monitoring data for some of your outfalls (i.e., some outfalls did not discharge). If you select this reason, you are required to complete all Sections of the form.
- *Reporting no discharge for all outfalls for this monitoring period*: Indicates that there were no discharges from all outfalls during this monitoring period. If you select this reason, you are only required to complete Sections I, II, III, IV, and VI.
- *Reporting that your site status has changed to inactive and unstaffed*: Indicates that your facility is currently inactive and unstaffed (See Part 7.2.1.6 of the permit for more information). If you select this reason, you are only required to complete Sections I, II, and VI and include date of status change in the comment field in Section V.
- *Reporting that your site status has changed from inactive to active*: Indicates that your facility is currently active (See Part 7.2.1.6 of the permit for more information). If you select this reason, you are required to complete all Sections of the form and include date of status change in the comment field in Section V.
- Reporting that no further reductions are achievable for all outfalls and for all effluent monitoring pollutants via Part 7.2.1.4 and Parts 4 of the permit: Indicates that your facility has determined that no further pollutant reductions are technologically available and economically practicable and achievable in light of best industry practice to meet the technology-based effluent limitations or are necessary to meet the water-quality-based effluent limitations in Parts 4 of the permit (See Part7.2.1.4 of the permit for more information). If you select this reason, you are required to complete Sections I, II and VI. However, if you can make this finding for some outfalls and pollutants, but not for others, you cannot select this reason; you will instead be able to identify which outfalls and which pollutants you can make this finding for in Section V.

Section I. Permit Tracking Number

- Enter the APDES tracking number assigned by DEC to the facility. If you do not know the tracking number, you can find the tracking number assigned to your facility on DEC's Water Permit Search http://dec.alaska.gov/Applications/Water/WaterPermitSearch/Search.aspx

Section II. Facility Information

- Enter the facility's official or legal name. Unless the name of your facility has changed, please use the same name provided on your NOI. You can use ADEC's Water Permit Search, http://dec.alaska.gov/Applications/Water/WaterPermitSearch/Search.aspx to view your NOI.
- Enter the street address, including city, state, and zip code of the actual physical location of the facility. Do not use a P.O. Box.
- Identify the name, telephone number, and email address of the person who will serve as a contact for DEC on issues related to monitoring at your facility. This person should be able to answer questions related to stormwater discharges and monitoring or have immediate access to individuals with that knowledge. This person does not have to be the facility operator but should have intimate knowledge of monitoring activities at the facility.
- If the form was prepared by someone other than the person who is signing the certification statement in Section VI (for example, if the DMR was prepared by a member of the facility's storm water pollution prevention team or a consultant for the certifier's signature), include the name, organization, telephone number, and email address of the DMR preparer.

Section III. Discharge Information

- Indicate the appropriate monitoring period (Quarter 1, 2, 3, or 4) covered by the DMR. "Alternative" monitoring periods can apply to facilities located in arid and semi-arid climates or in areas subject to snow or prolonged freezing. To use alternative monitoring periods, you must provide a revised monitoring schedule here in the first monitoring report submitted and indicate for which alternative monitoring period you are reporting monitoring data. If using alternative monitoring periods, identify the first day of the monitoring period through the last day of the monitoring period for each of the four periods. The dates should be displayed as month (Mo) / day (Day). See Part 7.2.1.2 of the permit for more information.
- If you are submitting benchmark monitoring data, identify if your facility is required to collect benchmark samples for one or more hardness-dependent metals (i.e., cadmium, copper, lead, nickel, silver, and zinc). If you select "yes" to this question you must also complete the table in Section III., and if you select "no" to this question, you may skip to Section IV.
- If you selected "yes" for the previous question, then you are required to submit to DEC with your first benchmark report a hardness level established consistent with the procedures in Appendix E of the permit, which is representative of your receiving water. If your outfalls discharge to more than one receiving water, as reported in your NOI form, you should report hardness for the receiving water with the lowest hardness values. Hardness values must be reported in milligrams per liter (mg/L).

Section IV. Outfall Information

- Enter the total number of outfalls identified in your SWPPP. Outfalls are locations where storm water exits the facility, including pipes, ditches, swales, and other structures used to remove storm water from the facility.
- Indicate if your facility has two or more outfalls that you believe discharge substantially identical effluents (i.e., storm water), based on the similarities of the general industrial activities and control measures, exposed materials that may significantly contribute pollutants to storm water, and runoff coefficients of

their drainage areas. See Parts 5.2.6.2 and 6.2.3 of the permit for more information on substantially identical outfalls.

- If you selected "yes" for the previous question, then you must list the outfall name(s) in Column b that you expect to be substantially identical to the corresponding outfall in Column a.
  a. *Monitored Outfall Name:* List name(s) of outfall(s) you are required to monitor.
  b. *Substantially Identical Outfalls:* List name(s) of outfall(s) substantially identical to "*Monitored Outfall*" in Column a. (if applicable)].
  c. *No Discharge:* Check box if you are reporting "No Discharge" for the monitored outfall for the reporting period identified in Section III.

Example:

a. Monitored Outfall Name	b. Substantially Identical Outfall	c. No Discharge
Outfall A	Outfall B, Outfall C	☐
Outfall D		☒

Reference attachments if additional space is needed to complete the table in Section IV.

Section V. Monitoring Information

- Enter the APDES tracking number assigned to the facility reported in Section I.
- For the reported monitoring event, indicate whether the discharge was from a rainfall or snowmelt event. If you select "rainfall", then indicate:
  - the duration (in hours) of the rainfall event;
  - rainfall total (in inches) for that rainfall event; and
  - time (in days) since the previous measurable storm event.
- If the discharge occurs during a period of both rainfall and snowmelt, check both the rainfall and snowmelt boxes and report the appropriate rainfall information in items a-c. To report multiple monitoring events in the same reporting period, copy Page 2 of this Form and enter each monitoring event separately with data for all outfalls sampled.
- For each pollutant monitored at an outfall, you must complete one row in the Table as follows:
  - *Outfall Name*: Provide the outfall name for which you monitored (e.g., Outfall 1, Outfall 2, Outfall 3).
  - *Monitoring Type*: Provide the type of monitoring using the specified codes below:
    - QBM – Quarterly benchmark monitoring;
    - ELG – Annual effluent limitations guidelines monitoring;
    - S – State specific monitoring;
    - I - Impaired waters monitoring; or
    - O – Other monitoring as required by DEC.
- *Parameter(s)*: Enter each "Parameter" (or "pollutant") monitored. For QBM and ELG monitoring, use the same parameter name as in Part 11 of the permit.
- *Quality or Concentration*: Enter sample measurement value for each parameter analyzed and required to be reported. Enter "ND" (i.e., not detected) for any sample results below the method detection limit or "BQL" (i.e., below quantitation limit) for sample results above the detection limit but below the quantitation limit.
- *Units*: Enter the units for sample measurement values (e.g., "mg/L" for milligrams per liter) for each parameter analyzed and required to be reported. For monitoring results reported as ND or BQL, this space will be left blank and the units will be reported under Results Description.
- *Results Description*: This section must be completed for any monitoring results reported as ND or BQL in the "Quality or Concentration" column. For ND, report the laboratory detection level and units in this column. For BQL, report the laboratory quantitation limit and units in this column.
- *Collection Date*: Identify the sampling date for each parameter monitoring result reported on this form.
- *Exceedance due to natural background pollutant levels*: Check box if following the first 4 quarters of benchmark monitoring (or sooner if the exceedance is triggered by less than 4 quarters of data) you have determined that the exceedance of the benchmark is attributable solely to the presence of that pollutant in the natural background for that outfall and any substantially identical outfalls. See Part 7.2.1.5 of the permit for more information. Attach supporting rationale for your determination to the submitted DMR and reference attachment in comments portion of Section V.
- *No further pollutant reductions achievable*: Check box if after collection of 4 quarterly samples (or sooner if the exceedance is triggered by less than 4 quarters of data), the average of the 4 monitoring values for any parameter exceeds the benchmark and you have made the determination that no further pollutant reductions are technologically available and economically practicable and achievable in light of best industry practice to meet the technology-based effluent limitations or are necessary to meet the water-quality-based effluent limitations in Parts 4 of the permit (See Part 7.2.1.4 of the permit for more information) for that outfall and any substantially identical outfalls. Attach supporting rationale for your determination to the submitted DMR and reference attachment in comments portion of Section V.
- Where violations of the permit requirements are reported, include a brief explanation to describe the cause and corrective actions taken and reference each violation by date. Also, this section should include any additional comments such as are required when changing site status from inactive and unstaffed to active or vice versa. Attach additional pages if you need more space.
- Attach additional copies of Section V as necessary to address all outfalls and parameters.

Section VI. Certification

- Enter *Printed Name and Title of Principal Executive Officer or Authorized Agent* with *Signature of Principal Executive Officer or Authorized Agent*, and the *Date* this form was signed and the email address of the "*Principal Executive Officer or Authorized Agent*." If you submit multiple pages of Section V monitoring data, each page must be appropriately signed and certified as described below.

The DMRs must be signed as follows:

(1) For a corporation, a responsible corporate officer shall sign the DMR, a responsible corporate officer means:
  (A) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or
  (B) the manager of one or more manufacturing, production, or operating facilities, if
    (i) the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental statutes and regulations;

(ii) the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and
(iii) authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship, the general partner or the proprietor, respectively; or

(3) for a municipality, state, or other public agency, either a principal executive officer or ranking elected official shall sign the application; in this subsection, a principal executive officer of an agency means
(A) the chief executive officer of the agency; or
(B) a senior executive officer having responsibility for the overall operations of a principal geographic unit or division of the agency.

- Include the name, title, and email address of the person signing the form and the date of signing. An unsigned or undated DMR will not be considered valid.

Where to File the DMR Form

- Monitoring data collected pursuant to Part 7.2 of the permit must be reported on the paper DMR form and sent to the following address:
- If you file by mail, remember to retain a copy for your records.
  - DMRs sent by mail:
    Alaska Dept. of Environmental Conservation
    Wastewater Discharge Authorization Program
    Office of Compliance
    555 Cordova Street
    Anchorage, AK 99501
    Phone: (907) 269-6285
    dec-wqreporting@alaska.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (EPA)
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
MULTI-SECTOR GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY (MSGP)

In compliance with the provisions of the Clean Water Act (CWA), as amended (33 U.S.C. 1251 *et seq.*), operators of stormwater discharges associated with industrial activity located in an area identified in Appendix C where EPA is the permitting authority are authorized to discharge to waters of the United States in accordance with the eligibility and Notice of Intent (NOI) requirements, effluent limitations, inspection requirements, and other conditions set forth in this permit. This permit is structured as follows:

- General requirements that apply to all facilities are found in Parts 1 through 7;
- Industry sector-specific requirements are found in Part 8; and
- Specific requirements that apply in individual states and Indian country are found in Part 9.

The Appendices (A through P) contain additional permit conditions that apply to all operators covered under this permit.

This permit becomes effective on June 4, 2015. For areas in the State of Washington (except for Indian country) subject to industrial activity by a Federal Operator, this permit becomes effective on July 21, 2015. For the State of Idaho (except for Indian country), and for industrial activities on Spokane Tribe of Indians lands, this permit becomes effective August 12, 2015.

This permit and the authorization to discharge shall expire at midnight, June 4, 2020.

Signed and issued this 4th day of June, 2015

Deborah Szaro
Acting Regional Administrator, EPA Region 1

Signed and issued this 4th day of June, 2015

José C. Font
Director, Caribbean Environmental Protection Division, EPA Region 2

Signed and issued this 4th day of June, 2015

Jon. M Capacasa
Water Protection Division, EPA Region 3

Signed and issued this 4th day of June, 2015

Tinka G. Hyde
Director, Water Division, EPA Region 5

Signed and issued this 4th day of June, 2015

William K. Honker
Director, Water Quality Protection Division, EPA Region 6

Signed and issued this 4th day of June, 2015

Karen Flournoy
Director, Water, Wetlands, and Pesticides Division, EPA Region 7

Signed and issued this 4th day of June, 2015

Darcy O'Connor
Acting Assistant Regional Administrator, EPA Region 8

Signed and issued this 4th day of June, 2015

Nancy Woo
Acting Director, Water Division, EPA Region 9

Signed and issued this 4th day of June, 21st day of July, and 12th day of August, 2015

Daniel D. Opalski
Director, Office of Water and Watersheds, EPA Region 10

NPDES MULTI-SECTOR GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY

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1. Coverage Under this Permit.

1.1 Eligibility.

1.1.1 Facilities Covered.

To be eligible to discharge under this permit, you must (1) have an allowable stormwater discharge or an allowable non-stormwater discharge associated with industrial activity from your primary industrial activity, as defined in Appendix A, provided your primary industrial activity is included in Appendix D, or (2) be notified by EPA that you are eligible for coverage under Sector AD of this permit. Your facility must also be located in an area where EPA is the permitting authority (see Appendix C).

1.1.2 Allowable Stormwater Discharges.

Unless otherwise made ineligible under Part 1.1.4, the following discharges are eligible for coverage under this permit:

1.1.2.1 Stormwater discharges associated with industrial activity for any primary industrial activities and co-located industrial activities, as defined in Appendix A, except for any stormwater discharges specifically prohibited in Part 8;

1.1.2.2 Discharges designated by EPA as needing a stormwater permit as provided in Sector AD;

1.1.2.3 Discharges that are not otherwise required to obtain NPDES permit authorization but are mixed with discharges that are authorized under this permit; and

1.1.2.4 Stormwater discharges from facilities subject to any of the national stormwater-specific effluent limitations guidelines listed in Table 1-1.

Table 1-1. Stormwater-Specific Effluent Limitations Guidelines

Regulated Discharge	40 CFR Section	MSGP Sector	New Source Performance Standard (NSPS)	New Source Date
Discharges resulting from spray down or intentional wetting of logs at wet deck storage areas	Part 429, Subpart I	A	Yes	1/26/81
Runoff from phosphate fertilizer manufacturing facilities that comes into contact with any raw materials, finished product, by-products or waste products (SIC 2874)	Part 418, Subpart A	C	Yes	4/8/74
Runoff from asphalt emulsion facilities	Part 443, Subpart A	D	Yes	7/28/75
Runoff from material storage piles at cement manufacturing facilities	Part 411, Subpart C	E	Yes	2/20/74
Mine dewatering discharges at crushed stone, construction sand and gravel, or industrial sand mining facilities	Part 436, Subparts B, C, and D	J	No	N/A
Runoff from hazardous waste and non-hazardous waste landfills	Part 445, Subparts A and B	K, L	Yes	2/2/00
Runoff from coal storage piles at steam electric generating facilities	Part 423	O	Yes	11/19/82 (10/8/74)[1]

1 NSPS promulgated in 1974 were not removed via the 1982 regulation; therefore wastewaters generated by Part 423-applicable sources that were New Sources under the 1974 regulations are subject to the 1974 NSPS.

Regulated Discharge	40 CFR Section	MSGP Sector	New Source Performance Standard (NSPS)	New Source Date
Runoff containing urea from airfield pavement deicing at existing and new primary airports with 1,000 or more annual non-propeller aircraft departures	Part 449	S	Yes	6/15/12

1.1.3 Allowable Non-Stormwater Discharges.

Below in Part 1.1.3.1 are the only non-stormwater discharges authorized under this permit for all sectors provided that all discharges comply with the effluent limits set forth in Parts 2 and 8. In addition to the authorized non-stormwater discharges in Part 1.1.3.1 applicable to all sectors, for Sector A, there is an additional non-stormwater discharge in Part 1.1.3.2 below, and for the mining sectors (Sectors G, H, and J), there are additional authorized non-stormwater discharges in Part 1.1.3.3 below. The additional allowable non-stormwater discharges for Sectors G, H, and J apply only to discharges from earth-disturbing activities conducted prior to active mining activities as defined in Part 8.G.3.2, 8.H.3.2, and 8.J.3.2 provided that, with the exception of water used to control dust and to irrigate areas to be vegetatively stabilized, these discharges are not routed to areas of exposed soil and all discharges comply with the permit's effluent limits.

Also allowed for all sectors are discharges of stormwater listed above in Parts 1.1.2 or authorized non-stormwater discharges in Part 1.1.3, mixed with a discharge authorized by a different NPDES permit and/or a discharge that does not require NPDES permit authorization. All other non-stormwater discharges requiring NPDES permit coverage except those specifically listed in Part 1.1.3 are not authorized by this permit. If non-stormwater discharges requiring NPDES permit coverage other than those specifically authorized in Part 1.1.3, including sector-specific non-stormwater discharges that are listed in Part 8 as prohibited (a non-exclusive list provided to raise awareness of contaminants or sources of contaminants characteristic of certain sectors), will be discharged, such non-stormwater discharges are not authorized by this permit and must either be eliminated or covered under another NPDES permit.

1.1.3.1 Allowable Non-Stormwater Discharges for all Sectors of Industrial Activity:

- Discharges from emergency/unplanned fire-fighting activities;
- Fire hydrant flushings;
- Potable water, including water line flushings;
- Uncontaminated condensate from air conditioners, coolers/chillers, and other compressors and from the outside storage of refrigerated gases or liquids;
- Irrigation drainage;
- Landscape watering provided all pesticides, herbicides, and fertilizers have been applied in accordance with the approved labeling;
- Pavement wash waters where no detergents or hazardous cleaning products are used (e.g., bleach, hydrofluoric acid, muriatic acid, sodium hydroxide, nonylphenols), and the wash waters do not come into contact with oil and grease deposits, sources of pollutants associated with industrial activities (see Part 5.2.3), or any other toxic or hazardous materials, unless residues are first cleaned up using dry clean-up methods (e.g., applying absorbent materials and sweeping, using hydrophobic mops/rags) and you have implemented

appropriate control measures to minimize discharges of mobilized solids and other pollutants (e.g., filtration, detention; settlement);

- Routine external building washdown / power wash water that does not use detergents or hazardous cleaning products (e.g., those containing bleach, hydrofluoric acid, muriatic acid, sodium hydroxide, nonylphenols);
- Uncontaminated ground water or spring water;
- Foundation or footing drains where flows are not contaminated with process materials; and
- Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of your facility, but not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown; drains).

1.1.3.2 ***Additional Allowable Non-Stormwater Discharge for Sector A:*** Discharges from the spray down of lumber and wood product storage yards where no chemical additives are used in the spray-down waters and no chemicals are applied to the wood during storage (applicable only to Sector A facilities provided the non-stormwater component of the discharge is in compliance with the non-numeric effluent limits requirements in Part 2.1.2).

1.1.3.3 ***Additional Allowable Non-Stormwater Discharges for Earth-Disturbing Activities Conducted Prior to Active Mining Activities for Sectors G, H and J:***

- Water used to wash vehicles and equipment, provided that there is no discharge of soaps, solvents, or detergents used for such purposes;
- Water used to control dust; and
- Dewatering water that has been treated by an appropriate control under Parts 8.G.4.2.9, 8.H.4.2.9, or 8.J.4.2.9.

Note: These non-stormwater discharges are only authorized for earth-disturbing activities conducted prior to active mining activities, as defined in Part 8.G.3.2, 8.H.3.2, and 8.J.3.2. Once the earth-disturbing activities conducted prior to active mining activities have ceased, the only allowable non-stormwater discharges for Sectors G, H, and J are those listed in Part 1.1.3.1.

1.1.4 Limitations on Coverage.

Any discharges not expressly authorized in this permit cannot become authorized or shielded from liability under Clean Water Act (CWA) section 402(k) by disclosure to EPA, state, or local authorities after issuance of this permit via any means, including the Notice of Intent (NOI) to be covered by the permit, the Stormwater Pollution Prevention Plan (SWPPP), or during an inspection.

1.1.4.1 ***For Discharges Mixed with Non-Stormwater.*** Stormwater discharges that are mixed with non-stormwater discharges, other than those mixed with allowable non-stormwater discharges listed in Part 1.1.3 and/or those mixed with a discharge authorized by a different NPDES permit and/or a discharge that does not require NPDES authorization, are not eligible for coverage under this permit.

1.1.4.2 ***For Stormwater Discharges Associated with Construction Activity.*** Stormwater discharges associated with construction activity disturbing one acre or more, or that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more, are not eligible for coverage

under this permit, unless in conjunction with mining activities or certain oil and gas extraction activities as specified in Sectors G, H, I, and J of this permit.

1.1.4.3 ***For Discharges Currently or Previously Covered by Another Permit.*** Unless you have received written notification from EPA specifically allowing these discharges to be covered under this permit, you are not eligible for coverage under this permit for any of the following:

- Stormwater discharges associated with industrial activity that are currently covered under an individual NPDES permit or an alternative NPDES general permit;
- Discharges covered within five years prior to the effective date of this permit by an individual permit or alternative general permit where that permit established site-specific numeric water quality-based limitations developed for the stormwater component of the discharge; or
- Discharges from facilities where any NPDES permit has been or is in the process of being denied, terminated, or revoked by EPA (this does not apply to the routine reissuance of permits every five years).

1.1.4.4 ***For Stormwater Discharges Subject to Effluent Limitations Guidelines.*** For discharges from facilities subject to stormwater effluent limitation guidelines under 40 CFR, Subchapter N, only those stormwater discharges identified in Table 1-1 are eligible for coverage under this permit.

1.1.4.5 ***Endangered and Threatened Species and Critical Habitat Protection.*** Coverage under this permit is available only if your stormwater discharges, allowable non-stormwater discharges, and stormwater discharge-related activities were the subject of an Endangered Species Act (ESA) consultation or an ESA section 10 permit, or if your stormwater discharges, allowable non-stormwater discharges, and stormwater discharge-related activities are not likely to adversely affect any species that are federally listed as endangered or threatened ("listed") and are not likely to adversely affect habitat that is designated as "critical habitat" under the ESA. You must meet one of the criteria below, following the procedures in Appendix E:

Criterion A. No federally listed threatened or endangered species or their designated critical habitat(s) are likely to occur in the "action area" as defined in Appendix A. To certify your eligibility under this criterion, you must use the *Criterion Selection Worksheet* in Part E.4 of Appendix E. You must also provide a description of the basis for the criterion you selected on your NOI form and provide documentation supporting your eligibility determination in your SWPPP.

Criterion B. Your industrial activity's discharges and discharge-related activities were already addressed in another operator's valid certification of eligibility for your action area under this permit, and there is no reason to believe that federally listed species or designated critical habitat not considered in the prior certification may be present or located in the "action area" (e.g., due to a new species listing or critical habitat designation). To certify your eligibility under this criterion, you must use the *Criterion Selection Worksheet* in Part E.4 of Appendix E. There must be no lapse of NPDES permit coverage in the other operator's certification. You must also comply with any additional measures that formed the basis of the other operator's valid certification of eligibility to ensure that your discharges and discharge-related

activities are protective of listed species and/or critical habitat. You must include in your NOI the NPDES ID (i.e., permit tracking number) assigned to the other operator's authorization under this permit, and a description of the basis for the criterion selected on your NOI form, including the eligibility criterion selected by the other operator's certification. You must also provide any documentation in your SWPPP that supports the other operator's eligibility determination, including any additional measures that formed the basis of the other operator's eligibility determination.

Criterion C. Federally listed threatened or endangered species or their designated critical habitat(s) are likely to occur in or near your facility's "action area," and your industrial activity's discharges and discharge-related activities are not likely to adversely affect listed threatened or endangered species or critical habitat. To certify your eligibility under this criterion, you must use the *Criterion Selection Worksheet* in Part E.4 of Appendix E, including completion of the *Criterion C Eligibility Form*, which you must submit to EPA at least 30 days prior to filing your NOI for permit coverage. After evaluation of your *Criterion C Eligibility Form*, EPA may require additional measures that you must implement to avoid or eliminate likely adverse effects on listed species and critical habitat from discharges and discharge-related activities. You may submit your NOI for permit coverage 30 days after submitting to EPA your completed *Criterion C worksheet*. You must also provide a description of the basis for the criterion you selected on your NOI form and provide documentation supporting your eligibility determination in your SWPPP.

Criterion D. Consultation between a Federal Agency and the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service under section 7 of the ESA has been concluded. Consultations can be either formal or informal, and would have occurred only as a result of a separate federal action (e.g., during application for an individual wastewater discharge permit or the issuance of a wetlands dredge and fill permit), and consultation must have addressed the effects of the industrial activity's discharges and discharge-related activities on federally listed threatened or endangered species and designated critical habitat. The result of this consultation must be one of the following:

i. A biological opinion that concludes that the action in question (taking into account the effects of your facility's discharges and discharge-related activities) is not likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of critical habitat;

ii. A biological opinion that concludes that the action is likely to jeopardize listed species or to result in the destruction or adverse modification of critical habitat, and any recommended reasonable and prudent alternatives or reasonable and prudent measures are being implemented; or

iii. Written concurrence from the applicable Service(s) with a finding that the facility's discharges and discharge-related activities are not likely to adversely affect listed species or critical habitat.

To certify your eligibility under this criterion, you must use the *Criterion Selection Worksheet* in Part E.4 of Appendix E. You must verify that the consultation does not warrant reinitiation under 50 CFR §402.16. If reinitiation of consultation is required, in order to be eligible under this Criterion you must ensure consultation is reinitiated and the result of the consultation must be consistent with (i), (ii), or (iii) above.

If eligible, you must also provide supporting documentation for your determination in your NOI and SWPPP, including the Biological Opinion (or PCTS tracking number) or concurrence letter.

Criterion E. Your industrial activities are the subject of a permit under section 10 of the ESA, and this authorization addresses the effects of your facility's discharges and discharge-related activities on federally listed species and designated critical habitat. To certify your eligibility under this criterion, you must use the *Criterion Selection Worksheet*. You must also provide supporting documentation for your determination in your NOI and SWPPP, including a copy of the permit from the Services.

You must comply with any measures that formed the basis of your eligibility determination in Part 1.1.4.5 to be in compliance with the permit. These measures become permit requirements per Part 2.3. Documentation of these measures must be kept as part of your SWPPP (see Part 5.2.6.1).

1.1.4.6 ***Historic Properties Preservation.*** Coverage under this permit is available only if your stormwater discharges, allowable non-stormwater discharges, and stormwater discharge-related activities meet one of the eligibility criteria below, following the procedures in Appendix F:

Criterion A. Your stormwater discharges and allowable non-stormwater discharges do not have the potential to have an effect on historic properties and you are not constructing or installing new stormwater control measures on your site that cause subsurface disturbance; or

Criterion B. Your discharge-related activities (i.e., construction and/or installation of stormwater control measures that involve subsurface disturbance) will not affect historic properties; or

Criterion C. Your stormwater discharges, allowable non-stormwater discharges, and discharge-related activities have the potential to have an effect on historic properties, and you have consulted with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), or other tribal representative regarding measures to mitigate or prevent any adverse effects on historic properties, and you have either (1) obtained and are in compliance with a written agreement that outlines all such measures, or (2) been unable to reach agreement on such measures; or

Criterion D. You have contacted the SHPO, THPO, or other tribal representative and EPA in writing informing them that you have the potential to have an effect on historic properties and you did not receive a response from the SHPO, THPO, or tribal representative within 30 days of receiving your letter.

If you have been unable to reach agreement with a SHPO, THPO, or other tribal representative regarding appropriate measures to mitigate or prevent adverse effects, EPA may notify you of additional measures you must implement to be eligible for coverage under this permit.

1.1.4.7 ***Eligibility for New Dischargers and New Sources: Based on Water Quality Standards.*** If you are a new discharger or a new source (as defined in Appendix A), you are ineligible for coverage under this permit if EPA determines prior to your authorization to discharge that your discharges will not meet an applicable water

quality standard (i.e., your discharges will cause or contribute to an exceedance of a water quality standard). In such case, EPA may notify you that an individual permit application is necessary per Part 1.2.3, or, alternatively, EPA may authorize your coverage under this permit after you implement additional control measures so that your discharges will meet water quality standards.

1.1.4.8 Eligibility for New Dischargers and New Sources to Water-Quality Impaired Waters. If you are a new discharger or a new source (as defined in Appendix A), you are ineligible for coverage under this permit to discharge to an "impaired water" (as defined in Appendix A) unless you do one of the following:

a. Prevent all exposure to stormwater of the pollutant(s) for which the waterbody is impaired, and retain documentation of procedures taken to prevent exposure onsite with your SWPPP;

b. Prior to submitting your NOI, provide to the appropriate EPA Regional Office technical information or other documentation to support your claim that the pollutant(s) for which the waterbody is impaired is not present at your site, and retain such documentation with your SWPPP; or

c. Prior to submitting your NOI, provide information to the appropriate EPA Regional Office, either data or other technical documentation, to support a conclusion that the discharge is expected to meet applicable water quality standards (i.e., that pollutants of concern will not be discharged at levels that will cause or contribute to an exceedance of a water quality standard), and retain such information with your SWPPP. The information to be submitted must be sufficient to demonstrate:

   i. For discharges to waters without an EPA-approved or established total maximum daily load (TMDL), that the discharge of the pollutant for which the water is impaired will meet water quality standards at the point of discharge to the waterbody; or

   ii. For discharges to waters with an applicable EPA-approved or established TMD), that there are, in accordance with 40 CFR 122.4(i), sufficient remaining wasteload allocations in the TMDL to allow your discharge and that existing dischargers to the waterbody are subject to compliance schedules designed to bring the waterbody into attainment with water quality standards (e.g., a reserve allocation for future growth).

   You are eligible under Part 1.1.4.8.c if you receive a determination from the EPA Regional Office that your discharge will meet applicable water quality standards (i.e., will not cause or contribute to an exceedance of a water quality standard), and you document the Region's determination in your SWPPP. If the EPA Regional Office fails to respond to you within 30 days after submission of data, you are considered to be eligible for coverage.

Note: For the purposes of this permit, your project is considered to discharge to an impaired water if the first water of the U.S. to which you discharge is identified by a state, tribe, or EPA as not meeting an applicable water quality standard, and:

- *Requires development of a TMDL (pursuant to section 303(d) of the CWA);*
- *Is addressed by an EPA-approved or established TMDL; or*

- *Is not in either of the above categories but the waterbody is covered by pollution control requirements that meet the requirements of 40 CFR 130.7(b)(1).*

For discharges that enter a separate storm sewer system[2] 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.

1.1.4.9 Eligibility for New Dischargers and New Sources to Waters with High Water Quality.

For new dischargers and new sources to Tier 2 or Tier 2.5 waters:

If you are a new discharger or a new source (as defined in Appendix A), you are eligible to discharge to a Tier 2 or Tier 2.5 water only if your discharge will not lower the water quality of the applicable water. See a list of Tier 2 and Tier 2.5 waters in Appendix L.

For new dischargers and new sources to Tier 3 waters:

If you are a new discharger or a new source (as defined in Appendix A), you are not eligible for coverage under this permit for discharges to waters designated by a state or tribe as Tier 3 (outstanding national resource waters) for antidegradation purposes under 40 CFR 131.13(a)(3). Instead, you must submit an application for an individual permit. See a list of Tier 3 waters in Appendix L.

Note: For the purposes of this permit, your project is 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 a Tier 2, Tier 2.5, or Tier 3 water. For discharges that enter a separate storm sewer system[2] 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.

1.1.4.10 For Discharges to a Federal CERCLA Site. If you discharge to a federal CERCLA Site listed in Appendix P, you are ineligible for coverage under this permit, unless you notify the EPA Regional Office in advance and the EPA Regional Office determines that you are eligible for permit coverage. In determining eligibility for coverage under this Part, the EPA Regional Office may evaluate whether you are implementing or plan to implement adequate controls and/or procedures to ensure that your discharge will not lead to recontamination of aquatic media at the CERCLA Site such that your discharge will cause or contribute to an exceedance of a water quality standard. If it is determined that your facility discharges to a CERCLA Site listed in Appendix P after you have obtained coverage under this permit, you must contact the EPA Regional Office and ensure that you either have implemented or will implement adequate controls and/or procedures to ensure that your discharges will not lead to recontamination of aquatic media at the CERCLA Site such that it will to cause or contribute to an exceedance of a water quality standard.

For the purposes of this permit, a permittee discharges to a federal CERCLA Site if the discharge flows directly into the site through its own conveyance, or a through

2 Separate storm systems do not include combined sewer systems or sanitary sewer systems. Separate storm systems include both municipal storm sewer systems (MS4s) and non-municipal separate storm sewers.

a conveyance owned by others, such as a municipal separate storm sewer system (MS4).

1.2 Authorization Under this Permit.

1.2.1 How to Obtain Authorization.

To obtain authorization under this permit, you must:

- Be an operator of a primary industrial activity in a sector covered by this permit (see Appendix D);
- Be located in a state, territory, or Indian country, or be a federal operator identified in Appendix C where EPA is the permitting authority;
- Meet the Part 1.1 eligibility requirements;
- Select, design, install, and implement control measures in accordance with Part 2.1 and Part 8 to meet numeric and non-numeric effluent limits;
- Develop a SWPPP per Part 5 of this permit or update your existing SWPPP consistent with Part 5 prior to submitting your NOI for coverage under this permit; and
- Submit a complete and accurate NOI in accordance with this Part.

1.2.1.1 Submitting Your NOI. To be covered under this permit, you must submit to EPA a complete and accurate NOI by the deadline applicable to your facility presented in Table 1-2. The NOI certifies to EPA that you are eligible for coverage according to Part 1.1, and provides information on your industrial activities and related discharges.

You must complete the development of a SWPPP or update your existing SWPPP consistent with Part 5 prior to submitting your NOI for coverage under this permit. If you choose to post your SWPPP on the Internet per Part 5.4.1, you must include the URL on your NOI form and this URL must directly link to the SWPPP (not just the corporate or facility homepage). If you do not post your SWPPP online, you must enter additional facility information from your SWPPP, per Part 5.4.2.

1.2.1.2 How to Submit Your NOI. You must submit your NOI electronically per Part 7.1, unless you have received a waiver from electronic reporting per Part 7.1, in which case you may use the paper NOI form in Appendix G.

1.2.1.3 Deadlines for Submitting Your NOI and Your Official Date of Permit Coverage. Table 1-2 provides the deadlines for submitting your NOI and your official start date of permit coverage.

Table 1-2. NOI Submittal Deadlines and Discharge Authorization Dates

Category	NOI Submission Deadline	Discharge Authorization Date[1, 2]
Operators of industrial activities that were authorized for coverage under the 2008 MSGP.	No later than September 2, 2015 unless EPA notifies you that your deadline is extended.[3]	30 days after EPA notifies you that it has received a complete NOI, unless EPA notifies you that your authorization has been denied or delayed. *Note: You must review and update your SWPPP to ensure that this permit's requirements are addressed prior to submitting your NOI*. Provided you submit your NOI in accordance with the deadline, your authorization under the 2008 MSGP is automatically continued until you have been granted coverage under this permit or an alternative permit, or coverage is otherwise terminated.
Operators of industrial activities that commenced discharging between September 30, 2013 and September 2, 2015 and have been operating consistent with EPA's no action assurance for the NPDES Stormwater Multi-Sector General Permit for Industrial Activities.	As soon as possible, but no later than September 2, 2015, unless EPA notifies you that your deadline is extended.[4]	30 days after EPA notifies you that it has received a complete NOI, unless EPA notifies you that your authorization has been denied or delayed.
Operators of industrial activities that commence discharging after September 2, 2015, or operators seeking coverage for discharges previously covered under an individual permit or an alternative general permit.	A minimum of 30 days prior to commencing discharge in accordance with the terms of the 2015 MSGP.[5]	30 days after EPA notifies you that it has received a complete NOI, unless EPA notifies you that your authorization has been denied or delayed.
New operators of existing industrial activities with discharges previously authorized under the 2015 MSGP.	A minimum of 30 days prior to the date of transfer of control to the new operator.	30 days after EPA notifies you that it has received a complete NOI, unless EPA notifies you that your authorization has been denied or delayed.
Other eligible operators – Operators of industrial activities that commenced discharging prior to September 2, 2015, but not covered under the 2008 MSGP or another NPDES permit and not operating consistent with EPA's no action assurance for the NPDES Stormwater Multi-Sector General Permit for Industrial Activities.	Immediately, to minimize the time discharges from the facility will continue to be unauthorized.	30 days after EPA notifies you that it has received a complete NOI, unless EPA notifies you that your authorization has been denied or delayed.

[1] If you have missed the deadline to submit your NOI, any and all discharges from your industrial 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 discharging and discharge authorization.

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

[3] For federal operators of industrial activities located in the State of Washington (except Indian country) that were authorized for coverage under the 2008 MSGP, you must submit your NOI no later than October 19, 2015, unless EPA notifies you that your deadline is extended. For operators of industrial activities located in the State of Idaho (except Indian country) or on Spokane Tribe of Indians lands that were authorized for coverage under the 2008 MSGP, you must submit your NOI no later than November 10, 2015, unless EPA notifies you that your deadline is extended.

[4] For federal operators of industrial activities located in the State of Washington (except Indian country) that commence discharging between September 30, 2013 and October 19, 2015, you must submit your NOI as soon as possible, but no later than October 19, 2015, unless EPA notifies you that your deadline is extended. For operators of industrial activities located in the State of Idaho (except Indian country) or on Spokane Tribe of Indians lands that commence discharging between September 30, 2013 and November 10, 2015, you must submit your NOI as soon as possible, but no later than November 10, 2015, unless EPA notifies you that your deadline is extended.

[5] For federal operators of industrial activities located in the State of Washington (except Indian country) that commence discharging after October 19, 2015, or operators seeking coverage for discharges previously covered under an individual permit or an alternative general permit, you must submit your NOI a minimum of 30 days prior to commencing discharge in accordance with the terms of the 2015 MSGP. For operators of industrial activities located in the State of Idaho (except Indian country) or on Spokane Tribe of Indians lands that commence discharging after November 10, 2015, or operators seeking coverage for discharges previously covered under an individual permit or an alternative general permit, you must submit your NOI a minimum of 30 days prior to commencing discharge in accordance with the terms of the 2015 MSGP.

1.2.2 Continuation of Coverage for Existing Permittees After the Permit Expires.

If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedure Act and 40 CFR 122.6 and remain in force and effect for discharges that were covered prior to expiration. If you obtain authorization to discharge under this permit prior to the expiration date and this permit is administratively continued, any discharges authorized under this permit will automatically remain covered by this permit after its expiration date until the earliest of:

- Your authorization for coverage under a reissued permit or a replacement version of this permit following your timely submittal of a complete and accurate NOI for coverage under the new permit; or

Note: If you fail to submit a timely NOI for coverage under the reissued or replacement permit, your coverage will terminate on the date that the NOI was due.

- Your submittal of a Notice of Termination (NOT); or
- Issuance of an individual permit for the facility's discharges; or
- A formal permit decision by EPA not to reissue this general permit, 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 cease at the end of this time period.

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

1.2.3 Coverage Under Alternative Permits.

EPA may require you to apply for and/or obtain authorization to discharge under an alternative permit, i.e., either an individual NPDES permit or an alternative NPDES general permit, in accordance with 40 CFR 122.64 and 124.5. If EPA requires you to apply for an alternative permit, the Agency will notify you in writing that a permit application or NOI is required. This notification will include a brief statement of the reasons for this decision and will contain alternative permit application or NOI requirements, including deadlines for completing your application or NOI.

1.2.3.1 Denial of Coverage for New or Previously Unpermitted Facilities. For new or previously unpermitted facilities, following the submittal of your NOI, you may be denied coverage under the 2015 MSGP and must apply for and/or obtain authorization to discharge under an alternative permit, per Part 1.2.3.

1.2.3.2 Loss of Authorization Under the 2015 MSGP for Existing Permitted Facilities. If your stormwater discharges are covered under this permit, you may receive a written notification that you must either apply for coverage under an individual NPDES permit or submit an NOI for coverage under an alternative general NPDES permit, per Part 1.2.3. In addition to the reasons for the decision and alternative permit application or NOI deadlines, the notice will include a statement that on the effective date of your alternative permit coverage, your coverage under the 2015 MSGP will terminate. EPA may grant additional time to submit the application or NOI if you request it. If you fail to submit an alternative permit application or NOI as required by EPA, then your authorization to discharge under the 2015 MSGP is terminated at the end of the day EPA required you to submit your alternative

permit application or NOI. EPA may take appropriate enforcement action for any unpermitted discharge.

1.2.3.3 Operator Requesting Coverage Under an Alternative Permit. You may request to be covered under an individual permit. In such a case, you must submit an individual permit application in accordance with the requirements of 40 CFR 122.28(b)(3)(iii), with reasons supporting the request, to the applicable EPA Regional Office listed in Part 7.9.1 of this permit. The request may be granted by issuance of an individual permit if your reasons are adequate to support the request. When you are authorized to discharge under an alternative permit, your authorization to discharge under the 2015 MSGP is terminated on the effective date of the alternative permit.

1.3 Terminating Coverage.

1.3.1 Submitting a Notice of Termination (NOT).

To terminate permit coverage, you must submit a complete and accurate NOT. Your authorization to discharge under this permit terminates at midnight of the day that you are notified that your complete NOT has been processed. If you submit a NOT without meeting one or more of the conditions identified in Part 1.3.3, then your NOT is not valid. You are responsible for meeting the terms of this permit until your authorization is terminated.

1.3.2 How to Submit Your NOT.

You must submit your NOT electronically per Part 7.2, unless you have received a waiver from electronic reporting per Part 7.1, in which case you may use the paper form in Appendix H.

1.3.3 When to Submit Your NOT.

You must submit a NOT within 30 days after one or more of the following conditions have been met:

- A new owner or operator has taken over responsibility for the facility; or
- You have ceased operations at the facility, there are not or no longer will be discharges of stormwater associated with industrial activity from the facility, and you have already implemented necessary sediment and erosion controls per Part 2.1.2.5; or
- You are a Sector G, H, or J facility and you have met the applicable termination requirements; or
- You obtained coverage under an individual or alternative general permit for all discharges required to be covered by an NPDES permit.

1.4 Conditional Exclusion for No Exposure.

If you are covered by this permit, and become eligible for a "no exposure" exclusion from permitting under 40 CFR 122.26(g), you may file a No Exposure Certification. You are no longer required to have a permit upon submission of a complete and accurate No Exposure Certification to EPA. If you are no longer required to have permit coverage because of a no exposure exclusion and have submitted a No Exposure Certification form to EPA, you are not required to submit a NOT. You must submit a No Exposure Certification form to EPA once every five years.

You must submit your No Exposure Certification electronically per Part 7.2, unless you have received a waiver from electronic reporting per Part 7.1, in which case you may use the paper form in Appendix K.

1.5 Permit Compliance.

Any noncompliance with any of the requirements of this permit constitutes a violation of this permit, and thus is a violation of the CWA. As detailed in Part 4 (Corrective Actions) of this permit, failure to take any required corrective actions constitutes an independent, additional violation of this permit, in addition to any original violation that triggered the need for corrective action. As such, any actions and time periods specified for remedying noncompliance do not absolve parties of the initial underlying noncompliance.

Where corrective action is triggered by an event that does not itself constitute permit noncompliance, such as an exceedance of an applicable benchmark, there is no permit violation provided you take the required corrective action within the relevant deadlines established in Part 4.3.

1.6 Severability.

Invalidation of a portion of this permit does not necessarily render the whole permit invalid. EPA's intent is that the permit is to remain in effect to the extent possible; in the event that any part of this permit is invalidated, EPA will advise the regulated community as to the effect of such invalidation.

2. Control Measures and Effluent Limits.

In the technology-based limits included in Parts 2.1 and 8, the term "minimize" means reduce and/or eliminate to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice. The term "infeasible" means not technologically possible or not economically practicable and achievable in light of best industry practices. EPA notes that it does not intend for any permit requirement to conflict with state water rights law.

2.1 Control Measures.

You must select, design, install, and implement control measures (including best management practices) to minimize pollutant discharges that address the selection and design considerations in Part 2.1.1, meet the non-numeric effluent limits in Part 2.1.2, meet limits contained in applicable effluent limitations guidelines in Part 2.1.3, and meet the water quality-based effluent limitations in Part 2.2. The selection, design, installation, and implementation of these control measures must be in accordance with good engineering practices and manufacturer's specifications. Note that you may deviate from such manufacturer's specifications where you provide justification for such deviation and include documentation of your rationale in the part of your SWPPP that describes your control measures, consistent with Part 5.2.4. If you find that your control measures are not achieving their intended effect of minimizing pollutant discharges to meet applicable water quality standards or any of the other non-numeric effluent limits in this permit, you must modify these control measures per the corrective action requirements in Part 4. Regulated stormwater discharges from your facility include stormwater run-on that commingles with stormwater discharges associated with industrial activity at your facility.

Effluent limit requirements in Part 2.1.2 that do not involve the site-specific selection of a control measure or are specific activity requirements (e.g., "Cleaning catch basins when the depth of debris reaches two-thirds (2/3) of the sump depth and keeping the debris surface at least six inches below the lowest outlet pipe") are marked with an asterisk (*). When documenting in your SWPPP, per Part 5, how you will comply with the requirements marked with an asterisk, you have the option of including additional information or you may just "cut-and-paste" those effluent limits verbatim into your SWPPP without providing additional documentation (see Part 5.2.4).

2.1.1 Control Measure Selection and Design Considerations.

You must consider the following when selecting and designing control measures:

- Preventing stormwater from coming into contact with polluting materials is generally more effective, and less costly, than trying to remove pollutants from stormwater;
- Using control measures in combination may be more effective than using control measures in isolation for minimizing pollutants in your stormwater discharge;
- Assessing the type and quantity of pollutants, including their potential to impact receiving water quality, is critical to designing effective control measures that will achieve the limits in this permit;
- Minimizing impervious areas at your facility and infiltrating runoff onsite (including bioretention cells, green roofs, and pervious pavement, among other approaches) can reduce runoff and improve ground water recharge and

stream base flows in local streams, although care must be taken to avoid ground water contamination;

- Attenuating flow using open vegetated swales and natural depressions can reduce in-stream impacts of erosive flows;
- Conserving and/or restoring riparian buffers will help protect streams from stormwater runoff and improve water quality; and
- Using treatment interceptors (e.g., swirl separators and sand filters) may be appropriate in some instances to minimize the discharge of pollutants.

2.1.2 Non-Numeric Technology-Based Effluent Limits (BPT/BAT/BCT).

You must comply with the following non-numeric effluent limits (except where otherwise specified in Part 8) as well as any sector-specific non-numeric effluent limits in Part 8:

2.1.2.1 ***Minimize Exposure.*** You must minimize the exposure of manufacturing, processing, and material storage areas (including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations) to rain, snow, snowmelt, and runoff in order to minimize pollutant discharges by either locating these industrial materials and activities inside or protecting them with storm resistant coverings. Unless infeasible, you must also:

- Use grading, berming or curbing to prevent runoff of contaminated flows and divert run-on away from these areas;
- Locate materials, equipment, and activities so that potential leaks and spills are contained or able to be contained or diverted before discharge;
- Clean up spills and leaks promptly using dry methods (e.g., absorbents) to prevent the discharge of pollutants;
- Store leaky vehicles and equipment indoors or, if stored outdoors, use drip pans and absorbents;
- Use spill/overflow protection equipment;
- Perform all vehicle and/or equipment cleaning operations indoors, under cover, or in bermed areas that prevent runoff and run-on and also that capture any overspray; and
- Drain fluids from equipment and vehicles that will be decommissioned, and, for any equipment and vehicles that will remain unused for extended periods of time, inspect at least monthly for leaks.

Note: Industrial materials do not need to be enclosed or covered if stormwater runoff from affected areas does not discharge pollutants to receiving waters or if discharges are authorized under another NPDES permit.

2.1.2.2 ***Good Housekeeping.*** You must keep clean all exposed areas that are potential sources of pollutants. You must perform good housekeeping measures in order to minimize pollutant discharges, including but not limited to, the following:

- Sweep or vacuum at regular intervals or, alternatively, wash down the area and collect and/or treat, and properly dispose of the washdown water;
- Store materials in appropriate containers;

- Keep all dumpster lids closed when not in use. For dumpsters and roll off boxes that do not have lids and could leak, ensure that discharges have a control (e.g., secondary containment, treatment). Consistent with Part 1.1.3 above, this permit does not authorize dry weather discharges from dumpsters or roll off boxes;*
- Minimize the potential for waste, garbage and floatable debris to be discharged by keeping exposed areas free of such materials, or by intercepting them before they are discharged.

Plastic Materials Requirements: Facilities that handle pre-production plastic must implement best management practices to eliminate discharges of plastic in stormwater. Examples of plastic material required to be addressed as stormwater pollutants include plastic resin pellets, powders, flakes, additives, regrind, scrap, waste and recycling.

2.1.2.3 ***Maintenance.*** You must maintain all control measures that are used to achieve the effluent limits in this permit in effective operating condition, as well as all industrial equipment and systems, in order to minimize pollutant discharges. This includes:

- Performing inspections and preventive maintenance of stormwater drainage, source controls, treatment systems, and plant equipment and systems that could fail and result in contamination of stormwater.
- Diligently maintaining non-structural control measures (e.g., keep spill response supplies available, personnel appropriately trained).
- Inspecting and maintaining baghouses at least quarterly to prevent the escape of dust from the system and immediately removing any accumulated dust at the base of the exterior baghouse.*
- Cleaning catch basins when the depth of debris reaches two-thirds (2/3) of the sump depth and keeping the debris surface at least six inches below the lowest outlet pipe.*

If you find that your control measures are in need of routine maintenance, you must conduct the necessary maintenance immediately in order to minimize pollutant discharges. If you find that your control measures need to be repaired or replaced, you must immediately take all reasonable steps to prevent or minimize the discharge of pollutants until the final repair or replacement is implemented, including cleaning up any contaminated surfaces so that the material will not be discharged during subsequent storm events. Final repairs/replacement of stormwater controls should be completed as soon as feasible but must be no later than the timeframe established in Part 4.3 for corrective actions, i.e., within 14 days or, if that is infeasible, within 45 days. If the completion of stormwater control repairs/replacement will exceed the 45 day timeframe, you may take the minimum additional time necessary to complete the maintenance, provided that you notify the EPA Regional Office of your intention to exceed 45 days, and document in your SWPPP your rationale for your modified maintenance timeframe. If a control measure was never installed, was installed incorrectly or not in accordance with Parts 2 and/or 8, or is not being properly operated or maintained, you must conduct corrective action as specified in Part 4.

Note: In this context, the term "immediately" requires you to, on the same day you identify that a control measure needs to be maintained, take all reasonable steps

to minimize or prevent the discharge of pollutants until a permanent solution is installed and made operational. However, if a problem is identified at a time in the work day when it is too late to take action, the initiation of action must begin no later than the following work day. "All reasonable steps" means that the permittee has undertaken initial actions to assess and address the condition causing the corrective action, including, for example, cleaning up any exposed materials that may be discharged in a storm event (e.g., through sweeping, vacuuming) or making arrangements (i.e., scheduling) for a new best management practice (BMP) to be installed at a later date. "All reasonable steps" for purposes of complying with Part 4.2 Conditions Requiring SWPPP Review to Determine if Modifications Are Necessary, when you conclude a corrective action is, in fact, not necessary, could include documenting why a corrective action is unnecessary.

2.1.2.4 ***Spill Prevention and Response.*** You must minimize the potential for leaks, spills and other releases that may be exposed to stormwater and develop plans for effective response to such spills if or when they occur in order to minimize pollutant discharges. You must conduct spill prevention and response measures, including but not limited to, the following:

- Plainly label containers (e.g., "Used Oil," "Spent Solvents," "Fertilizers and Pesticides") that could be susceptible to spillage or leakage to encourage proper handling and facilitate rapid response if spills or leaks occur;*
- Implement procedures for material storage and handling, including the use of secondary containment and barriers between material storage and traffic areas, or a similarly effective means designed to prevent the discharge of pollutants from these areas;
- Develop training on the procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases. As appropriate, execute such procedures as soon as possible;
- Keep spill kits on-site, located near areas where spills may occur or where a rapid response can be made; and
- Notify appropriate facility personnel when a leak, spill, or other release occurs.

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 discharge. State or local requirements may necessitate reporting spills or discharges to local emergency response, public health, or drinking water supply agencies. Contact information must be in locations that are readily accessible and available.

2.1.2.5 ***Erosion and Sediment Controls.*** You must minimize erosion by stabilizing exposed soils at your facility in order to minimize pollutant discharges and placing flow velocity dissipation devices at discharge locations to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. You must also use structural and non-structural control measures to minimize the discharge of sediment. If you use polymers and/or other chemical treatments as part of your controls, you must identify the polymers and/or chemicals used and

the purpose in your SWPPP. There are many resources available to help you select appropriate BMPs for erosion and sediment control, including EPA's Stormwater Discharges from Construction Activities website at: http://water.epa.gov/polwaste/npdes/stormwater/EPA-Construction-General-Permit.cfm.

2.1.2.6 ***Management of Runoff.*** You must divert, infiltrate, reuse, contain, or otherwise reduce stormwater runoff to minimize pollutants in your discharges. In selecting, designing, installing, and implementing appropriate control measures, you are encouraged to consult with EPA's Internet-based resources relating to runoff management, including the sector-specific *Industrial Stormwater Fact Sheet Series*, (http://water.epa.gov/polwaste/npdes/stormwater/EPA-Multi-Sector-General-Permit-MSGP.cfm), *National Menu of Stormwater BMPs* (http://water.epa.gov/polwaste/npdes/swbmp/index.cfm), and *National Management Measures to Control Nonpoint Source Pollution from Urban Areas* (http://water.epa.gov/polwaste/nps/urban/), and any similar state or tribal resources.

2.1.2.7 ***Salt Storage Piles or Piles Containing Salt.*** You must enclose or cover storage piles of salt, or piles containing salt, used for deicing or other commercial or industrial purposes, including maintenance of paved surfaces, in order to minimize pollutant discharges. You must implement appropriate measures (e.g., good housekeeping, diversions, containment) to minimize exposure resulting from adding to or removing materials from the pile. Piles do not need to be enclosed or covered pursuant to this permit if stormwater runoff from the piles is not discharged or if discharges from the piles are authorized under another NPDES permit.

2.1.2.8 ***Employee Training.*** You must train all employees who work in areas where industrial materials or activities are exposed to stormwater, or who are responsible for implementing activities necessary to meet the conditions of this permit (e.g., inspectors, maintenance personnel), including all members of your stormwater pollution prevention team. You must ensure the following personnel understand the requirements of this permit and their specific responsibilities with respect to those requirements:

- Personnel who are responsible for the design, installation, maintenance, and/or repair of controls (including pollution prevention measures);
- Personnel responsible for the storage and handling of chemicals and materials that could become contaminants in stormwater discharges;
- Personnel who are responsible for conducting and documenting monitoring and inspections as required in Parts 3 and 6; and
- Personnel who are responsible for taking and documenting corrective actions as required in Part 4.

Personnel must be trained in at least 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):

- An overview of what is in the SWPPP;
- Spill response procedures, good housekeeping, maintenance requirements, and material management practices;

- The location of all controls on the site required by this permit, and how they are to be maintained;
- The proper procedures to follow with respect to the permit's pollution prevention requirements; and
- When and how to conduct inspections, record applicable findings, and take corrective actions.

2.1.2.9 ***Non-Stormwater Discharges.*** You must evaluate for the presence of non-stormwater discharges. Any non-stormwater discharges not explicitly authorized in Part 1.1.3 or covered by another NPDES permit must be eliminated. This includes vehicle and equipment/tank wash water (except for those authorized in Part 1.1.3.3 for Sectors G, H, and J). If not covered under a separate NPDES permit, wastewater, wash water and any other unauthorized non-stormwater must be discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements, or otherwise disposed of appropriately.

2.1.2.10 ***Dust Generation and Vehicle Tracking of Industrial Materials.*** You must minimize generation of dust and off-site tracking of raw, final, or waste materials in order to minimize pollutant discharges.

2.1.3 Numeric Effluent Limitations Based on Effluent Limitations Guidelines.

If you are in an industrial category subject to one of the effluent limitations guidelines identified in Table 6-1 (see Part 6.2.2.1), you must meet the effluent limits referenced in Table 2-1 below:

Table 2-1. Applicable Effluent Limitations Guidelines

Regulated Activity	40 CFR Part/Subpart	Effluent Limit
Discharges resulting from spray down or intentional wetting of logs at wet deck storage areas	Part 429, Subpart I	See Part 8.A.7
Runoff from phosphate fertilizer manufacturing facilities that comes into contact with any raw materials, finished product, by-products or waste products (SIC 2874)	Part 418, Subpart A	See Part 8.C.4
Runoff from asphalt emulsion facilities	Part 443, Subpart A	See Part 8.D.4
Runoff from material storage piles at cement manufacturing facilities	Part 411, Subpart C	See Part 8.E.5
Mine dewatering discharges at crushed stone, construction sand and gravel, or industrial sand mining facilities	Part 436, Subparts B, C, or D	See Part 8.J.9
Runoff from hazardous waste landfills	Part 445, Subpart A	See Part 8.K.6
Runoff from non-hazardous waste landfills	Part 445, Subpart B	See Part 8.L.10
Runoff from coal storage piles at steam electric generating facilities	Part 423	See Part 8.O.8
Runoff containing urea from airfield pavement deicing at existing and new primary airports with 1,000 or more annual non-propeller aircraft departures	Part 449	See Part 8.S.8

2.2 Water Quality-Based Effluent Limitations.

2.2.1 Water Quality Standards.

Your discharge must be controlled as necessary to meet applicable water quality standards of all affected states (i.e., your discharge must not cause or contribute to an exceedance of applicable water quality standards in any affected state).

EPA expects that compliance with the conditions in this permit will control discharges as necessary to meet applicable water quality standards. If at any time you become aware, or EPA determines, that your discharge does not meet applicable water quality standards, you must take corrective action(s) as required in Part 4.1 and document the corrective actions as required in Part 4.4. You must also comply with any additional requirements that your state or tribe requires in Part 9.

EPA may also require that you undertake additional control measures (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, required reports, or from other sources indicates that your discharges are not controlled as necessary to meet applicable water quality standards. You must implement all measures necessary to be consistent with an available wasteload allocation in an EPA-established or approved TMDL.

2.2.2 Discharges to Water Quality-Impaired Waters.

You are considered to discharge to an impaired water if the first water of the U.S. to which you discharge is identified by a state, tribe or EPA as not meeting an applicable water quality standard, and:

- Requires development of a TMDL (pursuant to section 303(d) of the CWA);
- Is addressed by an EPA-approved or established TMDL; or
- 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).

Note: For discharges that enter a separate storm sewer system[3] prior to discharge, the first water of the U.S. to which you discharge is the waterbody that receives the water from the storm sewer system.

2.2.2.1 Existing Discharge to an Impaired Water with an EPA-Approved or Established TMDL. If you discharge to an impaired water with an EPA-approved or established TMDL, EPA will inform you whether any additional measures are necessary for your discharge to be consistent with the assumptions and requirements of the applicable TMDL and its wasteload allocation, or if coverage under an individual permit is necessary per Part 1.2.3.

2.2.2.2 Existing Discharger to an Impaired Water without an EPA-Approved or Established TMDL. If you discharge to an impaired water without an EPA-approved or established TMDL, you are still required to comply with Part 2.2.1, and you must comply with the monitoring requirements of Part 6.2.4.1. Note that the impaired waters monitoring requirements of Part 6.2.4.1 also apply where EPA determines that your discharge is not controlled as necessary to meet applicable water quality

3 Separate storm systems do not include combined sewer systems or sanitary sewer systems. Separate storm systems include both municipal storm sewer systems (MS4s) and non-municipal separate storm sewers.

standards in an impaired downstream water segment, even if your discharge is to a receiving water that is not identified as impaired according to Part 2.2.2.

2.2.2.3 New Discharger or New Source to an Impaired Water. If your authorization to discharge under this permit relied on Part 1.1.4.8 for a new discharger or a new source to an impaired water, you must implement and maintain any measures that enabled you to become eligible under Part 1.1.4.8, and modify such measures as necessary pursuant to any Part 4 corrective actions. You also must comply with Part 2.2.1 and the monitoring requirements of Parts 6.2.4.1.

2.2.3 Tier 2 Antidegradation Requirements for New Dischargers, New Sources, or Increased Discharges.

If you are a new discharger or a new source (as defined in Appendix A), or an existing discharger required to notify EPA of an increased discharge consistent with Part 7.7 (i.e., a "planned changes" report), and you discharge directly to waters designated by a state or tribe as Tier 2 or Tier 2.5 for antidegradation purposes under 40 CFR 131.12(a), EPA may require that you undertake additional control measures as necessary to ensure compliance with the applicable antidegradation requirements, or notify you that an individual permit application is necessary in accordance with Part 1.2.3. See list of Tier 2 and 2.5 waters in Appendix L.

2.3 Requirements Relating to Endangered Species, Historic Properties, and Federal CERCLA Sites.

If your eligibility under either Part 1.1.4.5, Part 1.1.4.6, and/or Part 1.1.4.10 was made possible through your, or another operator's, agreement to undertake additional measures, you must comply with all such measures to maintain eligibility under the MSGP.

Note that if at any time you become aware, or EPA determines, that your discharges and/or discharge-related activities have the potential to adversely affect listed species and/or critical habitat, EPA may inform you of the need to implement additional measures on a site-specific basis to meet the effluent limits in this permit, or require you to obtain coverage under an individual permit.

3. Inspections.

3.1 Routine Facility Inspections.

During normal facility operating hours you must conduct inspections of areas of the facility covered by the requirements in this permit, including, but not limited to, the following:

- Areas where industrial materials or activities are exposed to stormwater;
- Areas identified in the SWPPP and those that are potential pollutant sources (see Part 5.2.3);
- Areas where spills and leaks have occurred in the past three years;
- Discharge points; and
- Control measures used to comply with the effluent limits contained in this permit.

Inspections must be conducted at least quarterly (i.e., once each calendar quarter), or in some instances more frequently (e.g., monthly). Increased frequency may be appropriate for some types of equipment, processes and stormwater control measures, or areas of the facility with significant activities and materials exposed to stormwater. At least once each calendar year, the routine inspection must be conducted during a period when a stormwater discharge is occurring.

Inspections must be performed by qualified personnel (as defined in Appendix A) with at least one member of your stormwater pollution prevention team participating. Inspectors must consider the results of visual and analytical monitoring (if any) for the past year when planning and conducting inspections.

During the inspection you must examine or look out for the following:

- Industrial materials, residue or trash that may have or could come into contact with stormwater;
- Leaks or spills from industrial equipment, drums, tanks and other containers;
- Offsite tracking of industrial or waste materials, or sediment where vehicles enter or exit the site;
- Tracking or blowing of raw, final or waste materials from areas of no exposure to exposed areas;
- Control measures needing replacement, maintenance or repair.

During an inspection occurring during a stormwater event or discharge, control measures implemented to comply with effluent limits must be observed to ensure they are functioning correctly. Discharge points, as defined in Appendix A, must also be observed during this inspection. If such discharge locations are inaccessible, nearby downstream locations must be inspected.

3.1.1 Exceptions to Routine Facility Inspections for Inactive and Unstaffed Sites.

The requirement to conduct facility inspections on a routine basis does not apply at a facility that is inactive and unstaffed, as long as there are no industrial materials or activities exposed to stormwater. Such a facility is only required to conduct an annual site inspection in accordance with Part 3.1. To invoke this exception, you must indicate that your facility is inactive and unstaffed on your NOI. If you are already covered under the permit and your

facility has changed from active to inactive and unstaffed, you must modify and re-certify your NOI. You must also include a statement in your SWPPP per Part 5.2.5.2 indicating that the site is inactive and unstaffed, and that there are no industrial materials or activities exposed to stormwater, in accordance with the substantive requirements in 40 CFR 122.26(g)(4)(iii). The statement must be signed and certified in accordance with Appendix B, Subsection 11. If circumstances change and industrial materials or activities become exposed to stormwater or your facility becomes active and/or staffed, this exception no longer applies and you must immediately resume routine facility inspections. If you are not qualified for this exception at the time you become authorized under this permit, but during the permit term you become qualified because your facility becomes inactive and unstaffed, and there are no industrial materials or activities that are exposed to stormwater, you must include the same signed and certified statement as above and retain it with your records pursuant to Part 5.5.

Inactive and unstaffed facilities covered under Sectors G (Metal Mining), H (Coal Mines and Coal Mining-Related Facilities), and J (Non-Metallic Mineral Mining and Dressing) are not required to meet the "no industrial materials or activities exposed to stormwater" standard to be eligible for this exception from routine inspections, per Parts 8.G.8.4, 8.H.8.1, and 8.J.8.1.

3.1.2 Routine Facility Inspection Documentation.

You must document the findings of your facility inspections and maintain this report with your SWPPP as required in Part 5.5. Do not submit your routine facility inspection report to EPA, unless specifically requested to do so. However, you must summarize your findings in the annual report per Part 7.5. Document all findings, including but not limited to, the following information:

- The inspection date and time;
- The name(s) and signature(s) of the inspector(s);
- Weather information;
- All observations relating to the implementation of control measures at the facility, including:
  - A description of any discharges occurring at the time of the inspection;
  - Any previously unidentified discharges from and/or pollutants at the site;
  - Any evidence of, or the potential for, pollutants entering the drainage system;
  - Observations regarding the physical condition of and around all outfalls, including any flow dissipation devices, and evidence of pollutants in discharges and/or the receiving water;
  - Any control measures needing maintenance, repairs, or replacement;
- Any additional control measures needed to comply with the permit requirements;
- Any incidents of noncompliance; and
- A statement, signed and certified in accordance with Appendix B, Subsection 11.

Any corrective action required as a result of a routine facility inspection must be performed consistent with Part 4 of this permit.

If you performed a discharge visual assessment required in Part 3.2 during your facility inspection, you may include the results of the assessment with the report required in Part 3.1.2, as long as all components of both types of inspections are included in the report.

3.2 Quarterly Visual Assessment of Stormwater Discharges.

3.2.1 Quarterly Visual Assessment Procedures.

Once each quarter for the entire permit term, you must collect a stormwater sample from each outfall (except as noted in Part 3.2.3) and conduct a visual assessment of each of these samples. These samples are not required to be collected consistent with 40 CFR Part 136 procedures but must be collected in such a manner that the samples are representative of the stormwater discharge. Guidance on monitoring is available at http://water.epa.gov/polwaste/npdes/stormwater/EPA-Multi-Sector-General-Permit-MSGP.cfm.

The visual assessment must be made:

- Of a sample in a clean, colorless glass or plastic container, and examined in a well-lit area;
- On samples collected within the first 30 minutes of an actual discharge from a storm event. If it is not possible to collect the sample within the first 30 minutes of discharge, the sample must be collected as soon as practicable after the first 30 minutes and you must document why it was not possible to take the sample within the first 30 minutes. In the case of snowmelt, samples must be taken during a period with a measurable discharge from your site; and
- For storm events, on discharges that occur at least 72 hours (three days) from the previous discharge. The 72-hour (three-day) storm interval does not apply if you document that less than a 72-hour (three-day) interval is representative for local storm events during the sampling period.

You must visually inspect or observe the sample for the following water quality characteristics:

- Color;
- Odor;
- Clarity (diminished);
- Floating solids;
- Settled solids;
- Suspended solids;
- Foam;
- Oil sheen; and
- Other obvious indicators of stormwater pollution.

Whenever the visual assessment shows evidence of stormwater pollution, you must initiate the corrective action procedures in Part 4.

3.2.2 Quarterly Visual Assessment Documentation.

You must document the results of your visual assessments and maintain this documentation onsite with your SWPPP as required in Part 5.5. You are not required to submit

your visual assessment findings to EPA, unless specifically requested to do so. However, you must summarize your findings in the annual report per Part 7.5. Your documentation of the visual assessment must include, but not be limited to:

- Sample location(s);
- Sample collection date and time, and visual assessment date and time for each sample;
- Personnel collecting the sample and performing visual assessment, and their signatures;
- Nature of the discharge (i.e., runoff or snowmelt);
- Results of observations of the stormwater discharge;
- Probable sources of any observed stormwater contamination;
- If applicable, why it was not possible to take samples within the first 30 minutes; and
- A statement, signed and certified in accordance with Appendix B, Subsection 11.

Any corrective action required as a result of a quarterly visual assessment must be performed consistent with Part 4 of this permit.

3.2.3 Exceptions to Quarterly Visual Assessments.

Adverse Weather Conditions: When adverse weather conditions prevent the collection of samples during the quarter, you must take a substitute sample during the next qualifying storm event. Documentation of the rationale for no visual assessment for the quarter must be included with your SWPPP records as described in Part 5.5. Adverse conditions are those that are dangerous or create inaccessibility for personnel, such as local flooding, high winds, electrical storms, or situations that otherwise make sampling impractical, such as extended frozen conditions.

Climates with Irregular Stormwater Runoff: If your facility is located in an area where limited rainfall occurs during many parts of the year (e.g., arid or semi-arid climate) or in an area where freezing conditions exist that prevent runoff from occurring for extended periods, then your samples for the quarterly visual assessments may be distributed during seasons when precipitation runoff occurs.

Areas Subject to Snow: In areas subject to snow, at least one quarterly visual assessment must capture snowmelt discharge, as described in Part 6.1.3, taking into account the exception described above for climates with irregular stormwater runoff.

Inactive and Unstaffed Sites: The requirement for a quarterly visual assessment does not apply at a facility that is inactive and unstaffed, as long as there are no industrial materials or activities exposed to stormwater. To invoke this exception, you must maintain a statement in your SWPPP per Part 5.2.5.2 indicating that the site is inactive and unstaffed, and that there are no industrial materials or activities exposed to precipitation, in accordance with the substantive requirements in 40 CFR 122.26(g)(4)(iii). The statement must be signed and certified in accordance with Appendix B, Subsection 11. If circumstances change and industrial materials or activities become exposed to stormwater or your facility becomes active and/or staffed, this exception no longer applies and you must immediately resume quarterly visual assessments. If you are not qualified for this exception at the time you are authorized under this

permit, but during the permit term you become qualified because your facility becomes inactive and unstaffed, and there are no industrial materials or activities that are exposed to stormwater, then you must include the same signed and certified statement as above and retain it with your records pursuant to Part 5.5.

Inactive and unstaffed facilities covered under Sectors G (Metal Mining), H (Coal Mines and Coal Mining-Related Facilities), and J (Non-Metallic Mineral Mining and Dressing), are not required to meet the "no industrial materials or activities exposed to stormwater" standard to be eligible for this exception from quarterly visual assessments, consistent with the requirements established in Parts 8.G.8.4, 8.H.8.1, and 8.J.8.1.

Substantially Identical Outfalls: If your facility has two or more outfalls that discharge substantially identical effluents, as documented in Part 5.2.5.3, you may conduct quarterly visual assessments of the discharge at just one of the outfalls and report that the results also apply to the substantially identical outfall(s) provided that you perform visual assessments on a rotating basis of each substantially identical outfall throughout the period of your coverage under this permit.

If stormwater contamination is identified through visual assessment performed at a substantially identical outfall, you must assess and modify your control measures as appropriate for each outfall represented by the monitored outfall.

4. Corrective Actions.

4.1 Conditions Requiring SWPPP Review and Revision to Ensure Effluent Limits are Met.

When any of the following conditions occur or are detected during an inspection, monitoring or other means, or EPA or the operator of the MS4 through which you discharge informs you that any of the following conditions have occurred, you must review and revise, as appropriate, your SWPPP (e.g., sources of pollution; spill and leak procedures; non-stormwater discharges; the selection, design, installation and implementation of your control measures) so that this permit's effluent limits are met and pollutant discharges are minimized:

- An unauthorized release or discharge (e.g., spill, leak, or discharge of non-stormwater not authorized by this or another NPDES permit to a water of the U.S.) occurs at your facility.
- A discharge violates a numeric effluent limit listed in Table 2-1 and in your Part 8 sector-specific requirements.
- Your control measures are not stringent enough for the discharge to meet applicable water quality standards or the non-numeric effluent limits in this permit.
- A required control measure was never installed, was installed incorrectly, or not in accordance with Parts 2 and/or 8, or is not being properly operated or maintained.
- Whenever a visual assessment shows evidence of stormwater pollution (e.g., color, odor, floating solids, settled solids, suspended solids, foam).

4.2 Conditions Requiring SWPPP Review to Determine if Modifications Are Necessary.

If any of the following conditions occur, you must review your SWPPP (e.g., sources of pollution, spill and leak procedures, non-stormwater discharges, selection, design, installation and implementation of your control measures) to determine if modifications are necessary to meet the effluent limits in this permit:

- Construction or a change in design, operation, or maintenance at your facility that significantly changes the nature of pollutants discharged in stormwater from your facility, or significantly increases the quantity of pollutants discharged.
- The average of four quarterly sampling results exceeds an applicable benchmark (see Part 6.2.1.2). If less than four benchmark samples have been taken, but the results are such that an exceedance of the four quarter average is mathematically certain (i.e., if the sum of quarterly sample results to date is more than four times the benchmark level) this is considered a benchmark exceedance, triggering this review.

Note: A benchmark exceedance does not trigger a corrective action if you determine that the exceedance is solely attributable to natural background sources, or if you make a finding that no further pollutant reductions are technologically available and economically practicable and achievable in light of best industry practice (see Part 6.2.1.2).

Note: When run-on to your facility causes a benchmark exceedance, in addition to reviewing and revising, as appropriate, your SWPPP, you should notify the other operators contributing run-on to your discharges to abate their pollutant contribution. Where the other operators fail to take action to address the stormwater run-on, you should contact your EPA Regional Office.

4.3 Corrective Actions and Deadlines.

4.3.1 Immediate Actions.

If corrective action is needed, you must immediately take all reasonable steps necessary to minimize or prevent the discharge of pollutants until a permanent solution is installed and made operational, including cleaning up any contaminated surfaces so that the material will not discharge in subsequent storm events.

Note: In this context, the term "immediately" requires you to, on the same day a condition requiring corrective action is found, take all reasonable steps to minimize or prevent the discharge of pollutants until a permanent solution is installed and made operational. However, if a problem is identified at a time in the work day when it is too late to initiate corrective action, the initiation of corrective action must begin no later than the following work day. "All reasonable steps" means that the permittee has undertaken initial actions to assess and address the condition causing the corrective action, including, for example, cleaning up any exposed materials that may be discharged in a storm event (e.g., through sweeping, vacuuming) or making arrangements (i.e., scheduling) for a new BMP to be installed at a later date. "All reasonable steps" for purposes of complying with Part 4.2 Conditions Requiring SWPPP Review to Determine if Modifications Are Necessary, when you conclude a corrective action is, in fact, not necessary, could include documenting why a corrective action is unnecessary.

4.3.2 Subsequent Actions.

If you determine that additional actions are necessary beyond those implemented pursuant to Part 4.3.1, you must complete the corrective actions (e.g., install a new or modified control and make it operational, complete the repair) before the next storm event if possible, and within 14 calendar days from the time of discovery of the corrective action condition. If it is infeasible to complete the corrective action within 14 calendar days, you must document why it is infeasible to complete the corrective action within the 14-day timeframe. You must also identify your schedule for completing the work, which must be done as soon as practicable after the 14-day timeframe but no longer than 45 days after discovery. If the completion of corrective action will exceed the 45 day timeframe, you may take the minimum additional time necessary to complete the corrective action, provided that you notify the EPA Regional Office of your intention to exceed 45 days, your rationale for an extension, and a completion date, which you must also include in your corrective action documentation (see Part 4.4). Where your corrective actions result in changes to any of the controls or procedures documented in your SWPPP, you must modify your SWPPP accordingly within 14 calendar days of completing corrective action work.

These time intervals are not grace periods, but are schedules considered reasonable for documenting your findings and for making repairs and improvements. They are included in this permit to ensure that the conditions prompting the need for these repairs and improvements do not persist indefinitely.

4.4 Corrective Action Documentation.

You must document the existence of any of the conditions listed in Parts 4.1 or 4.2 within 24 hours of becoming aware of such condition. You are not required to submit your corrective action documentation to EPA, unless specifically requested to do so. However, you must summarize your findings in the annual report per Part 7.5. Include the following information in your documentation:

- Description of the condition triggering the need for corrective action review. For any spills or leaks, include the following information: a description of the

incident including material, date/time, amount, location, and reason for spill, and any leaks, spills or other releases that resulted in discharges of pollutants to waters of U.S., through stormwater or otherwise;

- Date the condition was identified;
- Description of immediate actions taken pursuant to Part 4.3.1 to minimize or prevent the discharge of pollutants. For any spills or leaks, include response actions, the date/time clean-up completed, notifications made, and staff involved. Also include any measures taken to prevent the reoccurrence of such releases (see Part 2.1.2.4); and
- A statement, signed and certified in accordance with Appendix B, Subsection 11.

You must also document the corrective actions taken or to be taken as a result of the conditions listed in Part 4.1 or 4.2 (or, for triggering events in Part 4.2 where you determine that corrective action is not necessary, the basis for this determination) within 14 days from the time of discovery of any of those conditions. Provide the dates when each corrective action was initiated and completed (or is expected to be completed). If applicable, document why it is infeasible to complete the necessary installations or repairs within the 14-day timeframe and document your schedule for installing the controls and making them operational as soon as practicable after the 14-day timeframe. If you notified EPA regarding an extension of the 45 day timeframe, you must document your rationale for an extension.

4.5 Effect of Corrective Action.

If the event triggering the review is a permit violation (e.g., non-compliance with an effluent limit), correcting it does not remove the original violation. Additionally, failing to take corrective action in accordance with this section is an additional permit violation. EPA will consider the appropriateness and promptness of corrective action in determining enforcement responses to permit violations.

4.6 Substantially Identical Outfalls.

If the event triggering corrective action is associated with an outfall that had been identified as a "substantially identical outfall" (see Parts 3.2.3 and 6.1.1), your review must assess the need for corrective action for all related substantially identical outfalls. Any necessary changes to control measures that affect these other outfalls must also be made before the next storm event if possible, or as soon as practicable following that storm event. Any corrective actions must be conducted within the timeframes set forth in Part 4.3.

5. Stormwater Pollution Prevention Plan (SWPPP).

You must prepare a SWPPP for your facility before submitting your NOI for permit coverage. If you prepared a SWPPP for coverage under a previous version of this NPDES permit, you must review and update the SWPPP to implement all provisions of this permit prior to submitting your NOI. The SWPPP does not contain effluent limitations; such limitations are contained in Parts 2, 8, and 9 of the permit. The SWPPP is intended to document the selection, design, and installation of control measures to meet the permit's effluent limits. As distinct from the SWPPP, the additional documentation requirements (see Part 5.5) are intended to document the implementation (including inspection, maintenance, monitoring, and corrective action) of the permit requirements.

Note: Any discharges not expressly authorized in this permit cannot become authorized or shielded from liability under CWA section 402(k) by disclosure to EPA, state, or local authorities after issuance of this permit via any means, including the Notice of Intent (NOI) to be covered by the permit, the SWPPP, during an inspection, etc.

5.1 Person(s) Responsible for SWPPP Preparation.

The SWPPP shall be prepared in accordance with good engineering practices and to industry standards. The SWPPP may be developed by either a person on your staff or a third party you hire, but it must be developed by a "qualified person" and must be certified per the signature requirements in Part 5.2.7. If EPA concludes that the SWPPP is not in compliance with Part 5.2 of this permit, EPA may require the SWPPP to be reviewed, amended as necessary, and certified by a Professional Engineer, or for Sector G, H or J, by a Professional Geologist, with the education and experience necessary to prepare an adequate SWPPP.

Note: A "qualified person" is a person knowledgeable in the principles and practices of industrial stormwater controls and pollution prevention, and possesses the education and ability to assess conditions at the industrial facility that could impact stormwater quality, and the education and ability to assess the effectiveness of stormwater controls selected and installed to meet the requirements of the permit.

5.2 Contents of Your SWPPP.

For coverage under this permit, your SWPPP must contain all of the following elements:

- Stormwater pollution prevention team (see Part 5.2.1);
- Site description (see Part 5.2.2);
- Summary of potential pollutant sources (see Part 5.2.3);
- Description of control measures (see Part 5.2.4);
- Schedules and procedures (see Part 5.2.5);
- Documentation to support eligibility considerations under other federal laws (see Part 5.2.6); and
- Signature requirements (see Part 5.2.7).

Where your SWPPP refers to procedures in other facility documents, such as a Spill Prevention, Control and Countermeasure (SPCC) Plan or an Environmental Management System (EMS), copies of the relevant portions of those documents must be kept with your SWPPP.

5.2.1 Stormwater Pollution Prevention Team.

You must identify the staff members (by name or title) that comprise the facility's stormwater pollution prevention team as well as their individual responsibilities. Your stormwater pollution prevention team is responsible for overseeing development of the SWPPP, any modifications to it, and for implementing and maintaining control measures and taking corrective actions when required. Each member of the stormwater pollution prevention team must have ready access to either 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.

5.2.2 Site Description.

Your SWPPP must include the following:

- *Activities at the Facility*. Provide a description of the nature of the industrial activities at your facility.
- *General location map*. Provide a general location map (e.g., U.S. Geological Survey (USGS) quadrangle map) with enough detail to identify the location of your facility and all receiving waters for your stormwater discharges.
- *Site map*. Provide a map showing:
  - Boundaries of the property and the size of the property in acres;
  - Location and extent of significant structures and impervious surfaces;
  - Directions of stormwater flow (use arrows);
  - Locations of all stormwater control measures;
  - Locations of all receiving waters, including wetlands, in the immediate vicinity of your facility. Indicate which waterbodies are listed as impaired and which are identified by your state, tribe, or EPA as Tier 2, Tier 2.5, or Tier 3 waters;
  - Locations of all stormwater conveyances including ditches, pipes, and swales;
  - Locations of potential pollutant sources identified under Part 5.2.3.2;
  - Locations where significant spills or leaks identified under Part 5.2.3.3 have occurred;
  - Locations of all stormwater monitoring points;
  - Locations of stormwater inlets and outfalls, with a unique identification code for each outfall (e.g., Outfall 001, 002), indicating if you are treating one or more outfalls as "substantially identical" under Parts 3.2.3, 5.2.5.3, and 6.1.1, and an approximate outline of the areas draining to each outfall;
  - If applicable, MS4s and where your stormwater discharges to them;
  - Areas of designated critical habitat for endangered or threatened species, if applicable.
  - Locations of the following activities where such activities are exposed to precipitation:
    - fueling stations;
    - vehicle and equipment maintenance and/or cleaning areas;
    - loading/unloading areas;
    - locations used for the treatment, storage, or disposal of wastes;
    - liquid storage tanks;

- processing and storage areas;
- immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility;
- transfer areas for substances in bulk;
- machinery;
- locations and sources of run-on to your site from adjacent property that contains significant quantities of pollutants.

5.2.3 Summary of Potential Pollutant Sources.

You must describe areas at your facility where industrial materials or activities are exposed to stormwater or from which allowable non-stormwater discharges originate. Industrial materials or activities include, but are not limited to: material handling equipment or activities; industrial machinery; raw materials; industrial production and processes; and intermediate products, by-products, final products, and waste products. Material handling activities include, but are not limited to: the storage, loading and unloading, transportation, disposal, or conveyance of any raw material, intermediate product, final product or waste product. For structures located in areas of industrial activity, you must be aware that the structures themselves are potential sources of pollutants. This could occur, for example, when metals such as aluminum or copper are leached from the structures as a result of acid rain.

For each area identified, the description must include:

5.2.3.1 ***Activities in the Area.*** A list of the industrial activities exposed to stormwater (e.g., material storage; equipment fueling, maintenance, and cleaning; cutting steel beams).

5.2.3.2 ***Pollutants.*** A list of the pollutant(s) or pollutant constituents (e.g., crankcase oil, zinc, sulfuric acid, cleaning solvents) associated with each identified activity, which could be exposed to rainfall or snowmelt and could be discharged from your facility. The pollutant list must include all significant materials that have been handled, treated, stored or disposed, and that have been exposed to stormwater in the three years prior to the date you prepare or amend your SWPPP.

5.2.3.3 ***Spills and Leaks.*** You must document where potential spills and leaks could occur that could contribute pollutants to stormwater discharges, and the corresponding outfall(s) that would be affected by such spills and leaks. You must document all significant spills and leaks of oil or toxic or hazardous substances that actually occurred at exposed areas, or that drained to a stormwater conveyance, in the three years prior to the date you prepare or amend your SWPPP.

Note: Significant spills and leaks include, but are not limited to, releases of oil or hazardous substances in excess of quantities that are reportable under CWA section 311 (see 40 CFR 110.6 and 40 CFR 117.21) or section 102 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC §9602. This permit does not relieve you of the reporting requirements of 40 CFR 110, 40 CFR 117, and 40 CFR 302 relating to spills or other releases of oils or hazardous substances.

5.2.3.4 ***Unauthorized Non-Stormwater Discharges.*** You must document that you have evaluated for the presence of unauthorized non-stormwater discharges (see Part

1.1.3 for the exclusive list of authorized non-stormwater discharges under this permit).

Documentation of your evaluation must include:

- The date of the evaluation;
- A description of the evaluation criteria used;
- A list of the outfalls or onsite drainage points that were directly observed during the evaluation; and
- The action(s) taken, such as a list of control measures used to eliminate unauthorized discharge(s), or documentation that a separate NPDES permit was obtained. For example, a floor drain was sealed, a sink drain was re-routed to sanitary, or an NPDES permit application was submitted for an unauthorized cooling water discharge.

5.2.3.5 ***Salt Storage.*** You must document the location of any storage piles containing salt used for deicing or other commercial or industrial purposes.

5.2.3.6 ***Sampling Data.*** Existing dischargers must summarize all stormwater discharge sampling data collected at the facility during the previous permit term. The summary shall include a narrative description (and may include data tables/figures) that adequately summarizes the collected sampling data to support identification of potential pollution sources at your facility. New dischargers and new sources must provide a summary of any available stormwater runoff data they may have.

5.2.4 Description of Control Measures to Meet Technology-Based and Water Quality-Based Effluent Limits.

You must document the location and type of control measures you have specifically chosen and/or designed to comply with:

- Non-numeric technology-based effluent limits in Part 2.1.2;
- Applicable numeric effluent limitations guidelines-based limits in Part 2.1.3 and Part 8;
- Water quality-based effluent limits in Part 2.2;
- Any additional measures that formed the basis of eligibility regarding threatened and endangered species, historic properties, and/or federal CERCLA Site requirements in Part 2.3;
- Applicable effluent limits in Parts 8 and 9.
- Regarding your control measures, you must also document, as appropriate:
  - How you addressed the selection and design considerations in Part 2.1.1;
  - How they address the pollutant sources identified in Part 5.2.3.

Effluent limit requirements in Part 2.1.2 that do not involve the site-specific selection of a control measure or are specific activity requirements (e.g., "cleaning catch basins when the depth of debris reaches two-thirds (2/3) of the sump depth and keeping the debris surface at least six inches below the lowest outlet pipe") are marked with an asterisk (*). For the requirements marked with an asterisk, you may include extra information, or you may just "cut-

and-paste" these effluent limits verbatim into your SWPPP without providing additional documentation.

5.2.5 Schedules and Procedures.

5.2.5.1 ***Pertaining to Control Measures Used to Comply with the Effluent Limits in Part 2.*** The following must be documented in your SWPPP:

- Good Housekeeping (See Part 2.1.2.2) – A schedule or the convention used for determining when pickup and disposal of waste materials occurs. Also provide a schedule for routine inspections for leaks and conditions of drums, tanks and containers.
- Maintenance (See Part 2.1.2.3) – Preventative maintenance procedures, including regular inspections, testing, maintenance and repair of all control measures to avoid situations that may result in leaks, spills, and other releases, and any back-up practices in place should a runoff event occur while a control measure is off-line. The SWPPP shall include the schedule or frequency for maintaining all control measures used to comply with the effluent limits in Part 2;
- Spill Prevention and Response Procedures (See Part 2.1.2.4) – Procedures for preventing and responding to spills and leaks, including notification procedures. For preventing spills, include in your SWPPP the control measures for material handling and storage, and the procedures for preventing spills that can contaminate stormwater. Also specify cleanup equipment, procedures and spill logs, as appropriate, in the event of spills. You may reference the existence of other plans for Spill Prevention Control and Countermeasure (SPCC) developed for the facility under section 311 of the CWA or BMP programs otherwise required by an NPDES permit for the facility, provided that you keep a copy of that other plan onsite and make it available for review consistent with Part 5.4;
- Erosion and Sediment Controls (Part 2.1.2.5) – If you use polymers and/or other chemical treatments as part of your controls, you must identify the polymers and/or chemicals used and the purpose;
- Employee Training (Part 2.1.2.8) – The elements of your employee training plan shall include all, but not be limited to, the requirements set forth in Part 2.1.2.8, and also the following:
  - The content of the training;
  - The frequency/schedule of training for employees who work in areas where industrial materials or activities are exposed to stormwater, or who are responsible for implementing activities necessary to meet the conditions of this permit;
  - A log of the dates on which specific employees received training.

5.2.5.2 ***Pertaining to Inspections and Assessments.*** You must document in your SWPPP your procedures for performing, as appropriate, the types of inspections specified by this permit, including:

- Routine facility inspections (see Part 3.1) and;
- Quarterly visual assessment of stormwater discharges (see Part 3.2).

For each type of inspection performed, your SWPPP must identify:

- Person(s) or positions of person(s) responsible for inspection;

- Schedules for conducting inspections, including tentative schedule for facilities in climates with irregular stormwater runoff discharges (see Part 3.2.3);
- Specific items to be covered by the inspection, including schedules for specific outfalls.

If you are invoking the exception for inactive and unstaffed sites relating to routine facility inspections and quarterly visual assessments, you must include in your SWPPP the information to support this claim as required by Parts 3.1.1 and 3.2.3.

5.2.5.3 ***Pertaining to Monitoring.*** You must document in your SWPPP procedures for conducting the five types of analytical monitoring specified by this permit, where applicable to your facility, including:

- Benchmark monitoring (see Part 6.2.1);
- Effluent limitations guidelines monitoring (see Part 6.2.2);
- State- or tribal-specific monitoring (see Part 6.2.3);
- Impaired waters monitoring (see Part 6.2.4);
- Other monitoring as required by EPA (see Part 6.2.5).

For each type of monitoring, your SWPPP must document:

- Locations where samples are collected, including any determination that two or more outfalls are substantially identical;
- Parameters for sampling and the frequency of sampling for each parameter;
- Schedules for monitoring at your facility, including schedule for alternate monitoring periods for climates with irregular stormwater runoff (see Part 6.1.6);
- Any numeric control values (benchmarks, effluent limitations guidelines, TMDL-related requirements, or other requirements) applicable to discharges from each outfall;
- Procedures (e.g., responsible staff, logistics, laboratory to be used) for gathering storm event data, as specified in Part 6.1.

If you are invoking the exception for inactive and unstaffed sites for benchmark monitoring or impaired waters monitoring, you must include in your SWPPP the information to support this claim as required by Part 6.2.1.3 and 6.2.4.2.

You must document the following in your SWPPP if you plan to use the substantially identical outfall exception for your quarterly visual assessment requirements in Part 3.2.3 or your benchmark or impaired waters monitoring requirements in Parts 6.2.1 and 6.2.4.1 (see also Part 6.1.1):

- Location of each of the substantially identical outfalls;
- Description of the general industrial activities conducted in the drainage area of each outfall;
- Description of the control measures implemented in the drainage area of each outfall;

- Description of the exposed materials located in the drainage area of each outfall that are likely to be significant contributors of pollutants to stormwater discharges;
- An estimate of the runoff coefficient of the drainage areas (low = under 40%; medium = 40 to 65%; high = above 65%);
- Why the outfalls are expected to discharge substantially identical effluents.

5.2.6 Documentation to Support Eligibility Considerations Under Other Federal Laws.

5.2.6.1 Documentation Regarding Endangered and Threatened Species and Critical Habitat Protection. You must keep with your SWPPP the documentation supporting your determination with regard to Part 1.1.4.5 (Endangered and Threatened Species and Critical Habitat Protection).

5.2.6.2 Documentation Regarding Historic Properties. You must keep with your SWPPP the documentation supporting your determination with regard to Part 1.1.4.6 (Historic Properties Preservation).

5.2.7 Signature Requirements. You must sign and date your SWPPP in accordance with Appendix B, Subsection 11.

5.3 Required SWPPP Modifications.

You must modify your SWPPP based on the corrective actions and deadlines required under Part 4.3 and that you documented under Part 4.4. SWPPP modifications must be signed and dated in accordance with Appendix B, Subsection 11.

5.4 SWPPP Availability.

You must retain a complete copy of your current SWPPP required by this permit at the facility in any accessible format. A complete SWPPP includes any documents incorporated by reference and all documentation supporting your permit eligibility pursuant to Part 1.1 of this permit, as well as your signed and dated certification page. Regardless of the format, the SWPPP must be immediately available to facility employees, EPA, a state or tribe, the operator of an MS4 into which you discharge, and representatives of the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) at the time of an onsite inspection. Your current SWPPP or certain information from your current SWPPP described below must also be made available to the public (except any confidential business information (CBI) or restricted information [as defined in Appendix A]), but you must clearly identify those portions of the SWPPP that are being withheld from public access; to do so, you must comply with one of the following two options:

5.4.1 SWPPP Posting on the Internet.

If you provide a URL in your NOI where your SWPPP can be found, and maintain your current SWPPP at this URL, you will have complied with the public availability requirements for the SWPPP. To remain current, you must post any SWPPP modifications, records and other reporting elements required for the previous year at the same URL as the main body of the SWPPP. The SWPPP update shall be no later than 45 days after conducting the final routine facility inspection for the year required in Part 3.1. If you did not provide a SWPPP URL in your NOI, you may reopen your NOI at any time subsequent to your original NOI submittal to add a URL where your current SWPPP can be found. You are not required to post any CBI or restricted information (as defined in Appendix A) (such information may be redacted), but you must clearly identify those portions of the SWPPP that are being withheld from public access. CBI may not be withheld from those staff cleared for CBI review within EPA, USFWS or NMFS.

5.4.2 SWPPP Information Provided on NOI Form.

If you did not provide a SWPPP URL in your NOI, your NOI must include the information required by Part 7.3. Irrespective of this requirement, EPA may provide access to portions of your SWPPP to a member of the public upon request (except any CBI or restricted information (as defined in Appendix A)). To remain current, you must report any modifications to the SWPPP information required by Part 7.3 through submittal of an "Change NOI" form. The SWPPP update shall be no later than 45 days after conducting the final routine facility inspection for the year required in Part 3.1.

5.5 Additional Documentation Requirements.

You are required to keep the following inspection, monitoring, and certification records with your SWPPP that together keep your records complete and up-to-date, and demonstrate your full compliance with the conditions of this permit:

- A copy of the NOI submitted to EPA along with any correspondence exchanged between you and EPA specific to coverage under this permit;
- A copy of the acknowledgment you receive from the EPA assigning your NPDES ID;
- A copy of this permit (an electronic copy easily available to SWPPP personnel is also acceptable);
- Documentation of maintenance and repairs of control measures, including the date(s) of regular maintenance, date(s) of discovery of areas in need of repair/replacement, and for repairs, date(s) that the control measure(s) returned to full function, and the justification for any extended maintenance/repair schedules (see Part 2.1.2.3);
- All inspection reports, including the Routine Facility Inspection Reports (see Part 3.1.2) and Quarterly Visual Assessment Reports (see Part 3.2.2);
- Description of any deviations from the schedule for visual assessments and/or monitoring, and the reason for the deviations (e.g., adverse weather or it was impracticable to collect samples within the first 30 minutes of a measurable storm event) (see Parts 3.2.3 and 6.1.5);
- Corrective action documentation required per Part 4.4;
- Documentation of any benchmark exceedances and the type of response to the exceedance you employed, including:
  - the corrective action taken;
  - a finding that the exceedance was due to natural background pollutant levels;
  - a determination from EPA that benchmark monitoring can be discontinued because the exceedance was due to run-on; or
  - a finding that no further pollutant reductions were technologically available and economically practicable and achievable in light of best industry practice consistent with Part 6.2.1.2.
- Documentation to support any determination that pollutants of concern are not expected to be present above natural background levels if you discharge directly to impaired waters, and that such pollutants were not detected in your discharge or were solely attributable to natural background sources (see Part 6.2.4.1); and

- Documentation to support your claim that your facility has changed its status from active to inactive and unstaffed with respect to the requirements to conduct routine facility inspections (see Part 3.1.1), quarterly visual assessments (see Part 3.2.3), benchmark monitoring (see Part 6.2.1.3), and/or impaired waters monitoring (see Part 6.2.4.2).

6. Monitoring.

You must collect and analyze stormwater samples and document monitoring activities consistent with the procedures described in Part 6 and Appendix B, Subsections 10 – 12, and any additional sector-specific or state/tribal-specific requirements in Parts 8 and 9, respectively. Refer to Part 7 for reporting and recordkeeping requirements.

6.1 Monitoring Procedures.

6.1.1 Monitored Outfalls.

Applicable monitoring requirements apply to each outfall authorized by this permit, except as otherwise exempt from monitoring as a "substantially identical outfall." If your facility has two or more outfalls that you believe discharge substantially identical effluents, based on the similarities of the general industrial activities and control measures, exposed materials that may significantly contribute pollutants to stormwater, and runoff coefficients of their drainage areas, you may monitor the effluent of just one of the outfalls and report that the results also apply to the substantially identical outfall(s). As required in Part 5.2.5.3, your SWPPP must identify each outfall authorized by this permit and describe the rationale for any substantially identical outfall determinations. The allowance for monitoring only one of the substantially identical outfalls is not applicable to any outfalls with numeric effluent limitations. You are required to monitor each outfall covered by a numeric effluent limit as identified in Part 6.2.2.

6.1.2 Commingled Discharges.

If discharges authorized by this permit commingle with discharges not authorized under this permit, any required sampling of the authorized discharges must be performed at a point before they mix with other waste streams, to the extent practicable.

6.1.3 Measurable Storm Events.

All required monitoring must be performed on a storm event that results in an actual discharge from your site ("measurable storm event") that follows the preceding measurable storm event by at least 72 hours (three days). The 72-hour (3-day) storm interval does not apply if you are able to document that less than a 72-hour (3-day) interval is representative for local storm events during the sampling period. In the case of snowmelt, the monitoring must be performed at a time when a measurable discharge occurs at your site.

For each monitoring event, except snowmelt monitoring, you must identify the date and duration (in hours) of the rainfall event, rainfall total (in inches) for that rainfall event, and time (in days) since the previous measurable storm event. For snowmelt monitoring, you must identify the date of the sampling event.

6.1.4 Sample Type.

You must take a minimum of one grab sample from a discharge resulting from a measurable storm event as described in Part 6.1.3. Samples must be collected within the first 30 minutes of a discharge associated with a measurable storm event. If it is not possible to collect the sample within the first 30 minutes of a measurable storm event, the sample must be collected as soon as practicable after the first 30 minutes and documentation must be kept with the SWPPP explaining why it was not possible to take samples within the first 30 minutes. In the case of snowmelt, samples must be taken during a period with a measurable discharge.

6.1.5 Adverse Weather Conditions.

When adverse weather conditions as described in Part 3.2.3 prevent the collection of samples according to the relevant monitoring schedule, you must take a substitute sample

during the next qualifying storm event. Adverse weather does not exempt you from having to file a benchmark monitoring report in accordance with your sampling schedule. As specified in Part 7.4, you must use NetDMR to report any failure to monitor using a "no data" or "NODI" code during the regular reporting period.

6.1.6 Climates with Irregular Stormwater Runoff.

If your facility is located in areas where limited rainfall occurs during parts of the year (e.g., arid or semi-arid climates) or in areas where freezing conditions exist that prevent runoff from occurring for extended periods, required monitoring events may be distributed during seasons when precipitation occurs, or when snowmelt results in a measurable discharge from your site. You must still collect the required number of samples. As specified in Part 7.4, you must also use NetDMR to report using a "no data" or "NODI" code for any of the regular reporting periods that there was no monitoring.

6.1.7 Monitoring Periods.

Monitoring requirements in this permit begin in the first full quarter following either September 2, 2015 or your date of discharge authorization, whichever date comes later. If your monitoring is required on a quarterly basis (e.g., benchmark monitoring), you must monitor at least once in each of the following 3-month intervals:

- January 1 – March 31;
- April 1 – June 30;
- July 1 – September 30;
- October 1 – December 31.

For example, if you obtain permit coverage on July 2, 2015, then your first monitoring quarter is October 1 - December 31, 2015. This monitoring schedule may be modified in accordance with Part 6.1.6 if the revised schedule is documented with your SWPPP. However, using NetDMR you must report using a "no data" or "NODI" code for any 3-month interval that you did not take a sample.

6.1.8 Monitoring for Allowable Non-Stormwater Discharges.

You are only required to monitor allowable non-stormwater discharges (as delineated in Part 1.1.3) when they are commingled with stormwater discharges associated with industrial activity.

6.1.9 Monitoring Reports

Monitoring data must be reported using EPA's electronic NetDMR tool at www.epa.gov/netdmr, as described in Part 7.4 (unless a waiver from electronic reporting has been granted from the EPA Regional Office, in which case you may submit a paper DMR form).

6.2 Required Monitoring.

This permit includes five types of required analytical monitoring, one or more of which may apply to your discharge:

- Quarterly benchmark monitoring (see Part 6.2.1);
- Annual effluent limitations guidelines monitoring (see Part 6.2.2);
- State- or tribal-specific monitoring (see Part 6.2.3);

- Impaired waters monitoring (see Part 6.2.4); and
- Other monitoring as required by EPA (see Part 6.2.5).

When more than one type of monitoring for the same pollutant at the same outfall applies (e.g., total suspended solids once per year for an effluent limitation and once per quarter for benchmark monitoring at a given outfall), you may use a single sample to satisfy both monitoring requirements (i.e., one sample satisfying both the annual effluent limitation sample and one of the four quarterly benchmark monitoring samples). When the effluent limitation is lower than the benchmark concentration for the same pollutant, your corrective action trigger is based on an exceedance of the effluent limitation, which would subject you to the corrective action requirements of Part 4.1.

Note: Exceedance of an effluent limitation associated with the results of any analytical monitoring type required by this Part subjects you to the corrective action requirements of Part 4.1.

All required monitoring must be conducted in accordance with the procedures described in Appendix B, Subsection B.10.

6.2.1 Benchmark Monitoring.

This permit specifies pollutant benchmark concentrations that are applicable to certain sectors / subsectors. Benchmark monitoring data are primarily for your use to determine the overall effectiveness of your control measures and to assist you in determining when additional corrective action(s) may be necessary to comply with the effluent limitations in Part 2.

The benchmark concentrations are not effluent limitations; a benchmark exceedance, therefore, is not a permit violation. However, if corrective action is required as a result of a benchmark exceedance, failure to conduct required corrective action is a permit violation.

At your discretion, more than four samples may be taken during separate runoff events and used to determine the average benchmark parameter concentration for facility discharges.

6.2.1.1 Applicability of Benchmark Monitoring. You must monitor for any benchmark parameters specified for the industrial sector(s), both primary industrial activity and any co-located industrial activities, applicable to your discharge. Your industry-specific benchmark concentrations are listed in the sector-specific sections of Part 8. If your facility is in one of the industrial sectors subject to benchmark concentrations that are hardness-dependent, you are required to submit to EPA with your NOI a hardness value, established consistent with the procedures in Appendix J, which is representative of your receiving water.

Samples must be analyzed consistent with 40 CFR Part 136 analytical methods and using test procedures with quantitation limits at or below benchmark values for all benchmark parameters for which you are required to sample.

6.2.1.2 Benchmark Monitoring Schedule. Benchmark monitoring must be conducted quarterly, as identified in Part 6.1.7, for your first four full quarters of permit coverage commencing no earlier than September 2, 2015.

Facilities in climates with irregular stormwater runoff, as described in Part 6.1.6, may modify this quarterly schedule provided that this revised schedule is reported directly to EPA by the due date of the first benchmark sample (see EPA Regional contacts in Part 7.9.1), and that this revised schedule is kept with the facility's SWPPP as specified in Part 5.5. When conditions prevent you from obtaining four samples in four consecutive quarters, you must continue monitoring until you have the four samples required for calculating your benchmark monitoring average. As noted in Part 6.1.7, you must use NetDMR to report using a "no data" or "NODI" code for any 3-month interval that you did not take a sample.

Data not exceeding benchmarks: After collection of four quarterly samples, if the average of the four monitoring values for any parameter does not exceed the benchmark, you have fulfilled your monitoring requirements for that parameter for the permit term.

Data exceeding benchmarks: After collection of four quarterly samples, if the average of the four monitoring values for any parameter exceeds the benchmark, you must, in accordance with Part 4, review the selection, design, installation, and implementation of your control measures to determine if modifications are necessary to meet the effluent limits in this permit, and either:

- Make the necessary modifications and continue quarterly monitoring until you have completed four additional quarters of monitoring for which the average does not exceed the benchmark; or
- Make a determination that no further pollutant reductions are technologically available and economically practicable and achievable in light of best industry practice to meet the technology-based effluent limits or are necessary to meet the water-quality-based effluent limitations in Parts 2.1 and 2.2 of this permit, in which case you must continue monitoring once per year. You must also document your rationale for concluding that no further pollutant reductions are achievable, and retain all records related to this documentation with your SWPPP.

You must review your control measures and perform any required corrective action immediately (or document why no corrective action is required), per Part 4, without waiting for the full four quarters of monitoring data, when an exceedance of the four quarter average is mathematically certain. If after modifying your control measures and conducting four additional quarters of monitoring, your average still exceeds the benchmark (or if an exceedance of the benchmark by the four quarter average is mathematically certain prior to conducting the full four additional quarters of monitoring), you must again review your control measures and take one of the two actions above.

***Natural background pollutant levels*:** Following the first four quarters of benchmark monitoring (or sooner if the exceedance is triggered by less than four quarters of data; see above), if the average concentration of a pollutant exceeds a benchmark value, and you determine that exceedance of the benchmark is attributable solely to the presence of that pollutant in the natural background, you are not required to perform corrective action or additional benchmark monitoring provided that:

- The average concentration of your benchmark monitoring results is less than or equal to the concentration of that pollutant in the natural background; and

- You document and maintain with your SWPPP, as required in Part 5.5, your supporting rationale for concluding that benchmark exceedances are in fact attributable solely to natural background pollutant levels. You must include in your supporting rationale any data previously collected by you or others (including literature studies) that describe the levels of natural background pollutants in your stormwater discharge.

Natural background pollutants are those substances that are naturally occurring in soils or ground water. Natural background pollutants do not include legacy pollutants from earlier activity on your site, or pollutants in run-on from neighboring sources which are not naturally occurring, such as other industrial sites or roadways. However, the EPA Regional Office may determine that you are eligible to discontinue monitoring for pollutants that occur solely from run-on sources.

6.2.1.3 ***Exception for Inactive and Unstaffed Sites.*** The requirement for benchmark monitoring does not apply at a facility that is inactive and unstaffed, provided that there are no industrial materials or activities exposed to stormwater. To invoke this exception, you must do the following:

- Maintain a statement with your SWPPP stating that the site is inactive and unstaffed, and that there are no industrial materials or activities exposed to stormwater in accordance with the substantive requirements in 40 CFR 122.26(g) and sign and certify the statement in accordance with Appendix B, Subsection 11.
- If circumstances change and industrial materials or activities become exposed to stormwater or your facility becomes active and/or staffed, this exception no longer applies and you must immediately begin complying with the applicable benchmark monitoring requirements under Part 6.2 as if you were in your first year of permit coverage. You must indicate in your NOI that your facility has materials or activities exposed to stormwater or has become active and/or staffed.
- If you are not qualified for this exception at the time you are authorized under this permit, but during the permit term you become qualified because your facility is inactive and unstaffed, and there are no industrial materials or activities that are exposed to stormwater, then you must notify EPA of this change on your NOI form. You may discontinue benchmark monitoring once you have notified EPA, and prepared and signed the certification statement described above concerning your facility's qualification for this special exception.

Note: This exception has different requirements for Sectors G, H, and J (see Part 8).

6.2.2 Effluent Limitations Monitoring.

6.2.2.1 ***Monitoring Based on Effluent Limitations Guidelines.*** Table 6-1 identifies the stormwater discharges subject to effluent limitation guidelines that are authorized for coverage under this permit. An exceedance of the effluent limitation is a permit violation. Beginning in the first full quarter following September 2, 2015 or your date of discharge authorization, whichever date comes later, you must monitor once per year at each outfall containing the discharges identified in Table 6-1 for the parameters specified in the sector-specific section of Part 8.

Table 6-1. Required Monitoring for Effluent Limits Based on Effluent Limitations Guidelines

Regulated Activity	Effluent Limit	Monitoring Frequency	Sample Type
Discharges resulting from spray down or intentional wetting of logs at wet deck storage areas	See Part 8.A.7	1/year	Grab
Runoff from phosphate fertilizer manufacturing facilities that comes into contact with any raw materials, finished product, by-products or waste products (SIC 2874)	See Part 8.C.4	1/year	Grab
Runoff from asphalt emulsion facilities	See Part 8.D.4	1/year	Grab
Runoff from material storage piles at cement manufacturing facilities	See Part 8.E.5	1/year	Grab
Mine dewatering discharges at crushed stone, construction sand and gravel, or industrial sand mining facilities	See Part 8.J.9	1/year	Grab
Runoff from hazardous waste landfills	See Part 8.K.6	1/year	Grab
Runoff from non-hazardous waste landfills	See Part 8.L.10	1/year	Grab
Runoff from coal storage piles at steam electric generating facilities	See Part 8.O.8	1/year	Grab
Runoff containing urea from airfield pavement deicing at existing and new primary airports with 1,000 or more annual non-propeller aircraft departures.	See Part 8.S.8	1/year	Grab

6.2.2.2 ***Substantially Identical Outfalls.*** You must monitor each outfall discharging runoff from any regulated activity identified in Table 6-1. The substantially identical outfall monitoring provisions are not available for numeric effluent limits monitoring.

6.2.2.3 ***Follow-up Actions if Discharge Exceeds Numeric Effluent Limitation.*** If any monitoring value exceeds a numeric effluent limitation contained in this permit, you must indicate the exceedance on a "Change NOI" form in the NPDES eReporting Tool (NeT), and you must conduct follow-up monitoring within 30 calendar days (or during the next qualifying runoff event, should none occur within 30 days) of implementing corrective action(s) taken per Part 4. When your follow-up monitoring exceeds the applicable effluent limitation, you must:

- ***Submit an Exceedance Report:*** You must submit an Exceedance Report no later than 30 days after you have received your laboratory result consistent with Part 7.6; and
- ***Continue to Monitor:*** You must monitor, at least quarterly, until your discharge is in compliance with the effluent limit or until EPA waives the requirement for additional monitoring. Once your discharge is back in compliance with the effluent limitation you must indicate this on a "Change NOI" form per Part 7.4.

6.2.3 State or Tribal Monitoring Provisions.

6.2.3.1 ***Sectors Required to Conduct State or Tribal Monitoring.*** You must comply with any state or tribal monitoring requirements (see Part 9) applicable to your facility's location.

6.2.3.2 ***State or Tribal Monitoring Schedule.*** If a monitoring frequency is not specified for an applicable requirement in Part 9, you must monitor once per year for the entire permit term.

6.2.4 Discharges to Impaired Waters Monitoring.

Note: For the purposes of this permit, your project is considered to discharge to an impaired water if the first water of the U.S. to which you discharge is identified by a state, tribe, or EPA pursuant to section 303(d) of the CWA as not meeting an applicable water quality standard, or has been removed from the 303(d) list either because the impairments are addressed by an EPA-approved or established TMDL or is covered by pollution control requirements that meet the requirements of 40 CFR 130.7(b)(1). For discharges that enter a separate storm sewer system[4] 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.

6.2.4.1 Permittees Required to Monitor Discharges to Impaired Waters.

Discharges to impaired waters without an EPA-approved or established TMDL: Beginning in the first full quarter following September 2, 2015 or your date of discharge authorization, whichever date comes later, you must monitor all pollutants for which the waterbody is impaired and for which a standard analytical method exists (see 40 CFR Part 136) once per year at each outfall (except substantially identical outfalls) discharging stormwater to impaired waters without an EPA-approved or established TMDL.

If the pollutant of concern for the impaired waterbody is suspended solids, turbidity or sediment/sedimentation, you must monitor for Total Suspended Solids (TSS). If a pollutant of concern is expressed in the form of an indicator or surrogate pollutant, you must monitor for that indicator or surrogate pollutant. No monitoring is required when a waterbody's biological communities are impaired but no pollutant, including indicator or surrogate pollutants, is specified as causing the impairment, or when a waterbody's impairment is related to hydrologic modifications, impaired hydrology, or other non-pollutant. Permittees should consult the appropriate EPA Regional Office for any available guidance regarding required monitoring parameters under this part.

If the pollutant of concern is not detected and not expected to be present in your discharge, or it is detected but you have determined that its presence is caused solely by natural background sources, you may discontinue monitoring for that pollutant. To support a determination that the pollutant's presence is caused solely by natural background sources, you must document and maintain with your SWPPP, as required by Part 5.5:

- An explanation of why you believe that the presence of the pollutant of concern in your discharge is not related to the activities or materials at your facility; and
- Data and/or studies that tie the presence of the pollutant of concern in your discharge to natural background sources in the watershed.

Natural background pollutants include those that occur naturally as a result of native soils, and vegetation, wildlife, or ground water. Natural background pollutants do not include legacy pollutants from earlier activity on your site, or pollutants in run-on from neighboring sources that are not naturally occurring. However, you may be eligible to discontinue annual monitoring for pollutants that

4 Separate storm systems do not include combined sewer systems or sanitary sewer systems. Separate storm systems include both municipal storm sewer systems (MS4s) and non-municipal separate storm sewers.

occur solely from these sources and should consult the appropriate EPA Regional Office for related guidance.

Discharges to impaired waters with an EPA-approved or established TMDL: For stormwater discharges to waters for which there is an EPA-approved or established TMDL, you are not required to monitor for the pollutant(s) for which the TMDL was written unless EPA informs you, upon examination of the applicable TMDL and its wasteload allocation, that you are subject to such a requirement consistent with the assumptions and requirements of the applicable TMDL and its wasteload allocation. EPA's notice will include specifications on monitoring parameters and frequency. Permittees must consult the appropriate EPA Regional Office for guidance regarding required monitoring under this Part.

6.2.4.2 Exception for Inactive and Unstaffed Sites. The requirement for impaired waters monitoring does not apply at a facility that is inactive and unstaffed, as long as there are no industrial materials or activities exposed to stormwater. To invoke this exception, you must do the following:

- Maintain a statement with your SWPPP stating that the site is inactive and unstaffed, and that there are no industrial materials or activities exposed to stormwater in accordance with the substantive requirements in 40 CFR 122.26(g) and sign and certify the statement in accordance with Appendix B, Subsection 11.
- If circumstances change and industrial materials or activities become exposed to stormwater or your facility becomes active and/or staffed, this exception no longer applies and you must immediately begin complying with the applicable impaired waters monitoring requirements under Part 6.2 as if you were in your first year of permit coverage. You must indicate in a "Change NOI" form per Part 7.4 that your facility has materials or activities exposed to stormwater or has become active and/or staffed.
- If you are not qualified for this exception at the time you are authorized under this permit, but during the permit term you become qualified because your facility is inactive and unstaffed, and there are no industrial materials or activities that are exposed to stormwater, then you must notify EPA of this change on your NOI form. You may discontinue impaired waters monitoring once you have notified EPA, and prepared and signed the certification statement described above concerning your facility's qualification for this special exception.

Note: This exception has different requirements for Sectors G, H, and J (see Part 8).

6.2.5 Additional Monitoring Required by EPA.

EPA may notify you of additional discharge monitoring requirements that EPA determines are necessary to meet the permit's effluent limitations. Any such notice will briefly state the reasons for the monitoring, locations, and parameters to be monitored, frequency and period of monitoring, sample types, and reporting requirements.

7. Reporting and Recordkeeping.

7.1 Electronic Reporting Requirement.

You must submit all NOIs, NOTs, NOEs, Annual Reports, Discharge Monitoring Reports (DMRs), and other reporting information as appropriate electronically, unless you have received a waiver from your EPA Regional Office based on one of the following conditions:

- If your 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
- If you have limitations regarding available computer access or computer capability.

Waivers are only granted for a one-time use for a single information submittal, i.e., an initial waiver does not apply for the entire term of the permit. If you need to submit information on paper after your first waiver, you must apply for a new waiver. However, waivers may be extended on a case-by-case basis by the EPA Regional Office.

If you wish to obtain a waiver from submitting a report electronically, you must submit a request to your EPA Regional Office. EPA Regional Office contact information can be found in Part 7.9.1 of this permit. In that request you must document which exemption you meet, provide evidence supporting any claims, and a copy of your completed NOI form. A waiver may only be considered granted once you receive written confirmation from EPA or its authorized representative.

7.2 Submitting Information to EPA.

Most information required to be submitted by this permit shall be submitted via EPA's electronic NPDES eReporting tool (NeT), unless the permit states otherwise or unless a waiver has been granted per Part 7.1. NeT allows you to both prepare and submit required information using specific forms, found in the permit's appendices. To access NeT, go to http://water.epa.gov/polwaste/npdes/stormwater/Stormwater-eNOI-System-for-EPAs-MultiSector-General-Permit.cfm.

Information required to be submitted to EPA via NeT:

- Notice of Intent (Part 1.2);
- No Exposure Certification (Part 1.4);
- Notice of Termination (Part 1.3); and
- Annual Report (Part 7.5).

Note: Discharge Monitoring Reports (see Part 7.4) are required to be submitted using EPA's NetDMR system, available at www.epa.gov/netdmr.

If you are given a waiver by the EPA Regional Office to submit information in paper form, you must utilize the required forms found in the Appendices.

Information required to be submitted to an EPA Regional Office at the address in Part 7.9.1:

- New Dischargers and New Sources to Water Quality-Impaired Waters (Part 1.1.4.8);

- Exceedance Report for Numeric Effluent Limitations (Part 7.6); and
- Additional Reporting (Part 7.7)

7.3 Additional SWPPP Information Required in Your NOI.

If you did not provide a SWPPP URL in your NOI per Part 5.4.1, your NOI must include the additional SWPPP information as follows:

- Onsite industrial activities exposed to stormwater, including potential spill and leak areas (see Parts 5.2.3.1, 5.2.3.3 and 5.2.3.5);
- Pollutants or pollutant constituents associated with each industrial activity exposed to stormwater that could be discharged in stormwater and/or any authorized non-stormwater discharges listed in Part 1.1.3 (see Part 5.2.3.2);
- Stormwater control measures you employ to comply with the non-numeric technology-based effluent limits required in Part 2.1.2 and Part 8, and any other measures taken to comply with the requirements in Part 2.2 Water Quality - Based Effluent Limitations (see Part 5.2.4). If you use polymers and/or other chemical treatments as part of your controls, you must identify the polymers and/or chemicals used and the purpose; and
- Schedule for good housekeeping and maintenance (see Part 5.2.5.1) and schedule for all inspections required in Part 3 (see Part 5.2.5.2).

7.4 Reporting Monitoring Data to EPA.

All monitoring data collected pursuant to Part 6.2 must be submitted to EPA using EPA's NetDMR system (available at www.epa.gov/netdmr) (unless a waiver from electronic reporting has been granted, in which case you may submit a paper DMR form) no later than 30 days after you have received your complete laboratory results for all monitoring outfalls for the reporting period. Your monitoring requirements (i.e., parameters required to be monitored and sample frequency) will be prepopulated on your electronic Discharge Monitoring Report (DMR) form based on the information you reported on your NOI form (through the NDPES eReporting tool (NeT)). Accordingly, the following changes to your monitoring frequency must be reported to EPA through the submittal of a "Change NOI" form in NeT, which will trigger changes to your monitoring requirements in NetDMR:

- All benchmark monitoring requirements have been fulfilled for the permit term;
- All impaired waters monitoring requirements have been fulfilled for the permit term;
- Benchmark and/or impaired monitoring requirements no longer apply because your facility is inactive and unstaffed;
- Benchmark and/or impaired monitoring requirements now apply because your facility has changed from inactive and unstaffed to active and staffed;
- For Sector G2 only: Discharges from waste rock and overburden piles have exceeded benchmark values;
- A numeric effluent limitation guideline has been exceeded;
- A numeric effluent limitation guideline exceedance is back in compliance.

Once monitoring requirements have been completely fulfilled, you are no longer required to report monitoring results using NetDMR. If you have only partially fulfilled your benchmark monitoring and/or impaired waters monitoring requirements (e.g., your four

quarterly average is below the benchmark for some, but not all, parameters; you did not detect some, but not all, impairment pollutants), you must continue to use NetDMR to report your results, but you must report a "no data" or "NODI" code for any monitoring parameters that have been fulfilled.

If you have received a waiver per Part 7.1, paper reporting forms must be submitted by the same deadline.

See Part 9 for specific reporting requirements applicable to individual states or tribes.

For benchmark monitoring, note that you are required to submit sampling results to EPA no later than 30 days after receiving your complete laboratory results for all monitored outfalls for each quarter that you are required to collect benchmark samples, per Part 6.2.1.2. If you collect samples during multiple storm events in a single quarter (e.g., due to adverse weather conditions, climates with irregular stormwater runoff, or areas subject to snow), you are required to submit all sampling results for each storm event to EPA within 30 days of receiving all laboratory results for the event. Or, for any of your monitored outfalls that did not have a discharge within the reporting period, using NetDMR you must report using a "no data" or "NODI" code for that outfall no later than 30 days after the end of the reporting period.

7.5 Annual Report.

You must submit an Annual Report to EPA electronically, per Part 7.2, by January 30th for each year of permit coverage containing information generated from the past calendar year. You must include the following information:

- A summary of your past year's routine facility inspection documentation required (Part 3.1.2). In addition, if you are an operator of an airport facility (Sector S) that is subject to the airport effluent limitations guidelines, and are complying with the Part 8.S.8.1 effluent limitation through the use of non-urea-containing deicers, provide a statement certifying that you do not use pavement deicers containing urea. (Note: Operators of airport facilities that are complying with Part 8.S.8.1 by meeting the numeric effluent limitation for ammonia do not need to include this statement.)
- A summary of your past year's quarterly visual assessment documentation (see Part 3.2.2 of the permit);
- For any four-sample (minimum) average benchmark monitoring exceedance, if after reviewing the selection, design, installation, and implementation of your control measures and considering whether any modifications are necessary to meet the effluent limits in the permit, you determine that no further pollutant reductions are technologically available and economically practicable and achievable in light of best industry practice, your rationale for why you believe no further reductions are achievable (see Part 6.2.1.2 of the permit); and
- A summary of your past year's corrective action documentation (see Part 4.4). If corrective action is not yet completed at the time of submission of your annual report, you must describe the status of any outstanding corrective action(s). Also describe any incidents of noncompliance in the past year or currently ongoing, or if none, provide a statement that you are in compliance with the permit.

Your Annual Report must also include a statement, signed and certified in accordance with Appendix B, Subsection 11.

7.6 Exceedance Report for Numeric Effluent Limitations.

If follow-up monitoring per Part 6.2.2.3 exceeds a numeric effluent limit, you must submit an Exceedance Report to EPA no later than 30 days after you have received your laboratory results. Your report must include the following:

- NPDES ID;
- Facility name, physical address and location;
- Name of receiving water;
- Monitoring data from this and the preceding monitoring event(s);
- An explanation of the situation, including what you have done and intend to do (should your corrective actions not yet be complete) to correct the violation;
- An appropriate contact name and phone number.

Send the Exceedance Report to the appropriate EPA Regional Office listed in Part 7.9.1, and report the monitoring data through NetDMR

7.7 Additional Reporting.

In addition to the reporting requirements stipulated in Part 7, you are also subject to the standard permit reporting provisions of Appendix B, Subsection 12.

You must submit the following reports to the appropriate EPA Regional Office listed in Part 7.9.1, as applicable. If you discharge through an MS4, you must also submit these reports to the MS4 operator (identified pursuant to Part 5.2.2).

- 24-hour reporting (see Appendix B, Subsection 12.F) – You must report any noncompliance which may endanger health or the environment. Any information must be provided orally within 24 hours from the time you become aware of the circumstances;
- 5-day follow-up reporting to the 24 hour reporting (see Appendix B, Subsection 12.F) – A written submission must also be provided within five days of the time you become aware of the circumstances;
- Reportable quantity spills (see Part 2.1.2.4) – You must provide notification, as required under Part 2.1.2.4, as soon as you have knowledge of a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity;
- Planned changes (see Appendix B, Subsection 12.A) – You must give notice to EPA promptly, no fewer than 30 days prior to making any planned physical alterations or additions to the permitted facility that qualify the facility as a new source or that could significantly change the nature or significantly increase the quantity of pollutants discharged;
- Anticipated noncompliance (see Appendix B, Subsection 12.B) – You must give advance notice to EPA of any planned changes in the permitted facility or activity which you anticipate will result in noncompliance with permit requirements;

- Compliance schedules (see Appendix B, Subsection 12.F) – Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than 14 days following each schedule date;
- Other noncompliance (see Appendix B, Subsection 12.G) – You must report all instances of noncompliance not reported in your annual report, compliance schedule report, or 24-hour report at the time monitoring reports are submitted; and
- Other information (see Appendix B, Subsection 12.H) – You must promptly submit facts or information if you become aware that you failed to submit relevant facts in your NOI, or that you submitted incorrect information in your NOI or in any report.

7.8 Recordkeeping.

You must retain copies of your SWPPP (including any modifications made during the term of this permit), additional documentation requirements pursuant to Part 5.5 (including documentation related to corrective actions taken pursuant to Part 4), all reports and certifications required by this permit, monitoring data, and records of all data used to complete the NOI to be covered by this permit, for a period of at least three years from the date that your coverage under this permit expires or is terminated.

7.9 Addresses for Reports.

7.9.1 EPA Addresses.

7.9.1.1 Region 1: Connecticut, Massachusetts, and New Hampshire, Rhode Island, Vermont.

U.S. EPA Region 1
Office of Ecosystem Protection
Stormwater and Construction Permits Section
5 Post Office Square, Suite 100
(OEP 06-1)
Boston, MA 02109-3912

7.9.1.2 Region 2: New Jersey, New York, Puerto Rico, and Virgin Islands.

For Puerto Rico and the Virgin Islands

U.S. EPA Region 2
Caribbean Environmental Protection Division
NPDES Stormwater Program
City View Plaza II – Suite 7000
48 Rd. 165 Km 1.2
Guaynabo, PR 00968-8069

For New Jersey and New York:

(Coverage not available under this permit.)
U.S. EPA Region 2
NPDES Stormwater Program
290 Broadway, 24th Floor
New York, NY 10007-1866

7.9.1.3 Region 3: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.

U.S. EPA Region 3
Office of NPDES Permits and Enforcement
NPDES Permits Branch, Mailcode 3WP41
1650 Arch Street
Philadelphia, PA 19103

7.9.1.4 Region 4: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

(Coverage not available under this permit.)

U.S. EPA Region 4
Water Protection Division
NPDES Stormwater Program
Atlanta Federal Center
61 Forsyth Street SW
Atlanta, GA 30303-3104

7.9.1.5 Region 5: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

U.S. EPA Region 5
NPDES Program Branch
77 W. Jackson Blvd.
Mail Code WN16J
Chicago, IL 60604-3507

7.9.1.6 Region 6: Arkansas, Louisiana, Oklahoma, Texas, and New Mexico (except see Region 9 for Navajo lands, and see Region 8 for Ute Mountain Reservation lands).

U.S. EPA Region 6
NPDES Stormwater Program (WQ-PP)
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

7.9.1.7 Region 7: Iowa, Kansas, Missouri, Nebraska.

U.S. EPA Region 7
NPDES Stormwater Program
11201 Renner Blvd
Lenexa, KS 66219

7.9.1.8 Region 8: Colorado, Montana, North Dakota, South Dakota, Wyoming, Utah (except see Region 9 for Goshute Reservation and Navajo Reservation lands), the Ute Mountain Reservation in New Mexico, and the Pine Ridge Reservation in Nebraska.

EPA Region 8 Storm Water Program
Mailcode: 8P-W-WW
1595 Wynkoop Street
Denver, CO 80202-1129

7.9.1.9 Region 9: Arizona, California, Hawaii, Nevada, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Goshute Reservation in Utah

and Nevada, the Navajo Reservation in Utah, New Mexico, and Arizona, the Duck Valley Reservation in Idaho, Fort McDermitt Reservation in Oregon.

U.S. EPA Region 9
Water Division
NPDES Stormwater Program (WTR-2-3)
75 Hawthorne Street
San Francisco, CA 94105-3901

7.9.1.10 Region 10: Alaska, Idaho, Oregon (except see Region 9 for Fort McDermitt Reservation), Washington.

U.S. EPA Region 10
NPDES Stormwater Program
1200 6th Avenue (OWW-191)
Seattle, WA 98101-3140

7.9.2 State and Tribal Addresses.

See Part 9 (states and tribes) for the addresses of applicable states or tribes that require submission of information to their agencies.

Part 8 – Sector-Specific Requirements for Industrial Activity

You must comply with the requirements applicable to your industrial sector(s) in this Part, in addition to the requirements applicable to all facilities in Parts 1 through 7 and the appendices to the permit.

Subpart A – Sector A – Timber Products.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.A.1 Covered Stormwater Discharges.

The requirements in Subpart A apply to stormwater discharges associated with industrial activity from Timber Products facilities as identified by the SIC Codes specified under Sector A in Table D-1 of Appendix D of the permit.

8.A.2 Limitations on Coverage.

8.A.2.1 ***Prohibition of Discharges.*** (See also Part 1.1.4) Not covered by this permit: stormwater discharges from areas where there may be contact with the chemical formulations sprayed to provide surface protection. These discharges must be covered by a separate NPDES permit.

8.A.2.2 ***Authorized Non-Stormwater Discharges.*** (See also Part 1.1.3) Also authorized by this permit, provided the non-stormwater component of the discharge is in compliance with the requirements in Part 2.1.2 (Non-Numeric Effluent Limits): discharges from the spray down of lumber and wood product storage yards where no chemical additives are used in the spray-down waters and no chemicals are applied to the wood during storage.

8.A.3 Additional Technology-Based Effluent Limits.

8.A.3.1 ***Good Housekeeping***. (See also Part 2.1.2.2) In areas where storage, loading and unloading, and material handling occur, perform good housekeeping to minimize the discharge of wood debris, leachate generated from decaying wood materials, and the generation of dust.

8.A.4 Additional SWPPP Requirements.

8.A.4.1 ***Drainage Area Site Map.*** (See also Part 5.2.2) Document in your SWPPP where any of the following may be exposed to precipitation or surface runoff: processing areas, treatment chemical storage areas, treated wood and residue storage areas, wet decking areas, dry decking areas, untreated wood and residue storage areas, and treatment equipment storage areas.

8.A.4.2 ***Inventory of Exposed Materials.*** (See also Part 5.2.3.2) Where such information exists, if your facility has used chlorophenolic, creosote, or chromium-copper-arsenic formulations for wood surface protection or preserving, document in your SWPPP the following: areas where contaminated soils, treatment equipment, and stored materials still remain and the management practices employed to minimize the contact of these materials with stormwater runoff.

8.A.4.3 ***Description of Stormwater Management Controls.*** (See also Part 5.2.4) Document measures implemented to address the following activities and sources: log, lumber, and wood product storage areas; residue storage areas; loading and unloading areas;

material handling areas; chemical storage areas; and equipment and vehicle maintenance, storage, and repair areas. If your facility performs wood surface protection and preservation activities, address the specific control measures, including any BMPs, for these activities.

8.A.5 Additional Inspection Requirements. (See also Part 3.1)

If your facility performs wood surface protection and preservation activities, inspect processing areas, transport areas, and treated wood storage areas monthly to assess the usefulness of practices to minimize the deposit of treatment chemicals on unprotected soils and in areas that will come in contact with stormwater discharges.

8.A.6 Sector-Specific Benchmarks. (See also Part 6)

Table 8.A-1 identifies benchmarks that apply to the specific subsectors of Sector A. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Table 8.A-1

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Subsector A1. General Sawmills and Planing Mills (SIC 2421)	Chemical Oxygen Demand (COD)	120.0 mg/L
	Total Suspended Solids (TSS)	100 mg/L
	Total Zinc (freshwater)[2] Total Zinc (saltwater)[1]	Hardness Dependent 0.09 mg/L
Subsector A2. Wood Preserving (SIC 2491)	Total Arsenic (freshwater) Total Arsenic (saltwater)[1]	0.15 mg/L 0.069 mg/L
	Total Copper (freshwater)[2] Total Copper (saltwater)[1]	Hardness Dependent 0.0048 mg/L
Subsector A3. Log Storage and Handling (SIC 2411)	Total Suspended Solids (TSS)	100 mg/L
Subsector A4. Hardwood Dimension and Flooring Mills; Special Products Sawmills, not elsewhere classified; Millwork, Veneer, Plywood, and Structural Wood; Wood Pallets and Skids; Wood Containers, not elsewhere classified; Wood Buildings and Mobile Homes; Reconstituted Wood Products; and Wood Products Facilities not elsewhere classified (SIC 2426, 2429, 2431-2439 (except 2434), 2441, 2448, 2449, 2451, 2452, 2493, and 2499)	Chemical Oxygen Demand (COD)	120.0 mg/L
	Total Suspended Solids (TSS)	100.0 mg/L

[1]Saltwater benchmark values apply to stormwater discharges into saline waters where indicated.
[2] The freshwater benchmark values of some metals are dependent on water hardness. For these parameters, permittees must determine the hardness of the receiving water (see Appendix J, "Calculating Hardness in Receiving Waters for Hardness Dependent Metals," for methodology), in accordance with Part 6.2.1.1, to identify the applicable 'hardness range' for determining their benchmark value applicable to their facility. Hardness Dependent Benchmarks follow in the table below:

Freshwater Hardness Range	**Copper** (mg/L)	**Zinc** (mg/L)
0-24.99 mg/L	0.0038	0.04
25-49.99 mg/L	0.0056	0.05
50-74.99 mg/L	0.0090	0.08
75-99.99 mg/L	0.0123	0.11
100-124.99 mg/L	0.0156	0.13
125-149.99 mg/L	0.0189	0.16
150-174.99 mg/L	0.0221	0.18
175-199.99 mg/L	0.0253	0.20
200-224.99 mg/L	0.0285	0.23
225-249.99 mg/L	0.0316	0.25
250+ mg/L	0.0332	0.26

8.A.7 Effluent Limitations Based on Effluent Limitations Guidelines. (See also Part 6.2.2)

Table 8.A-2 identifies effluent limits that apply to the industrial activities described below. Compliance with these effluent limits is to be determined based on discharges from these industrial activities independent of commingling with any other waste streams that may be covered under this permit.

Table 8.A-2[1]

Industrial Activity	**Parameter**	**Effluent Limitation**
Discharges resulting from spray down or intentional wetting of logs at wet deck storage areas	pH	6.0 - 9.0 s.u
	Debris (woody material such as bark, twigs, branches, heartwood, or sapwood)	No discharge of debris that will not pass through a 2.54-cm (1-in.) diameter round opening

[1] Monitor annually.

8.A.7.1 ***Credit for Pollutants in Intake Water.*** For discharges that are comprised solely of water drawn from the same body of water into which the discharges flow and that exceed an applicable effluent limitation, you may be eligible for a credit to the extent necessary to meet the limitation. To obtain this credit, you must show that your discharge would meet the limitation in the absence of the pollutant(s) in the intake water by demonstrating that the control measures you use to meet the limitation would, if properly installed and operated, meet the limitations for the pollutant (i.e., the pollutant level in your discharge is in exceedance of the limitation due to the pollutant concentration in the source or intake water). You must consult the appropriate EPA Regional Office for guidance in seeking a pollutant credit under this Part. EPA will notify you whether you are eligible for the credit, and, if so, provide the scope of such credit.

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart B – Sector B – Paper and Allied Products.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.B.1 Covered Stormwater Discharges.

The requirements in Subpart B apply to stormwater discharges associated with industrial activity from Paper and Allied Products Manufacturing facilities, as identified by the SIC Codes specified under Sector B in Table D-1 of Appendix D of the permit.

8.B.2 Sector-Specific Benchmarks. (See also Part 6)

Table 8.B-1 identifies benchmarks that apply to the specific subsectors of Sector B. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Table 8.B-1.

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Subsector B1. Paperboard Mills (SIC Code 2631)	Chemical Oxygen Demand (COD)	120 mg/L

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart C – Sector C – Chemical and Allied Products Manufacturing, and Refining.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.C.1 Covered Stormwater Discharges.

The requirements in Subpart C apply to stormwater discharges associated with industrial activity from Chemical and Allied Products Manufacturing, and Refining facilities, as identified by the SIC Codes specified under Sector C in Table D-1 of Appendix D of the permit.

8.C.2 Limitations on Coverage.

8.C.2.1 ***Prohibition of Non-Stormwater Discharges.*** (See also Part 1.1.4) The following are not covered by this permit: non-stormwater discharges containing inks, paints, or substances (hazardous, nonhazardous, etc.) resulting from an onsite spill, including materials collected in drip pans; wash water from material handling and processing areas; and wash water from drum, tank or container rinsing and cleaning. (EPA includes this prohibited non-stormwater discharge here solely as a helpful reminder to the operator that the only non-stormwater discharges authorized by this permit are at Part 1.1.3.)

8.C.3 Sector-Specific Benchmarks. (See also Part 6)

Table 8.C-1 identifies benchmarks that apply to the specific subsectors of Sector C. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Table 8.C-1.		
Subsector (You may be subject to requirements for more than one sector/subsector)	**Parameter**	**Benchmark Monitoring Concentration**
Subsector C1. Agricultural Chemicals (SIC 2873-2879)	Nitrate plus Nitrite Nitrogen	0.68 mg/L
	Total Lead (freshwater)[2] Total Lead (saltwater)[1]	Hardness Dependent 0.21 mg/L
	Total Iron	1.0 mg/L
	Total Zinc (freshwater)[2] Total Zinc (saltwater)[1]	Hardness Dependent 0.09 mg/L
	Phosphorus	2.0 mg/L
Subsector C2. Industrial Inorganic Chemicals (SIC 2812-2819)	Total Aluminum	0.75 mg/L
	Total Iron	1.0 mg/L
	Nitrate plus Nitrite Nitrogen	0.68 mg/L
Subsector C3. Soaps, Detergents, Cosmetics, and Perfumes (SIC 2841-2844)	Nitrate plus Nitrite Nitrogen	0.68 mg/L
	Total Zinc (freshwater)[2] Total Zinc (saltwater)[1]	Hardness Dependent 0.09 mg/L
Subsector C4. Plastics, Synthetics, and Resins (SIC 2821-2824)	Total Zinc (freshwater)[2] Total Zinc (saltwater)[1]	Hardness Dependent 0.09 mg/L

[1]Saltwater benchmark values apply to stormwater discharges into saline waters where indicated.
[2]The freshwater benchmark values of some metals are dependent on water hardness. For these parameters, permittees must determine the hardness of the receiving water (see Appendix J, "Calculating Hardness in Receiving Waters for Hardness Dependent Metals," for methodology), in accordance with Part 6.2.1.1, to identify the applicable 'hardness range' for determining their benchmark value applicable to their facility. Hardness Dependent Benchmarks follow in the table below:

Freshwater Hardness Range	**Lead** (mg/L)	**Zinc** (mg/L)
0-24.99 mg/L	0.014	0.04
25-49.99 mg/L	0.023	0.05
50-74.99 mg/L	0.045	0.08
75-99.99 mg/L	0.069	0.11
100-124.99 mg/L	0.095	0.13
125-149.99 mg/L	0.122	0.16
150-174.99 mg/L	0.151	0.18
175-199.99 mg/L	0.182	0.20
200-224.99 mg/L	0.213	0.23
225-249.99 mg/L	0.246	0.25
250+ mg/L	0.262	0.26

8.C.4 Effluent Limitations Based on Effluent Limitations Guidelines. (See also Part 6.2.2.1)

Table 8.C-2 identifies effluent limits that apply to the industrial activities described below. Compliance with these effluent limits is to be determined based on discharges from these industrial activities independent of commingling with any other waste streams that may be covered under this permit.

Table 8.C-2[1]		
Industrial Activity	**Parameter**	**Effluent Limitation**
Runoff from phosphate fertilizer manufacturing facilities that comes into contact with any raw materials, finished product, by-products or waste products (SIC 2874)	Total Phosphorus (as P)	105.0 mg/L, daily maximum
		35 mg/L, 30-day avg.
	Fluoride	75.0 mg/L, daily maximum
		25.0 mg/L, 30-day avg.

[1] Monitor annually.

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart D – Sector D – Asphalt Paving and Roofing Materials and Lubricant Manufacturing.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.D.1 Covered Stormwater Discharges.

The requirements in Subpart D apply to stormwater discharges associated with industrial activity from Asphalt Paving and Roofing Materials and Lubricant Manufacturing facilities, as identified by the SIC Codes specified under Sector D in Table D-1 of Appendix D of the permit.

8.D.2 Limitations on Coverage.

The following stormwater discharges associated with industrial activity are not authorized by this permit (see also Part 1.1.4):

8.D.2.1 ***Stormwater discharges from petroleum refining facilities, including those that manufacture asphalt or asphalt products, that are subject to nationally established effluent limitation guidelines found in 40 CFR Part 419 (Petroleum Refining).***

The following stormwater discharges associated with industrial activity are not authorized under Sector D:

8.D.2.2 ***Stormwater discharges from oil recycling facilities, which are covered under Sector N*** (see Part 8.N); and

8.D.2.3 Stormwater discharges associated with fats and oils rendering, which are covered under Sector U (see Part 8.U).

8.D.3 Sector-Specific Benchmarks. (See also Part 6)

Table 8.D-1 identifies benchmarks that apply to the specific subsectors of Sector D. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Table 8.D-1.

Subsector	Parameter	Benchmark Monitoring Concentration
Subsector D1. Asphalt Paving and Roofing Materials (SIC 2951, 2952)	Total Suspended Solids (TSS)	100 mg/L

8.D.4 Effluent Limitations Based on Effluent Limitations Guidelines. (See also Part 6.2.2.1)

Table 8.D-2 identifies effluent limitations that apply to the industrial activities described below. Compliance with these effluent limitations is to be determined based on discharges from these industrial activities independent of commingling with any other waste streams that may be covered under this permit.

Table 8.D-2[1]		
Industrial Activity	**Parameter**	**Effluent Limitation**
Discharges from asphalt emulsion facilities.	Total Suspended Solids (TSS)	23.0 mg/L, daily maximum 15.0 mg/L, 30-day avg.
	pH	6.0 - 9.0 s.u.
	Oil and Grease	15.0 mg/L, daily maximum
		10 mg/L, 30-day avg.

[1]Monitor annually.

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart E – Sector E – Glass, Clay, Cement, Concrete, and Gypsum Products.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.E.1 Covered Stormwater Discharges.

The requirements in Subpart E apply to stormwater discharges associated with industrial activity from Glass, Clay, Cement, Concrete, and Gypsum Products facilities, as identified by the SIC Codes specified under Sector E in Table D-1 of Appendix D of the permit.

8.E.2 Additional Technology-Based Effluent Limits.

8.E.2.1 ***Good Housekeeping Measures***. (See also Part 2.1.2.2) As part of your good housekeeping program, prevent or minimize the discharge of spilled cement, aggregate (including sand or gravel), kiln dust, fly ash, settled dust, or other significant material in stormwater from paved portions of the site that are exposed to stormwater. Sweep or vacuum paved surfaces of the site that are exposed to stormwater at regular intervals or use other equivalent measures (e.g., wash down the area and collect and/or treat and properly dispose of the washdown water) to minimize the potential discharge of these materials in stormwater. Indicate in your SWPPP the frequency of sweeping, vacuuming or other equivalent measures. Determine the frequency based on the amount of industrial activity occurring in the area and the frequency of precipitation, but it must be performed at least once a week in areas where cement, aggregate, kiln dust, fly ash or settled dust are being handled or processed and may be discharged in stormwater. You must also prevent the exposure of fine granular solids (e.g., cement, fly ash, kiln dust) to stormwater, where practicable, by storing these materials in enclosed silos, hoppers, buildings or under other covering.

8.E.3 Additional SWPPP Requirements.

8.E.3.1 ***Drainage Area Site Map.*** (See also Part 5.2.2) Document in the SWPPP the locations of the following, as applicable: bag house or other dust control device; recycle/ sedimentation pond, clarifier, or other device used for the treatment of process wastewater; and the areas that drain to the treatment device.

8.E.3.2 ***Discharge Testing.*** (See also Part 5.2.3.4) For facilities producing ready-mix concrete, concrete block, brick, or similar products, include in the non-stormwater discharge testing a description of measures that ensure that process wastewaters resulting from washing trucks, mixers, transport buckets, forms, or other equipment are discharged in accordance with NPDES wastewater permit requirements or are recycled.

8.E.4 Sector-Specific Benchmarks. (See also Part 6)

Table 8.E-1 identifies benchmarks that apply to the specific subsectors of Sector E. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Table 8.E-1.		
Subsector (You may be subject to requirements for more than one sector/subsector)	**Parameter**	**Benchmark Monitoring Concentration**
Subsector E1. Clay Product Manufacturers (SIC 3251-3259, 3261-3269)	Total Aluminum	0.75 mg/L
Subsector E2. Concrete and Gypsum Product Manufacturers (SIC 3271-3275)	Total Suspended Solids (TSS)	100 mg/L
	Total Iron	1.0 mg/L

8.E.5 Effluent Limitations Based on Effluent Limitations Guidelines. (See also Part 6.2.2.1)

Table 8.E-2 identifies effluent limits that apply to the industrial activities described below. Compliance with these limits is to be determined based on discharges from these industrial activities independent of commingling with any other waste streams that may be covered under this permit.

Table 8.E-2[1]		
Industrial Activity	**Parameter**	**Effluent Limitation**
Discharges from material storage piles at cement manufacturing facilities (SIC 3241)	Total Suspended Solids (TSS)	50 mg/L, daily maximum[2]
	pH	6.0 - 9.0 s.u.[2]

[1]Monitor annually.
[2]Any untreated overflow from facilities designed, constructed and operated to treat the volume of runoff from materials storage piles which is associated with a 10-year, 24-hour rainfall event shall not be subject to the pH and TSS limitations (40 CFR 411.32(b)).

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart F – Sector F – Primary Metals.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.F.1 Covered Stormwater Discharges.

The requirements in Subpart F apply to stormwater discharges associated with industrial activity from Primary Metals facilities, as identified by the SIC Codes specified under Sector F in Table D-1 of Appendix D of the permit.

8.F.2 Additional Technology-Based Effluent Limits.

8.F.2.1 ***Good Housekeeping Measures.*** (See also Part 2.1.2.2) As part of your good housekeeping program, you must implement a cleaning and maintenance program for all impervious areas of the facility where particulate matter, dust or debris may accumulate to minimize the discharge of pollutants in stormwater. The cleaning and maintenance program must encompass, as appropriate, areas where material loading and unloading, storage, handling and processing occur.

Stabilize unpaved areas using vegetation or paving where there is vehicle traffic or where material loading and unloading, storage, handling and processing occurs, unless feasible.

For paved areas of the facility where particulate matter, dust or debris may accumulate, to minimize the discharge of pollutants in stormwater, implement control measures such as the following, where determined to be feasible (list not exclusive): sweeping or vacuuming at regular intervals; and washing down the area and collecting and/or treating and properly disposing of the washdown water. For unstabilized areas or for stabilized areas where sweeping, vacuuming, or washing down is not possible, to minimize the discharge of particulate matter, dust, or debris or other pollutants in stormwater, implement stormwater management devices such as the following, where determined to be feasible (list not exclusive): sediment traps, vegetative buffer strips, filter fabric fence, sediment filtering boom, gravel outlet protection, and other equivalent measures that effectively trap or remove sediment.

8.F.3 Additional SWPPP Requirements.

8.F.3.1 ***Drainage Area Site Map.*** (See also Part 5.2.2) Identify in the SWPPP where any of the following activities may be exposed to precipitation or surface runoff: storage or disposal of wastes such as spent solvents and baths, sand, slag and dross; liquid storage tanks and drums; processing areas including pollution control equipment (e.g., baghouses); and storage areas of raw material such as coal, coke, scrap, sand, fluxes, refractories or metal in any form. In addition, indicate where an accumulation of significant amounts of particulate matter could occur from such sources as furnace or oven emissions, losses from coal and coke handling operations, etc., and could result in a discharge of pollutants in stormwater.

8.F.3.2 ***Inventory of Exposed Material.*** (See also Part 5.2.3) Include in the inventory of materials handled at the site that potentially may be exposed to precipitation or runoff areas where there is the potential for deposition of particulate matter from process air emissions or losses during material-handling activities.

8.F.4 Additional Inspection Requirements. (See also Part 3.1)

As part of conducting your routine facility inspections at least quarterly (Part 3.1), address all potential sources of pollutants, including (if applicable) air pollution control equipment (e.g., baghouses, electrostatic precipitators, scrubbers, cyclones), for any signs of degradation (e.g., leaks, corrosion, improper operation) that could limit their efficiency and lead to excessive emissions. Consider monitoring air flow at inlets and outlets (or use equivalent measures) to check for leaks (e.g., particulate deposition) or blockage in ducts. Also inspect all process and material handling equipment (e.g., conveyors, cranes and vehicles) for leaks, drips, or the potential loss of material; and material storage areas (e.g., piles, bins, or hoppers for storing coke, coal, scrap or slag, as well as chemicals stored in tanks and drums) for signs of material losses due to wind or stormwater runoff.

8.F.5 Sector-Specific Benchmarks. (See also Part 6)

Table 8.F-1 identifies benchmarks that apply to the specific subsectors of Sector F. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Table 8.F-1.

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Subsector F1. Steel Works, Blast Furnaces, and Rolling and Finishing Mills (SIC 3312-3317)	Total Aluminum	0.75 mg/L
	Total Zinc (freshwater)[2] Total Zinc (saltwater)[1]	Hardness Dependent 0.09 mg/L
Subsector F2. Iron and Steel Foundries (SIC 3321-3325)	Total Aluminum	0.75 mg/L
	Total Suspended Solids (TSS)	100 mg/L
	Total Copper (freshwater)[2] Total Copper (saltwater)[1]	Hardness Dependent 0.0048 mg/L
	Total Iron	1.0 mg/L
	Total Zinc (freshwater)[2] Total Zinc (saltwater)[1]	Hardness Dependent 0.09 mg/L
Subsector F3. Rolling, Drawing, and Extruding of Nonferrous Metals (SIC 3351-3357)	Total Copper (freshwater)[2] Total Copper (saltwater)[1]	Hardness Dependent 0.0048 mg/L
	Total Zinc (freshwater)[2] Total Zinc (saltwater)[1]	Hardness Dependent 0.09 mg/L
Subsector F4. Nonferrous Foundries (SIC 3363-3369)	Total Copper (freshwater)[2] Total Copper (saltwater)[1]	Hardness Dependent 0.0048 mg/L
	Total Zinc (freshwater)[2] Total Zinc (saltwater)[1]	Hardness Dependent 0.09 mg/L

[1]Saltwater benchmark values apply to stormwater discharges into saline waters where indicated.

[2] The freshwater benchmark values of some metals are dependent on water hardness. For these parameters, permittees must determine the hardness of the receiving water (see Appendix J, "Calculating Hardness in Receiving Waters for Hardness Dependent Metals," for methodology), in accordance with Part 6.2.1.1, to identify the applicable 'hardness range' for determining their benchmark value applicable to their facility. Hardness Dependent Benchmarks follow in the table below:

Freshwater Hardness Range	**Copper** (mg/L)	**Zinc** (mg/L)
0-24.99 mg/L	0.0038	0.04
25-49.99 mg/L	0.0056	0.05
50-74.99 mg/L	0.0090	0.08
75-99.99 mg/L	0.0123	0.11
100-124.99 mg/L	0.0156	0.13
125-149.99 mg/L	0.0189	0.16
150-174.99 mg/L	0.0221	0.18
175-199.99 mg/L	0.0253	0.20
200-224.99 mg/L	0.0285	0.23
225-249.99 mg/L	0.0316	0.25
250+ mg/L	0.0332	0.26

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart G – Sector G – Metal Mining.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

Note: Where compliance with a requirement in a separate exploration permit, mining permit, reclamation plan, Surface Mining Control and Reclamation Act (SMCRA) requirements, etc. will result in you fully meeting any requirement in this Subpart, you are considered to have complied with the relevant requirement in this Subpart. You must include documentation in your SWPPP describing your rationale for concluding that any particular action on your part is sufficient to comply with the corresponding requirement in this Subpart.

8.G.1 Covered Stormwater Discharges.

The requirements in Subpart G apply to stormwater discharges associated with industrial activity from Metal Mining facilities, including mines abandoned on Federal lands, as identified by the SIC Codes specified under Sector G in Table D-1 of Appendix D. Coverage is required for metal mining facilities that discharge stormwater contaminated by contact with, or that has come into contact with, any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of the operation.

8.G.1.1 ***Covered Discharges from Inactive Facilities.*** All stormwater discharges.

8.G.1.2 ***Covered Discharges from Active and Temporarily Inactive Facilities.*** Only the stormwater discharges from the following areas are covered:

- Waste rock and overburden piles if composed entirely of stormwater and not combined with mine drainage;
- Topsoil piles;
- Offsite haul and access roads;
- Onsite haul and access roads constructed of waste rock, overburden or spent ore if composed entirely of stormwater and not combining with mine drainage;
- Onsite haul and access roads not constructed of waste rock, overburden or spent ore except if mine drainage is used for dust control;
- Runoff from tailings dams or dikes when not constructed of waste rock or tailings and no process fluids are present;
- Runoff from tailings dams or dikes when constructed of waste rock or tailings and no process fluids are present, if composed entirely of stormwater and not combining with mine drainage;
- Concentration building if no contact with material piles;
- Mill site if no contact with material piles;
- Office or administrative building and housing if mixed with stormwater from industrial area;
- Chemical storage area;
- Docking facility if no excessive contact with waste product that would otherwise constitute mine drainage;
- Explosive storage;
- Fuel storage;
- Vehicle and equipment maintenance area and building;
- Parking areas (if necessary);
- Power plant;

- Truck wash areas if no excessive contact with waste product that would otherwise constitute mine drainage;
- Unreclaimed, disturbed areas outside of active mining area;
- Reclaimed areas released from reclamation requirements prior to December 17, 1990;
- Partially or inadequately reclaimed areas or areas not released from reclamation requirements.

8.G.1.3 ***Covered Discharges from Earth-Disturbing Activities Conducted Prior to Active Mining Activities.*** All stormwater discharges.

8.G.1.4 ***Covered Discharges from Facilities Undergoing Reclamation***. All stormwater discharges.

8.G.2 Limitations on Coverage.

8.G.2.1 ***Prohibition of Stormwater Discharges.*** **Stormwater discharges not authorized by this permit**: discharges from active metal mining facilities that are subject to effluent limitation guidelines for the Ore Mining and Dressing Point Source Category (40 CFR Part 440).

Note: Stormwater runoff from these sources are subject to 40 CFR Part 440 if they are mixed with other discharges subject to Part 440. In this case, they are not eligible for coverage under this permit. Discharges from overburden/waste rock and overburden/waste rock-related areas are not subject to 40 CFR Part 440 unless they: (1) drain naturally (or are intentionally diverted) to a point source; and (2) combine with "mine drainage" that is otherwise regulated under the Part 440 regulations. For such sources, coverage under this permit would be available if the discharge composed entirely of stormwater does not combine with other sources of mine drainage that are not subject to 40 CFR Part 440, and meets the other eligibility criteria contained in Part 1.1 of the permit. Operators bear the initial responsibility for determining if they are eligible for coverage under this permit, or must seek coverage under another NPDES permit. EPA recommends that operators contact the relevant NPDES permit issuance authority for assistance to determine the nature and scope of the "active mining area" on a mine-by-mine basis, as well as to determine the appropriate permitting mechanism for authorizing such discharges.

8.G.2.2 ***Prohibition of Non-Stormwater Discharges***. Not authorized by this permit: adit drainage, and contaminated springs or seeps discharging from waste rock dumps that do not directly result from precipitation events (see also the standard Limitations on Coverage in Part 1.1.4). (EPA includes these prohibited non-stormwater discharges here solely as a helpful reminder to the operator that the only non-stormwater discharges authorized by this permit are at Part 1.1.3)

8.G.3 Definitions.

The following definitions are not intended to supersede the definitions of active and inactive mining facilities established by 40 CFR 122.26(b)(14)(iii).

8.G.3.1 ***Mining operations*** – For this permit, mining operations are grouped into two distinct categories, with distinct effluent limits and requirements applicable to each: a) earth-disturbing activities conducted prior to active mining activities); and b) active mining activities, which includes reclamation. "Mining operations" can occur at both inactive mining facilities and temporarily inactive mining facilities.

8.G.3.2 ***Earth-disturbing activities conducted prior to active mining activities*** – Consists of two classes of earth-disturbing (i.e., clearing, grading and excavation) activities:

a. activities performed for purposes of mine site preparation, including: cutting new rights of way (except when related to access road construction); providing access to a mine site for vehicles and equipment (except when related to access road construction); other earth disturbances associated with site preparation activities on any areas where active mining activities have not yet commenced (e.g., for heap leach pads, waste rock facilities, tailings impoundments, wastewater treatment plants); and

b. construction of staging areas to prepare for erecting structures such as to house project personnel and equipment, mill buildings, etc., and construction of access roads. Earth-disturbing activities associated with the construction of staging areas and the construction of access roads conducted prior to active mining are considered to be "construction" and have additional effluent limits in Part 8.G.4.2.

8.G.3.3 ***Active mining activities*** – Activities related to the extraction, removal or recovery, and benefication of metal ore from the earth; removal of overburden and waste rock to expose mineable minerals; and site reclamation and closure activities. All such activities occur within the "active mining area." Reclamation involves activities undertaken, in compliance with applicable mined land reclamation requirements, to return the land to an appropriate post-mining contour and land use in order to meet applicable federal and state reclamation requirements. In addition, once earth-disturbing activities conducted prior to active mining activities have ceased and all related requirements in Part 8.G.4 have been met, and a well-delineated "active mining area" has been established, all activities (including any clearing, grading, and excavation) that occur within the active mining area are "active mining activities."

8.G.3.4 ***Active mining area*** – A place where work or other activity related to the extraction, removal or recovery of metal ore is being conducted, except, with respect to surface mines, any area of land on or in which grading has been completed to return the earth to desired contour and reclamation work has begun.

Note: Earth-disturbing activities described in the definition in Part 8.G.3.2 that occur on areas outside the active mining area (e.g., for expansion of the mine into undeveloped territory) are considered "earth-disturbing conducted prior to active mining activities", and must comply with the requirements in Part 8.G.4.

8.G.3.5 ***Inactive metal mining facility*** – A site or portion of a site where metal mining and/or milling occurred in the past but there are no active mining activities occurring as defined above, and where the inactive portion is not covered by an active mining permit issued by the applicable state or federal agency. An inactive metal mining facility has an identifiable owner / operator. Sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials and sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim are not considered either active or inactive mining facilities and do not require an NPDES industrial stormwater permit.

8.G.3.6 ***Temporarily inactive metal mining facility*** – A site or portion of a site where metal mining and/or milling occurred in the past but currently are not being actively undertaken, and the facility is covered by an active mining permit issued by the applicable state or federal agency.

8.G.4 Requirements Applicable to Earth-Disturbing Activities Conducted Prior to Active Mining Activities.

Stormwater discharges from earth-disturbing activities conducted prior to active mining activities (defined in Part 8.G.3.2) are covered under this permit. For such earth-disturbing

activities, you must comply with all applicable requirements in Parts 1-9 of the MSGP except for the technology-based effluent limits in Part 8.G.5 and Part 2.1.2, the inspection requirements in Part 8.G.7 and Part 3, and the monitoring requirements in Part 8.G.8 and Part 6.

Authorized discharges from areas where earth-disturbing activities have ceased and stabilization as specified in Part 8.G.4.1.9 or 8.G.4.2.11, where appropriate, has been completed (stabilization is not required for areas where active mining activities will occur), are no longer subject to the Part 8.G.4 requirements. At such time, authorized discharges become subject to all other applicable requirements in the MSGP, including the effluent limits in Parts 2.1.2 and 8.G.5, the inspection requirements in Parts 3 and 8.G.7, and the monitoring requirements in Parts 6 and 8.G.8.

8.G.4.1 ***Technology-Based Effluent Limits Applicable to All Earth-Disturbing Activities Conducted Prior to Active Mining Activities***. The following technology-based effluent limits apply to authorized discharges from all earth-disturbing activities conducted prior to active mining activities defined in Part 8.G.3.2(a) and 8.G.3.2(b). These limits supersede the technology-based limits listed in Part 2.1.2 and Part 8.G.5 of the MSGP.

8.G.4.1.1 ***Erosion and sediment control installation requirements.***

- By the time construction activities commence, install and make operational downgradient sediment controls, unless this timeframe is infeasible. If infeasible you must install and make such controls operational as soon as practicable or as soon as site conditions permit.
- All other stormwater controls described in the SWPPP must be installed and made operational as soon as conditions on each portion of the site allows.

8.G.4.1.2 ***Erosion and sediment control maintenance requirements.*** You must:

- Ensure that all erosion and sediment controls remain in effective operating condition.
- Wherever you determine that a stormwater control needs maintenance to continue operating effectively, initiate efforts to fix the problem immediately after its discovery, and complete such work by the end of the next work day.
- When a stormwater control must be replaced or significantly repaired, complete the work within 7 days, unless infeasible. If 7 days is infeasible, you must complete the installation or repair as soon practicable.

8.G.4.1.3 ***Perimeter controls.*** You must:

- Install sediment controls along those perimeter areas of your disturbed area that will receive stormwater, except where site conditions prevent the use of such controls (in which case, maximize their installation to the extent practicable).
- Remove sediment before it accumulates to one-half of the above-ground height of any perimeter control.

8.G.4.1.4 ***Sediment track-out.*** For construction vehicles and equipment exiting the site directly onto paved roads, you must:

- Use appropriate stabilization techniques to minimize sediment track-out from vehicles and equipment prior to exit;
- Use additional controls to remove sediment from vehicle and equipment tires prior to exit, where necessary;
- Remove sediment that is tracked out onto paved roads by end of the work day.

Note: EPA recognizes that some fine grains may remain visible on the surfaces of off-site streets, other paved areas, and sidewalks even after you have implemented sediment removal practices. Such "staining" is not a violation of Part 8.G.4.1.4.

8.G.4.1.5 ***Soil or sediment stockpiles.*** You must:

- Minimize erosion of stockpiles from stormwater and wind via temporary cover, if feasible.
- Prevent up-slope stormwater flows from causing erosion of stockpiles (e.g., by diverting flows around the stockpile).
- Minimize sediment from stormwater that runs off of stockpiles, using sediment controls (e.g., a sediment barrier or downslope sediment control).

8.G.4.1.6 ***Sediment basins.*** If you intend to install a sediment basin to treat stormwater from your earth-disturbing activities, you must:

- Provide storage for either (1) the 2-year, 24-hour storm, or (2) 3,600 cubic feet per acre drained.
- Prevent erosion of (1) basin embankments using stabilization controls (e.g., erosion control blankets), and (2) the inlet and outlet points of the basin using erosion controls and velocity dissipation devices.

8.G.4.1.7 ***Minimize dust.*** You must minimize the generation of dust through the appropriate application of water or other dust suppression techniques that minimize pollutants being discharged into surface waters.

8.G.4.1.8 ***Restrictions on use of treatment chemicals.*** If you intend to use sediment treatment chemicals at your site, you are subject to the following minimum requirements:

- Use conventional erosion and sediment controls prior to and after application of chemicals;
- Select chemicals suited to soil type, and expected turbidity, pH, flow rate;
- Minimize the discharge risk from stored chemicals;
- Comply with state/local requirements;
- Use chemicals in accordance with good engineering practices and specifications of chemical supplier;
- Ensure proper training;
- Provide proper SWPPP documentation.

If you plan to use cationic treatment chemicals (as defined in Appendix A), you are ineligible for coverage under this permit, unless you notify your applicable EPA Regional Office 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 a violation of water quality standards.

8.G.4.1.9 Site stabilization requirements for earth-disturbing activities performed for purposes of mine site preparation as defined in 8.G.3.2(a) (i.e., not applicable to construction of staging areas for structures and access roads as defined in 8.G.3.2(b)). You must comply with the following stabilization requirements except where the intended function of the site accounts for such disturbed earth (e.g., the earth disturbances will become actively mined, or the controls implemented at the active mining area effectively control the disturbance)

(although you are encouraged to do so within the active mining area, where appropriate):

- *Temporary stabilization of disturbed areas.* Stabilization measures must be initiated immediately in portions of the site where earth-disturbing activities performed for purposes of mine site preparation (as defined in 8.G.3.2(a)) have temporarily ceased, but in no case more than 14 days after such activities have temporarily ceased. In arid, semi-arid, and drought-stricken areas, or in areas subject to snow or freezing conditions, where initiating perennial vegetative stabilization measures is not possible within 14 days after earth-disturbing activities performed for purposes of mine site preparation has temporarily ceased, temporary vegetative stabilization measures must be initiated as soon as practicable. Until temporary vegetative stabilization is achieved, interim measures such as erosion control blankets with an appropriate seed base and tackifiers must be employed. In areas of the site where earth-disturbing activities performed for purposes of mine site preparation have permanently ceased prior to active mining, temporary stabilization measures must be implemented to minimize mobilization of sediment or other pollutants until active mining activities commence.
- *Final stabilization of disturbed areas.* Stabilization measures must be initiated immediately where earth-disturbing activities performed for purposes of mine site preparation (as defined in 8.G.3.2(a)) have permanently ceased, but in no case more than 14 days after the earth-disturbing activities have permanently ceased. In arid, semi-arid, and drought-stricken areas, or in areas subject to snow or freezing conditions, where initiating perennial vegetative stabilization measures is not possible within 14 days after earth-disturbing activities have permanently ceased, final vegetative stabilization measures must be initiated as soon as possible. Until final stabilization is achieved, temporary stabilization measures, such as erosion control blankets with an appropriate seed base and tackifiers, must be used.

8.G.4.2 Additional Technology-Based Effluent Limits Applicable Only to the Construction of Staging Areas for Structures and Access Roads. The following technology-based effluent limits apply to authorized discharges from earth-disturbing activities associated with the construction of staging areas and the construction of access roads, as defined in Part 8.G.3.2(b). These limits supersede the technology-based limits listed in Part 2.1.2 and Part 8.G.5 of the MSGP. These limits do not apply to earth-disturbing activities performed for purposes of mine site preparation (as defined in 8.G.3.2(a)).

8.G.4.2.1 Area of disturbance. You must minimize the amount of soil exposed during construction activities.

8.G.4.2.2 Erosion and sediment control design requirements. You must:

- Design, install and maintain effective erosion and sediment controls to minimize the discharge of pollutants from construction activities. Account for the following factors in designing your erosion and sediment controls:
  - The expected amount, frequency, intensity and duration of precipitation;
  - The nature of stormwater runoff and run-on at the site, including factors such as impervious surfaces, slopes and site drainage features;
  - The range of soil particle sizes expected to be present on the site.

- Direct discharges from your stormwater controls to vegetated areas of your site to increase sediment removal and maximize stormwater infiltration, including any natural buffers, unless infeasible. Use velocity dissipation devices if necessary to prevent erosion when directing stormwater to vegetated areas.
- If any stormwater flow becomes or will be channelized at your site, you must design erosion and sediment controls to control both peak flowrates and total stormwater volume to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points.
- If you install stormwater conveyance channels, they must be designed to avoid unstabilized areas on the site and to reduce erosion, unless infeasible. In addition, you must minimize erosion of channels and their embankments, outlets, adjacent streambanks, slopes, and downstream waters during discharge conditions through the use of erosion controls and velocity dissipation devices within and along the length of any constructed stormwater conveyance channel, and at any outlet to provide a non-erosive flow velocity.

8.G.4.2.3 ***Natural Buffers.*** For any stormwater discharges from construction activities within 50 feet of a water of the U.S., you must comply with one of the following compliance alternatives:

1. Provide a 50-foot undisturbed natural buffer between construction activities and the water of the U.S.; or

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

3. If it is infeasible to provide an undisturbed natural buffer of any size, implement erosion and sediment controls that achieve a sediment load reduction that is equivalent to a 50-foot undisturbed natural buffer.

There are exceptions when buffer requirements do not apply:

- There is no stormwater discharge from construction disturbances to a water of the U.S;
- The natural buffer has already been eliminated by preexisting development disturbances;
- The disturbance is for the construction of a water-dependent structure or construction approved under a CWA section 404 permit;
- For linear construction projects, you are not required to comply with the requirements if there are site constraints provided that, to the extent feasible, you limit disturbances within 50 feet of a water of the U.S. and/or you provide supplemental erosion and sediment controls to treat stormwater discharges from any disturbances within 50 feet of a water of the U.S.

See http://water.epa.gov/polwaste/npdes/stormwater/upload/cgp2012_appendixg.pdf for guidance on complying with these alternatives.

8.G.4.2.4 ***Soil or sediment stockpiles.*** In addition to the requirements in Part 8.G.4.1.5, you must locate any piles outside of any natural buffers established under Part 8.G.4.2.3.

8.G.4.2.5 ***Sediment basins.*** In addition to the requirements in Part 8.G.4.1.6, you must locate sediment basins outside of any surface waters and any natural buffers established under Part 8.G.4.2.3, and you must utilize outlet structures that withdraw water from the surface, unless infeasible.

8.G.4.2.6 ***Native topsoil preservation.*** You must preserve native topsoil removed during clearing, grading, or excavation, unless infeasible. Store topsoil in a manner that will maximize its use in reclamation or final vegetative stabilization (e.g., by keeping the topsoil stabilized with seed or similar measures). This requirement does not apply if the intended function of the disturbed area dictates that topsoil be disturbed or removed.

8.G.4.2.7 ***Steep slopes.*** You must minimize the disturbance of steep slopes. The permit does not prevent or prohibit disturbance on steep slopes.

Depending on site conditions and needs, disturbance on steep slopes may be necessary (e.g., a road cut in mountainous terrain; for grading steep slopes prior to erecting the mine office). Where steep slope disturbances are necessary, you can minimize the disturbances to steep slopes through the implementation of a number of standard erosion and sediment control practices, such as by phasing disturbances in these areas and using stabilization practices specifically for steep grades.

8.G.4.2.8 ***Soil compaction.*** Where final vegetative stabilization will occur or where infiltration practices will be installed, you must either restrict vehicle/ equipment use in these areas to avoid soil compaction or use soil conditioning techniques to support vegetative growth. Minimizing soil compaction is not required where compacted soil is integral to the functionality of the site.

8.G.4.2.9 ***Dewatering Practices.*** You are prohibited from discharging ground water or accumulated stormwater that is removed from excavations, trenches, foundations, vaults or other similar points of accumulation, unless such waters are first effectively managed by appropriate controls (e.g., sediment basins or sediment traps, sediment socks, dewatering tanks, tube settlers, weir tanks, or filtration systems). Uncontaminated, non-turbid dewatering water can be discharged without being routed to a control.

You must also meet the following requirements for dewatering activities:

- Discharge requirements:
  - No discharging visible floating solids or foam;
  - Remove oil, grease and other pollutants from dewatering water via an oil-water separator or suitable filtration device (such as a cartridge filter);
  - Utilize vegetated upland areas of the site, to the extent feasible, to infiltrate dewatering water before discharge. In no case shall waters of the U.S. be considered part of the treatment area;
  - Implement velocity dissipation devices at all points where dewatering water is discharged;
  - Haul backwash water away for disposal or return it to the beginning of the treatment process; and

- Clean or replace the filter media used in dewatering devices when the pressure differential equals or exceeds the manufacturer's specifications.

- Treatment chemical restrictions: If you use polymers, flocculants or other chemicals to treat dewatering water, you must comply with the requirements in Parts 8.G.4.1.8.

8.G.4.2.10 ***Pollution prevention requirements.***

- *Prohibited discharges* (this non-exhaustive list of prohibited non-stormwater discharges is included here as a reminder that only the only allowable non-stormwater discharges are those enumerated in Part 1.1.3):
  - Wastewater from washout of concrete;
  - Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
  - Fuels, oils, or other pollutants used for operation and maintenance of vehicles or equipment;
  - Soaps, solvents, or detergents used in vehicle or equipment washing;
  - Toxic or hazardous substances from a spill or other release.
- *Design and location requirements:* Minimize the discharge of pollutants from pollutant sources by:
  - Minimizing exposure;
  - Using secondary containment, spill kits, or other equivalent measures;
  - Locating pollution sources away from surface waters, storm sewer inlets, and drainageways;
  - Cleaning up spills immediately (do not clean by hosing area down).
- *Pollution prevention requirements for wash waters:* 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;
- *Pollution prevention requirements for the storage, handling, and disposal of construction products, materials, and wastes:* 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 stormwater. Minimization of exposure is not required in cases where the exposure 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).

8.G.4.2.11 ***Site Stabilization requirements for the construction of staging areas for structures and access roads as defined in 8.G.3.2(b)*** (i.e., not applicable to earth-disturbing activities performed for purposes of mine site preparation as defined in 8.G.3.2(a)). You must comply with the following stabilization requirements, except where the intended function of the site accounts for such disturbed earth (e.g., the area of construction will become actively mined, or the controls implemented at the active mining area effectively control the disturbance):

- By no later than the end of the next work day after construction work in an area has stopped permanently or temporarily ("temporarily" means the land will be idle for a period of 14 days or more but earth-disturbing activities will resume in the future), immediately initiate stabilization measures;

- If using vegetative measures, by no later than 14 days after initiating stabilization:
  - Seed or plant the area, and provide temporary cover to protect the planted area;
  - Once established, vegetation must be uniform, perennial (if final stabilization), and cover at least 70% of stabilized area based on density of native vegetation.
- If using non-vegetative stabilization, by no later than 14 days after initiating stabilization:
  - Install or apply all non-vegetative measures;
  - Cover all areas of exposed soil.

  Note: For the purposes of this permit, EPA will consider any of the following types of activities to constitute the initiation of stabilization: 1. Prepping the soil for vegetative or non-vegetative stabilization; 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 area to be stabilized, but not on the entire area; and 5. Finalizing arrangements to have stabilization product fully installed in compliance with the applicable deadline for completing stabilization.

Exceptions:

- Arid, semi-arid (if construction occurs during seasonally dry period), or drought-stricken areas:
  - Within 14 days of stopping construction work in an area, install any necessary non-vegetative stabilization measures;
  - Initiate vegetative stabilization as soon as conditions on the site allow;
  - Document the schedule that will be followed for initiating and completing vegetative stabilization;
  - Plant the area so that within 3 years the 70% cover requirement is met.
- Sites affected by severe storm events or other unforeseen circumstances:
  - Initiate vegetative stabilization as soon conditions on the site allow;
  - Document the schedule that will be followed for initiating and completing vegetative stabilization;
  - Plant the area so that so that within 3 years the 70% cover requirement is met.

8.G.4.3 *Water Quality-Based Requirements Applicable to Earth-Disturbing Activities Conducted Prior to Active Mining Activities.*

The following water quality-based limits apply to earth-disturbing activities conducted prior to active mining activities defined in Part 8.G.3.2(a) and 8.G.3.2(b), in addition to the water quality-based limits in Part 2.2 of the MSGP.

Stricter requirements apply if your site will discharge to an impaired water or a water that is identified by your state, tribe, or EPA as a Tier 2 or Tier 2.5 for antidegradation purposes:

- More rapid stabilization of exposed areas: Complete initial stabilization activities within 7 days of stopping earth-disturbing work.
- More frequent site inspections: Once every 7 days and within 24 hours of a storm event of 0.25 inches or greater.

8.G.4.4 Inspection Requirements Applicable to Earth-Disturbing Activities Conducted Prior to Active Mining Activities.

The following requirements supersede the inspection requirements in Part 3 and 8.G.7 of the MSGP for earth-disturbing activities conducted prior to active mining activities defined in Part 8.G.3.2(a) and 8.G.3.2(b).

8.G.4.4.1 Inspection frequency

- At least once every 7 calendar days, or
- Once every 14 calendar days and within 24 hours of a storm event of 0.25 inches or greater.

Note:

- Inspections only required during working hours;
- Inspections not required during unsafe conditions; and
- If you choose to inspect once every 14 days, you must have a method for measuring rainfall amount on site (either rain gauge or representative weather station)

Note: 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.

Note: You are required to specify in your SWPPP which schedule you will be following.

Note: "Within 24 hours of the occurrence of a storm event" means that you are required to conduct an inspection within 24 hours once a storm event has produced 0.25 inches, even if the storm event is still continuing. Thus, if you have elected to inspect bi-weekly 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 are required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm.

8.G.4.4.2 *Reductions in inspection frequency.*

- Stabilized areas: You may reduce the frequency of inspections to once per month in any area of your site where stabilization has occurred pursuant to Part 8.G.4.1.9 or 8.G.4.2.11.
- Arid, semi-arid, and drought stricken areas: If earth-disturbing activities are occurring during the seasonally dry period or during a period in which drought is predicted to occur, you may reduce inspections to once per month and within 24 hours of a 0.25 inch storm event.
- Frozen conditions: You may temporarily suspend or reduce inspections to once per month until thawing conditions occur if frozen conditions are continuous and disturbed areas have been stabilized. For extreme conditions in remote areas, e.g., where transit to the site is perilous/restricted or temperatures are routinely below freezing, you may suspend inspections until the conditions are conducive to safe access, and more frequent inspections can resume.

8.G.4.4.3 *Areas to be inspected.* You must at a minimum inspect the all of the following areas:

- Disturbed areas;
- Stormwater controls and pollution prevention measures;
- Locations where stabilization measures have been implemented;
- Material, waste, borrow, or equipment storage and maintenance areas;

- Areas where stormwater flows;
- Points of discharge.

8.G.4.4.4 ***What to check for during inspections***. At a minimum you must check:

- Whether all stormwater controls are installed, operational and working as intended;
- Whether any new or modified stormwater controls are needed;
- For conditions that could lead to a spill or leak;
- For visual signs of erosion/sedimentation at points of discharge.

If a discharge is occurring, check:

- The quality and characteristics of the discharge;
- Whether controls are operating effectively.

8.G.4.4.5 ***Inspection report.*** Within 24 hours of an inspection, complete a report that includes:

- Inspection date;
- Name and title of inspector(s);
- Summary of inspection findings;
- Rainfall amount that triggered the inspection (if applicable);
- If it was unsafe to inspect a portion of the site, include documentation of the reason and the location(s);
- Each inspection report must be signed;
- Keep a current copy of all reports at the site or at an easily accessible location.

8.G.5 Technology-Based Effluent Limits for Active Mining Activities.

Note: These requirements do not apply for any discharges from earth-disturbing activities conducted prior to active mining as defined in 8.G.3.2(a) or 8.G.3.2(b).

8.G.5.1 ***Employee training.*** (See also Part 2.1.2.8) Conduct employee training at least annually at active and temporarily inactive facilities.

8.G.5.2 ***Stormwater controls.*** Apart from the control measures you implement to meet your Part 2 technology-based effluent limits, where necessary to minimize pollutant discharges in stormwater, implement the following control measures at your site. The potential pollutants identified in Part 8.G.6.3 shall determine the priority and appropriateness of the control measures selected. For mines subject to dust control requirements under state or county air quality permits, provided the requirements are equivalent, compliance with such air permit dust requirements shall constitute compliance with the dust control effluent limit in Part 2.1.2.10.

Stormwater diversions: Divert stormwater away from potential pollutant sources through implementation of control measures such as the following, where determined to be feasible (list not exclusive): interceptor or diversion controls (e.g., dikes, swales, curbs, berms); pipe slope drains; subsurface drains; conveyance systems (e.g., channels or gutters, open-top box culverts, and waterbars; rolling dips and road sloping; roadway surface water deflector and culverts); or their equivalents.

Capping: When capping is necessary to minimize pollutant discharges in stormwater, identify the source being capped and the material used to construct the cap.

Treatment: If treatment of stormwater (e.g., chemical or physical systems, oil - water separators, artificial wetlands) is necessary to protect water quality, describe the type and location of treatment used. Passive and/or active treatment of stormwater runoff is encouraged, where feasible. Treated runoff may be discharged as a stormwater

source regulated under this permit provided the discharge is not combined with discharges subject to effluent limitation guidelines for the Ore Mining and Dressing Point Source Category (40 CFR Part 440).

8.G.5.3 ***Discharge testing.*** (See also Part 5.2.3.4) Test or evaluate all outfalls covered under this permit for the presence of specific mining-related but unauthorized non-stormwater discharges such as seeps or adit discharges, or discharges subject to effluent limitations guidelines (e.g., 40 CFR Part 440), such as mine drainage or process water. Alternatively (if applicable), you may keep a certification with your SWPPP consistent with Part 8.G.6.6.

8.G.6 Additional SWPPP Requirements for Mining Operations.

Note: The requirements in Part 8.G.6 are not applicable to inactive metal mining facilities.

8.G.6.1 ***Nature of industrial activities.*** (See also Part 5.2.2) Briefly document in your SWPPP the mining and associated activities that can potentially affect the stormwater discharges covered by this permit, including a general description of the location of the site relative to major transportation routes and communities.

8.G.6.2 ***Site map.*** (See also Part 5.2.2) Document in your SWPPP the locations of the following (as appropriate): mining or milling site boundaries; access and haul roads; outline of the drainage areas of each stormwater outfall within the facility with indications of the types of discharges from the drainage areas; location(s) of all permitted discharges covered under an individual NPDES permit; outdoor equipment storage, fueling, and maintenance areas; materials handling areas; outdoor manufacturing, outdoor storage, and material disposal areas; outdoor chemicals and explosives storage areas; overburden, materials, soils, or waste storage areas; location of mine drainage (where water leaves mine) or other process water; tailings piles and ponds (including proposed ones); heap leach pads; off-site points of discharge for mine drainage and process water; surface waters; boundary of tributary areas that are subject to effluent limitations guidelines; and location(s) of reclaimed areas.

8.G.6.3 ***Potential pollutant sources.*** (See also Part 5.2.3) For each area of the mine or mill site where stormwater discharges associated with industrial activities occur, identify the types of pollutants (e.g., heavy metals, sediment) likely to be present in significant amounts. Consider these factors: the mineralogy of the ore and waste rock (e.g., acid forming); toxicity and quantity of chemicals used, produced, or discharged; the likelihood of contact with stormwater; vegetation of site (if any); and history of significant leaks or spills of toxic or hazardous pollutants. Also include a summary of any existing ore or waste rock or overburden characterization data and test results for potential generation of acid rock. If any new data is acquired due to changes in ore type being mined, update your SWPPP with this information.

8.G.6.4 ***Documentation of control measures.*** Document all control measures that you implement consistent with Part 8.G.5.2. If control measures are implemented or planned but are not listed in Part 8.G.5.2 (e.g., substituting a less toxic chemical for a more toxic one), include descriptions of them in your SWPPP. If you are in compliance with dust control requirements under state or county air quality permits, you must include (or summarize, as necessary) what the state or county air quality permit dust control requirements are and how you've achieved compliance with them.

8.G.6.5 ***Employee training.*** All employee training(s) must be documented in the SWPPP.

8.G.6.6 ***Certification of permit coverage for commingled non-stormwater discharges.*** If you are able, consistent with Part 8.G.5.3 above, to certify that a particular discharge composed of commingled stormwater and non-stormwater is covered under a separate NPDES permit, and that permit subjects the non-stormwater portion to effluent limitations prior to any commingling, retain such certification with your SWPPP. This certification must identify the non-stormwater discharges, the applicable NPDES permit(s), the effluent limitations placed on the non-stormwater discharge by the permit(s), and the points at which the limitations are applied.

8.G.7 Additional Inspection Requirements. (See also Part 3.1)

Except for earth-disturbing activities conducted prior to active mining activities as defined in Part 8.G.3.2(a) and 8.G.3.2(b), which are subject to Part 8.G.4.4, inspect sites at least quarterly unless adverse weather conditions make the site inaccessible. Sites which discharge to waters designated as Tier 2 or 2.5 or waters which are impaired for sediment or nitrogen must be inspected monthly. See Part 8.G.8.4 for inspection requirements for inactive and unstaffed sites.

8.G.8 Monitoring and Reporting Requirements. (See also Part 6)
Note: There are no Part 8.G.8 monitoring and reporting or impaired waters monitoring requirements for inactive and unstaffed sites.

8.G.8.1 ***Benchmark Monitoring for Active Copper Ore Mining and Dressing Facilities***.
Table 8.G-1 identifies benchmarks that apply to active copper ore mining and dressing facilities. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Table 8.G-1

Subsector (You may be subject to requirements for more than one sector/subsector)	**Parameter**	**Benchmark Monitoring Concentration**
Subsector G1. Active Copper Ore Mining and Dressing Facilities (SIC 1021)	Total Suspended Solids (TSS)	100 mg/L
	Nitrate plus Nitrite Nitrogen	0.68 mg/L
	Chemical Oxygen Demand (COD)	120 mg/L

8.G.8.2 ***Benchmark Monitoring Requirements for Discharges From Waste Rock and Overburden Piles at Active Metal Mining Facilities.*** For discharges from waste rock and overburden piles, perform benchmark monitoring once in the first year for the parameters listed in Table 8.G-2, and twice annually in all subsequent years of coverage under this permit for any parameters for which the benchmark has been exceeded. You are also required to conduct analytic monitoring for the parameters listed in Table 8.G-3 in accordance with the requirements in Part 8.G.8.3. The Director may also notify you that you must perform additional monitoring to accurately characterize the quality and quantity of pollutants discharged from your waste rock and overburden piles.

Table 8.G-2.		
Subsector (Discharges may be subject to requirements for more than one sector/subsector)	**Parameter**	**Benchmark Monitoring Concentration**
Subsector G2. Iron Ores; Copper Ores; Lead and Zinc Ores; Gold and Silver Ores; Ferroalloy Ores, Except Vanadium; and Miscellaneous Metal Ores (SIC Codes 1011, 1021, 1031, 1041, 1044, 1061, 1081, 1094, 1099) (Note: when analyzing hardness for a suite of metals, it is more cost effective to add analysis of calcium and magnesium, and have hardness calculated than to require hardness analysis separately)	Total Suspended Solids (TSS)	100 mg/L
	Turbidity	50 NTU
	pH	6.0-9.0 s.u.
	Hardness (as $CaCO_3$; calc. from Ca, Mg)[2]	no benchmark value
	Total Antimony	0.64 mg/L
	Total Arsenic (freshwater) Total Arsenic (saltwater)[1]	0.15 mg/L 0.069 mg/L
	Total Beryllium	0.13 mg/L
	Total Cadmium (freshwater)[2] Total Cadmium (saltwater)[1]	Hardness Dependent 0.04 mg/L
	Total Copper (freshwater)[2] Total Copper (saltwater)[1]	Hardness Dependent 0.0048 mg/L
	Total Iron	1.0 mg/L
	Total Lead (freshwater)[2] Total Lead (saltwater)[1]	Hardness Dependent 0.21 mg/L
	Total Mercury (freshwater) Total Mercury (saltwater)[1]	0.0014 mg/L 0.0018 mg/L
	Total Nickel (freshwater)[2] Total Nickel (saltwater)[1]	Hardness Dependent 0.074 mg/L
	Total Selenium (freshwater) Total Selenium (saltwater)[1]	0.005 mg/L 0.29 mg/L
	Total Silver (freshwater)[2] Total Silver (saltwater)[1]	Hardness Dependent 0.0019 mg/L
	Total Zinc (freshwater)[2] Total Zinc (saltwater)[1]	Hardness Dependent 0.09 mg/L

[1]Saltwater benchmark values apply to stormwater discharges into saline waters where indicated.

[2] The freshwater benchmark values of some metals are dependent on water hardness. For these parameters, permittees must determine the hardness of the receiving water (see Appendix J, "Calculating Hardness in Receiving Waters for Hardness Dependent Metals," for methodology), in accordance with Part 6.2.1.1, to identify the applicable 'hardness range' for determining their benchmark value applicable to their facility. Hardness Dependent Benchmarks follow in the table below:

Freshwater Hardness Range	**Cadmium** (mg/L)	**Copper** (mg/L)	**Lead** (mg/L)	**Nickel** (mg/L)	**Silver** (mg/L)	**Zinc** (mg/L)
0-24.99 mg/L	0.0005	0.0038	0.014	0.15	0.0007	0.04
25-49.99 mg/L	0.0008	0.0056	0.023	0.20	0.0007	0.05
50-74.99 mg/L	0.0013	0.0090	0.045	0.32	0.0017	0.08
75-99.99 mg/L	0.0018	0.0123	0.069	0.42	0.0030	0.11
100-124.99 mg/L	0.0023	0.0156	0.095	0.52	0.0046	0.13
125-149.99 mg/L	0.0029	0.0189	0.122	0.61	0.0065	0.16
150-174.99 mg/L	0.0034	0.0221	0.151	0.71	0.0087	0.18
175-199.99 mg/L	0.0039	0.0253	0.182	0.80	0.0112	0.20
200-224.99 mg/L	0.0045	0.0285	0.213	0.89	0.0138	0.23
225-249.99 mg/L	0.0050	0.0316	0.246	0.98	0.0168	0.25
250+ mg/L	0.0053	0.0332	0.262	1.02	0.0183	0.26

8.G.8.3 ***Additional Analytic Monitoring Requirements for Discharges From Waste Rock and Overburden Piles at Active Metal Mining Facilities.*** In addition to the monitoring required in Part 8.G.8.2 for discharges from waste rock and overburden piles, you must also conduct monitoring for additional parameters based on the type of ore you mine at your site. Where a parameter in Table 8.G-3 is the same as a pollutant you are required to monitor for in Table 8.G-2 (i.e., for all of the metals), you must use the corresponding benchmark in Table 8.G-2 and you may use any monitoring results conducted for Part 8.G.8.2 to satisfy the monitoring requirement for that parameter for Part 8.G.8.3. For radium and uranium, which do not have corresponding benchmarks in Table 8.G-2, there are no applicable benchmarks. The frequency and schedule for monitoring for these additional parameters is the same as that specified in Part 6.2.1.2.

Table 8.G-3. Additional Monitoring Requirements for Discharges from Waste Rock and Overburden Piles

Supplemental Requirements			
Type of Ore Mined	**Pollutants of Concern**		
	Total Suspended Solids (TSS)	**pH**	**Metals, Total**
Tungsten Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H)
Nickel Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H)
Aluminum Ore	X	X	Iron
Mercury Ore	X	X	Nickel (H)
Iron Ore	X	X	Iron (Dissolved)
Platinum Ore			Cadmium (H), Copper (H), Mercury, Lead (H), Zinc (H)
Titanium Ore	X	X	Iron, Nickel (H), Zinc (H)
Vanadium Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H)
Molybdenum	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Mercury, Zinc (H)
Uranium, Radium, and Vanadium Ore	X	X	Chemical Oxygen Demand, Arsenic, Radium (Dissolved and Total), Uranium, Zinc (H)

Note: An "X" indicated for TSS and/or pH means that you are required to monitor for those parameters. (H) indicates that hardness must also be measured when this pollutant is measured.

8.G.8.4 ***Inactive and Unstaffed Sites – Conditional Exemption from No Exposure Requirements for Quarterly Visual Assessments and Routine Facility Inspections.*** As a Sector G facility, if you are seeking to exercise a waiver from the quarterly visual assessment and routine facility inspection requirements for inactive and unstaffed sites (including temporarily inactive sites), you are conditionally exempt from the requirement to certify that "there are no industrial materials or activities exposed to stormwater" in Parts 3.1.1 and 3.2.3. This exemption is conditioned on the following:

- If circumstances change and your facility becomes active and/or staffed, this exception no longer applies and you must immediately begin complying with the quarterly visual assessment requirements; and
- EPA retains the authority to revoke this exemption and/or the monitoring waiver where it is determined that the discharge causes, has a reasonable potential to

cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

Subject to the two conditions above, if your facility is inactive and unstaffed, you are waived from the requirement to conduct quarterly visual assessments and routine facility inspections. You must still do an annual site inspection in accordance with Part 3.1. You are encouraged to inspect your site more frequently where you have reason to believe that severe weather or natural disasters may have damaged control measures or increased discharges.

Table 8.G-4. Applicability of the Multi-Sector General Permit to Stormwater Runoff From Active Mining and Dressing Sites, Temporarily Inactive Sites, and Sites Undergoing Reclamation

Discharge/Source of Discharge	Note/Comment
Piles	
Waste rock/overburden	Covered under the MSGP if composed entirely of stormwater and not combined with mine drainage. See note below.
Topsoil	--
Roads constructed of waste rock or spent ore	
Onsite haul roads	Covered under the MSGP if composed entirely of stormwater and not combined with mine drainage. See note below.
Offsite haul and access roads	--
Roads not constructed of waste rock or spent ore	
Onsite haul roads	Covered under the MSGP except if mine drainage is used for dust control.
Offsite haul and access roads	--
Milling/concentrating	
Runoff from tailings dams and dikes when constructed of waste rock/tailings	Covered under the MSGP except if process fluids are present and only if composed entirely of stormwater and not combined with mine drainage. See Note below.
Runoff from tailings dams/dikes when not constructed of waste rock and tailings	Covered under the MSGP except if process fluids are present.
Concentration building	Covered under the MSGP If stormwater only and no contact with piles.
Mill site	If stormwater only and no contact with piles.
Ancillary areas	
Office and administrative building and housing	Covered under the MSGP if mixed with stormwater from the industrial area.
Chemical storage area	--
Docking facility	Covered under the MSGP except if excessive contact with waste product that would otherwise constitute mine drainage.
Explosive storage	--
Fuel storage (oil tanks/coal piles)	--
Vehicle and equipment maintenance area/building	--
Parking areas	Covered under the MSGP but coverage unnecessary if only employee and visitor-type parking.

Table 8.G-4. Applicability of the Multi-Sector General Permit to Stormwater Runoff From Active Mining and Dressing Sites, Temporarily Inactive Sites, and Sites Undergoing Reclamation	
Discharge/Source of Discharge	**Note/Comment**
Power plant	
Truck wash area	Covered under the MSGP except when excessive contact with waste product that would otherwise constitute mine drainage.
Reclamation-related areas	
Any disturbed area (unreclaimed)	Covered under the MSGP only if not in active mining area.
Reclaimed areas released from reclamation requirements prior to Dec. 17, 1990	--
Partially/inadequately reclaimed areas or areas not released from reclamation requirements	--

Note: Stormwater runoff from these sources are subject to the NPDES program for stormwater unless mixed with discharges subject to 40 CFR Part 440 that are regulated by another permit prior to mixing. Non-stormwater discharges from these sources are subject to NPDES permitting and may be subject to the effluent limitation guidelines under 40 CFR Part 440. Discharges from overburden/waste rock and overburden/waste rock-related areas are not subject to 40 CFR Part 440 unless: (1) it drains naturally (or is intentionally diverted) to a point source; and (2) combines with "mine drainage" that is otherwise regulated under the Part 440 regulations. For such sources, coverage under this permit would be available if the discharge composed entirely of stormwater does not combine with other sources of mine drainage that are not subject to 40 CFR Part 440, as well as meeting other eligibility criteria contained in Part 1.1 of the permit. Operators bear the initial responsibility for determining the applicable technology-based standard for such discharges. EPA recommends that operators contact the relevant NPDES permit issuance authority for assistance to determine the nature and scope of the "active mining area" on a mine-by-mine basis, as well as to determine the appropriate permitting mechanism for authorizing such discharges.

8.G.9. Termination of Permit Coverage

8.G.9.1 ***Termination of Permit Coverage for Sites Reclaimed After December 17, 1990.*** A site or a portion of a site that has been released from applicable state or federal reclamation requirements after December 17, 1990, is no longer required to maintain coverage under this permit. If the site or portion of a site reclaimed after December 17, 1990, was not subject to reclamation requirements, the site or portion of the site is no longer required to maintain coverage under this permit if the site or portion of the site has been reclaimed as defined in Part 8.G.3.3.

8.G.9.2 ***Termination of Permit Coverage for Sites Reclaimed Before December 17, 1990.*** A site or portion of a site that was released from applicable state or federal reclamation requirements before December 17, 1990, or that was otherwise reclaimed before December 17, 1990, is no longer required to maintain coverage under this permit if the site or portion of the site has been reclaimed. A site or portion of a site is considered to have been reclaimed if: (1) stormwater runoff that comes into contact with raw materials, intermediate byproducts, finished products, and waste products does not have the potential to cause or contribute to violations of state water quality standards, (2) soil disturbing activities related to mining at the sites or portion of the site have been completed, (3) the site or portion of the site has been stabilized to minimize soil erosion, and (4) as appropriate depending on location, size, and the potential to contribute pollutants to stormwater discharges, the site or portion of the site has been revegetated, will be amenable to natural revegetation, or will be left in a condition consistent with the post-mining land use.

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart H – Sector H – Coal Mines and Coal Mining-Related Facilities.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

Note: Where compliance with a requirement in a separate exploration permit, mining permit, reclamation plan, Surface Mining Control and Reclamation Act (SMCRA) requirements, etc. will result in you fully meeting any requirement in this Subpart, you are considered to have complied with the relevant requirement in this Subpart. You must include documentation in your SWPPP describing your rationale for concluding that any particular action on your part is sufficient to comply with the corresponding requirement in this Subpart.

8.H.1 Covered Stormwater Discharges.

The requirements in Subpart H apply to stormwater discharges associated with industrial activity from Coal Mines and Coal Mining-Related facilities as identified by the SIC Codes specified under Sector H in Table D-1 of Appendix D.

8.H.2 Limitations on Coverage.

8.H.2.1 ***Prohibition of Non-Stormwater Discharges.*** (See also Part 1.1.4) Not covered by this permit: discharges from pollutant seeps or underground drainage from inactive coal mines and refuse disposal areas that do not result from precipitation events, and discharges from floor drains in maintenance buildings and other similar drains in mining and preparation plant areas. (EPA includes these prohibited non-stormwater discharges here solely as a helpful reminder to the operator that the only non-stormwater discharges authorized by this permit are at Part 1.1.3).

8.H.2.2 ***Discharges Subject to Stormwater Effluent Guidelines.*** (See also Part 1.1.2.4) Not authorized by this permit: stormwater discharges subject to an existing effluent limitation guideline at 40 CFR Part 434.

8.H.3 Definitions

The following definitions are not intended to supersede the definitions of active and inactive mining facilities established by 40 CFR 122.26(b)(14)(iii).

8.H.3.1 ***Mining operations*** - For this permit, mining operations are grouped into two distinct categories, with distinct effluent limits and requirements applicable to each: a) earth-disturbing activities conducted prior to active mining activities); and b) active mining activities, which includes reclamation. "Mining operations" can occur at both inactive mining facilities and temporarily inactive mining facilities.

8.H.3.2 ***Earth-disturbing activities conducted prior to active mining activities*** – Consists of two classes of earth-disturbing (i.e., clearing, grading and excavation) activities:

a. activities performed for purposes of mine site preparation, including: cutting new rights of way (except when related to access road construction); providing access to a mine site for vehicles and equipment (except when related to access road construction); other earth disturbances associated with site preparation activities on any areas where active mining activities have not yet commenced (e.g., for heap leach pads, waste rock facilities, tailings impoundments, wastewater treatment plants); and

b. construction of staging areas to prepare for erecting structures such as to house project personnel and equipment, mill buildings, etc., and construction of access roads. Earth-disturbing activities associated with the construction of staging areas and the construction of access roads conducted prior to active mining are considered to be "construction" and have additional effluent limits in Part 8.H.4.2.

8.H.3.3 ***Active mining activities*** *– Activities related to the extraction, removal or recovery, and preparation of coal; removal of overburden and waste rock to expose mineable minerals; and site reclamation and closure activities. All such activities occur within the "active mining area." Reclamation involves activities undertaken, in compliance with applicable mined land reclamation requirements, to return the land to an appropriate post-mining contour and land use in order to meet applicable federal and state reclamation requirements. In addition, once earth-disturbing activities conducted prior to active mining activities have ceased and all related requirements in Part 8.H.4 have been met, and a well-delineated "active mining area" has been established, all activities (including any clearing, grading, and excavation) that occur within the active mining area are "active mining activities."*

8.H.3.4 ***Active mining area*** *– A place where work or other activity related to the extraction, removal or recovery of coal is being conducted, except, with respect to surface mines, any area of land on or in which grading has been completed to return the earth to desired contour and reclamation work has begun.*

Note: Earth-disturbing activities described in the definition in Part 8.H.3.2 that occur on areas outside the active mining area (e.g., for expansion of the mine into undeveloped territory) are considered "earth-disturbing conducted prior to active mining activities", and must comply with the requirements in Part 8.H.4.

8.H.3.5 ***Inactive coal mining facility*** – A site or portion of a site where coal mining and/or milling occurred in the past but there are no active mining operations occurring as defined above, and where the inactive portion is not covered by an active mining permit issued by the applicable state or federal agency. An inactive coal mining facility has an identifiable owner / operator. Sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials and sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim are not considered either active or inactive mining facilities and do not require an NPDES industrial stormwater permit.

8.H.3.6 ***Temporarily inactive coal mining facility*** – A site or portion of a site where coal mining and/or milling occurred in the past but currently are not being actively undertaken, and the facility is covered by an active mining permit issued by the applicable state or federal agency.

8.H.4 Requirements Applicable to Earth-Disturbing Activities Conducted Prior to Active Mining Activities.

Stormwater discharges from earth-disturbing activities conducted prior to active mining activities (defined in Part 8.H.3.2) are covered under this permit. For such earth-disturbing activities, you must comply with all applicable requirements in Parts 1-9 of the MSGP except for the technology-based effluent limits in Part 8.H.5 and Part 2.1.2, the inspection requirements in Part 8.H.7 and Part 3, and the monitoring requirements in Part 8.H.8 and Part 6.

Authorized discharges from areas where earth-disturbing activities have ceased and stabilization as specified in Part 8.H.4.19 or 8.H.4.2.11, where appropriate, has been completed (stabilization is not required for areas where active mining activities will occur), are no longer subject to the Part 8.H.4 requirements. At such time, authorized discharges become subject to all

other applicable requirements in the MSGP, including the effluent limits in Parts 2.1.2 and 8.H.5, the inspection requirements in Parts 3 and 8.H.7, and the monitoring requirements in Parts 6 and 8.H.8.

8.H.4.1 Technology-Based Effluent Limits Applicable to All Earth-Disturbing Activities Conducted Prior to Active Mining Activities. The following technology-based effluent limits apply to authorized discharges from all earth-disturbing activities conducted prior to active mining activities defined in Part 8.H.3.2(a) and 8.H.3.2(b). These limits supersede the technology-based limits listed in Part 2.1.2 and Part 8.H.5 of the MSGP.

8.H.4.1.1 ***Erosion and sediment control installation requirements.***

- By the time construction activities commence, install and make operational downgradient sediment controls, unless this timeframe is infeasible. If infeasible you must install and make such controls operational as soon as practicable or as soon as site conditions permit.
- All other stormwater controls described in the SWPPP must be installed and made operational as soon as conditions on each portion of the site allows.

8.H.4.1.2 ***Erosion and sediment control maintenance requirements.*** You must:

- Ensure that all erosion and sediment controls remain in effective operating condition.
- Wherever you determine that a stormwater control needs maintenance to continue operating effectively, initiate efforts to fix the problem immediately after its discovery, and complete such work by the end of the next work day.
- When a stormwater control must be replaced or significantly repaired, complete the work within 7 days, unless infeasible. If 7 days is infeasible, you must complete the installation or repair as soon practicable.

8.H.4.1.3 ***Perimeter controls.*** You must:

- Install sediment controls along those perimeter areas of your disturbed area that will receive stormwater, except where site conditions prevent the use of such controls (in which case, maximize their installation to the extent practicable).
- Remove sediment before it accumulates to one-half of the above-ground height of any perimeter control.

8.H.4.1.4 ***Sediment track-out.*** For construction vehicles and equipment exiting the site directly onto paved roads, you must:

- Use appropriate stabilization techniques to minimize sediment track-out from vehicles and equipment prior to exit;
- Use additional controls to remove sediment from vehicle and equipment tires prior to exit, where necessary;
- Remove sediment that is tracked out onto paved roads by end of the work day.

Note: EPA recognizes that some fine grains may remain visible on the surfaces of off-site streets, other paved areas, and sidewalks even after you have implemented sediment removal practices. Such "staining" is not a violation of Part 8.H.4.1.4.

8.H.4.1.5 Soil or sediment stockpiles. You must:

- Minimize erosion of stockpiles from stormwater and wind via temporary cover, if feasible.

- Prevent up-slope stormwater flows from causing erosion of stockpiles (e.g., by diverting flows around the stockpile).
- Minimize sediment from stormwater that runs off of stockpiles, using sediment controls (e.g., a sediment barrier or downslope sediment control).

8.H.4.1.6 ***Sediment basins.*** If you intend to install a sediment basin to treat stormwater from your earth-disturbing activities, you must:

- Provide storage for either (1) the 2-year, 24-hour storm, or (2) 3,600 cubic feet per acre drained.
- Prevent erosion of (1) basin embankments using stabilization controls (e.g., erosion control blankets), and (2) the inlet and outlet points of the basin using erosion controls and velocity dissipation devices.

8.H.4.1.7 ***Minimize dust.*** You must minimize the generation of dust through the appropriate application of water or other dust suppression techniques that minimize pollutants being discharged into surface waters.

8.H.4.1.8 ***Restrictions on use of treatment chemicals.*** If you intend to use sediment treatment chemicals at your site, you are subject to the following minimum requirements:

- Use conventional erosion and sediment controls prior to and after application of chemicals;
- Select chemicals suited to soil type, and expected turbidity, pH, flow rate;
- Minimize the discharge risk from stored chemicals;
- Comply with state/local requirements;
- Use chemicals in accordance with good engineering practices and specifications of chemical supplier;
- Ensure proper training;
- Provide proper SWPPP documentation.

If you plan to use cationic treatment chemicals (as defined in Appendix A), you are ineligible for coverage under this permit, unless you notify your applicable EPA Regional Office 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 a violation of water quality standards.

8.H.4.1.9 ***Site stabilization requirements for earth-disturbing activities performed for purposes of mine site preparation as defined in 8.H.3.2(a)*** (i.e., not applicable to construction of staging areas for structures and access roads as defined in 8.H.3.2(b)). You must comply with the following stabilization requirements except where the intended function of the site accounts for such disturbed earth (e.g., the earth disturbances will become actively mined, or the controls implemented at the active mining area effectively control the disturbance):

- *Temporary stabilization of disturbed areas.* Stabilization measures must be initiated immediately in portions of the site where earth-disturbing activities performed for purposes of mine site preparation (as defined in 8.H.3.2(a)) have temporarily ceased, but in no case more than 14 days after such activities have temporarily ceased. In arid, semi-arid, and drought-stricken areas, or in areas subject to snow or freezing conditions, where initiating perennial vegetative stabilization measures is not possible within 14 days after earth-disturbing activities performed for purposes of mine site preparation has temporarily ceased, temporary vegetative

stabilization measures must be initiated as soon as practicable. Until temporary vegetative stabilization is achieved, interim measures such as erosion control blankets with an appropriate seed base and tackifiers must be employed. In areas of the site where earth-disturbing activities performed for purposes of mine site preparation have permanently ceased prior to active mining, temporary stabilization measures must be implemented to minimize mobilization of sediment or other pollutants until active mining activities commence.

- *Final stabilization of disturbed areas.* Stabilization measures must be initiated immediately where earth-disturbing activities performed for purposes of mine site preparation (as defined in 8.H.3.2(a)) have permanently ceased, but in no case more than 14 days after the earth-disturbing activities have permanently ceased. In arid, semi-arid, and drought-stricken areas, or in areas subject to snow or freezing conditions, where initiating perennial vegetative stabilization measures is not possible within 14 days after earth-disturbing activities have permanently ceased, final vegetative stabilization measures must be initiated as soon as possible. Until final stabilization is achieved, temporary stabilization measures, such as erosion control blankets with an appropriate seed base and tackifiers, must be used.

8.H.4.2 ***Additional Technology-Based Effluent Limits Applicable Only to the Construction of Staging Areas for Structures and Access Roads.*** The following technology-based effluent limits apply to authorized discharges from earth-disturbing activities associated with the construction of staging areas and the construction of access roads, as defined in Part 8.H.3.2(b). These limits supersede the technology-based limits listed in Part 2.1.2 and Part 8.H.5 of the MSGP. These limits do not apply to earth-disturbing activities performed for purposes of mine site preparation (as defined in 8.H.3.2(a)).

8.H.4.2.1 ***Area of disturbance***. You must minimize the amount of soil exposed during construction activities.

8.H.4.2.2 ***Erosion and sediment control design requirements.*** You must:

- Design, install and maintain effective erosion and sediment controls to minimize the discharge of pollutants from construction activities. Account for the following factors in designing your erosion and sediment controls:
  - The expected amount, frequency, intensity and duration of precipitation;
  - The nature of stormwater runoff and run-on at the site, including factors such as impervious surfaces, slopes and site drainage features;
  - The range of soil particle sizes expected to be present on the site.
- Direct discharges from your stormwater controls to vegetated areas of your site to increase sediment removal and maximize stormwater infiltration, including any natural buffers, unless infeasible. Use velocity dissipation devices if necessary to prevent erosion when directing stormwater to vegetated areas.
- If any stormwater flow becomes or will be channelized at your site, you must design erosion and sediment controls to control both peak flowrates and total stormwater volume to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points.
- If you install stormwater conveyance channels, they must be designed to avoid unstabilized areas on the site and to reduce erosion, unless infeasible. In addition, you must minimize erosion of channels and their embankments, outlets, adjacent streambanks, slopes, and downstream

waters during discharge conditions through the use of erosion controls and velocity dissipation devices within and along the length of any constructed stormwater conveyance channel, and at any outlet to provide a non-erosive flow velocity.

8.H.4.2.3 ***Natural Buffers.*** For any stormwater discharges from construction activities within 50 feet of a water of the U.S., you must comply with one of the following compliance alternatives:

1. Provide a 50-foot undisturbed natural buffer between construction activities and the water of the U.S.; or

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

3. If it is infeasible to provide an undisturbed natural buffer of any size, implement erosion and sediment controls that achieve a sediment load reduction that is equivalent to a 50-foot undisturbed natural buffer.

There are exceptions when buffer requirements do not apply:

- There is no stormwater discharge from construction disturbances to a water of the U.S;
- The natural buffer has already been eliminated by preexisting development disturbances;
- The disturbance is for the construction of a water-dependent structure or construction approved under a CWA section 404 permit;
- For linear construction projects, you are not required to comply with the requirements if there are site constraints provided that, to the extent feasible, you limit disturbances within 50 feet of a water of the U.S. and/or you provide supplemental erosion and sediment controls to treat stormwater discharges from any disturbances within 50 feet of a water of the U.S.

See http://water.epa.gov/polwaste/npdes/stormwater/upload/cgp2012_appendixg.pdf for guidance on complying with these alternatives.

8.H.4.2.4 ***Soil or sediment stockpiles.*** In addition to the requirements in Part 8.H.4.1.5, you must locate any piles outside of any natural buffers established under Part 8.H.4.2.3.

8.H.4.2.5 ***Sediment basins.*** In addition to the requirements in Part 8.H.4.1.6, you must locate sediment basins outside of any surface waters and any natural buffers established under Part 8.H.4.2.3, and you must utilize outlet structures that withdraw water from the surface, unless infeasible.

8.H.4.2.6 ***Native topsoil preservation.*** You must preserve native topsoil removed during clearing, grading, or excavation, unless infeasible. Store topsoil in a manner that will maximize its use in reclamation or final vegetative stabilization (e.g., by keeping the topsoil stabilized with seed or similar measures). This requirement does not apply if the intended function of the disturbed area dictates that topsoil be disturbed or removed.

8.H.4.2.7 ***Steep slopes.*** You must minimize the disturbance of steep slopes. The permit does not prevent or prohibit disturbance on steep slopes.

Depending on site conditions and needs, disturbance on steep slopes may be necessary (e.g., a road cut in mountainous terrain; for grading steep slopes prior to erecting the mine office). Where steep slope disturbances are necessary, you can minimize the disturbances to steep slopes through the implementation of a number of standard erosion and sediment control practices, such as by phasing disturbances in these areas and using stabilization practices specifically for steep grades.

8.H.4.2.8 ***Soil compaction.*** Where final vegetative stabilization will occur or where infiltration practices will be installed, you must either restrict vehicle/ equipment use in these areas to avoid soil compaction or use soil conditioning techniques to support vegetative growth. Minimizing soil compaction is not required where compacted soil is integral to the functionality of the site.

8.H.4.2.9 ***Dewatering Practices.*** You are prohibited from discharging ground water or accumulated stormwater that is removed from excavations, trenches, foundations, vaults or other similar points of accumulation, unless such waters are first effectively managed by appropriate controls (e.g., sediment basins or sediment traps, sediment socks, dewatering tanks, tube settlers, weir tanks, or filtration systems). Uncontaminated, non-turbid dewatering water can be discharged without being routed to a control.

You must also meet the following requirements for dewatering activities:

- Discharge requirements:
  - No discharging visible floating solids or foam;
  - Remove oil, grease and other pollutants from dewatering water via an oil-water separator or suitable filtration device (such as a cartridge filter);
  - Utilize vegetated upland areas of the site, to the extent feasible, to infiltrate dewatering water before discharge. In no case shall waters of the U.S. be considered part of the treatment area;
  - Implement velocity dissipation devices at all points where dewatering water is discharged;
  - Haul backwash water away for disposal or return it to the beginning of the treatment process; and
  - Clean or replace the filter media used in dewatering devices when the pressure differential equals or exceeds the manufacturer's specifications.
- Treatment chemical restrictions: If you use polymers, flocculants or other chemicals to treat dewatering water, you must comply with the requirements in Parts 8.H.4.1.8.

8.H.4.2.10 ***Pollution prevention requirements.***

- *Prohibited discharges* (this non-exhaustive list of prohibited non-stormwater discharges is included here as a reminder that only the only allowable non-stormwater discharges are those enumerated in Part 1.1.3):
  - Wastewater from washout of concrete;
  - Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
  - Fuels, oils, or other pollutants used for operation and maintenance of vehicles or equipment;

  - Soaps, solvents, or detergents used in vehicle or equipment washing;
  - Toxic or hazardous substances from a spill or other release.
- *Design and location requirements:* Minimize the discharge of pollutants from pollutant sources by:
  - Minimizing exposure;
  - Using secondary containment, spill kits, or other equivalent measures;
  - Locating pollution sources away from surface waters, storm sewer inlets, and drainageways;
  - Cleaning up spills immediately (do not clean by hosing area down).
- *Pollution prevention requirements for wash waters:* 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;
- *Pollution prevention requirements for the storage, handling, and disposal of construction products, materials, and wastes:* 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 stormwater. Minimization of exposure is not required in cases where the exposure 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).

8.H.4.2.11 ***Site Stabilization requirements for the construction of staging areas for structures and access roads as defined in 8.H.3.2(b)*** *(i.e., not applicable to earth-disturbing activities performed for purposes of mine site preparation as defined in 8.H.3.2(a))*. You must comply with the following stabilization requirements, except where the intended function of the site accounts for such disturbed earth (e.g., the area of construction will become actively mined, or the controls implemented at the active mining area effectively control the disturbance):

- By no later than the end of the next work day after construction work in an area has stopped permanently or temporarily ("temporarily" means the land will be idle for a period of 14 days or more but earth-disturbing activities will resume in the future), immediately initiate stabilization measures;
- If using vegetative measures, by no later than 14 days after initiating stabilization:
  - Seed or plant the area, and provide temporary cover to protect the planted area;
  - Once established, vegetation must be uniform, perennial (if final stabilization), and cover at least 70% of stabilized area based on density of native vegetation.
- If using non-vegetative stabilization, by no later than 14 days after initiating stabilization:
  - Install or apply all non-vegetative measures;
  - Cover all areas of exposed soil.

  Note: For the purposes of this permit, EPA will consider any of the following types of activities to constitute the initiation of stabilization: 1. Prepping the soil for vegetative or non-vegetative stabilization; 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 area to be stabilized, but not on the entire area; and 5. Finalizing arrangements to have stabilization product fully installed in compliance with the applicable deadline for completing stabilization.

Exceptions:

- Arid, semi-arid (if construction occurs during seasonally dry period), or drought-stricken areas:
  - Within 14 days of stopping construction work in an area, install any necessary non-vegetative stabilization measures;
  - Initiate vegetative stabilization as soon as conditions on the site allow;
  - Document the schedule that will be followed for initiating and completing vegetative stabilization;
  - Plant the area so that within 3 years the 70% cover requirement is met.
- Sites affected by severe storm events or other unforeseen circumstances:
  - Initiate vegetative stabilization as soon conditions on the site allow;
  - Document the schedule that will be followed for initiating and completing vegetative stabilization;
  - Plant the area so that so that within 3 years the 70% cover requirement is met.

8.H.4.3 ***Water Quality-Based Requirements Applicable to Earth-Disturbing Activities Conducted Prior to Active Mining Activities.***

The following water quality-based limits apply to earth-disturbing activities conducted prior to active mining activities defined in Part 8.H.3.2(a) and 8.H.3.2(b), in addition to the water quality-based limits in Part 2.2 of the MSGP.

Stricter requirements apply if your site will discharge to an impaired water or a water that is identified by your state, tribe, or EPA as a Tier 2 or Tier 2.5 for antidegradation purposes:

- More rapid stabilization of exposed areas: Complete initial stabilization activities within 7 days of stopping earth-disturbing work.
- More frequent site inspections: Once every 7 days and within 24 hours of a storm event of 0.25 inches or greater.

8.H.4.4 ***Inspection Requirements Applicable to Earth-Disturbing Activities Conducted Prior to Active Mining Activities.***

The following requirements supersede the inspections requirements in Part 3 and 8.H.7 of the MSGP for earth-disturbing activities conducted prior to active mining activities defined in Part 8.H.3.2(a) and 8.H.3.2(b).

8.H.4.4.1 ***Inspection Frequency***

- At least once every 7 calendar days, or
- Once every 14 calendar days and within 24 hours of a storm event of 0.25 inches or greater.

Note:

- Inspections only required during working hours;
- Inspections not required during unsafe conditions; and
- If you choose to inspect once every 14 days, you must have a method for measuring rainfall amount on site (either rain gauge or representative weather station)

Note: 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.

Note: You are required to specify in your SWPPP which schedule you will be following.

Note: "Within 24 hours of the occurrence of a storm event" means that you are required to conduct an inspection within 24 hours once a storm event has produced 0.25 inches, even if the storm event is still continuing. Thus, if you have elected to inspect bi-weekly in 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 are required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm.

8.H.4.4.2 ***Reductions in Inspection Frequency***

- Stabilized areas: You may reduce the frequency of inspections to once per month in any area of your site where stabilization has occurred pursuant to Part 8.H.4.1.9 or 8.H.4.2.11.
- Arid, semi-arid, and drought stricken areas: If earth-disturbing activities are occurring during the seasonally dry period or during a period in which drought is predicted to occur, you may reduce inspections to once per month and within 24 hours of a 0.25 inch storm event.
- Frozen conditions: You may temporarily suspend or reduce inspections to once per month until thawing conditions occur if frozen conditions are continuous and disturbed areas have been stabilized. For extreme conditions in remote areas, e.g., where transit to the site is perilous/restricted or temperatures are routinely below freezing, you may suspend inspections until the conditions are conducive to safe access, and more frequent inspections can resume.

8.H.4.4.3 ***Areas to be Inspected***. You must at a minimum inspect the following areas:

- Disturbed areas;
- Stormwater controls and pollution prevention measures;
- Locations where stabilization measures have been implemented;
- Material, waste, borrow, or equipment storage and maintenance areas;
- Areas where stormwater flows;
- Points of discharge.

8.H.4.4.4 ***What to Check for During Inspections.*** At a minimum you must check:

- Whether all stormwater controls are installed, operational, and working as intended;
- Whether any new or modified stormwater controls are needed;
- For conditions that could lead to a spill or leak;
- For visual signs of erosion/sedimentation at points of discharge.

If a discharge is occurring:

- The quality and characteristics of the discharge;
- Whether controls are operating effectively.

8.H.4.4.5 ***Inspection Report***. Within 24 hours of an inspection, complete a report that includes:

- Inspection date;
- Name and title of inspector(s);
- Summary of inspection findings;
- Rainfall amount that triggered the inspection (if applicable);
- If it was unsafe to inspect a portion of the site, include documentation of the reason and the location(s);

- Each inspection report must be signed;
- Keep a current copy of all reports at the site or at an easily accessible location.

8.H.4.5 ***Cessation of Requirements Applicable to Earth-Disturbing Activities Conducted Prior to Active Mining Activities.*** The requirements in 8.H.4 no longer apply for any earth-disturbing activities conducted prior to active mining activities as defined in 8.H.3.2(a) or 8.H.3.2(b) where:

1. Earth-disturbing activities have ceased; and
2. Stabilization has been met consistent with Part 8.H.4.1.9 or 8.H.4.2.11 (not required for areas where active mining activities will occur).

8.H.5 Technology-Based Effluent Limits for Active Mining Activities.

Note: These requirements do not apply for any discharges from earth-disturbing activities conducted prior to active mining as defined in 8.H.3.2(a) or 8.H.3.2(b).

8.H.5.1 ***Good Housekeeping Measures.*** (See also Part 2.1.2.2) As part of your good housekeeping program, in order to minimize discharges of pollutants in stormwater, implement control measures such as the following, where determined to be feasible (list not inclusive): using sweepers and covered storage; watering haul roads to minimize dust generation; and conserving vegetation to minimize erosion. For mines subject to dust control requirements under state or county air quality permits, provided the requirements are equivalent, compliance with such air permit dust requirements shall constitute compliance with the dust control effluent limit in Part 2.1.2.10.

8.H.5.2 ***Preventive Maintenance.*** (See also Part 2.1.2.3) Perform inspections or other equivalent measures of storage tanks and pressure lines of fuels, lubricants, hydraulic fluid, and slurry to prevent leaks due to deterioration or faulty connections.

8.H.6 Additional SWPPP Requirements for Mining Operations.

Note: The requirements in Part 8.H.6 are not applicable to inactive coal mining facilities.

8.H.6.1 ***Other Applicable Regulations.*** Most active coal mining-related areas (SIC Codes 1221-1241) are subject to sediment and erosion control regulations of the U.S. Office of Surface Mining (OSM) that enforces the Surface Mining Control and Reclamation Act (SMCRA). OSM has granted authority to most coal-producing states to implement SMCRA through State SMCRA regulations. All SMCRA requirements regarding control of stormwater-related pollutant discharges must be addressed and then documented with the SWPPP (directly or by reference).

8.H.6.2 ***Site Map.*** (See also Part 5.2.2) Document in your SWPPP where any of the following may be exposed to precipitation or surface runoff: haul and access roads; railroad spurs, sliding, and internal hauling lines; conveyor belts, chutes, and aerial tramways; equipment storage and maintenance yards; coal handling buildings and structures; inactive mines and related areas; acidic spoil, refuse, or unreclaimed disturbed areas; and liquid storage tanks containing pollutants such as caustics, hydraulic fluids, and lubricants.

8.H.6.3 ***Potential Pollutant Sources.*** (See also Part 5.2.3) Document in your SWPPP the following sources and activities that have potential pollutants associated with them: truck traffic on haul roads and resulting generation of sediment subject to runoff and dust generation; fuel or other liquid storage; pressure lines containing slurry, hydraulic fluid, or other potential harmful liquids; and loading or temporary storage of acidic refuse or spoil.

8.H.6.4 If you are in compliance with dust control requirements under state or county air quality permits, you must include (or summarize, as necessary) what the state or county air quality permit dust control requirements are and how you've achieved compliance with them.

8.H.7 Additional Inspection Requirements. (See also Part 3.1)

8.H.7.1 ***Inspections of Active Mining-Related Areas.*** (See also Part 3) Except for earth-disturbing activities conducted prior to active mining activities as defined in Part 8.H.3.2(a) and 8.H.3.2(b), which are subject to Part 8.H.4.4, perform routine inspections of active mining areas covered by this permit, corresponding with the inspections as performed by SMCRA inspectors, of all mining-related areas required by SMCRA. Also maintain the records of the SMCRA authority representative. See Part 8.H.8.1 for inspection requirements for inactive and unstaffed sties.

8.H.7.2 ***Sediment and Erosion Control.*** (See also Part 2.1.2.5) As indicated in Part 8.H.6.1, SMCRA requirements regarding sediment and erosion control measures must be complied with for those areas subject to SMCRA authority, including inspection requirements.

8.H.7.3 ***Routine Site Inspections.*** (See also Part 3.1) Your inspection program must include inspections for pollutants entering the drainage system from activities located on or near coal mining-related areas. Among the areas to be inspected are haul and access roads; railroad spurs, sliding, and internal hauling lines; conveyor belts, chutes, and aerial tramways; equipment storage and maintenance yards; coal handling buildings and structures; and inactive mines and related areas.

8.H.8 Sector-Specific Benchmarks. (See also Part 6)

Table 8.H-1 identifies benchmarks that apply to the specific subsectors of Sector H. These benchmarks apply to both your primary industrial activity and any co-located industrial activities. Note: There are no Part 8.H. 8 monitoring and reporting or impaired waters monitoring requirements for inactive and unstaffed sites.

Table 8.H-1.

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Subsector H1. Coal Mines and Related Areas (SIC 1221-1241)	Total Aluminum	0.75 mg/L
	Total Iron	1.0 mg/L
	Total Suspended Solids (TSS)	100 mg/L

8.H.8.1 ***Inactive and Unstaffed Sites – Conditional Exemption from No Exposure Requirement for Routine Inspections, Quarterly Visual Assessments, and Benchmark and Impaired Waters Monitoring.*** As a Sector H facility, if you are seeking to exercise a waiver from either the quarterly visual assessment or the benchmark and/or impaired waters monitoring requirements for inactive and unstaffed sites (including temporarily inactive sites), you are conditionally exempt from the requirement to certify that "there are no industrial materials or activities exposed to stormwater" in Parts 3.2.3, 6.2.1.3, and 6.2.4.2. Additionally, if you are seeking to reduce your required routine inspection frequency, as is allowed under Part 3.1.1, you are also conditionally exempt from the requirement to certify that "there are no industrial materials or activities exposed to stormwater." These conditional exemptions are based on the following requirements:

- If circumstances change and your facility becomes active and/or staffed, this exception no longer applies and you must immediately begin complying with the applicable benchmark monitoring requirements as if you were in your first year of permit coverage, and the quarterly visual assessment requirements; and
- EPA retains the authority to revoke this exemption and/or the monitoring waiver where it is determined that the discharge causes, has a reasonable potential to cause or contribute to an instream excursion above an applicable water quality standard, including designated uses.

Subject to the two conditions above, if your facility is inactive and unstaffed, you are waived from the requirement to conduct routine facility inspections, quarterly visual assessments, and benchmark and impaired waters monitoring. You must still conduct an annual site inspection in accordance with Part 3.1. You are encouraged to inspect your site more frequently where you have reason to believe that severe weather or natural disasters may have damaged control measures or increased discharges.

8.H.9 Termination of Permit Coverage

8.H.9.1 ***Termination of Permit Coverage for Sites Reclaimed After December 17, 1990***. A site or a portion of a site that has been released from applicable state or federal reclamation requirements after December 17, 1990, is no longer required to maintain coverage under this permit. If the site or portion of a site reclaimed after December 17, 1990, was not subject to reclamation requirements, the site or portion of the site is no longer required to maintain coverage under this permit if the site or portion of the site has been reclaimed as defined in Part 8.H.3.5.

8.H.9.2 ***Termination of Permit Coverage for Sites Reclaimed Before December 17, 1990***. A site or portion of a site that was released from applicable state or federal reclamation requirements before December 17, 1990, or that was otherwise reclaimed before December 17, 1990, is no longer required to maintain coverage under this permit if the site or portion of the site has been reclaimed. A site or portion of a site is considered to have been reclaimed if: (1) stormwater runoff that comes into contact with raw materials, intermediate byproducts, finished products, and waste products does not have the potential to cause or contribute to violations of state water quality standards, (2) soil disturbing activities related to mining at the sites or portion of the site have been completed, (3) the site or portion of the site has been stabilized to minimize soil erosion, and (4) as appropriate depending on location, size, and the potential to contribute pollutants to stormwater discharges, the site or portion of the site has been revegetated, will be amenable to natural revegetation, or will be left in a condition consistent with the post-mining land use.

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart I – Sector I – Oil and Gas Extraction.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.I.1 Covered Stormwater Discharges.

The requirements in Subpart I apply to stormwater discharges associated with industrial activity from Oil and Gas Extraction facilities as identified by the SIC Codes specified under Sector I in Table D-1 of Appendix D of the permit.

8.I.1.1 ***Discharges of stormwater runoff from field activities or operations associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities are exempt from NPDES permit coverage unless, in accordance with 40 CFR 122.26(c)(1)(iii), the facility:***

- Has had a discharge of stormwater resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at any time since November 16, 1987; or
- Has had a discharge of stormwater resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or
- Contributes to a violation of a water quality standard.

Any stormwater discharges that require permit coverage as a result of meeting one of the conditions of 122.26(c)(1)(iii) may be covered under this permit unless otherwise required to obtain coverage under an alternative NPDES general permit or an individual NPDES permit as specified in Part 1.6.1.

8.I.2 Limitations on Coverage.

8.I.2.1 ***Stormwater Discharges Subject to Effluent Limitation Guidelines.*** (See also Part 1.1.4.5) This permit does not authorize stormwater discharges from petroleum drilling operations that are subject to nationally established effluent limitation guidelines found at 40 CFR Part 435, respectively.

8.I.2.2 ***Non-Stormwater Discharges.*** Discharges of vehicle and equipment wash water, including tank cleaning operations, are not authorized by this permit. Alternatively, wash water discharges must be authorized under a separate NPDES permit, or be discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements. (EPA includes this prohibited non-stormwater discharge here solely as a helpful reminder to the operator that the only non-stormwater discharges authorized by this permit are at Part 1.1.3).

8.I.3 Additional Technology-Based Effluent Limits.

8.I.3.1 ***Vegetative Controls.*** Implement vegetative practices designed to preserve existing vegetation, where attainable, and revegetate open areas as soon as practicable after grade drilling. Implement appropriate vegetative practices, such as the following (list not exclusive): temporary or permanent seeding, mulching, sod stabilization, vegetative buffer strips, and tree protection practices. Begin implementing appropriate vegetative practices on all disturbed areas within 14 days following the last activity in that area.

8.I.4 Additional SWPPP Requirements.

8.I.4.1 ***Drainage Area Site Map.*** (See also Part 5.2.2) Document in your SWPPP where any of the following may be exposed to precipitation or surface runoff: Reportable Quantity (RQ) releases; locations used for the treatment, storage, or disposal of wastes; processing areas and storage areas; chemical mixing areas; construction and drilling areas; all areas subject to the effluent guidelines requirements for "No Discharge" in accordance with 40 CFR 435.32; and the structural controls to achieve compliance with the "No Discharge" requirements.

8.I.4.2 ***Potential Pollutant Sources.*** (See also Part 5.2.3) Also document in your SWPPP the following sources and activities that have potential pollutants associated with them: chemical, cement, mud, or gel mixing activities; drilling or mining activities; and equipment cleaning and rehabilitation activities. In addition, include information about the reportable quantity (RQ) release that triggered the permit application requirements: the nature of the release (e.g., spill of oil from a drum storage area), amount of oil or hazardous substance released, amount of substance recovered, date of the release, cause of the release (e.g., poor handling techniques and lack of containment in the area), areas affected by the release (i.e., land and water), procedures to clean up release, actions or procedures implemented to prevent or improve response to a release, and remaining potential contamination of stormwater from release (taking into account human health risks, the control of drinking water intakes, and the designated uses of the receiving water).

8.I.4.3 ***Erosion and Sediment Controls***. (See also Part 2.1.2.5) Unless covered by EPA's Construction General Permit (CGP), the additional documentation requirements for sediment and erosion controls for well drillings and sand/shale mining areas include the following:

8.I.4.3.1 ***Site Description.*** Also include a description in your SWPPP of the nature of the exploration activity, estimates of the total area of site and area disturbed due to exploration activity, an estimate of runoff coefficient of the site, a site drainage map, including approximate slopes, and the names of all receiving waters.

8.I.4.3.2 ***Vegetative Controls.*** Document vegetative practices used consistent with Part 8.I.3.1 in the SWPPP.

8.I.5 Additional Inspection Requirements.

All erosion and sediment controls must be inspected either: 1) every 7 days; or 2) once every 14 calendar days and within 24 hours of a storm event of 0.25 inches or greater.

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart J – Sector J – Non-Metallic Mineral Mining and Dressing.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

Note: Where compliance with a requirement in a separate exploration permit, mining permit, reclamation plan, Surface Mining Control and Reclamation Act (SMCRA) requirements, etc. will result in you fully meeting any requirement in this Subpart, you are considered to have complied with the relevant requirement in this Subpart. You must include documentation in your SWPPP describing your rationale for concluding that any particular action on your part is sufficient to comply with the corresponding requirement in this Subpart.

8.J.1 Covered Stormwater Discharges.

The requirements in Subpart J apply to stormwater discharges associated with industrial activity from Active and Inactive Non-Metallic Mineral Mining and Dressing facilities as identified by the SIC Codes specified under Sector J in Table D-1 of Appendix D of the permit.

8.J.1.1 ***Covered Discharges from Inactive Facilities.*** All stormwater discharges.

8.J.1.2 ***Covered Discharges from Active and Temporarily Inactive Facilities***. All stormwater discharges, except for most stormwater discharges subject to the existing effluent limitation guideline at 40 CFR Part 436. Mine dewatering discharges composed entirely of stormwater or uncontaminated ground water seepage from: construction sand and gravel, industrial sand, and crushed stone mining facilities.

8.J.1.3 ***Covered Discharges from Earth-Disturbing Activities Conducted Prior to Active Mining Activities.*** All stormwater discharges.

8.J.1.4 ***Covered Discharges from Sites Undergoing Reclamation.*** All stormwater discharges.

8.J.2 Limitations on Coverage.

Most stormwater discharges subject to an existing effluent limitation guideline at 40 CFR Part 436 are not authorized by this permit. The exceptions to this limitation, which are covered by this permit, are mine dewatering discharges composed entirely of stormwater or uncontaminated ground water seepage from construction sand and gravel, industrial sand, and crushed stone mining facilities.

8.J.3 Definitions.

The following definitions are not intended to supersede the definitions of active and inactive mining facilities established by 40 CFR 122.26(b)(14)(iii).

8.J.3.1 ***Mining operations*** – For this permit, mining operations are grouped into two distinct categories, with distinct effluent limits and requirements applicable to each: a) earth-disturbing activities conducted prior to active mining activities); and b) active mining activities, which includes reclamation. "Mining operations" can occur at both inactive mining facilities and temporarily inactive mining facilities.

8.J.3.2 ***Earth-disturbing activities conducted prior to active mining activities*** – Consists of two classes of earth-disturbing (i.e., clearing, grading and excavation) activities:

a. activities performed for purposes of mine site preparation, including: cutting new rights of way (except when related to access road construction); providing access to a

mine site for vehicles and equipment (except when related to access road construction); other earth disturbances associated with site preparation activities on any areas where active mining activities have not yet commenced (e.g., for heap leach pads, waste rock facilities, tailings impoundments, wastewater treatment plants); and

b. construction of staging areas to prepare for erecting structures such as to house project personnel and equipment, mill buildings, etc., and construction of access roads. Earth-disturbing activities associated with the construction of staging areas and the construction of access roads conducted prior to active mining are considered to be "construction" and have additional effluent limits in Part 8.J .4.2.

8.J.3.3 ***Active mining activities*** – Activities related to the extraction, removal or recovery, and benefication of n*on-metallic minerals* from the earth; removal of overburden and waste rock to expose mineable minerals; and site reclamation and closure activities. All such activities occur within the "active mining area." Reclamation involves activities undertaken, in compliance with applicable mined land reclamation requirements, to return the land to an appropriate post-mining contour and land use in order to meet applicable federal and state reclamation requirements. In addition, once earth-disturbing activities conducted prior to active mining activities have ceased and all related requirements in Part 8.J.4 have been met, and a well-delineated "active mining area" has been established, all activities (including any clearing, grading, and excavation) that occur within the active mining area are "active mining activities

8.J.3.4 ***Active mining area*** – A place where work or other activity related to the extraction, removal or recovery of *n*on-metallic minerals is being conducted, except, with respect to surface mines, any area of land on or in which grading has been completed to return the earth to desired contour and reclamation work has begun.

Note: Earth-disturbing activities described in the definition in Part 8.J.3.2 that occur on areas outside the active mining area (e.g., for expansion of the mine into undeveloped territory) are considered "earth-disturbing conducted prior to active mining activities", and must comply with the requirements in Part 8.J.4.

8.J.3.5 ***Inactive mineral mining facility*** – A site or portion of a site where mineral mining and/or milling occurred in the past but there are no active mining activities occurring as defined above, and where the inactive portion is not covered by an active mining permit issued by the applicable state or federal agency. An inactive mineral mining facility has an identifiable owner / operator. Sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, and sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim are not considered either active or inactive mining facilities and do not require an NPDES industrial stormwater permit.

8.J.3.6 ***Temporarily inactive mineral mining facility*** – A site or portion of a site where *n*on-metallic mineral mining and/or milling occurred in the past but currently are not being actively undertaken, and the facility is covered by an active mining permit issued by the applicable state or federal agency.

8.J.4 Requirements Applicable to Earth-Disturbing Activities Conducted Prior to Active Mining Activities.

Stormwater discharges from earth-disturbing activities conducted prior to active mining activities (defined in Part 8.J.3.2) are covered under this permit. For such earth-disturbing activities, you must comply with all applicable requirements in Parts 1-9 of the MSGP except for

the technology-based effluent limits in Part 8.J.5 and Part 2.1.2, the inspection requirements in Part 8.J.7 and Part 3, and the monitoring requirements in Part 8.J.8 and Part 6.

Authorized discharges from areas where earth-disturbing activities have ceased and stabilization as specified in Part 8.J.4.19 or 8.J.4.2.11, where appropriate, has been completed (stabilization is not required for areas where active mining activities will occur), are no longer subject to the Part 8.J.4 requirements. At such time, authorized discharges become subject to all other applicable requirements in the MSGP, including the effluent limits in Parts 2.1.2 and 8.J.5, the inspection requirements in Parts 3 and 8.J.7, and the monitoring requirements in Parts 6 and 8.J.8.

8.J.4.1 Technology-Based Effluent Limits Applicable to All Earth-Disturbing Activities Conducted Prior to Active mining Activities. The following technology-based effluent limits apply to authorized discharges from all earth-disturbing activities conducted prior to active mining activities defined in Part 8.J.3.2(a) and 8.J.3.2(b). These limits supersede the technology-based limits listed in Part 2.1.2 and Part 8.J.5 of the MSGP.

8.J.4.1.1 Erosion and sediment control installation requirements.

- By the time construction activities commence, install and make operational downgradient sediment controls, unless this timeframe is infeasible. If infeasible you must install and make such controls operational as soon as practicable or as soon as site conditions permit.
- All other stormwater controls described in the SWPPP must be installed and made operational as soon as conditions on each portion of the site allows.

8.J.4.1.2 Erosion and sediment control maintenance requirements. You must:

- Ensure that all erosion and sediment controls remain in effective operating condition.
- Wherever you determine that a stormwater control needs maintenance to continue operating effectively, initiate efforts to fix the problem immediately after its discovery, and complete such work by the end of the next work day.
- When a stormwater control must be replaced or significantly repaired, complete the work within 7 days, unless infeasible. If 7 days is infeasible, you must complete the installation or repair as soon practicable.

8.J.4.1.3 Perimeter controls. You must:

- Install sediment controls along those perimeter areas of your disturbed area that will receive stormwater, except where site conditions prevent the use of such controls (in which case, maximize their installation to the extent practicable).
- Remove sediment before it accumulates to one-half of the above-ground height of any perimeter control.

8.J.4.1.4 Sediment track-out. For construction vehicles and equipment exiting the site directly onto paved roads, you must:

- Use appropriate stabilization techniques to minimize sediment track-out from vehicles and equipment prior to exit;
- Use additional controls to remove sediment from vehicle and equipment tires prior to exit, where necessary;
- Remove sediment that is tracked out onto paved roads by end of the work day.

Note: EPA recognizes that some fine grains may remain visible on the surfaces of off-site streets, other paved areas, and sidewalks even after you have

implemented sediment removal practices. Such "staining" is not a violation of Part 8.J.4.1.4.

8.J.4.1.5 ***Soil or sediment stockpiles.*** You must:

- Minimize erosion of stockpiles from stormwater and wind via temporary cover, if feasible.
- Prevent up-slope stormwater flows from causing erosion of stockpiles (e.g., by diverting flows around the stockpile).
- Minimize sediment from stormwater that runs off of stockpiles, using sediment controls (e.g., a sediment barrier or downslope sediment control).

8.J.4.1.6 ***Sediment basins.*** If you intend to install a sediment basin to treat stormwater from your earth-disturbing activities, you must:

- Provide storage for either (1) the 2-year, 24-hour storm, or (2) 3,600 cubic feet per acre drained.
- Prevent erosion of (1) basin embankments using stabilization controls (e.g., erosion control blankets), and (2) the inlet and outlet points of the basin using erosion controls and velocity dissipation devices.

8.J.4.1.7 ***Minimize dust.*** You must minimize the generation of dust through the appropriate application of water or other dust suppression techniques that minimize pollutants being discharged into surface waters.

8.J.4.1.8 ***Restrictions on use of treatment chemicals.*** If you intend to use sediment treatment chemicals at your site, you are subject to the following minimum requirements:

- Use conventional erosion and sediment controls prior to and after application of chemicals;
- Select chemicals suited to soil type, and expected turbidity, pH, flow rate;
- Minimize the discharge risk from stored chemicals;
- Comply with state/local requirements;
- Use chemicals in accordance with good engineering practices and specifications of chemical supplier;
- Ensure proper training;
- Provide proper SWPPP documentation.

If you plan to use cationic treatment chemicals (as defined in Appendix A), you are ineligible for coverage under this permit, unless you notify your applicable EPA Regional Office 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 a violation of water quality standards.

8.J.4.1.9 ***Site stabilization requirements for earth-disturbing activities performed for purposes of mine site preparation as defined in 8.J.3.2(a)*** (i.e., not applicable to construction of staging areas for structures and access roads as defined in 8.J.3.2(b)). You must comply with the following stabilization requirements except where the intended function of the site accounts for such disturbed earth (e.g., the earth disturbances will become actively mined, or the controls implemented at the active mining area effectively control the disturbance):

- *Temporary stabilization of disturbed areas.* Stabilization measures must be initiated immediately in portions of the site where earth-disturbing activities performed for purposes of mine site preparation (as defined in

8.J.3.2(a)) have temporarily ceased, but in no case more than 14 days after such activities have temporarily ceased. In arid, semi-arid, and drought-stricken areas, or in areas subject to snow or freezing conditions, where initiating perennial vegetative stabilization measures is not possible within 14 days after earth-disturbing activities performed for purposes of mine site preparation has temporarily ceased, temporary vegetative stabilization measures must be initiated as soon as practicable. Until temporary vegetative stabilization is achieved, interim measures such as erosion control blankets with an appropriate seed base and tackifiers must be employed. In areas of the site where earth-disturbing activities performed for purposes of mine site preparation have permanently ceased prior to active mining, temporary stabilization measures must be implemented to minimize mobilization of sediment or other pollutants until active mining activities commence.

- *Final stabilization of disturbed areas.* Stabilization measures must be initiated immediately where earth-disturbing activities performed for purposes of mine site preparation (as defined in 8.J.3.2(a)) have permanently ceased, but in no case more than 14 days after the earth-disturbing activities have permanently ceased. In arid, semi-arid, and drought-stricken areas, or in areas subject to snow or freezing conditions, where initiating perennial vegetative stabilization measures is not possible within 14 days after earth-disturbing activities have permanently ceased, final vegetative stabilization measures must be initiated as soon as possible. Until final stabilization is achieved, temporary stabilization measures, such as erosion control blankets with an appropriate seed base and tackifiers, must be used.

8.J.4.2 Additional Technology-Based Effluent Limits Applicable Only to the Construction of Staging Areas for Structures and Access Roads. The following technology-based effluent limits apply to authorized discharges from earth-disturbing activities associated with the construction of staging areas and the construction of access roads, as defined in Part 8.J.3.2(b). These limits supersede the technology-based limits listed in Part 2.1.2 and Part 8.J.5 of the MSGP. These limits do not apply to earth-disturbing activities performed for purposes of mine site preparation (as defined in 8.J.3.2(a)).

8.J.4.2.1 Area of disturbance. You must minimize the amount of soil exposed during construction activities.

8.J.4.2.2 Erosion and sediment control design requirements. You must:

- Design, install and maintain effective erosion and sediment controls to minimize the discharge of pollutants from construction activities. Account for the following factors in designing your erosion and sediment controls:
  - The expected amount, frequency, intensity and duration of precipitation;
  - The nature of stormwater runoff and run-on at the site, including factors such as impervious surfaces, slopes and site drainage features;
  - The range of soil particle sizes expected to be present on the site.
- Direct discharges from your stormwater controls to vegetated areas of your site to increase sediment removal and maximize stormwater infiltration, including any natural buffers, unless infeasible. Use velocity dissipation devices if necessary to prevent erosion when directing stormwater to vegetated areas.

- If any stormwater flow becomes or will be channelized at your site, you must design erosion and sediment controls to control both peak flowrates and total stormwater volume to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points.
- If you install stormwater conveyance channels, they must be designed to avoid unstabilized areas on the site and to reduce erosion, unless infeasible. In addition, you must minimize erosion of channels and their embankments, outlets, adjacent streambanks, slopes, and downstream waters during discharge conditions through the use of erosion controls and velocity dissipation devices within and along the length of any constructed stormwater conveyance channel, and at any outlet to provide a non-erosive flow velocity.

8.J.4.2.3 ***Natural Buffers.*** For any stormwater discharges from construction activities within 50 feet of a water of the U.S., you must comply with one of the following compliance alternatives:

1. Provide a 50-foot undisturbed natural buffer between construction activities and the water of the U.S.; or

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

3. If it is infeasible to provide an undisturbed natural buffer of any size, implement erosion and sediment controls that achieve a sediment load reduction that is equivalent to a 50-foot undisturbed natural buffer.

There are exceptions when buffer requirements do not apply:

- There is no stormwater discharge from construction disturbances to a water of the U.S;
- The natural buffer has already been eliminated by preexisting development disturbances;
- The disturbance is for the construction of a water-dependent structure or construction approved under a CWA section 404 permit;
- For linear construction projects, you are not required to comply with the requirements if there are site constraints provided that, to the extent feasible, you limit disturbances within 50 feet of a water of the U.S. and/or you provide supplemental erosion and sediment controls to treat stormwater discharges from any disturbances within 50 feet of a water of the U.S.

See http://water.epa.gov/polwaste/npdes/stormwater/upload/cgp2012_appendixg.pdf for guidance on complying with these alternatives.

8.J.4.2.4 ***Soil or sediment stockpiles.*** In addition to the requirements in Part 8.J.4.1.5, you must locate any piles outside of any natural buffers established under Part 8.J.4.2.3.

8.J.4.2.5 ***Sediment basins.*** In addition to the requirements in Part 8.J.4.1.6, you must locate sediment basins outside of any surface waters and any natural buffers established under Part 8.J.4.2.3, and you must utilize outlet structures that withdraw water from the surface, unless infeasible.

8.J.4.2.6 ***Native topsoil preservation.*** You must preserve native topsoil removed during clearing, grading, or excavation, unless infeasible. Store topsoil in a manner that will maximize its use in reclamation or final vegetative stabilization (e.g., by keeping the topsoil stabilized with seed or similar measures). This requirement does not apply if the intended function of the disturbed area dictates that topsoil be disturbed or removed.

8.J.4.2.7 ***Steep slopes.*** You must minimize the disturbance of steep slopes. The permit does not prevent or prohibit disturbance on steep slopes.

Depending on site conditions and needs, disturbance on steep slopes may be necessary (e.g., a road cut in mountainous terrain; for grading steep slopes prior to erecting the mine office). Where steep slope disturbances are necessary, you can minimize the disturbances to steep slopes through the implementation of a number of standard erosion and sediment control practices, such as by phasing disturbances in these areas and using stabilization practices specifically for steep grades.

8.J.4.2.8 ***Soil compaction.*** Where final vegetative stabilization will occur or where infiltration practices will be installed, you must either restrict vehicle/ equipment use in these areas to avoid soil compaction or use soil conditioning techniques to support vegetative growth. Minimizing soil compaction is not required where compacted soil is integral to the functionality of the site.

8.J.4.2.9 ***Dewatering Practices.*** You are prohibited from discharging ground water or accumulated stormwater that is removed from excavations, trenches, foundations, vaults or other similar points of accumulation, unless such waters are first effectively managed by appropriate controls (e.g., sediment basins or sediment traps, sediment socks, dewatering tanks, tube settlers, weir tanks, or filtration systems). Uncontaminated, non-turbid dewatering water can be discharged without being routed to a control.

You must also meet the following requirements for dewatering activities:

- *Discharge requirements:*
  - No discharging visible floating solids or foam;
  - Remove oil, grease and other pollutants from dewatering water via an oil-water separator or suitable filtration device (such as a cartridge filter);
  - Utilize vegetated upland areas of the site, to the extent feasible, to infiltrate dewatering water before discharge. In no case shall waters of the U.S. be considered part of the treatment area;
  - Implement velocity dissipation devices at all points where dewatering water is discharged;
  - Haul backwash water away for disposal or return it to the beginning of the treatment process; and
  - Clean or replace the filter media used in dewatering devices when the pressure differential equals or exceeds the manufacturer's specifications.
- Treatment chemical restrictions: If you use polymers, flocculants or other chemicals to treat dewatering water, you must comply with the requirements in Parts 8.J.4.1.8.

8.J.4.2.10 Pollution prevention requirements.

- *Prohibited discharges* (this non-exhaustive list of prohibited non-stormwater discharges is included here as a reminder that only the only allowable non-stormwater discharges are those enumerated in Part 1.1.3):
  - Wastewater from washout of concrete;
  - Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
  - Fuels, oils, or other pollutants used for operation and maintenance of vehicles or equipment;
  - Soaps, solvents, or detergents used in vehicle or equipment washing;
  - Toxic or hazardous substances from a spill or other release.
- *Design and location requirements:* Minimize the discharge of pollutants from pollutant sources by:
  - Minimizing exposure;
  - Using secondary containment, spill kits, or other equivalent measures;
  - Locating pollution sources away from surface waters, storm sewer inlets, and drainageways;
  - Cleaning up spills immediately (do not clean by hosing area down).
- *Pollution prevention requirements for wash waters:* 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;
- *Pollution prevention requirements for the storage, handling, and disposal of construction products, materials, and wastes:* 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 stormwater. Minimization of exposure is not required in cases where the exposure 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).

8.J.4.2.11 Site Stabilization requirements for the construction of staging areas for structures and access roads as defined in 8.J.3.2(b) *(i.e., not applicable to earth-disturbing activities performed for purposes of mine site preparation as defined in 8.J.3.2(a))*. You must comply with the following stabilization requirements, except where the intended function of the site accounts for such disturbed earth (e.g., the area of construction will become actively mined, or the controls implemented at the active mining area effectively control the disturbance):

- By no later than the end of the next work day after construction work in an area has stopped permanently or temporarily ("temporarily" means the land will be idle for a period of 14 days or more but earth-disturbing activities will resume in the future), immediately initiate stabilization measures;
- If using vegetative measures, by no later than 14 days after initiating stabilization:
  - Seed or plant the area, and provide temporary cover to protect the planted area;
  - Once established, vegetation must be uniform, perennial (if final stabilization), and cover at least 70% of stabilized area based on density of native vegetation.

- If using non-vegetative stabilization, by no later than 14 days after initiating stabilization:
  - Install or apply all non-vegetative measures;
  - Cover all areas of exposed soil.

Note: For the purposes of this permit, EPA will consider any of the following types of activities to constitute the initiation of stabilization: 1. Prepping the soil for vegetative or non-vegetative stabilization; 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 area to be stabilized, but not on the entire area; and 5. Finalizing arrangements to have stabilization product fully installed in compliance with the applicable deadline for completing stabilization.

Exceptions:

- Arid, semi-arid (if construction occurs during seasonally dry period), or drought-stricken areas:
  - Within 14 days of stopping construction work in an area, install any necessary non-vegetative stabilization measures;
  - Initiate vegetative stabilization as soon as conditions on the site allow;
  - Document the schedule that will be followed for initiating and completing vegetative stabilization;
  - Plant the area so that within 3 years the 70% cover requirement is met.
- Sites affected by severe storm events or other unforeseen circumstances:
  - Initiate vegetative stabilization as soon conditions on the site allow;
  - Document the schedule that will be followed for initiating and completing vegetative stabilization;
  - Plant the area so that so that within 3 years the 70% cover requirement is met.

8.J.4.3 Water Quality-Based Requirements Applicable to Earth-Disturbing Activities Conducted Prior to Active Mining Activities.

The following water quality-based limits apply to earth-disturbing activities conducted prior to active mining activities defined in Part 8.J.3.2(a) and 8.J.3.2(b), in addition to the water quality-based limits in Part 2.2 of the MSGP.

Stricter requirements apply if your site will discharge to an impaired water or a water that is identified by your state, tribe, or EPA as a Tier 2 or Tier 2.5 for antidegradation purposes:

- More rapid stabilization of exposed areas: Complete initial stabilization activities within 7 days of stopping construction work.
- More frequent site inspections: Once every 7 days and within 24 hours of a storm event of 0.25 inches or greater.

8.J.4.4 Inspection Requirements Applicable to Earth-Disturbing Activities Conducted Prior to Active Mining Activities.

The following requirements supersede the inspections requirements in Part 3 and 8.J.7 of the MSGP for earth-disturbing activities conducted prior to active mining activities defined in Part 8.J.3.2(a) and 8.J.3.2(b).

8.J.4.4.1 Inspection Frequency

- At least once every 7 calendar days, or
- Once every 14 calendar days and within 24 hours of a storm event of 0.25 inches or greater.

Note:

- Inspections only required during working hours;
- Inspections not required during unsafe conditions; and
- If you choose to inspect once every 14 days, you must have a method for measuring rainfall amount on site (either rain gauge or representative weather station)

Note: 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.

Note: You are required to specify in your SWPPP which schedule you will be following.

Note: "Within 24 hours of the occurrence of a storm event" means that you are required to conduct an inspection within 24 hours once a storm event has produced 0.25 inches, even if the storm event is still continuing. Thus, if you have elected to inspect bi- 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 are required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm.

8.J.4.4.2 Reductions in Inspection Frequency

- Stabilized areas: You may reduce the frequency of inspections to once per month in any area of your site where stabilization has occurred pursuant to Part 8.J.4.1.9 or 8.J.4.2.11.
- Arid, semi-arid, and drought stricken areas: If earth-disturbing activities are occurring during the seasonally dry period or during a period in which drought is predicted to occur, you may reduce inspections to once per month and within 24 hours of a 0.25 inch storm event.
- Frozen conditions: You may temporarily suspend or reduce inspections to once per month until thawing conditions occur if frozen conditions are continuous and disturbed areas have been stabilized. For extreme conditions in remote areas, e.g., where transit to the site is perilous/restricted or temperatures are routinely below freezing, you may suspend inspections until the conditions are conducive to safe access, and more frequent inspections can resume.

8.J.4.4.3 Areas to be Inspected. **You must at a minimum inspect the all of the following areas:**

- Disturbed areas;
- Stormwater controls and pollution prevention measures;
- Locations where stabilization measures have been implemented;
- Material, waste, borrow, or equipment storage and maintenance areas;
- Areas where stormwater flows;
- Points of discharge.

8.J.4.4.4 What to Check for During Inspections. At a minimum you must check:

- Whether all stormwater controls are installed, operational and working as intended;
- Whether any new or modified stormwater controls are needed;
- For conditions that could lead to a spill or leak;

- For visual signs of erosion/sedimentation at points of discharge.

If a discharge is occurring:
- The quality and characteristics of the discharge;
- Whether controls are operating effectively.

8.J.4.4.5 Inspection Report. Within 24 hours of an inspection, complete a report that includes:
- Inspection date;
- Name and title of inspector(s);
- Summary of inspection findings;
- Rainfall amount that triggered the inspection (if applicable);
- If it was unsafe to inspect a portion of the site, include documentation of the reason and the location(s);
- Each inspection report must be signed;
- Keep a current copy of all reports at the site or at an easily accessible location.

8.J.4.5 Cessation of Requirements Applicable to Earth-Disturbing Activities Conducted Prior to Active Mining Activities. The requirements in 8.J.4 no longer apply for any earth-disturbing activities conducted prior to active mining activities as defined in 8.J.3.2(a) or 8.J.3.2(b) where:
1. Earth-disturbing activities have ceased; and
2. Stabilization has been met consistent with Part 8.J.4.1.9 or 8.J.4.2.11 (not required for areas where active mining activities will occur).

8.J.5 Technology-Based Effluent Limits for Active Mining Activities.

Note: These requirements do not apply for any discharges from earth-disturbing activities conducted prior to active-mining as defined in 8.J.3.2(a) or 8.J.3.2(b).

8.J.5.1 Employee Training. Conduct employee training at least annually at active and temporarily inactive sites. (See also Part 2.1.2.8).

8.J.5.2 Stormwater Controls. Apart from the control measures you implement to meet your Part 2 effluent limits, where necessary to minimize pollutant discharges in stormwater, implement the following control measures at your site. The potential pollutants identified in Part 8.J.6.3 shall determine the priority and appropriateness of the control measures selected.

Stormwater Diversions: Divert stormwater away from potential pollutant sources through implementation of control measures such as the following, where determined to be feasible (list not exclusive): interceptor or diversion controls (e.g., dikes, swales, curbs, berms); pipe slope drains; subsurface drains; conveyance systems (e.g., channels or gutters, open-top box culverts, and waterbars; rolling dips and road sloping; roadway surface water deflector and culverts); or their equivalents. For mines subject to dust control requirements under state or county air quality permits, provided the requirements are equivalent, compliance with such air permit dust requirements shall constitute compliance with the dust control effluent limit in Part 2.1.2.10.

Capping: When capping is necessary to minimize pollutant discharges in stormwater, identify the source being capped and the material used to construct the cap.

Treatment: If treatment of stormwater (e.g., chemical or physical systems, oil and water separators, artificial wetlands) is necessary to protect water quality, describe the type and location of treatment used. Passive and/or active treatment of stormwater runoff is encouraged. Treated runoff may be discharged as a stormwater source regulated

under this permit provided the discharge is not combined with discharges subject to effluent limitation guidelines for the Mineral Mining and Processing Point Source Category (40 CFR Part 436).

8.J.5.3 ***Discharge Testing.*** (See also Part 5.2.3.4) Test or evaluate all outfalls covered under this permit for the presence of specific mining-related but unauthorized non-stormwater discharges such as discharges subject to effluent limitations guidelines (e.g., 40 CFR Part 436). Alternatively (if applicable), you may keep a certification with your SWPPP, per Part 8.J.6.6.

8.J.6 Additional SWPPP Requirements for Mining Operations.

Note: The requirements in Part 8.J.6 are not applicable to inactive mineral mining facilities.

8.J.6.1 ***Nature of Industrial Activities.*** (See also Part 5.2.2) Document in your SWPPP the mining and associated activities that can potentially affect the stormwater discharges covered by this permit, including a general description of the location of the site relative to major transportation routes and communities.

8.J.6.2 ***Site Map.*** (See also Part 5.2.2) Document in your SWPPP the locations of the following (as appropriate): mining or milling site boundaries; access and haul roads; outline of the drainage areas of each stormwater outfall within the facility with indications of the types of discharges from the drainage areas; location(s) of all permitted discharges covered under an individual NPDES permit; outdoor equipment storage, fueling, and maintenance areas; materials handling areas; outdoor manufacturing, outdoor storage, and material disposal areas; outdoor chemicals and explosives storage areas; overburden, materials, soils, or waste storage areas; location of mine drainage dewatering or other process water; heap leach pads; off-site points of discharge for mine dewatering and process water; surface waters; boundary of tributary areas that are subject to effluent limitations guidelines; and location(s) of reclaimed areas.

8.J.6.3 ***Potential Pollutant Sources.*** (See also Part 5.2.3) For each area of the mine or mill site where stormwater discharges associated with industrial activities occur, document in your SWPPP the types of pollutants (e.g., heavy metals, sediment) likely to be present in significant amounts. For example, phosphate mining facilities will likely need to document pollutants such as selenium, which can be present in significant amounts in their discharges. Consider these factors: the mineralogy of the waste rock (e.g., acid forming); toxicity and quantity of chemicals used, produced, or discharged; the likelihood of contact with stormwater; vegetation of site (if any); and history of significant leaks or spills of toxic or hazardous pollutants. Also include a summary of any existing waste rock or overburden characterization data and test results for potential generation of acid rock drainage.

8.J.6.4 ***Documentation of Control Measures.*** To the extent that you use any of the control measures in Part 8.J.5.2, document them in your SWPPP per Part 5.2.4. If control measures are implemented or planned but are not listed here (e.g., substituting a less toxic chemical for a more toxic one), include descriptions of them in your SWPPP. If you are in compliance with dust control requirements under state or county air quality permits, you must state (or summarize, as necessary) what the state or county air quality permit dust control requirements are and how you've achieved compliance with them.

8.J.6.5 ***Employee Training.*** All employee training(s) conducted in accordance with Part 8.J.5.1 must be documented with the SWPPP.

8.J.6.6 ***Certification of Permit Coverage for Commingled Non-Stormwater Discharges***. If you determine that you are able to certify, consistent with Part 8.J.5.3, that a particular

discharge composed of commingled stormwater and non-stormwater is covered under a separate NPDES permit, and that permit subjects the non-stormwater portion to effluent limitations prior to any commingling, you must retain such certification with your SWPPP. This certification must identify the non-stormwater discharges, the applicable NPDES permit(s), the effluent limitations placed on the non-stormwater discharge by the permit(s), and the points at which the limitations are applied.

8.J.7 Additional Inspection Requirements. (See also Part 3.1)

Except for earth-disturbing activities conducted prior to active mining activities as defined in Part 8.J.3.2(a) and 8.J.3.2(b), which are subject to Part 8.J.4.4, perform inspections at least quarterly unless adverse weather conditions make the site inaccessible. Sites which discharge to waters which are designated as Tier 2 or 2.5 or waters which are impaired for sediment or nitrogen must be inspected monthly. See Part 8.J.8.1 for inspection requirements for inactive and unstaffed sites.

8.J.8 Sector-Specific Benchmarks. (See also Part 6)

Table 8.J-1 identifies benchmarks that apply to the specific subsectors of Sector J. These benchmarks apply to both your primary industrial activity and any co-located industrial activities. Note: There are no Part 8.J.8 monitoring and reporting or impaired waters monitoring requirements for inactive and unstaffed sites.

Table 8.J-1.

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Subsector J1. Sand and Gravel Mining (SIC 1442, 1446)	Nitrate plus Nitrite Nitrogen	0.68 mg/L
	Total Suspended Solids (TSS)	100 mg/L
Subsector J2. Dimension and Crushed Stone and Nonmetallic Minerals (except fuels) (SIC 1411, 1422-1429, 1481, 1499)	Total Suspended Solids (TSS)	100 mg/L

8.J.8.1 Inactive and Unstaffed Sites – Conditional Exemption from No Exposure Requirement for Routine Inspections, Quarterly Visual Assessments, and Benchmark and Impaired Waters Monitoring. As a Sector J facility, if you are seeking to exercise a waiver from either the routine inspection, quarterly visual assessment or the benchmark and/or impaired monitoring requirements for inactive and unstaffed sites (including temporarily inactive sites), you are conditionally exempt from the requirement to certify that "there are no industrial materials or activities exposed to stormwater" in Parts 3.1.1, 3.2.3, 6.2.1.3, and 6.2.4.3. This exemption is conditioned on the following:

- If circumstances change and your facility becomes active and/or staffed, this exception no longer applies and you must immediately begin complying with the applicable benchmark monitoring requirements as if you were in your first year of permit coverage, and the quarterly visual assessment requirements; and
- EPA retains the authority to revoke this exemption and/or the monitoring waiver where it is determined that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

Subject to the two conditions above, if your facility is inactive and unstaffed, you are waived from the requirement to conduct routine facility inspections, quarterly visual assessments, and benchmark and impaired waters monitoring. You must still conduct an annual site inspection in

accordance with Part 3.1. You are encouraged to inspect your site more frequently where you have reason to believe that severe weather or natural disasters may have damaged control measures or increased discharges.

8.J.9 Effluent Limitations Based on Effluent Limitations Guidelines. (See also Part 6.2.2.1).

Table 8.J-2 identifies effluent limits that apply to the industrial activities described below. Compliance with these effluent limits is to be determined based on discharges from these industrial activities independent of commingling with any other waste streams that may be covered under this permit.

Table 8.J-2

Industrial Activity	Parameter	Effluent Limitation[1]
Mine dewatering discharges at crushed stone mining facilities (SIC 1422 - 1429)	pH	6.0 - 9.0
Mine dewatering discharges at construction sand and gravel mining facilities (SIC 1442)	pH	6.0 - 9.0
Mine dewatering discharges at industrial sand mining facilities (SIC 1446)	Total Suspended Solids (TSS)	25 mg/L, monthly avg.
		45 mg/L, daily maximum
	pH	6.0 - 9.0

[1]Monitor annually.

8.J.10 Termination of Permit Coverage.

8.J.10.1 ***Termination of Permit Coverage for Sites Reclaimed After December 17, 1990.*** A site or a portion of a site that has been released from applicable state or federal reclamation requirements after December 17, 1990, is no longer required to maintain coverage under this permit. If the site or portion of a site reclaimed after December 17, 1990, was not subject to reclamation requirements, the site or portion of the site is no longer required to maintain coverage under this permit if the site or portion of the site has been reclaimed as defined in Part 8.J.3.5.

8.J.10.2 ***Termination of Permit Coverage for Sites Reclaimed Before December 17, 1990.*** A site or portion of a site that was released from applicable state or federal reclamation requirements before December 17, 1990, or that was otherwise reclaimed before December 17, 1990, is no longer required to maintain coverage under this permit if the site or portion of the site has been reclaimed. A site or portion of a site is considered to have been reclaimed if: (1) stormwater runoff that comes into contact with raw materials, intermediate byproducts, finished products, and waste products does not have the potential to cause or contribute to violations of state water quality standards, (2) soil disturbing activities related to mining at the sites or portion of the site have been completed, (3) the site or portion of the site has been stabilized to minimize soil erosion, and (4) as appropriate depending on location, size, and the potential to contribute pollutants to stormwater discharges, the site or portion of the site has been revegetated, will be amenable to natural revegetation, or will be left in a condition consistent with the post-mining land use.

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart K – Sector K – Hazardous Waste Treatment, Storage, or Disposal Facilities.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.K.1 Covered Stormwater Discharges.

The requirements in Subpart K apply to stormwater discharges associated with industrial activity from Hazardous Waste Treatment, Storage, or Disposal facilities (TSDFs) as identified by the Activity Code specified under Sector K in Table D-1 of Appendix D of the permit.

8.K.2 Industrial Activities Covered by Sector K.

This permit authorizes stormwater discharges associated with industrial activity from facilities that treat, store, or dispose of hazardous wastes and that are operating under interim status or a permit under subtitle C of RCRA.

Disposal facilities that have been properly closed and capped, and have no significant materials exposed to stormwater, are considered inactive and do not require permits.

8.K.3 Limitations on Coverage.

8.K.3.1 ***Prohibition of Non-Stormwater Discharges.*** (See also Part 1.1.4) The following are not authorized by this permit: leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory-derived wastewater, and contact wash water from washing truck and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility. (EPA includes these prohibited non-stormwater discharges here solely as a helpful reminder to the operator that the only non-stormwater discharges authorized by this permit are at Part 1.1.3.)

8.K.3.2 ***Limitations on Coverage for Facilities Providing Commercial TSDF Services.*** For facilities located in Region 6 (see Appendix C) coverage is limited to hazardous waste TSDFs that are self-generating (including occasionally accepting wastes from community household hazardous waste collection events as public service), handle only residential wastes, and/or only store hazardous wastes and do not treat or dispose of them. Coverage under this permit is not available to commercial waste disposal and treatment facilities located in Region 6 that dispose and treat on a commercial basis any produced hazardous wastes (i.e., not their own) as a service to commercial or industrial generators.

8.K.4 Definitions.

8.K.4.1 ***Contaminated stormwater*** – stormwater that comes into direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined in Part 8.K.4.4. Some specific areas of a landfill that may produce contaminated stormwater include (but are not limited to) the open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; trucks, equipment, or machinery that has been in direct contact with the waste; and waste dumping areas.

8.K.4.2 ***Drained free liquids*** – aqueous wastes drained from waste containers (e.g., drums) prior to landfilling.

8.K.4.3 ***Landfill*** – an area of land or an excavation in which wastes are placed for permanent disposal, but that is not a land application or land treatment unit, surface

impoundment, underground injection well, waste pile, salt dome formation, salt bed formation, underground mine, or cave as these terms are defined in 40 CFR 257.2, 258.2, and 260.10.

8.K.4.4 ***Landfill wastewater*** – as defined in 40 CFR Part 445 (Landfills Point Source Category), all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, non-contaminated stormwater, contaminated ground water, and wastewater from recovery pumping wells. Landfill wastewater includes, but is not limited to, leachate, gas collection condensate, drained free liquids, laboratory derived wastewater, contaminated stormwater, and contact wash water from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

8.K.4.5 ***Leachate*** – liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

8.K.4.6 ***Non-contaminated stormwater*** – stormwater that does not come into direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined in Part 8.K.4.4. Non-contaminated stormwater includes stormwater that flows off the cap, cover, intermediate cover, daily cover, and/or final cover of the landfill.

8.K.5 Sector-Specific Benchmarks. (See also Part 6)

Table 8.K-1 identifies benchmarks that apply to the specific subsectors of Sector K. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Table 8.K-1.

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Subsector K1. ALL - Industrial Activity Code "HZ" (Note: permit coverage limited in some states). Benchmarks only applicable to discharges not subject to effluent limitations in 40 CFR Part 445 Subpart A (see below).	Ammonia	2.14 mg/L
	Total Magnesium	0.064 mg/L
	Chemical Oxygen Demand (COD)	120 mg/L
	Total Arsenic (freshwater) Total Arsenic (saltwater)[1]	0.15 mg/L 0.069 mg/L
	Total Cadmium (freshwater)[2] Total Cadmium (saltwater)[1]	Hardness Dependent 0.04 mg/L
	Total Cyanide (freshwater) Total Cyanide (saltwater)[1]	0.022 mg/L 0.001 mg/L
	Total Lead (freshwater)[2] Total Lead (saltwater)[1]	Hardness Dependent 0.21 mg/L
	Total Mercury (freshwater) Total Mercury (saltwater)[1]	0.0014 mg/L 0.0018 mg/L
	Total Selenium (freshwater) Total Selenium (saltwater)[1]	0.005 mg/L 0.29 mg/L
	Total Silver (freshwater)[2] Total Silver (saltwater)[1]	Hardness Dependent 0.0019 mg/L

[1]Saltwater benchmark values apply to stormwater discharges into saline waters where indicated.
[2] The freshwater benchmark values of some metals are dependent on water hardness. For these parameters, permittees must determine the hardness of the receiving water (see Appendix J, "Calculating Hardness in Receiving Waters for Hardness Dependent Metals," for methodology), in accordance with Part 6.2.1.1, to identify the applicable 'hardness range' for determining their benchmark value applicable to their facility. Hardness Dependent Benchmarks follow in the table below:

Freshwater Hardness Range	**Cadmium** (mg/L)	**Lead** (mg/L)	**Silver** (mg/L)
0-24.99 mg/L	0.0005	0.014	0.0007
25-49.99 mg/L	0.0008	0.023	0.0007
50-74.99 mg/L	0.0013	0.045	0.0017
75-99.99 mg/L	0.0018	0.069	0.0030
100-124.99 mg/L	0.0023	0.095	0.0046
125-149.99 mg/L	0.0029	0.122	0.0065
150-174.99 mg/L	0.0034	0.151	0.0087
175-199.99 mg/L	0.0039	0.182	0.0112
200-224.99 mg/L	0.0045	0.213	0.0138
225-249.99 mg/L	0.0050	0.246	0.0168
250+ mg/L	0.0053	0.262	0.0183

8.K.6 Effluent Limitations Based on Effluent Limitations Guidelines. (See also Part 6.2.2.1)

Table 8.K-2 identifies effluent limitations that apply to the industrial activities described below. Compliance with these effluent limitations is to be determined based on discharges from these industrial activities independent of commingling with any other waste streams that may be covered under this permit.

Table 8.K-2[1]		
Industrial Activity	**Parameter**	**Effluent Limitation**
Discharges from hazardous waste landfills subject to effluent limitations in 40 CFR Part 445 Subpart A (see footnote).	Biochemical Oxygen Demand (BOD_5)	220 mg/L, daily maximum
		56 mg/L, monthly avg. maximum
	Total Suspended Solids (TSS)	88 mg/L, daily maximum
		27 mg/L, monthly avg. maximum
	Ammonia	10 mg/L, daily maximum
		4.9 mg/L, monthly avg. maximum
	Alpha Terpineol	0.042 mg/L, daily maximum
		0.019 mg/L, monthly avg. maximum
	Aniline	0.024 mg/L, daily maximum
		0.015 mg/L, monthly avg. maximum
	Benzoic Acid	0.119 mg/L, daily maximum
		0.073 mg/L, monthly avg. maximum
	Naphthalene	0.059 mg/L, daily maximum
		0.022 mg/L, monthly avg. maximum
	p-Cresol	0.024 mg/L, daily maximum
		0.015 mg/L, monthly avg. maximum
	Phenol	0.048 mg/L, daily maximum
		0.029 mg/L, monthly avg. maximum
	Pyridine	0.072 mg/L, daily maximum
		0.025 mg/L, monthly avg. maximum
	Total Arsenic	1.1 mg/L, daily maximum
		0.54 mg/L, monthly avg. maximum
	Total Chromium	1.1 mg/L, daily maximum
		0.46 mg/L, monthly avg. maximum
	Total Zinc	0.535 mg/L, daily maximum
		0.296 mg/L, monthly avg. maximum
	pH	Within the range of 6-9 standard pH units (s.u.)

[1] Monitor annually. As set forth at 40 CFR Part 445 Subpart A, these numeric limitations apply to contaminated stormwater discharges from hazardous waste landfills subject to the provisions of RCRA Subtitle C at 40 CFR Parts 264 (Subpart N) and 265 (Subpart N) except for any of the following facilities:

(a) landfills operated in conjunction with other industrial or commercial operations when the landfill receives only wastes generated by the industrial or commercial operation directly associated with the landfill;

(b) landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes, provided that the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N as the industrial or commercial operation or that the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation;

(c) landfills operated in conjunction with Centralized Waste Treatment (CWT) facilities subject to 40 CFR Part 437, so long as the CWT facility commingles the landfill wastewater with other non-landfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills; or

(d) landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities, so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart L – Sector L – Landfills, Land Application Sites, and Open Dumps.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.L.1 Covered Stormwater Discharges.

The requirements in Subpart L apply to stormwater discharges associated with industrial activity from Landfills and Land Application Sites as identified by the Activity Code specified under Sector L in Table D-1 of Appendix D of the permit.

8.L.2 Industrial Activities Covered by Sector L.

This permit may authorize stormwater discharges for Sector L facilities associated with waste disposal at landfills, land application sites that receive or have received industrial waste, including sites subject to regulation under Subtitle D of RCRA. This permit does not cover discharges from landfills that receive only municipal wastes.

8.L.3 Limitations on Coverage.

8.L.3.1 ***Prohibition of Non-Stormwater Discharges.*** (See also Part 1.1.4) The following discharges are not authorized by this permit: leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory wastewater, and contact wash water from washing truck and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility. (EPA includes these prohibited non-stormwater discharges here solely as a helpful reminder to the operator that the only non-stormwater discharges authorized by this permit are at Part 1.1.3.)

8.L.3.2 ***Prohibition Stormwater Discharges from Open Dumps.*** Discharges from open dumps as defined under RCRA are also not authorized under this permit.

8.L.4 Definitions.

8.L.4.1 ***Contaminated stormwater*** – stormwater that comes into direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater. Some areas of a landfill that may produce contaminated stormwater include (but are not limited to) the open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; trucks, equipment, or machinery that has been in direct contact with the waste; and waste dumping areas.

8.L.4.2 ***Drained free liquids*** – aqueous wastes drained from waste containers (e.g., drums) prior to landfilling.

8.L.4.3 ***Landfill wastewater*** – as defined in 40 CFR Part 445 (Landfills Point Source Category) all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, non-contaminated stormwater, contaminated ground water, and wastewater from recovery pumping wells. Landfill process wastewater includes, but is not limited to, leachate; gas collection condensate; drained free liquids; laboratory-derived wastewater; contaminated stormwater; and contact wash water from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

8.L.4.4 ***Leachate*** – liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

8.L.4.5 ***Non-contaminated stormwater*** – stormwater that does not come into direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater. Non-contaminated stormwater includes stormwater that flows off the cap, cover, intermediate cover, daily cover, and/or final cover of the landfill.

8.L.5 Additional Technology-Based Effluent Limits.

8.L.5.1 ***Preventive Maintenance Program.*** (See also Part 2.1.2.3) As part of your preventive maintenance program, maintain the following: all elements of leachate collection and treatment systems, to prevent commingling of leachate with stormwater; the integrity and effectiveness of any intermediate or final cover (including repairing the cover as necessary), to minimize the effects of settlement, sinking, and erosion.

8.L.5.2 ***Erosion and Sedimentation Control.*** (See also Part 2.1.2.5) Provide temporary stabilization (e.g., temporary seeding, mulching, and placing geotextiles on the inactive portions of stockpiles) for the following in order to minimize discharges of pollutants in stormwater: materials stockpiled for daily, intermediate, and final cover; inactive areas of the landfill or open dump; landfills or open dump areas that have gotten final covers but where vegetation has yet to establish itself; and land application sites where waste application has been completed but final vegetation has not yet been established.

8.L.6 Additional SWPPP Requirements.

8.L.5.1 ***Drainage Area Site Map.*** (See also Part 5.2.2) Document in your SWPPP where any of the following may be exposed to precipitation or surface runoff: active and closed landfill cells or trenches, active and closed land application areas, locations where open dumping is occurring or has occurred, locations of any known leachate springs or other areas where uncontrolled leachate may commingle with runoff, and leachate collection and handling systems.

8.L.5.2 ***Summary of Potential Pollutant Sources.*** (See also Part 5.2.3) Document in your SWPPP the following sources and activities that have potential pollutants associated with them: fertilizer, herbicide, and pesticide application; earth and soil moving; waste hauling and loading or unloading; outdoor storage of significant materials, including daily, interim, and final cover material stockpiles as well as temporary waste storage areas; exposure of active and inactive landfill and land application areas; uncontrolled leachate flows; and failure or leaks from leachate collection and treatment systems.

8.L.7 Additional Inspection Requirements. (See also Part 3)

8.L.7.1 ***Inspections of Active Sites.*** Except in arid and semi-arid climates, inspect operating landfills, open dumps, and land application sites at least once every 7 days. Focus on areas of landfills that have not yet been finally stabilized; active land application areas, areas used for storage of material and wastes that are exposed to precipitation, stabilization, and structural control measures; leachate collection and treatment systems; and locations where equipment and waste trucks enter and exit the site. Ensure that sediment and erosion control measures are operating properly. For stabilized sites and areas where land application has been completed, or where the climate is arid or semi-arid, conduct inspections at least once every month.

8.L.7.2 ***Inspections of Inactive Sites.*** Inspect inactive landfills, open dumps, and land application sites at least quarterly. Qualified personnel must inspect landfill (or open dump) stabilization and structural erosion control measures, leachate collection and treatment systems, and all closed land application areas.

8.L.8 Additional Post-Authorization Documentation Requirements.

8.L.8.1 ***Recordkeeping and Internal Reporting.*** Keep records with your SWPPP of the types of wastes disposed of in each cell or trench of a landfill or open dump. For land application sites, track the types and quantities of wastes applied in specific areas.

8.L.9 Sector-Specific Benchmarks. (See also Part 6)

Table 8.L-1 identifies benchmarks that apply to the specific subsectors of Sector L. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Table 8.L-1.

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration[1]
Subsector L1. All Landfill, Land Application Sites and Open Dumps (Industrial Activity Code "LF")	Total Suspended Solids (TSS)	100 mg/L
Subsector L2. All Landfill, Land Application Sites and Open Dumps, except Municipal Solid Waste Landfill (MSWLF) Areas Closed in Accordance with 40 CFR 258.60 (Industrial Activity Code "LF")	Total Iron	1.0 mg/L

[1]Benchmark monitoring required only for discharges not subject to effluent limitations in 40 CFR Part 445 Subpart B (see Table L-2 below).

8.L.10. Effluent Limitations Based on Effluent Limitations Guidelines. (See also Part 6.2.2.1)

Table 8.L-2 identifies effluent limitations that apply to the industrial activities described below. Compliance with these effluent limitations is to be determined based on discharges from these industrial activities independent of commingling with any other waste streams that may be covered under this permit.

Table 8.L-2[1]

Industrial Activity	Parameter	Effluent Limitation
Discharges from non-hazardous waste landfills subject to effluent limitations in 40 CFR Part 445 Subpart B.	Biochemical Oxygen Demand (BOD_5)	140 mg/L, daily maximum
		37 mg/L, monthly avg. maximum
	Total Suspended Solids (TSS)	88 mg/L, daily maximum
		27 mg/L, monthly avg. maximum
	Ammonia	10 mg/L, daily maximum
		4.9 mg/L, monthly avg. maximum
	Alpha Terpineol	0.033 mg/L, daily maximum
		0.016 mg/L monthly avg. maximum
	Benzoic Acid	0.12 mg/L, daily maximum
		0.071 mg/L, monthly avg. maximum
	p-Cresol	0.025 mg/L, daily maximum
		0.014 mg/L, monthly avg. maximum

Table 8.L-2[1]		
Industrial Activity	**Parameter**	**Effluent Limitation**
	Phenol	0.026 mg/L, daily maximum
		0.015 mg/L, monthly avg. maximum
	Total Zinc	0.20 mg/L, daily maximum
		0.11 mg/L, monthly avg. maximum
	pH	Within the range of 6-9 standard pH units (s.u.)

[1] Monitor annually. As set forth at 40 CFR Part 445 Subpart B, these numeric limitations apply to contaminated stormwater discharges from MSWLFs that have not been closed in accordance with 40 CFR 258.60, and to contaminated stormwater discharges from those landfills that are subject to the provisions of 40 CFR Part 257 except for discharges from any of the following facilities:

(a) landfills operated in conjunction with other industrial or commercial operations, when the landfill receives only wastes generated by the industrial or commercial operation directly associated with the landfill;

(b) landfills operated in conjunction with other industrial or commercial operations, when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes, provided that the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N as the industrial or commercial operation, or that the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation;

(c) landfills operated in conjunction with CWT facilities subject to 40 CFR Part 437, so long as the CWT facility commingles the landfill wastewater with other non-landfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills; or

(d) landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities, so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart M – Sector M – Automobile Salvage Yards.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.M.1 Covered Stormwater Discharges.

The requirements in Subpart M apply to stormwater discharges associated with industrial activity from Automobile Salvage Yards as identified by the SIC Code specified under Sector M in Table D-1 of Appendix D of this permit.

8.M.2 Additional Technology-Based Effluent Limits.

8.M.2.1 ***Spill and Leak Prevention Procedures.*** (See also Part 2.1.2.4) Drain vehicles intended to be dismantled of all fluids upon arrival at the site (or as soon thereafter as practicable), or employ some other equivalent means to prevent spills and leaks.

8.M.2.2 ***Employee Training.*** (See also Part 2.1.2.8) If applicable to your facility, address the following areas (at a minimum) in your employee training program: proper handling (collection, storage, and disposal) of oil, used mineral spirits, anti-freeze, mercury switches, and solvents.

8.M.2.3 ***Management of Runoff.*** (See also Part 2.1.2.6) Implement control measures to minimize discharges of pollutants in runoff such as the following, where determined to be feasible (list not exclusive): berms or drainage ditches on the property line (to help prevent run-on from neighboring properties); berms for uncovered outdoor storage of oily parts, engine blocks, and above-ground liquid storage; installation of detention ponds; and installation of filtering devices and oil and water separators.

8.M.3 Additional SWPPP Requirements.

8.M.3.1 ***Drainage Area Site Map.*** (See also Part 5.2.2) Identify locations used for dismantling, storing, and maintaining used motor vehicle parts. Also identify where any of the following may be exposed to precipitation or surface runoff: dismantling areas, parts (e.g., engine blocks, tires, hub caps, batteries, hoods, mufflers) storage areas, and liquid storage tanks and drums for fuel and other fluids.

8.M.3.2 ***Potential Pollutant Sources.*** (See also Part 5.2.3) Assess the potential for the following to contribute pollutants to stormwater discharges: vehicle storage areas, dismantling areas, parts storage areas (e.g., engine blocks, tires, hub caps, batteries, hoods, mufflers), and fueling stations.

8.M.4 Additional Inspection Requirements. (See also Part 3.1)

Immediately (or as soon thereafter as practicable) inspect vehicles arriving at the site for leaks. Inspect quarterly for signs of leakage all equipment containing oily parts, hydraulic fluids, any other types of fluids, or mercury switches. Also, inspect quarterly for signs of leakage all vessels and areas where hazardous materials and general automotive fluids are stored, including, but not limited to, mercury switches, brake fluid, transmission fluid, radiator water, and antifreeze.

8.M.5 Sector-Specific Benchmarks. (See also Part 6)

Table 8.M-1 identifies benchmarks that apply to Sector M. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Table 8.M-1.		
Subsector (You may be subject to requirements for more than one sector/subsector)	**Parameter**	**Benchmark Monitoring Concentration**
Subsector M1. Automobile Salvage Yards (SIC 5015)	Total Suspended Solids (TSS)	100 mg/L
	Total Aluminum	0.75 mg/L
	Total Iron	1.0 mg/L
	Total Lead (freshwater)[2] Total Lead (saltwater)[1]	Hardness Dependent 0.21 mg/L

[1]Saltwater benchmark values apply to stormwater discharges into saline waters where indicated.
[2] The freshwater benchmark values of some metals are dependent on water hardness. For these parameters, permittees must determine the hardness of the receiving water (see Appendix J, "Calculating Hardness in Receiving Waters for Hardness Dependent Metals," for methodology), in accordance with Part 6.2.1.1, to identify the applicable 'hardness range' for determining their benchmark value applicable to their facility. Hardness Dependent Benchmarks follow in the table below:

Freshwater Hardness Range	**Lead** (mg/L)
0-24.99 mg/L	0.014
25-49.99 mg/L	0.023
50-74.99 mg/L	0.045
75-99.99 mg/L	0.069
100-124.99 mg/L	0.095
125-149.99 mg/L	0.122
150-174.99 mg/L	0.151
175-199.99 mg/L	0.182
200-224.99 mg/L	0.213
225-249.99 mg/L	0.246
250+ mg/L	0.262

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart N – Sector N – Scrap Recycling and Waste Recycling Facilities.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.N.1 Covered Stormwater Discharges.

The requirements in Subpart N apply to stormwater discharges associated with industrial activity from Scrap Recycling and Waste Recycling facilities as identified by the SIC Code specified under Sector N in Table D-1 of Appendix D of the permit.

8.N.2 Limitation on Coverage.

Separate permit requirements have been established for recycling facilities that receive, process, and do wholesale distribution of only source-separated recyclable materials primarily from non-industrial and residential sources (i.e., common consumer products including paper, newspaper, glass, cardboard, plastic containers, and aluminum and tin cans). This includes recycling facilities commonly referred to as material recovery facilities (MRF). See Part 8.N.3.3.

8.N.2.1 ***Prohibition of Non-Stormwater Discharges.*** (See also Part 1.1.4) Non-stormwater discharges from turnings containment areas are not covered by this permit (see also Part 8.N.3.1.3). Discharges from containment areas in the absence of a storm event are prohibited unless covered by a separate NPDES permit. (EPA includes these prohibited non-stormwater discharges here solely as a helpful reminder to the operator that the only non-stormwater discharges authorized by this permit are at Part 1.1.3.)

8.N.3 Additional Technology-Based Effluent Limits.

8.N.3.1 ***Scrap and Waste Recycling Facilities (Non-Source Separated, Nonliquid Recyclable Materials).*** The following requirements are for facilities that receive, process, and do wholesale distribution of non-source separated, nonliquid recyclable wastes (e.g., ferrous and nonferrous metals, plastics, glass, cardboard, and paper). These facilities may receive both nonrecyclable and recyclable materials. This section is not intended for those facilities that accept recyclables only from primarily non-industrial and residential sources.

8.N.3.1.1 ***Inbound Recyclable and Waste Material Control Program.*** Minimize the chance of accepting materials that could be significant sources of pollutants by conducting inspections of inbound recyclables and waste materials and through implementation of control measures such as the following, where determined to be feasible (list not exclusive): providing information and education to suppliers of scrap and recyclable waste materials on draining and properly disposing of residual fluids (e.g., from vehicles and equipment engines, radiators and transmissions, oil filled transformers, and individual containers or drums) and removal of mercury switches from vehicles before delivery to your facility; establishing procedures to minimize the potential of any residual fluids from coming into contact with precipitation or runoff; establishing procedures for accepting scrap lead-acid batteries (additional requirements for the handling, storage, and disposal or recycling of batteries are contained in the scrap lead-acid battery program provisions in Part 8.N.3.1.6); providing training targeted for those personnel engaged in the inspection and acceptance of inbound recyclable materials; and

establishing procedures to ensure that liquid wastes, including used oil, are stored in materially compatible and non-leaking containers and are disposed of or recycled in accordance with the Resource Conservation and Recovery Act (RCRA).

8.N.3.1.2 ***Scrap and Waste Material Stockpiles and Storage (Outdoor).*** Minimize contact of stormwater runoff with stockpiled materials, processed materials, and nonrecyclable wastes through implementation of control measures such as the following, where determined to be feasible (list not exclusive): permanent or semi-permanent covers; sediment traps, vegetated swales and strips, catch basin filters, and sand filters to facilitate settling or filtering of pollutants; dikes, berms, containment trenches, culverts, and surface grading to divert runoff from storage areas; silt fencing; and oil and water separators, sumps, and dry absorbents for areas where potential sources of residual fluids are stockpiled (e.g., automobile engine storage areas).

8.N.3.1.3 ***Stockpiling of Turnings Exposed to Cutting Fluids (Outdoor Storage)***. Minimize contact of surface runoff with residual cutting fluids by storing all turnings exposed to cutting fluids under some form of permanent or semi-permanent cover, or establishing dedicated containment areas for all turnings that have been exposed to cutting fluids. Any containment areas must be constructed of concrete, asphalt, or other equivalent types of impermeable material and include a barrier (e.g., berms, curbing, elevated pads) to prevent contact with stormwater run-on. Stormwater runoff from these areas can be discharged, provided that any runoff is first collected and treated by an oil and water separator or its equivalent. You must regularly maintain the oil and water separator (or its equivalent) and properly dispose of or recycle collected residual fluids.

8.N.3.1.4 ***Scrap and Waste Material Stockpiles and Storage (Covered or Indoor Storage).*** Minimize contact of residual liquids and particulate matter from materials stored indoors or under cover with surface runoff through implementation of control measures such as the following, where determined to be feasible (list not exclusive): good housekeeping measures, including the use of dry absorbents or wet vacuuming to contain, dispose of, or recycle residual liquids originating from recyclable containers, and mercury spill kits for spills from storage of mercury switches; not allowing wash water from tipping floors or other processing areas to discharge to the storm sewer system; and disconnecting or sealing off all floor drains connected to the storm sewer system.

8.N.3.1.5 ***Scrap and Recyclable Waste Processing Areas.*** Minimize surface runoff from coming in contact with scrap processing equipment. Pay attention to operations that generate visible amounts of particulate residue (e.g., shredding) to minimize the contact of accumulated particulate matter and residual fluids with runoff (i.e., through good housekeeping, preventive maintenance). To minimize discharges of pollutants in stormwater from scrap and recyclable waste processing areas, implement control measures such as the following, where determined to be feasible (list not exclusive): at least once per month inspecting equipment for spills or leaks and malfunctioning, worn, or corroded parts or equipment; establishing a preventive maintenance program for processing equipment; using dry-absorbents or other cleanup practices to collect and dispose of or recycle spilled or leaking fluids or use mercury spill kits for spills from storage of mercury switches; on unattended

hydraulic reservoirs over 150 gallons in capacity, installing protection devices such as low-level alarms or equivalent devices, or secondary containment that can hold the entire volume of the reservoir; implementing containment or diversion structures such as dikes, berms, culverts, trenches, elevated concrete pads, and grading to minimize contact of stormwater runoff with outdoor processing equipment or stored materials; using oil and water separators or sumps; installing permanent or semi-permanent covers in processing areas where there are residual fluids and grease; and using retention or detention ponds or basins, sediment traps, vegetated swales or strips, and/or catch basin filters or sand filters for pollutant settling and filtration.

8.N.3.1.6 ***Scrap Lead-Acid Battery Program.*** To minimize the discharge of pollutants in stormwater from lead-acid batteries, properly handle, store, and dispose of scrap lead-acid batteries, and implement control measures such as the following, where determined to be feasible (list not exclusive): segregating scrap lead-acid batteries from other scrap materials; properly handling, storing, and disposing of cracked or broken batteries; collecting and disposing of leaking lead-acid battery fluid; minimizing or eliminating (if possible) exposure of scrap lead-acid batteries to precipitation or runoff; and providing employee training for the management of scrap batteries.

8.N.3.1.7 ***Spill Prevention and Response Procedures.*** (See also Part 2.1.2.4) Install alarms and/or pump shutoff systems on outdoor equipment with hydraulic reservoirs exceeding 150 gallons in the event of a line break. Alternatively, a secondary containment system capable of holding the entire contents of the reservoir plus room for precipitation can be used. Use a mercury spill kit for any release of mercury from switches, anti-lock brake systems, and switch storage areas.

8.N.3.1.8 ***Supplier Notification Program.*** As appropriate, notify major suppliers which scrap materials will not be accepted at the facility or will be accepted only under certain conditions.

8.N.3.2 ***Waste Recycling Facilities*** (Liquid Recyclable Materials).

8.N.3.2.1 ***Waste Material Storage (Indoor).*** Minimize or eliminate contact between residual liquids from waste materials stored indoors and from surface runoff. The plan may refer to applicable portions of other existing plans, such as Spill Prevention, Control, and Countermeasure (SPCC) plans required under 40 CFR Part 112. To minimize discharges of pollutants in stormwater from indoor waste material storage areas, implement control measures such as the following, where determined to be feasible (list not exclusive): implementing procedures for material handling (including labeling and marking); cleaning up spills and leaks with dry absorbent materials and/or a wet vacuum system; installing appropriate containment structures (e.g., trenching, curbing, gutters, etc.); and installing a drainage system, including appurtenances (e.g., pumps or ejectors, manually operated valves), to handle discharges from diked or bermed areas. Drainage should be discharged to an appropriate treatment facility or sanitary sewer system, or otherwise disposed of properly. These discharges may require coverage under a separate NPDES wastewater permit or industrial user permit under the pretreatment program.

8.N.3.2.2 ***Waste Material Storage (Outdoor).*** Minimize contact between stored residual liquids and precipitation or runoff. The plan may refer to applicable portions of other existing plans, such as SPCC plans required under 40 CFR Part 112.

Discharges of stormwater from containment areas containing used oil must also be in accordance with applicable sections of 40 CFR Part 112. To minimize discharges of pollutants in stormwater from outdoor waste material storage areas, implement control measures such as the following, where determined to be feasible (list not exclusive): appropriate containment structures (e.g., dikes, berms, curbing, pits) to store the volume of the largest tank, with sufficient extra capacity for precipitation; drainage control and other diversionary structures; corrosion protection and/or leak detection systems for storage tanks; and dry-absorbent materials or a wet vacuum system to collect spills.

8.N.3.2.3 ***Trucks and Rail Car Waste Transfer Areas.*** Minimize pollutants in stormwater discharges from truck and rail car loading and unloading areas. Include measures to clean up minor spills and leaks resulting from the transfer of liquid wastes. To minimize discharges of pollutants in stormwater from truck and rail car waste transfer areas, implement control measures such as the following, where determined to be feasible (list not exclusive): containment and diversionary structures to minimize contact with precipitation or runoff; and dry clean-up methods, wet vacuuming, roof coverings, and/or runoff controls.

8.N.3.3 ***Recycling Facilities (Source-Separated Materials).*** The following requirements are for facilities that receive only source-separated recyclables, primarily from non-industrial and residential sources.

8.N.3.3.1 ***Inbound Recyclable Material Control.*** Minimize the chance of accepting nonrecyclables (e.g., hazardous materials) that could be a significant source of pollutants by conducting inspections of inbound materials and through the implementation of control measures such as the following, where determined to be feasible (list not exclusive): providing information and education measures to inform suppliers of recyclables about acceptable and non-acceptable materials; training drivers responsible for pickup of recycled material; clearly marking public drop-off containers regarding which materials can be accepted; rejecting nonrecyclable wastes or household hazardous wastes at the source; and establishing procedures for handling and disposal of nonrecyclable material.

8.N.3.3.2 ***Outdoor Storage.*** Minimize exposure of recyclables to precipitation and runoff by using good housekeeping measures to prevent accumulation of particulate matter and fluids, particularly in high traffic areas and through implementation of control measure such as the following, where determined to be feasible (list not exclusive): providing totally enclosed drop-off containers for the public; installing a sump and pump with each container pit and treat or discharge collected fluids to a sanitary sewer system; providing dikes and curbs for secondary containment (e.g., around bales of recyclable waste paper); diverting surface water runoff away from outside material storage areas; providing covers over containment bins, dumpsters, and roll-off boxes; and storing the equivalent of one day's volume of recyclable material indoors.

8.N.3.3.3 ***Indoor Storage and Material Processing.*** Minimize the release of pollutants from indoor storage and processing areas through implementation of control measures such as the following, where determined to be feasible (list not exclusive): scheduling routine good housekeeping measures for all storage and processing areas; prohibiting tipping floor wash water from draining to

the storm sewer system; and providing employee training on pollution prevention practices.

8.N.3.3.4 ***Vehicle and Equipment Maintenance***. Minimize the discharge of pollutants in stormwater from areas where vehicle and equipment maintenance occur outdoors through implementation of control measures such as the following, where determined to be feasible (list not exclusive): minimizing or eliminating outdoor maintenance areas; establishing spill prevention and clean-up procedures in fueling areas; avoiding topping off fuel tanks; diverting runoff from fueling areas; storing lubricants and hydraulic fluids indoors; and providing employee training on proper handling and storage of hydraulic fluids and lubricants.

8.N.4 Additional SWPPP Requirements.

8.N.4.1 ***Drainage Area Site Map.*** (See also Part 5.2.2) Document in your SWPPP the locations of any of the following activities or sources that may be exposed to precipitation or surface runoff: scrap and waste material storage; outdoor scrap and waste processing equipment; and containment areas for turnings exposed to cutting fluids.

8.N.4.2 ***Maintenance Schedules/Procedures for Collection, Handling, and Disposal or Recycling of Residual Fluids at Scrap and Waste Recycling Facilities.*** If you are subject to Part 8.N.3.1.3, your SWPPP must identify any applicable maintenance schedule and the procedures to collect, handle, and dispose of or recycle residual fluids.

8.N.5 Additional Inspection Requirements.

8.N.5.1 ***Inspections for Waste Recycling Facilities.*** The inspections must be performed quarterly, per Part 3.1, and include, at a minimum, all areas where waste is generated, received, stored, treated, or disposed of and that are exposed to either precipitation or stormwater runoff.

8.N.6 Sector-Specific Benchmarks. (See also Part 6)

Table 8.N-1 identifies benchmarks that apply to Sector N. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Table 8.N-1.

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Subsector N1. Scrap Recycling and Waste Recycling Facilities except those only receiving source-separate recyclable materials primarily from non-industrial and residential sources (SIC 5093)	Chemical Oxygen Demand (COD)	120 mg/L
	Total Suspended Solids (TSS)	100 mg/L
	Aluminum Total Recoverable	0.75 mg/L
	Total Copper (freshwater)[2] Total Copper (saltwater)[1]	Hardness Dependent 0.0048 mg/L
	Total Recoverable Iron	1.0 mg/L
	Total Lead (freshwater)[2] Total Lead (saltwater)[1]	Hardness Dependent 0.21 mg/L
	Total Zinc (freshwater)[2] Total Zinc (saltwater)[1]	Hardness Dependent 0.09 mg/L

[1]Saltwater benchmark values apply to stormwater discharges into saline waters where indicated.
[2] The freshwater benchmark values of some metals are dependent on water hardness. For these parameters, permittees must determine the hardness of the receiving water (see Appendix J, "Calculating Hardness in Receiving Waters for Hardness Dependent Metals," for methodology), in accordance with Part 6.2.1.1, to identify the applicable 'hardness range' for determining their benchmark value applicable to their facility. Hardness Dependent Benchmarks follow in the table below:

Freshwater Hardness Range	**Copper** (mg/L)	**Lead** (mg/L)	**Zinc** (mg/L)
0-24.99 mg/L	0.0038	0.014	0.04
25-49.99 mg/L	0.0056	0.023	0.05
50-74.99 mg/L	0.0090	0.045	0.08
75-99.99 mg/L	0.0123	0.069	0.11
100-124.99 mg/L	0.0156	0.095	0.13
125-149.99 mg/L	0.0189	0.122	0.16
150-174.99 mg/L	0.0221	0.151	0.18
175-199.99 mg/L	0.0253	0.182	0.20
200-224.99 mg/L	0.0285	0.213	0.23
225-249.99 mg/L	0.0316	0.246	0.25
250+ mg/L	0.0332	0.262	0.26

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart O – Sector O – Steam Electric Generating Facilities.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.O.1 Covered Stormwater Discharges.

The requirements in Subpart O apply to stormwater discharges associated with industrial activity from Steam Electric Power Generating Facilities as identified by the Activity Code specified under Sector O in Table D-1 of Appendix D.

8.O.2 Industrial Activities Covered by Sector O.

This permit authorizes stormwater discharges from the following industrial activities at Sector O facilities:

8.O.2.1 ***Steam electric power generation using coal, natural gas, oil, nuclear energy, etc., to produce a steam source, including coal handling areas (does not include geothermal power);***

8.O.2.2 ***Coal pile runoff, including effluent limitations established by 40 CFR Part 423;***

8.O.2.3 Dual fuel facilities that could employ a steam boiler.

8.O.3 Limitations on Coverage.

8.O.3.1 ***Prohibition of Non-Stormwater Discharges.*** Non-stormwater discharges subject to effluent limitations guidelines are not covered by this permit. (EPA includes these prohibited non-stormwater discharges here solely as a helpful reminder to the operator that the only non-stormwater discharges authorized by this permit are at Part 1.1.3.)

8.O.3.2 ***Prohibition of Stormwater Discharges.*** Stormwater discharges from the following are not covered by this permit:

8.O.3.2.1 ***Ancillary facilities (e.g., fleet centers and substations) that are not contiguous to a steam electric power generating facility;***

8.O.3.2.2 ***Gas turbine facilities (provided the facility is not a dual-fuel facility that includes a steam boiler), and combined-cycle facilities where no supplemental fuel oil is burned (and the facility is not a dual-fuel facility that includes a steam boiler);***

8.O.3.2.3 ***Cogeneration (combined heat and power) facilities utilizing a gas turbine.***

8.O.4 Additional Technology-Based Effluent Limits. The following good housekeeping measures are required in addition to Part 2.1.2.2:

8.O.4.1 ***Fugitive Dust Emissions.*** Minimize fugitive dust emissions from coal handling areas to minimize the tracking of coal dust offsite that could be discharged in stormwater through implementation of control measures such as the following, where determined to be feasible, (list not exclusive): installing specially designed tires; and washing vehicles in a designated area before they leave the site and controlling the wash water.

8.O.4.2 ***Delivery Vehicles.*** Minimize contamination of stormwater runoff from delivery vehicles arriving at the plant site. Implement procedures to inspect delivery vehicles arriving at the plant site as necessary to minimize discharges of pollutants in stormwater. Ensure the overall integrity of the body or container of the delivery vehicle and implement procedures to deal with leakage or spillage from delivery vehicles.

8.O.4.3 ***Fuel Oil Unloading Areas.*** Minimize contamination of precipitation or surface runoff from fuel oil unloading areas. Use containment curbs in unloading areas where feasible. In addition, ensure personnel familiar with spill prevention and response procedures are available to respond expeditiously in the event of a leak or spill during deliveries. Ensure that any leaks or spills are immediately contained and cleaned up, and use spill and overflow protection devices (e.g., drip pans, drip diapers, or other containment devices placed beneath fuel oil connectors to contain potential spillage during deliveries or from leaks at the connectors).

8.O.4.4 ***Chemical Loading and Unloading***. Minimize contamination of precipitation or surface runoff from chemical loading and unloading areas. Use containment curbs at chemical loading and unloading areas to contain spills, where practicable. In addition, ensure personnel familiar with spill prevention and response procedures are available to respond expeditiously in the event of a leak or spill during deliveries. Ensure leaks and spills are immediately contained and cleaned up and, where practicable, load and unload in covered areas and store chemicals indoors.

8.O.4.5 ***Miscellaneous Loading and Unloading Areas.*** Minimize contamination of precipitation or surface runoff from loading and unloading areas through implementation of control measures such as the following, where determined to be feasible (list not exclusive): covering the loading area; grading, curbing, or berming around the loading area to divert run-on; locating the loading and unloading equipment and vehicles so that leaks are contained in existing containment and flow diversion systems; or equivalent procedures.

8.O.4.6 ***Liquid Storage Tanks***. Minimize contamination of surface runoff from above-ground liquid storage tanks through implementation of control measures such as the following, where determined to be feasible, the following (list not exclusive): using protective guards around tanks; using containment curbs; installing spill and overflow protection; using dry cleanup methods; or equivalent measures.

8.O.4.7 ***Large Bulk Fuel Storage Tanks.*** Minimize contamination of surface runoff from large bulk fuel storage tanks. Use containment berms (or their equivalent). You must also comply with applicable state and federal laws, including Spill Prevention, Control and Countermeasure (SPCC) Plan requirements.

8.O.4.8 ***Spill Reduction Measures.*** Minimize the potential for an oil or chemical spill, or reference the appropriate part of your SPCC plan. Visually inspect as part of your routine facility inspection the structural integrity of all above-ground tanks, pipelines, pumps, and related equipment that may be exposed to stormwater, and make any necessary repairs immediately.

8.O.4.9 ***Oil-Bearing Equipment in Switchyards***. Minimize contamination of surface runoff from oil-bearing equipment in switchyard areas. Use level grades and gravel surfaces to retard flows and limit the spread of spills, or collect runoff in perimeter ditches.

8.O.4.10 ***Residue-Hauling Vehicles.*** Inspect all residue-hauling vehicles for proper covering over the load, adequate gate sealing, and overall integrity of the container body. Repair vehicles without load covering or adequate gate sealing, or with leaking containers or beds.

8.O.4.11 ***Ash Loading Areas***. Reduce or control the tracking of ash and residue from ash loading areas. Clear the ash building floor and immediately adjacent roadways of spillage, debris, and excess water as necessary to minimize discharges of pollutants in stormwater.

8.O.4.12 ***Areas Adjacent to Disposal Ponds or Landfills.*** Minimize contamination of surface runoff from areas adjacent to disposal ponds or landfills. Reduce ash residue that may be tracked on to access roads traveled by residue handling vehicles, and reduce ash residue on exit roads leading into and out of residue handling areas.

8.O.4.13 ***Landfills, Scrap Yards, Surface Impoundments, Open Dumps, General Refuse Sites.*** Minimize the potential for contamination of runoff from these areas.

8.O.5 Additional SWPPP Requirements.

8.O.5.1 ***Drainage Area Site Map.*** (See also Part 5.2.2) Document in your SWPPP the locations of any of the following activities or sources that may be exposed to precipitation or surface runoff: storage tanks, scrap yards, and general refuse areas; short- and long-term storage of general materials (including but not limited to supplies, construction materials, paint equipment, oils, fuels, used and unused solvents, cleaning materials, paint, water treatment chemicals, fertilizer, and pesticides); landfills and construction sites; and stock pile areas (e.g., coal or limestone piles).

8.O.5.2 ***Documentation of Good Housekeeping Measures.*** You must document in your SWPPP the good housekeeping measures implemented to meet the effluent limits in Part 8.O.4.

8.O.6 Additional Inspection Requirements.

As part of your inspection, inspect the following areas monthly: coal handling areas, loading or unloading areas, switchyards, fueling areas, bulk storage areas, ash handling areas, areas adjacent to disposal ponds and landfills, maintenance areas, liquid storage tanks, and long term and short term material storage areas.

8.O.7 Sector-Specific Benchmarks. (See also Part 6)

Table 8.O-1 identifies benchmarks that apply to Sector O. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Table 8.O-1.

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Subsector O1. Steam Electric Generating Facilities (Industrial Activity Code "SE")	Total Iron	1.0 mg/L

8.O.8 Effluent Limitations Based on Effluent Limitations Guidelines. (See also Part 6.2.2.1)

Table 8.O-2 identifies effluent limits that apply to the industrial activities described below. Compliance with these effluent limits is to be determined based on discharges from these industrial activities independent of commingling with any other waste streams that may be covered under this permit.

Table 8.O-2[1]		
Industrial Activity	**Parameter**	**Effluent Limitation**
Discharges from coal storage piles at Steam Electric Generating Facilities	TSS	50 mg/l[2]
	pH	6.0 min - 9.0 max

[1] Monitor annually.
[2] If your facility is designed, constructed, and operated to treat the volume of coal pile runoff that is associated with a 10-year, 24-hour rainfall event, any untreated overflow of coal pile runoff from the treatment unit is not subject to the 50 mg/L limitation for total suspended solids.

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart P – Sector P – Land Transportation and Warehousing.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.P.1 Covered Stormwater Discharges.

The requirements in Subpart P apply to stormwater discharges associated with industrial activity from Land Transportation and Warehousing facilities as identified by the SIC Codes specified under Sector P in Table D-1 of Appendix D of the permit.

8.P.2 Limitation on Coverage.

8.P.2.1 ***Prohibited Discharges*** (see also Parts 1.1.4 and 8.P.3.1.4) This permit does not authorize the discharge of vehicle/equipment/surface wash water, including tank cleaning operations. Such discharges must be authorized under a separate NPDES permit, discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements, or recycled on-site.

8.P.3 Additional Technology-Based Effluent Limits.

8.P.3.1 ***Good Housekeeping Measures.*** (See also Part 2.1.2.2) In addition to the Good Housekeeping requirements in Part 2.1.2.2, you must do the following.

8.P.3.1.1 ***Vehicle and Equipment Storage Areas.*** Minimize the potential for stormwater exposure to leaky or leak-prone vehicles/equipment awaiting maintenance through implementation of control measures such as the following, where determined to be feasible (list not exclusive): using of drip pans under vehicles/equipment; storing vehicles and equipment indoors; installing berms or dikes; using of absorbents; roofing or covering storage areas; and cleaning pavement surfaces to remove oil and grease.

8.P.3.1.2 ***Fueling Areas.*** Minimize contamination of stormwater runoff from fueling areas through implementation of control measures such as the following, where determined to be feasible: covering the fueling area; using spill/overflow protection and cleanup equipment; minimizing stormwater run-on/runoff to the fueling area; using dry cleanup methods; and treating and/or recycling collected stormwater runoff.

8.P.3.1.3 ***Material Storage Areas.*** Maintain all material storage vessels (e.g., for used oil/oil filters, spent solvents, paint wastes, hydraulic fluids) to prevent contamination of stormwater and plainly label them (e.g., "Used Oil," "Spent Solvents"). To minimize discharges of pollutants in stormwater from material storage areas, implement control measures such as the following, where determined to be feasible (list not exclusive): storing the materials indoors; installing berms/dikes around the areas; minimizing runoff of stormwater to the areas; using dry cleanup methods; and treating and/or recycling collected stormwater runoff.

8.P.3.1.4 ***Vehicle and Equipment Cleaning Areas.*** Minimize contamination of stormwater runoff from all areas used for vehicle/equipment cleaning through implementation of control measures such as the following, where determined to be feasible (list not exclusive): performing all cleaning operations indoors;

covering the cleaning operation, ensuring that all wash water drains to a proper collection system (i.e., not the stormwater drainage system); treating and/or recycling collected wash water; or other equivalent measures. Discharges of vehicle and equipment wash water, including tank cleaning operations, are not authorized by this permit for this sector.

8.P.3.1.5 ***Vehicle and Equipment Maintenance Areas.*** Minimize contamination of stormwater runoff from all areas used for vehicle/equipment maintenance through implementation of control measures such as the following, where determined to be feasible (list not exclusive): performing maintenance activities indoors; using drip pans; keeping an organized inventory of materials used in the shop; draining all parts of fluid prior to disposal; prohibiting wet clean up practices if these practices would result in the discharge of pollutants to stormwater drainage systems; using dry cleanup methods; treating and/or recycling collected stormwater runoff; and minimizing run on/runoff of stormwater to maintenance areas.

8.P.3.1.6 ***Locomotive Sanding (Loading Sand for Traction) Areas.*** Minimize discharges of pollutants in stormwater from locomotive sanding areas through implementation of control measures such as the following, where determined to be feasible (list not exclusive): covering sanding areas; minimizing stormwater run on/runoff; or appropriate sediment removal practices to minimize the offsite transport of sanding material by stormwater.

8.P.3.2 ***Employee Training.*** (See also Part 2.1.2.8) Train personnel at least once a year and address the following activities, as applicable: used oil and spent solvent management; fueling procedures; general good housekeeping practices; proper painting procedures; and used battery management.

8.P.4 Additional SWPPP Requirements.

8.P.4.1 ***Drainage Area Site Map.*** (See also Part 5.2.2) Identify in the SWPPP the following areas of the facility and indicate whether activities occurring there may be exposed to precipitation/surface runoff: fueling stations; vehicle/equipment maintenance or cleaning areas; storage areas for vehicle/equipment with actual or potential fluid leaks; loading/unloading areas; areas where treatment, storage or disposal of wastes occur; liquid storage tanks; processing areas; and storage areas.

8.P.4.2 ***Potential Pollutant Sources.*** (See also Part 5.2.3) Assess the potential for the following activities and facility areas to contribute pollutants to stormwater discharges: onsite waste storage or disposal; dirt/gravel parking areas for vehicles awaiting maintenance; illicit plumbing connections between shop floor drains and the stormwater conveyance system(s); and fueling areas. Describe these activities in the SWPPP.

8.P.4.3 ***Description of Good Housekeeping Measures***. You must document in your SWPPP the good housekeeping measures you implement consistent with Part 8.P.3.

8.P.4.4 ***Vehicle and Equipment Wash Water Requirements.*** If wash water is handled in a manner that does not involve separate NPDES permitting (e.g., hauled offsite), describe the disposal method and include all pertinent information (e.g., frequency, volume, destination, etc.) in your SWPPP. Discharges of vehicle and equipment wash water, including tank cleaning operations, are not authorized by this permit for this sector.

8.P.5 Additional Inspection Requirements. (See also Part 3.1)

Inspect all the following areas/activities: storage areas for vehicles/equipment awaiting maintenance, fueling areas, indoor and outdoor vehicle/equipment maintenance areas, material storage areas, vehicle/equipment cleaning areas and loading/unloading areas.

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart Q – Sector Q – Water Transportation.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.Q.1 Covered Stormwater Discharges.

The requirements in Subpart Q apply to stormwater discharges associated with industrial activity from Water Transportation facilities as identified by the SIC Codes specified under Sector Q in Table D-1 of Appendix D of the permit.

8.Q.2 Limitations on Coverage.

8.Q.2.1 ***Prohibition of Non-Stormwater Discharges.*** (See also Part 1.1.4) Not covered by this permit: discharges from vessels including bilge and ballast water, sanitary wastes, pressure wash water, and cooling water. Any discharge of pollutants from a point source to a water of the U.S. requires coverage under an NPDES permit. (EPA includes these prohibited non-stormwater discharges here solely as a helpful reminder to the operator that the only non-stormwater discharges authorized by this permit are at Part 1.1.3.)

8.Q.3 Additional Technology-Based Effluent Limits.

8.Q.3.1 ***Good Housekeeping Measures.*** You must implement the following good housekeeping measures in addition to the requirements of Part 2.1.2.2:

8.Q.3.1.1 ***Pressure Washing Area.*** If pressure washing is used to remove marine growth from vessels, the discharge water must be permitted by a separate NPDES permit. Collect or contain the discharges from the pressure washing area so that they are not commingled with stormwater discharges authorized by this permit.

8.Q.3.1.2 ***Blasting and Painting Area.*** Minimize the potential for spent abrasives, paint chips, and overspray to be discharged into receiving waters or the storm sewer system. Contain all blasting and painting activities, or use other measures, to minimize the discharge of contaminants (e.g., hanging plastic barriers or tarpaulins during blasting or painting operations to contain debris). At least once per month, you must clean stormwater conveyances of deposits of abrasive blasting debris and paint chips.

8.Q.3.1.3 ***Material Storage Areas.*** Store and plainly label all containerized materials (e.g., fuels, paints, solvents, waste oil, antifreeze, batteries) in a protected, secure location away from drains. Minimize the contamination of precipitation or surface runoff from the storage areas. Specify which materials are stored indoors, and contain or enclose or use other measures for those stored outdoors. If abrasive blasting is performed, discuss the storage and disposal of spent abrasive materials generated at the facility. Implement an inventory control plan to limit the presence of potentially hazardous materials onsite.

8.Q.3.1.4 ***Engine Maintenance and Repair Areas.*** Minimize the contamination of precipitation or surface runoff from all areas used for engine maintenance and repair through implementation of control measures such as the following,

where determined to be feasible (list not exclusive): performing all maintenance activities indoors; maintaining an organized inventory of materials used in the shop; draining all parts of fluid prior to disposal; prohibiting the practice of hosing down the shop floor; using dry cleanup methods; and treating and/or recycling stormwater runoff collected from the maintenance area.

8.Q.3.1.5 ***Material Handling Area.*** Minimize the contamination of precipitation or surface runoff from material handling operations and areas (e.g., fueling, paint and solvent mixing, disposal of process wastewater streams from vessels) through implementation of control measures such as the following, where determined to be feasible (list not exclusive): covering fueling areas; using spill and overflow protection; mixing paints and solvents in a designated area (preferably indoors or under a shed); and minimizing runoff of stormwater to material handling areas.

8.Q.3.1.6 ***Drydock Activities.*** Routinely maintain and clean the drydock to minimize dischrges of pollutants in stormwater. Address the cleaning of accessible areas of the drydock prior to flooding, and final cleanup following removal of the vessel and raising the dock. Include procedures for cleaning up oil, grease, and fuel spills occurring on the drydock. To minimize discharges of pollutants in stormwater from drydock activities, implement control measures such as the following, where determined to be feasible (list not exclusive): sweeping rather than hosing off debris and spent blasting material from accessible areas of the drydock prior to flooding; and making absorbent materials and oil containment booms readily available to clean up or contain any spills.

8.Q.3.2 ***Employee Training.*** (See also Part 2.1.2.8) As part of your employee training program, address, at a minimum, the following activities (as applicable): used oil management; spent solvent management; disposal of spent abrasives; disposal of vessel wastewaters; spill prevention and control; fueling procedures; general good housekeeping practices; painting and blasting procedures; and used battery management.

8.Q.3.3 ***Preventive Maintenance.*** (See also Part 2.1.2.3) As part of your preventive maintenance program, perform timely inspection and maintenance of stormwater management devices (e.g., cleaning oil and water separators and sediment traps to ensure that spent abrasives, paint chips, and solids will be intercepted and retained prior to entering the storm drainage system), as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

8.Q.4 Additional SWPPP Requirements.

8.Q.4.1 ***Drainage Area Site Map.*** (See also Part 5.2.2) Document in your SWPPP where any of the following may be exposed to precipitation or surface runoff: fueling; engine maintenance and repair; vessel maintenance and repair; pressure washing; painting; sanding; blasting; welding; metal fabrication; loading and unloading areas; locations used for the treatment, storage, or disposal of wastes; liquid storage tanks; liquid storage areas (e.g., paint, solvents, resins); and material storage areas (e.g., blasting media, aluminum, steel, scrap iron).

8.Q.4.2 ***Summary of Potential Pollutant Sources.*** (See also Part 5.2.3) Document in the SWPPP the following additional sources and activities that have potential pollutants associated with them: outdoor manufacturing or processing activities (e.g., welding, metal

fabricating) and significant dust or particulate generating processes (e.g., abrasive blasting, sanding, and painting).

8.Q.5 Additional Inspection Requirements. (See also Part 3.1)

Include the following in all quarterly routine facility inspections: pressure washing areas; blasting, sanding, and painting areas; material storage areas; engine maintenance and repair areas; material handling areas; drydock area; and general yard area.

8.Q.6 Sector-Specific Benchmarks. (See also Part 6)

Table 8.Q-1 identifies benchmarks that apply to Sector Q. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Table 8.Q-1.

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Subsector Q1. Water Transportation Facilities (SIC 4412-4499)	Total Aluminum	0.75 mg/L
	Total Iron	1.0 mg/L
	Total Lead (freshwater)[2] Total Lead (saltwater)[1]	Hardness Dependent 0.21 mg/L
	Total Zinc (freshwater)[2] Total Zinc (saltwater)[1]	Hardness Dependent 0.09 mg/L

[1]Saltwater benchmark values apply to stormwater discharges into saline waters where indicated.

[2] The freshwater benchmark values of some metals are dependent on water hardness. For these parameters, permittees must determine the hardness of the receiving water (see Appendix J, "Calculating Hardness in Receiving Waters for Hardness Dependent Metals," for methodology), in accordance with Part 6.2.1.1, to identify the applicable 'hardness range' for determining their benchmark value applicable to their facility. Hardness Dependent Benchmarks follow in the table below:

Freshwater Hardness Range	Lead (mg/L)	Zinc (mg/L)
0-24.99 mg/L	0.014	0.04
25-49.99 mg/L	0.023	0.05
50-74.99 mg/L	0.045	0.08
75-99.99 mg/L	0.069	0.11
100-124.99 mg/L	0.095	0.13
125-149.99 mg/L	0.122	0.16
150-174.99 mg/L	0.151	0.18
175-199.99 mg/L	0.182	0.20
200-224.99 mg/L	0.213	0.23
225-249.99 mg/L	0.246	0.25
250+ mg/L	0.262	0.26

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart R – Sector R – Ship and Boat Building and Repair Yards.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.R.1 Covered Stormwater Discharges.

The requirements in Subpart R apply to stormwater discharges associated with industrial activity from Ship and Boat Building and Repair Yards as identified by the SIC Codes specified under Sector R in Table D-1 of Appendix D of the permit.

8.R.2 Limitations on Coverage.

8.R.2.1 ***Prohibition of Non-Stormwater Discharges.*** (See also Part 1.1.4) Not covered by this permit: discharges from vessels including bilge and ballast water, sanitary wastes, pressure wash water, and cooling water. (EPA includes these prohibited non-stormwater discharges here solely as a helpful reminder to the operator that the only non-stormwater discharges authorized by this permit are at Part 1.1.3.)

8.R.3 Additional Technology-Based Effluent Limits.

8.R.3.1 ***Good Housekeeping Measures.*** (See also Part 2.1.2.2)

8.R.3.1.1 ***Pressure Washing Area***. If pressure washing is used to remove marine growth from vessels, the discharged water must be permitted as a process wastewater by a separate NPDES permit.

8.R.3.1.2 ***Blasting and Painting Area.*** Minimize the potential for spent abrasives, paint chips, and overspray to be discharged into receiving waters or the storm sewer system. Contain all blasting and painting activities, or use other measures, to prevent the discharge of the contaminants (e.g., hanging plastic barriers or tarpaulins during blasting or painting operations to contain debris). When necessary, regularly clean stormwater conveyances of deposits of abrasive blasting debris and paint chips.

8.R.3.1.3 ***Material Storage Areas.*** Store and plainly label all containerized materials (e.g., fuels, paints, solvents, waste oil, antifreeze, batteries) in a protected, secure location away from drains. Minimize the contamination of precipitation or surface runoff from the storage areas. If abrasive blasting is performed, discuss the storage and disposal of spent abrasive materials generated at the facility. Implement an inventory control plan to limit the presence of potentially hazardous materials onsite.

8.R.3.1.4 ***Engine Maintenance and Repair Areas.*** Minimize the contamination of precipitation or surface runoff from all areas used for engine maintenance and repair through implementation of control measures such as the following, where determined to be feasible (list not exclusive): performing all maintenance activities indoors; maintaining an organized inventory of materials used in the shop; draining all parts of fluid prior to disposal; prohibiting the practice of hosing down the shop floor; using dry cleanup methods; and treating and/or recycling stormwater runoff collected from the maintenance area.

8.R.3.1.5 ***Material Handling Area.*** Minimize the discharge of pollutants in stormwater from material handling operations and areas (e.g., fueling, paint and solvent mixing, disposal of process wastewater streams from vessels) through implementation of control measures such as the following, where determined to be feasible (list not exclusive): covering fueling areas, using spill and overflow protection, mixing paints and solvents in a designated area (preferably indoors or under a shed), and minimizing stormwater run-on to material handling areas.

8.R.3.1.6 ***Drydock Activities.*** Routinely maintain and clean the drydock to minimize pollutants in stormwater runoff. Clean accessible areas of the drydock prior to flooding and final cleanup following removal of the vessel and raising the dock. Include procedures for cleaning up oil, grease, or fuel spills occurring on the drydock. To minimize discharges of pollutants in stormwater from drydock activities, implement control measures such as the following, where determined to be feasible (list not exclusive): sweeping rather than hosing off debris and spent blasting material from accessible areas of the drydock prior to flooding; and having absorbent materials and oil containment booms readily available to clean up and contain any spills.

8.R.3.2 ***Employee Training.*** (See also Part 2.1.2.8) As part of your employee training program, address, at a minimum, the following activities (as applicable): used oil management, spent solvent management, disposal of spent abrasives, disposal of vessel wastewaters, spill prevention and control, fueling procedures, general good housekeeping practices, painting and blasting procedures, and used battery management.

8.R.3.4 ***Preventive Maintenance.*** (See also Part 2.1.2.3) As part of your preventive maintenance program, perform timely inspection and maintenance of stormwater management devices (e.g., cleaning oil and water separators and sediment traps to ensure that spent abrasives, paint chips, and solids will be intercepted and retained prior to entering the storm drainage system), as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

8.R.4 Additional SWPPP Requirements.

8.R.4.1 ***Drainage Area Site Map.*** (See also Part 5.2.2) Document in your SWPPP where any of the following may be exposed to precipitation or surface runoff: fueling; engine maintenance or repair; vessel maintenance or repair; pressure washing; painting; sanding; blasting; welding; metal fabrication; loading and unloading areas; treatment, storage, and waste disposal areas; liquid storage tanks; liquid storage areas (e.g., paint, solvents, resins); and material storage areas (e.g., blasting media, aluminum, steel, scrap iron).

8.R.4.2 ***Potential Pollutant Sources.*** (See also Part 5.2.3) Document in your SWPPP the following additional sources and activities that have potential pollutants associated with them (if applicable): outdoor manufacturing or processing activities (e.g., welding, metal fabricating) and significant dust or particulate generating processes (e.g., abrasive blasting, sanding, and painting).

8.R.4.3 ***Documentation of Good Housekeeping Measures.*** Document in your SWPPP any good housekeeping measures implemented to meet the effluent limits in Part 8.R.3.

8.R.4.3.1 ***Blasting and Painting Areas.*** Document in the SWPPP any standard operating practices relating to blasting and painting (e.g., prohibiting uncontained blasting and painting over open water or prohibiting blasting and painting during windy conditions, which can render containment ineffective).

8.R.4.3.2 ***Storage Areas.*** Specify in your SWPPP which materials are stored indoors, and contain or enclose or use other measures for those stored outdoors.

8.R.5 Additional Inspection Requirements. (See also Part 3.1)

Include the following in all quarterly routine facility inspections: pressure washing areas; blasting, sanding, and painting areas; material storage areas; engine maintenance and repair areas; material handling areas; drydock area; and general yard area.

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart S – Sector S – Air Transportation.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.S.1 Covered Stormwater Discharges.

The requirements in Subpart S apply to stormwater discharges associated with industrial activity from Air Transportation facilities identified by the SIC Codes specified under Sector S in Table D-1 of Appendix D of the permit.

8.S.2 Limitation on Coverage.

8.S.2.1 ***Limitations on Coverage.*** This permit authorizes stormwater discharges from only those portions of the air transportation facility that are involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), equipment cleaning operations or deicing operations.

Note: the term "deicing" in this permit will generally be used to mean both deicing (removing frost, snow or ice) and anti-icing (preventing accumulation of frost, snow or ice) activities, unless specific mention is made otherwise.

8.S.2.2 ***Prohibition of Non-Stormwater Discharges.*** (See also Part 1.1.4 and Part 8.S.5.3) This permit does not authorize the discharge of aircraft, ground vehicle, runway and equipment wash waters; nor the dry weather discharge of deicing chemicals. Such discharges must be covered by separate NPDES permit(s). Note that a discharge resulting from snowmelt is not a dry weather discharge. (EPA includes these prohibited non-stormwater discharges here solely as a helpful reminder to the operator that the only non-stormwater discharges authorized by this permit are at Part 1.1.3.)

8.S.3 Multiple Operators at Air Transportation Facilities.

Air transportation facilities often have more than one operator who could discharge stormwater associated with industrial activity. Operators include the airport authority and airport tenants, including air passenger or cargo companies, fixed based operators, and other parties who routinely perform industrial activities on airport property.

8.S.3.1 ***Permit Coverage/Submittal of NOIs.*** Where an airport transportation facility has multiple industrial operators that discharge stormwater, each individual operator must obtain coverage under an NPDES stormwater permit. To obtain coverage under the MSGP, all such operators must meet the eligibility requirements in Part 1 and must submit an NOI, per Part 1.2.1.1 (or, if appropriate, a no exposure certification per Part 1.4).

8.S.3.2 ***MSGP Implementation Responsibilities for Airport Authority and Tenants.*** The airport authority, in collaboration with its tenants, may choose to implement certain MSGP requirements on behalf of its tenants in order to increase efficiency and eliminate redundancy or duplication of effort. Options available to the airport authority and its tenants for implementation of MSGP requirements include:

- The airport authority performs certain activities on behalf of itself and its tenants and reports on its activities;
- Tenants provide the airport authority with relevant inputs about tenants' activities, including deicing chemical usage*, and the airport authority compiles and reports on tenants' and its own activities;

- Tenants independently perform, document and submit required information on their activities.

*Tenants who report their deicing chemical usage to the airport authority and rely on the airport authority to perform monitoring should not check the glycol and urea use box on their NOI forms.

8.S.3.3 ***SWPPP Requirements.*** A single comprehensive SWPPP must be developed for all stormwater discharges associated with industrial activity at the airport before submittal of any NOIs. The comprehensive SWPPP should be developed collaboratively by the airport authority and tenants. If any operator develops a SWPPP for discharges from its own areas of the airport, that SWPPP must be coordinated and integrated with the comprehensive SWPPP. All operators and their separate SWPPP contributions and compliance responsibilities must be clearly identified in the comprehensive SWPPP, which all operators must sign and certify per Part 5.2.7. As applicable, the SWPPP must clearly specify the MSGP requirements to be complied with by:

- The airport authority for itself;
- The airport authority on behalf of its tenants;
- Tenants for themselves.

For each activity that an operator (e.g., the airport authority) conducts on behalf of another operator (e.g., a tenant), the SWPPP must describe a process for reporting results to the latter operator and for ensuring appropriate follow-up, if necessary, by all affected operators. This is to ensure all actions are taken to correct any potential deficiencies or permit violations. For example, where the airport authority is conducting monitoring for itself and its tenants, the SWPPP must identify how the airport authority will share the monitoring results with its tenants, and then follow-up with its tenants where there are any exceedances of benchmarks, effluent limits, or water quality standards. In turn, the SWPPP must describe how the tenants will also follow-up to ensure permit compliance.

8.S.3.4 ***Duty to Comply.*** All individual operators are responsible for implementing their assigned portion of the comprehensive SWPPP, and operators must ensure that their individual activities do not render another operator's stormwater controls ineffective. In addition, the standard permit conditions found in Appendix B apply to each individual operator, including B.1 Duty to Comply (which states, in part, "You [each individual operator] must comply with all conditions of this permit."). For multiple operators at an airport this means that each individual operator remains responsible for ensuring all requirements of its own MSGP coverage are met regardless of whether the comprehensive SWPPP allocates the actual implementation of any of those responsibilities to another entity. That is, the failure of the entity allocated responsibility in the SWPPP to implement an MSGP requirement on behalf of other operators does not negate the other operators' ultimate liability.

8.S.4 Additional Technology-Based Effluent Limits.

8.S.4.1 ***Good Housekeeping Measures.*** (See also Part 2.1.2.2)

8.S.4.1.1 ***Aircraft, Ground Vehicle and Equipment Maintenance Areas.*** Minimize the contamination of stormwater runoff from all areas used for aircraft, ground vehicle and equipment maintenance (including the maintenance conducted on the terminal apron and in dedicated hangers) through implementation of control measures such as the following, where determined to be feasible and that accommodate considerations of safety, space, operational constraints, and flight considerations (list not exclusive):

performing maintenance activities indoors; maintaining an organized inventory of material used in the maintenance areas; draining all parts of fluids prior to disposal; prohibiting the practice of hosing down the apron or hanger floor; using dry cleanup methods; and collecting the stormwater runoff from the maintenance area and providing treatment or recycling.

8.S.4.1.2 ***Aircraft, Ground Vehicle and Equipment Cleaning Areas.*** (See also Part 8.S.4.6) Clearly demarcate these areas on the ground using signage or other appropriate means. Minimize the contamination of stormwater runoff from cleaning areas.

8.S.4.1.3 ***Aircraft, Ground Vehicle and Equipment Storage Areas.*** Store all aircraft, ground vehicles and equipment awaiting maintenance in designated areas only and implement control measures to minimize the discharge of pollutants in stormwater from these storage areas such as the following, where determined to be feasible and that accommodate considerations of safety, space, operational constraints, and flight considerations (list not exclusive): storing aircraft and ground vehicles indoors; using drip pans for the collection of fluid leaks; and perimeter drains, dikes or berms surrounding the storage areas.

8.S.4.1.4 ***Material Storage Areas.*** Maintain the vessels of stored materials (e.g., used oils, hydraulic fluids, spent solvents, and waste aircraft fuel) in good condition to prevent or minimize contamination of stormwater. Also plainly label the vessels (e.g., "used oil," "Contaminated Jet A"). To minimize contamination of precipitation/runoff from these areas, implement control measures such as the following, where determined to be feasible and that accommodate considerations of safety, space, operational constraints, and flight considerations (list not exclusive): storing materials indoors; storing waste materials in a centralized location; and installing berms/dikes around storage areas.

8.S.4.1.5 ***Airport Fuel System and Fueling Areas.*** Minimize the discharge of pollutants in stormwater from airport fuel system and fueling areas through implementation of control measures such as the following, where determined to be feasible and that accommodate considerations of safety, space, operational constraints, and flight considerations (list not exclusive): implementing spill and overflow practices (e.g., placing absorptive materials beneath aircraft during fueling operations); using only dry cleanup methods; and collecting stormwater runoff. If you have implemented a SPCC plan developed in accordance with the 2006 amendments to the SPCC rule, you may cite the relevant aspects from your SPCC plan that comply with the requirements of this section in your SWPPP.

8.S.4.1.6 ***Source Reduction.*** Consistent with safety considerations, minimize the use of urea and glycol-based deicing chemicals to reduce the aggregate amount of deicing chemicals used that could add pollutants to stormwater discharges. Chemical options to replace pavement deicers (urea or glycol) include (list not exclusive): potassium acetate; magnesium acetate; calcium acetate; and anhydrous sodium acetate.

8.S.4.1.6.1 ***Runway Deicing Operations.*** To minimize the discharge of pollutants in stormwater from runway deicing operations, implement source reduction control measures such as the following, where determined to be feasible and that

accommodate considerations of safety, space, operational constraints, and flight considerations (list not exclusive): metered application of chemicals; pre-wetting dry chemical constituents prior to application; installing a runway ice detection system; implementing anti-icing operations as a preventive measure against ice buildup; heating sand; and product substitution.

8.S.4.1.6.2 ***Aircraft Deicing Operations.*** Minimize the discharge of pollutants in stormwater from aircraft deicing operations. Determine whether excessive application of deicing chemicals occurs and adjust as necessary, consistent with considerations of flight safety. Determine whether alternatives to glycol and whether containment measures for applied chemicals are feasible. Implement control measures for reducing deicing fluid such as the following, where determined to be feasible and that accommodate considerations of safety, space, operational constraints, and flight considerations (list not exclusive): forced-air deicing systems, computer-controlled fixed-gantry systems, infrared technology, hot water, varying glycol content to air temperature, enclosed-basket deicing trucks, mechanical methods, solar radiation, hangar storage, aircraft covers, and thermal blankets for MD-80s and DC-9s. Consider using ice-detection systems and airport traffic flow strategies and departure slot allocation systems where feasible and that accommodate considerations of safety, space, operational constraints, and flight considerations. The evaluations and determinations required by this Part should be carried out by the personnel most familiar with the particular aircraft and flight operations and related systems in question (versus an outside entity such as the airport authority).

8.S.4.1.7 ***Management of Runoff.*** (See also Part 2.1.2.6) Minimize the discharge of pollutants in stormwater from deicing chemicals in runoff. To minimize discharges of pollutants in stormwater from aircraft deicing, implement runoff management control measures such as the following, where determined to be feasible and that accommodate considerations of safety, space, operational constraints, and flight considerations (list not exclusive): installing a centralized deicing pad to recover deicing fluid following application; plug-and-pump (PnP); using vacuum/collection trucks (glycol recovery vehicles); storing contaminated stormwater/deicing fluids in tanks; recycling collected deicing fluid where feasible; releasing controlled amounts to a publicly owned treatment works; separation of contaminated snow; conveying contaminated runoff into a stormwater impoundment for biochemical decomposition (be aware of attracting wildlife that may prove hazardous to flight operations); and directing runoff into vegetative swales or other infiltration measures. To minimize discharges of pollutants in stormwater from runway deicing, implement runoff management control measures such as the following, where determined to be feasible and that accommodate considerations of safety, space, operational constraints, and flight considerations (list not exclusive): mechanical systems (snow plows, brushes); conveying contaminated runoff into swales and/or a stormwater impoundment; and pollution prevention practices such as ice detection systems, and airfield prewetting.

When applying deicing fluids during non-precipitation events (also referred to as "clear ice deicing"), implement control measures to prevent unauthorized discharge of pollutants (dry-weather discharges of pollutants would need coverage under an NPDES wastewater permit), or to minimize the discharge of pollutants from deicing fluids in later stormwater discharges, implement control measures such as the following, where determined to be feasible and that accommodate considerations safety, space, operational constraints, and flight considerations (list not exclusive): recovering deicing fluids; preventing the fluids from entering storm sewers or other stormwater discharge conveyances (e.g., covering storm sewer inlets, using booms, installing absorptive interceptors in the drains); releasing controlled amounts to a publicly owned treatment works Used deicing fluid should be recycled whenever practicable.

8.S.4.2 ***Deicing Season.*** You must determine the seasonal timeframe (e.g., December-February, October - March) during which deicing activities typically occur at the facility. Implementation of control measures, including any BMPs, facility inspections and monitoring must be conducted with particular emphasis throughout the defined deicing season. If you meet the deicing chemical usage thresholds of 100,000 gallons glycol and/or 100 tons of urea, the deicing season you identified is the timeframe during which you must obtain the four required benchmark monitoring event results for deicing-related parameters, i.e., BOD, COD, ammonia and pH. See also Part 8.S.7.

8.S.5 Additional SWPPP Requirements.

8.S.5.1 ***Drainage Area Site Map***. (See also Part 5.2.2) Document in the SWPPP the following areas of the facility and indicate whether activities occurring there may be exposed to precipitation/surface runoff: aircraft and runway deicing operations; fueling stations; aircraft, ground vehicle and equipment maintenance/cleaning areas; and storage areas for aircraft, ground vehicles and equipment awaiting maintenance.

8.S.5.2 ***Potential Pollutant Sources.*** (See also Part 5.2.3) In the inventory of exposed materials, describe in the SWPPP the potential for the following activities and facility areas to contribute pollutants to stormwater discharges: aircraft, runway, ground vehicle and equipment maintenance and cleaning; and aircraft and runway deicing operations (including apron and centralized aircraft deicing stations, runways, taxiways and ramps). If deicing chemicals are used, a record of the types (including the Safety Data Sheets [SDS]) used and the monthly quantities, either as measured or, in the absence of metering, using best estimates, must be maintained. This includes all deicing chemicals, not just glycols and urea (e.g., potassium acetate), because large quantities of these other chemicals can still have an adverse impact on receiving waters. Deicing operators must provide the above information to the airport authority for inclusion with any comprehensive airport SWPPPs.

8.S.5.3 ***Vehicle and Equipment Wash Water Requirements.*** If wash water is handled in a manner that does not involve separate NPDES permitting or local pretreatment requirements (e.g., hauled offsite, retained onsite), describe the disposal method and include all pertinent information (e.g., frequency, volume, destination) in your SWPPP. Discharges of vehicle and equipment wash water are not authorized by this permit for this sector.

8.S.5.4 ***Documentation of Control Measures Used for Management of Runoff.*** Document in your SWPPP the control measures used for collecting or containing contaminated melt water from collection areas used for disposal of contaminated snow.

8.S.6 Additional Inspection Requirements.

At a minimum conduct facility inspections at least monthly during the deicing season (e.g., October through April for most mid-latitude airports). If your facility needs to deice before or after this period, expand the monthly inspections to include all months during which deicing chemicals may be used. The Director may specifically require you to increase inspection frequencies.

8.S.7 Sector-Specific Benchmarks. (See also Part 6)

Table 8.S-1 identifies benchmarks that apply to Sector S. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Table 8.S-1.

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
For airports where a single permittee, or a combination of permitted facilities use more than 100,000 gallons of pure glycol in glycol-based deicing fluids and/or 100 tons or more of urea on an average annual basis, monitor the first four parameters in ONLY those outfalls that collect runoff from areas where deicing activities occur (SIC 4512-4581).	Biochemical Oxygen Demand (BOD_5)[1]	30 mg/L
	Chemical Oxygen Demand (COD)[1]	120 mg/L
	Ammonia[1]	2.14 mg/L
	pH[1]	6.0 - 9.0 s.u.

[1] These are deicing-related parameters. Collect the four benchmark samples, and any required follow-up benchmark samples, during the timeframe defined in Part 8.S.4.2 when deicing activities are occurring.

8.S.8 Effluent Limitations Based on Effluent Limitations Guidelines and New Source Performance Standards. (See also Part 6.2.2.1)

8.S.8.1 ***Airfield Pavement Deicing.*** For both existing and new "primary airports" (as defined at 40 CFR 449.2) with 1,000 or more annual non-propeller aircraft departures that discharge stormwater from airfield pavement deicing activities, there shall be no discharge of airfield pavement deicers containing urea. To comply with this limitation, such airports must do one of the following: (1) certify annually on the annual report that you do not use pavement deicers containing urea, or (2) meet the effluent limitation in Table 8.S-2.

8.S.8.2 ***Aircraft Deicing.*** Airports that are both "primary airports" (as defined at 40 CFR 449.2) and new sources ("new airports") with 1,000 or more annual non-propeller aircraft departures must meet the applicable requirements for aircraft deicing at 40 CFR 449.11(a). Discharges of the collected aircraft deicing fluid directly to waters of the U.S. are not eligible for coverage under this permit.

8.S.8.3 ***Monitoring, Reporting and Recordkeeping.*** For new and existing airports subject to the effluent limitations in Part 8.S.8.1 or 8.S.8.2 of this permit, you must comply with the applicable monitoring, reporting and recordkeeping requirements outlined in 40 CFR 449.20.

Table 8.S-2		
Industrial Activity	**Parameter**	**Effluent Limitation**
Runoff containing urea from airfield pavement deicing at existing and new primary airports with 1,000 or more annual non-propeller aircraft departures	Ammonia as Nitrogen	14.7 mg/L, daily maximum

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart T – Sector T – Treatment Works.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.T.1 Covered Stormwater Discharges.

The requirements in Subpart T apply to stormwater discharges associated with industrial activity from Treatment Works as identified by the Activity Code specified under Sector T in Table D-1 of Appendix D of the permit.

8.T.2 Industrial Activities Covered by Sector T.

The requirements listed under this part apply to all existing point source stormwater discharges associated with the following activities:

8.T.2.1 ***Treatment works treating domestic sewage, or any other sewage sludge or wastewater treatment device or system used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge; that are located within the confines of a facility with a design flow of 1.0 million gallons per day (MGD) or more; or are required to have an approved pretreatment program under 40 CFR Part 403.***

8.T.2.2 ***The following are not required to have permit coverage: farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located within the facility, or areas that are in compliance with Section 405 of the CWA.***

8.T.3 Limitations on Coverage.

8.T.3.1 ***Prohibition of Non-Stormwater Discharges.*** (See also Part 1.1.4) Sanitary and industrial wastewater and equipment and vehicle wash water are not authorized by this permit. (EPA includes these prohibited non-stormwater discharges here solely as a helpful reminder to the operator that the only non-stormwater discharges authorized by this permit are at Part 1.1.3.)

8.T.4 Additional Technology-Based Effluent Limits.

8.T.4.1 ***Control Measures.*** (See also Part 2.1.2) To minimize the discharge of pollutants in stormwater, implement control measures such as the following, where determined to be feasible (list not exclusive): routing stormwater to the treatment works; or covering exposed materials (i.e., from the following areas: grit, screenings and other solids handling, storage or disposal areas; sludge drying beds; dried sludge piles; compost piles; and septage or hauled waste receiving station).

8.T.4.2 ***Employee Training.*** (See also Part 2.1.2.8) At a minimum, training must address the following areas when applicable to a facility: petroleum product management; process chemical management; spill prevention and controls; fueling procedures; general good housekeeping practices; and proper procedures for using fertilizer, herbicides, and pesticides.

8.T.5 Additional SWPPP Requirements.

8.T.5.1 ***Site Map.*** (See also Part 5.2.2) Document in your SWPPP where any of the following may be exposed to precipitation or surface runoff: grit, screenings, and other solids handling, storage, or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station; and storage areas for process chemicals, petroleum products, solvents, fertilizers, herbicides, and pesticides.

8.T.5.2 ***Potential Pollutant Sources.*** (See also Part 5.2.3) Document in your SWPPP the following additional sources and activities that have potential pollutants associated with them, as applicable: grit, screenings, and other solids handling, storage, or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station; and access roads and rail lines.

8.T.5.3 ***Wastewater and Wash Water Requirements.*** If wastewater and/or vehicle and equipment wash water is not covered by another NPDES permit but is handled in another manner (e.g., hauled offsite, retained onsite), the disposal method must be described and all pertinent information (e.g., frequency, volume, destination) must be included in your SWPPP. Discharges of vehicle and equipment wash water, including tank cleaning operations, are not authorized by this permit for this sector.

8.T.6 Additional Inspection Requirements. (See also Part 3.1)

Include the following areas in all inspections: access roads and rail lines; grit, screenings, and other solids handling, storage, or disposal areas; sludge drying beds; dried sludge piles; compost piles; and septage or hauled waste receiving station.

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart U – Sector U – Food and Kindred Products.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.U.1 Covered Stormwater Discharges.

The requirements in Subpart U apply to stormwater discharges associated with industrial activity from Food and Kindred Products facilities as identified by the SIC Codes specified in Table D-1 of Appendix D of the permit.

8.U.2 Limitations on Coverage.

8.U.2.1 ***Prohibition of Non-Stormwater Discharges.*** (See also Part 1.1.4) The following discharges are not authorized by this permit: discharges containing boiler blowdown, cooling tower overflow and blowdown, ammonia refrigeration purging, and vehicle washing and clean-out operations. (EPA includes these prohibited non-stormwater discharges here solely as a helpful reminder to the operator that the only non-stormwater discharges authorized by this permit are at Part 1.1.3.)

8.U.3 Additional Technology-Based Limitations.

8.U.3.1 ***Employee Training.*** (See also Part 2.1.2.8) Address pest control in your employee training program.

8.U.4 Additional SWPPP Requirements.

8.U.4.1 ***Drainage Area Site Map.*** (See also Part 5.2.2) Document in your SWPPP the locations of the following activities if they are exposed to precipitation or runoff: vents and stacks from cooking, drying, and similar operations; dry product vacuum transfer lines; animal holding pens; spoiled product; and broken product container storage areas.

8.U.4.2 ***Potential Pollutant Sources.*** (See also Part 5.2.3) Document in your SWPPP, in addition to food and kindred products processing-related industrial activities, application and storage of pest control chemicals (e.g., rodenticides, insecticides, fungicides) used on plant grounds.

8.U.5 Additional Inspection Requirements. (See also Part 3.1)

Inspect on a quarterly basis, at a minimum, the following areas where the potential for exposure to stormwater exists: loading and unloading areas for all significant materials; storage areas, including associated containment areas; waste management units; vents and stacks emanating from industrial activities; spoiled product and broken product container holding areas; animal holding pens; staging areas; and air pollution control equipment.

8.U.6 Sector-Specific Benchmarks. (See also Part 6)

Table 8.U-1 identifies benchmarks that apply to the specific subsectors of Sector U. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Table 8.U-1.		
Subsector (You may be subject to requirements for more than one Sector / Subsector)	**Parameter**	**Benchmark Monitoring Concentration**
Subsector U1. Grain Mill Products (SIC 2041-2048)	Total Suspended Solids (TSS)	100 mg/L
Subsector U2. Fats and Oils Products (SIC 2074-2079)	Biochemical Oxygen Demand (BOD_5)	30 mg/L
	Chemical Oxygen Demand (COD)	120 mg/L
	Nitrate plus Nitrite Nitrogen	0.68 mg/L
	Total Suspended Solids (TSS)	100 mg/L

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart V – Sector V – Textile Mills, Apparel, and Other Fabric Products.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.V.1 Covered Stormwater Discharges.

The requirements in Subpart V apply to stormwater discharges associated with industrial activity from Textile Mills, Apparel, and Other Fabric Product manufacturing as identified by the SIC Codes specified under Sector V in Table D-1 of Appendix D of the permit.

8.V.2 Limitations on Coverage.

8.V.2.1 ***Prohibition of Non-Stormwater Discharges.*** (See also Part 1.1.4) The following are not authorized by this permit: discharges of wastewater (e.g., wastewater resulting from wet processing or from any processes relating to the production process), reused or recycled water, and waters used in cooling towers. If you have these types of discharges from your facility, you must cover them under a separate NPDES permit. (EPA includes these prohibited non-stormwater discharges here solely as a helpful reminder to the operator that the only non-stormwater discharges authorized by this permit are at Part 1.1.3.)

8.V.3 Additional Technology-Based Limitations.

8.V.3.1 ***Good Housekeeping Measures.*** (See also Part 2.1.2.2)

8.V.3.1.1 ***Material Storage Areas.*** Plainly label and store all containerized materials (e.g., fuels, petroleum products, solvents, and dyes) in a protected area, away from drains. Minimize contamination of the stormwater runoff from such storage areas. Also consider an inventory control plan to prevent excessive purchasing of potentially hazardous substances. For storing empty chemical drums or containers, ensure that the drums and containers are clean (consider triple-rinsing) and that there is no contact of residuals with precipitation or runoff. Collect and dispose of wash water from these cleanings properly.

8.V.3.1.2 ***Material Handling Areas.*** Minimize contamination of stormwater runoff from material handling operations and areas through implementation of control measures such as the following, where determined to be feasible: using spill and overflow protection; covering fueling areas; and covering or enclosing areas where the transfer of material may occur. When applicable, address the replacement or repair of leaking connections, valves, transfer lines and pipes that may carry chemicals, dyes or wastewater.

8.V.3.1.3 ***Fueling Areas.*** Minimize contamination of stormwater runoff from fueling areas through implementation of control measures such as the following, where determined to be feasible: covering the fueling area; using spill and overflow protection; minimizing run-on of stormwater to the fueling areas; using dry cleanup methods; and treating and/or recycling stormwater runoff collected from the fueling area.

8.V.3.1.4 ***Above-Ground Storage Tank Area.*** Minimize contamination of stormwater runoff from above-ground storage tank areas, including the associated piping and valves, through implementation of control measures such as the following, where determined to be feasible (list not exclusive): regular cleanup of these areas; including measures for tanks, piping and valves explicitly in your SPCC program; minimizing runoff of stormwater from adjacent areas; restricting access to the area; inserting filters in adjacent catch basins; providing absorbent booms in unbermed fueling areas; using dry cleanup methods; and permanently sealing drains within critical areas that may discharge to a storm drain.

8.V.3.2 ***Employee Training.*** (See also Part 2.1.2.8) As part of your employee training program, address, at a minimum, the following activities (as applicable): use of reused and recycled waters, solvents management, proper disposal of dyes, proper disposal of petroleum products and spent lubricants, spill prevention and control, fueling procedures, and general good housekeeping practices.

8.V.4 Additional SWPPP Requirements.

8.V.4.1 ***Potential Pollutant Sources.*** (See also Part 5.2.3) Document in your SWPPP the following additional sources and activities that have potential pollutants associated with them: industry-specific significant materials and industrial activities (e.g., backwinding, beaming, bleaching, backing bonding, carbonizing, carding, cut and sew operations, desizing, drawing, dyeing locking, fulling, knitting, mercerizing, opening, packing, plying, scouring, slashing, spinning, synthetic-felt processing, textile waste processing, tufting, turning, weaving, web forming, winging, yarn spinning, and yarn texturing).

8.V.4.2 ***Description of Good Housekeeping Measures for Material Storage Areas.*** Document in the SWPPP your containment area or enclosure for materials stored outdoors in connection with Part 8.V.3.1.1 above.

8.V.5 Additional Inspection Requirements.

Inspect, at least monthly, the following activities and areas (at a minimum): transfer and transmission lines, spill prevention, good housekeeping practices, management of process waste products, and all structural and nonstructural management practices.

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart W – Sector W – Furniture and Fixtures.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.W.1 Covered Stormwater Discharges.

The requirements in Subpart W apply to stormwater discharges associated with industrial activity from Furniture and Fixtures facilities as identified by the SIC Codes specified under Sector W in Table D-1 of Appendix D of the permit.

8.W.2 Additional SWPPP Requirements.

8.W.2.1 ***Drainage Area Site Map.*** (See also Part 5.2.2) Document in your SWPPP where any of the following may be exposed to precipitation or surface runoff: material storage (including tanks or other vessels used for liquid or waste storage) areas; outdoor material processing areas; areas where wastes are treated, stored, or disposed of; access roads; and rail spurs.

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart X – Sector X – Printing and Publishing.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.X.1 Covered Stormwater Discharges.

The requirements in Subpart X apply to stormwater discharges associated with industrial activity from Printing and Publishing facilities as identified by the SIC Codes specified under Sector X in Table D-1 of Appendix D of the permit.

8.X.2 Additional Technology-Based Effluent Limits.

8.X.2.1 ***Good Housekeeping Measures.*** (See also Part 2.1.2.2)

8.X.2.1.1 ***Material Storage Areas.*** Plainly label and store all containerized materials (e.g., skids, pallets, solvents, bulk inks, hazardous waste, empty drums, portable and mobile containers of plant debris, wood crates, steel racks, and fuel oil) in a protected area, away from drains. Minimize contamination of the stormwater runoff from such storage areas. Also consider an inventory control plan to prevent excessive purchasing of potentially hazardous substances.

8.X.2.1.2 ***Material Handling Area.*** Minimize contamination of stormwater runoff from material handling operations and areas (e.g., blanket wash, mixing solvents, loading and unloading materials) through implementation of control measures such as the following, where determined to be feasible (list not exclusive): using spill and overflow protection; covering fueling areas; and covering or enclosing areas where the transfer of materials may occur. When applicable, address the replacement or repair of leaking connections, valves, transfer lines, and pipes that may carry chemicals or wastewater.

8.X.2.1.3 ***Fueling Areas.*** Minimize contamination of stormwater runoff from fueling areas through implementation of control measures such as the following, where determined to be feasible (list not exclusive): covering the fueling area; using spill and overflow protection; minimizing runoff of stormwater to the fueling areas; using dry cleanup methods; and treating and/or recycling stormwater runoff collected from the fueling area.

8.X.2.1.4 ***Above Ground Storage Tank Area.*** Minimize contamination of the stormwater runoff from above-ground storage tank areas, including the associated piping and valves, through implementation of control measures such as the following, where determined to be feasible (list not exclusive): regularly cleaning these areas; explicitly addressing tanks; piping and valves in the SPCC program; minimizing stormwater runoff from adjacent areas; restricting access to the area; inserting filters in adjacent catch basins; providing absorbent booms in unbermed fueling areas; using dry cleanup methods; and permanently sealing drains within critical areas that may discharge to a storm drain.

8.X.2.2 ***Employee Training.*** (See also Part 2.1.2.8) As part of your employee training program, address, at a minimum, the following activities (as applicable): spent solvent management, spill prevention and control, used oil management, fueling procedures, and general good housekeeping practices.

8.X.3 Additional SWPPP Requirements.

8.X.3.1 ***Description of Good Housekeeping Measures for Material Storage Areas.*** In connection with Part 8.X.2.1.1, describe in the SWPPP the containment area or enclosure for materials stored outdoors.

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart Y – Sector Y – Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.Y.1 Covered Stormwater Discharges.

The requirements in Subpart Y apply to stormwater discharges associated with industrial activity from Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries facilities as identified by the SIC Codes specified under Sector Y in Table D-1 of Appendix D of the permit.

8.Y.2 Additional Technology-Based Effluent Limits.

8.Y.2.1 ***Controls for Rubber Manufacturers***. (See also Part 2.1.2) Minimize the discharge of zinc in your stormwater discharges. Parts 8.Y.2.1.1 to 8.Y.2.1.5 give possible sources of zinc to be reviewed and list control measures to be implemented where determined to be feasible. Implement additional control measures such as the following, where determined to be feasible (list not exclusive): using chemicals purchased in pre-weighed, sealed polyethylene bags; storing in-use materials in sealable containers, ensuring an airspace between the container and the cover to minimize "puffing" losses when the container is opened; and using automatic dispensing and weighing equipment.

8.Y.2.1.1 ***Zinc Bags.*** Ensure proper handling and storage of zinc bags at your facility through implementation of control measures such as the following, where determined to be feasible (list not exclusive): employee training on the handling and storage of zinc bags; indoor storage of zinc bags; cleanup of zinc spills without washing the zinc into the storm drain; and the use of 2,500-pound sacks of zinc rather than 50- to 100-pound sacks.

8.Y.2.1.2 ***Dumpsters.*** Minimize discharges of zinc from dumpsters through implementation of control measures such as the following, where determined to be feasible (list not exclusive): covering the dumpster; moving the dumpster indoors; and providing a lining for the dumpster.

8.Y.2.1.3 ***Dust Collectors and Baghouses***. Minimize contributions of zinc to stormwater from dust collectors and baghouses. Replace or repair, as appropriate, improperly operating dust collectors and baghouses.

8.Y.2.1.4 ***Grinding Operations.*** Minimize contamination of stormwater as a result of dust generation from rubber grinding operations. Where determined to be feasible, install a dust collection system.

8.Y.2.1.5 ***Zinc Stearate Coating Operations.*** Minimize the potential for stormwater contamination from drips and spills of zinc stearate slurry that may be released to the storm drain. Where determined to be feasible, use alternative compounds to zinc stearate.

8.Y.2.2 ***Controls for Plastic Products Manufacturers.*** Minimize the discharge of plastic resin pellets in your stormwater discharges through implementation of control measures such as the following, where determined to be feasible (list not exclusive): minimizing spills; cleaning up of spills promptly and thoroughly; sweeping thoroughly; pellet capturing; employee education; and disposal precautions.

8.Y.3 Additional SWPPP Requirements.

8.Y.3.1 ***Potential Pollutant Sources for Rubber Manufacturers.*** (See also Part 5.2.3) Document in your SWPPP the use of zinc at your facility and the possible pathways through which zinc may be discharged in stormwater runoff.

8.Y.4 Sector-Specific Benchmarks. (See also Part 6)

Table 8.Y-1 identifies benchmarks that apply to Sector Y. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Table 8.Y-1.

Subsector (You may be subject to requirements for more than one sector/subsector)	**Parameter**	**Benchmark Monitoring Concentration**
Subsector Y1. Rubber Products Manufacturing (SIC 3011, 3021, 3052, 3053, 3061, 3069)	Total Zinc (freshwater)[2] Total Zinc (saltwater)[1]	Hardness Dependent 0.09 mg/L

[1]Saltwater benchmark values apply to stormwater discharges into saline waters where indicated.
[2] The freshwater benchmark values of some metals are dependent on water hardness. For these parameters, permittees must determine the hardness of the receiving water (see Appendix J, "Calculating Hardness in Receiving Waters for Hardness Dependent Metals," for methodology), in accordance with Part 6.2.1.1, to identify the applicable 'hardness range' for determining their benchmark value applicable to their facility. Hardness Dependent Benchmarks follow in the table below:

Freshwater Hardness Range	**Zinc** (mg/L)
0-24.99 mg/L	0.04
25-49.99 mg/L	0.05
50-74.99 mg/L	0.08
75-99.99 mg/L	0.11
100-124.99 mg/L	0.13
125-149.99 mg/L	0.16
150-174.99 mg/L	0.18
175-199.99 mg/L	0.20
200-224.99 mg/L	0.23
225-249.99 mg/L	0.25
250+ mg/L	0.26

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart Z – Sector Z – Leather Tanning and Finishing.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.Z.1 Covered Stormwater Discharges.

The requirements in Subpart Z apply to stormwater discharges associated with industrial activity from Leather Tanning and Finishing facilities as identified by the SIC Code specified under Sector Z in Table D-1 of Appendix D of the permit.

8.Z.2 Additional Technology-Based Effluent Limits.

8.Z.2.3 ***Good Housekeeping Measures.*** (See also Part 2.1.2.2)

8.Z.2.3.1 ***Storage Areas for Raw, Semiprocessed, or Finished Tannery By-products.*** Minimize contamination of stormwater runoff from pallets and bales of raw, semiprocessed, or finished tannery by-products (e.g., splits, trimmings, shavings). Store or protect indoors with polyethylene wrapping, tarpaulins, roofed storage, etc. where practicable. Place materials on an impermeable surface and enclose or put berms (or equivalent measures) around the area to prevent stormwater run-on and runoff where practicable.

8.Z.2.3.2 ***Material Storage Areas.*** Label storage containers of all materials (e.g., specific chemicals, hazardous materials, spent solvents, waste materials) and minimize contact of such materials with stormwater.

8.Z.2.3.3 ***Buffing and Shaving Areas.*** Minimize contamination of stormwater runoff with leather dust from buffing and shaving areas through implementation of control measures such as the following, where determined to be feasible (list not exclusive): implementing dust collection enclosures; implementing preventive inspection and maintenance programs; or other appropriate preventive measures.

8.Z.2.3.4 ***Receiving, Unloading, and Storage Areas.*** Minimize contamination of stormwater runoff from receiving, unloading, and storage areas. If these areas are exposed, implement control measures such as the following, where determined to be feasible (list not exclusive): covering all hides and chemical supplies; diverting drainage to the process sewer; or grade berming or curbing the area to prevent stormwater runoff.

8.Z.2.3.5 ***Outdoor Storage of Contaminated Equipment.*** Minimize contact of stormwater with contaminated equipment through implementation of control measures such as the following, where determined to be feasible (list not exclusive): covering equipment, diverting drainage to the process sewer, and cleaning thoroughly prior to storage.

8.Z.2.3.6 ***Waste Management.*** Minimize contamination of stormwater runoff from waste storage areas through implementation of control measures such as the following, where determined to be feasible (list not exclusive): covering dumpsters; moving waste management activities indoors; covering waste piles with temporary covering material such as tarpaulins or polyethylene; and

minimizing stormwater runoff by enclosing the area or building berms around the area.

8.Z.3 Additional SWPPP Requirements.

8.Z.3.1 ***Drainage Area Site Map.*** (See also Part 5.2.2) Identify in your SWPPP where any of the following may be exposed to precipitation or surface runoff: processing and storage areas of the beamhouse, tanyard, and re-tan wet finishing and dry finishing operations.

8.Z.3.2 ***Potential Pollutant Sources.*** (See also Part 5.2.3) Document in your SWPPP the following sources and activities that have potential pollutants associated with them (as appropriate): temporary or permanent storage of fresh and brine-cured hides; extraneous hide substances and hair; leather dust, scraps, trimmings, and shavings.

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart AA – Sector AA – Fabricated Metal Products

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.AA.1 Covered Stormwater Discharges.

The requirements in Subpart AA apply to stormwater discharges associated with industrial activity from Fabricated Metal Products facilities as identified by the SIC Codes specified under Sector AA in Table D-1 of Appendix D of the permit.

8.AA.2 Additional Technology-Based Effluent Limits.

8.AA.2.1 ***Good Housekeeping Measures.*** (See also Part 2.1.2.2)

8.AA.2.1.1 ***Raw Steel Handling Storage.*** Minimize the generation of and/or recover and properly manage scrap metals, fines, and iron dust. Include measures for containing materials within storage handling areas.

8.AA.2.1.2 ***Paints and Painting Equipment.*** Minimize exposure of paint and painting equipment to stormwater.

8.AA.2.2 ***Spill Prevention and Response Procedures.*** (See also Part 2.1.2.4) Ensure that the necessary equipment to implement a cleanup is available to personnel. The following areas should be addressed:

8.AA.2.2.1 ***Metal Fabricating Areas.*** Maintain clean, dry, orderly conditions in these areas. Use dry clean-up techniques where practicable.

8.AA.2.2.2 ***Storage Areas for Raw Metal.*** Keep these areas free of conditions that could cause, or impede appropriate and timely response to, spills or leakage of materials through implementation of control measures such as the following, where determined to be feasible (list not exclusive): maintaining storage areas so that there is easy access in the event of a spill, and labeling stored materials to aid in identifying spill contents.

8.AA.2.2.3 ***Metal Working Fluid Storage Areas.*** Minimize the potential for stormwater contamination from storage areas for metal working fluids.

8.AA.2.2.4 ***Cleaners and Rinse Water***. Control and clean up spills of solvents and other liquid cleaners, control sand buildup and disbursement from sand-blasting operations, and prevent exposure of recyclable wastes. Substitute environmentally benign cleaners when possible.

8.AA.2.2.5 ***Lubricating Oil and Hydraulic Fluid Operations.*** Minimize the potential for stormwater contamination from lubricating oil and hydraulic fluid operations. Use monitoring equipment or other devices to detect and control leaks and overflows where feasible. Install perimeter controls such as dikes, curbs, grass filter strips, or equivalent measures where feasible.

8.AA.2.2.6 ***Chemical Storage Areas.*** Minimize stormwater contamination and accidental spillage in chemical storage areas. Include a program to inspect containers and identify proper disposal methods.

8.AA.2.3 ***Spills and Leaks.*** (See also Part 5.2.3.3) In your spill prevention and response procedures, required by Part 2.1.2.4, pay attention to the following materials (at a minimum): chromium, toluene, pickle liquor, sulfuric acid, zinc and other water priority chemicals, and hazardous chemicals and wastes.

8.AA.3 Additional SWPPP Requirements.

8.AA.3.1 ***Drainage Area Site Map.*** (See also Part 5.2.2) Document in your SWPPP where any of the following may be exposed to precipitation or surface runoff: raw metal storage areas; finished metal storage areas; scrap disposal collection sites; equipment storage areas; retention and detention basins; temporary and permanent diversion dikes or berms; right-of-way or perimeter diversion devices; sediment traps and barriers; processing areas, including outside painting areas; wood preparation; recycling; and raw material storage.

8.AA.3.2 ***Potential Pollutant Sources.*** (See also Part 5.2.3) Document in your SWPPP the following additional sources and activities that have potential pollutants associated with them: loading and unloading operations for paints, chemicals, and raw materials; outdoor storage activities for raw materials, paints, empty containers, corn cobs, chemicals, and scrap metals; outdoor manufacturing or processing activities such as grinding, cutting, degreasing, buffing, and brazing; onsite waste disposal practices for spent solvents, sludge, pickling baths, shavings, ingot pieces, and refuse and waste piles.

8.AA.4 Additional Inspection Requirements.

8.AA.4.1 ***Inspections.*** (See also Part 3.1) At a minimum, include the following areas in all inspections: raw metal storage areas, finished product storage areas, material and chemical storage areas, spent solvents and chemical storage areas, recycling areas, loading and unloading areas, equipment storage areas, paint areas, drainage from roof and vehicle fueling and maintenance areas. Potential pollutants include chromium, zinc, lubricating oil, solvents, aluminum, oil and grease, methyl ethyl ketone, steel, and related materials.

8.AA.5 Sector-Specific Benchmarks. (See also Part 6)

Table 8.AA-1 identifies benchmarks that apply to the specific subsectors of Sector AA. These benchmarks apply to both your primary industrial activity and any co-located industrial activities.

Table 8.AA-1

Subsector (You may be subject to requirements for more than one sector/subsector)	Parameter	Benchmark Monitoring Concentration
Subsector AA1. Fabricated Metal Products, except Coating (SIC 3411-3499; 3911-3915)	Total Aluminum	0.75 mg/L
	Total Iron	1.0 mg/L
	Total Zinc (freshwater)[2] Total Zinc (saltwater)[1]	Hardness Dependent 0.09 mg/L
	Nitrate plus Nitrite Nitrogen	0.68 mg/L
Subsector AA2. Fabricated Metal Coating and Engraving (SIC 3479)	Total Zinc (freshwater)[2] Total Zinc (saltwater)[1]	Hardness Dependent 0.09 mg/L
	Nitrate plus Nitrite Nitrogen	0.68 mg/L

[1]Saltwater benchmark values apply to stormwater discharges into saline waters where indicated.
[2] The freshwater benchmark values of some metals are dependent on water hardness. For these parameters, permittees must determine the hardness of the receiving water (see Appendix J, "Calculating Hardness in Receiving Waters for Hardness Dependent Metals," for methodology), in accordance with Part 6.2.1.1, to identify the applicable 'hardness range' for determining their benchmark value applicable to their facility. Hardness Dependent Benchmarks follow in the table below:

Freshwater Hardness Range	**Zinc** (mg/L)
0-24.99 mg/L	0.04
25-49.99 mg/L	0.05
50-74.99 mg/L	0.08
75-99.99 mg/L	0.11
100-124.99 mg/L	0.13
125-149.99 mg/L	0.16
150-174.99 mg/L	0.18
175-199.99 mg/L	0.20
200-224.99 mg/L	0.23
225-249.99 mg/L	0.25
250+ mg/L	0.26

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart AB – Sector AB – Transportation Equipment, Industrial or Commercial Machinery Facilities.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.AB.1 Covered Stormwater Discharges.

The requirements in Subpart AB apply to stormwater discharges associated with industrial activity from Transportation Equipment, Industrial or Commercial Machinery facilities as identified by the SIC Codes specified under Sector AB in Table D-1 of Appendix D of the permit.

8.AB.2 Additional SWPPP Requirements.

8.AB.2.1 ***Drainage Area Site Map.*** (See also Part 5.2.2) Identify in your SWPPP where any of the following may be exposed to precipitation or surface runoff: vents and stacks from metal processing and similar operations.

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart AC– Sector AC – Electronic and Electrical Equipment and Components, Photographic and Optical Goods.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.AC.1 Covered Stormwater Discharges.

The requirements in Subpart AC apply to stormwater discharges associated with industrial activity from facilities that manufacture Electronic and Electrical Equipment and Components, Photographic and Optical goods as identified by the SIC Codes specified in Table D-1 of Appendix D of the permit.

8.AC.2 Additional Requirements.

No additional sector-specific requirements apply.

Part 8 – Sector-Specific Requirements for Industrial Activity

Subpart AD – Sector AD – Stormwater Discharges Designated by the Director as Requiring Permits.

You must comply with Part 8 sector-specific requirements associated with your primary industrial activity and any co-located industrial activities, as defined in Appendix A. The sector-specific requirements apply to those areas of your facility where those sector-specific activities occur. These sector-specific requirements are in addition to any requirements specified elsewhere in this permit.

8.AD.1 Covered Stormwater Discharges.

Sector AD is used to provide permit coverage for facilities designated by the Director as needing a stormwater permit, and any discharges of stormwater associated with industrial activity that do not meet the description of an industrial activity covered by Sectors A-AC.

8.AD.1.1 ***Eligibility for Permit Coverage.*** Because this sector is primarily intended for use by discharges designated by the Director as needing a stormwater permit (which is an atypical circumstance), and your facility may or may not normally be discharging stormwater associated with industrial activity, you must obtain the Director's written permission to use this permit prior to submitting an NOI. If you are authorized to use this permit, you will still be required to ensure that your discharges meet the basic eligibility provisions of this permit at Part 1.1.

8.AD.2 Sector-Specific Benchmarks and Effluent Limits. (See also Part 6)

The Director will establish any additional monitoring and reporting requirements for your facility prior to authorizing you to be covered by this permit. Additional monitoring requirements would be based on the nature of activities at your facility and your stormwater discharges.

9. Permit Conditions Applicable to Specific States, Indian Country Lands, or Territories

9.1 EPA Region 1: Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont.

9.1.1 CTR05I000: Indian Country within the State of Connecticut

No additional requirements.

9.1.2 MAR050000: Commonwealth of Massachusetts, except Indian country

Permittees in the Commonwealth of Massachusetts must meet the following conditions:

9.1.2.1 ***Additional conditions required by the Commonwealth of Massachusetts.*** Discharges covered by the general permit must comply with the provisions of 314 CMR 3.00; 314 CMR 4.00; 314 CMR 9.00; and 314 CMR 10.00 and any other related policies adopted under the authority of the Massachusetts Clean Waters Act, MGL c.21, ss. 26-53 and Wetlands Protection Act, MGL s. 40.

New facilities or redevelopment of existing facilities subject to this permit must comply with applicable stormwater performance standards prescribed by state regulation or policy. A permit under 314 CMR 3.04 is not required for existing facilities which meet state stormwater performance standards. An application for a permit under 314 CMR 3.00 is required only when required under 314 CMR 3.04(2)(b) {designation of a discharge on a case-by-case basis} or is otherwise identified in 314 CMR 3.00 or any Massachusetts Department of Environmental Protection policy as a discharge requiring a permit application. Department regulations and policies may be obtained through the State House Bookstore or online at www.mass.gov/dep.

9.1.2.2 ***SWPPP Availability.*** The Department may request a copy of the Stormwater Pollution Prevention Plan (SWPPP) and the permittee is required to submit the SWPPP to the Department within 14 days of such a request.

9.1.2.3 ***Authorization to Inspect.*** The Department may conduct an inspection of any facility covered by this permit to ensure compliance with state law requirements, including state water quality standards. The Department may enforce its certification conditions.

9.1.2.4 ***Submission of Monitoring Data.*** The results of any monitoring [four samples required in the first year of the permit] required by this permit must be sent to the appropriate Regional Office of the Department [attention: Bureau of Waste Prevention] where the monitoring identifies violations of any effluent limits or benchmarks for any parameter for which monitoring is required under this permit. In addition, any follow-up monitoring and a description of the corrective actions required and undertaken to meet the effluent limits or benchmarks must be sent to the appropriate Department Regional Office.

9.1.2.5 ***Sector-Specific Requirements.*** The Massachusetts Coastal Zone Management Program submitted the following conditions to be added to the permit in order to meet the Programs' Consistency Review and which are included in the requirements of this Water Quality Certification:

- In Sector Q [Water Transportation] add copper to the required monitoring parameters with a benchmark monitoring concentration as included in the MSGP 2015 Fact Sheet Part X.B.1, and Appendix J.
- In Sector R [Ship and Boat Building and Repair Yards] add aluminum, iron, lead and copper to the list of required monitoring parameters with a benchmark monitoring concentration as included in the MSGP 2015 Fact Sheet Part X.B.1 and Appendix J.
- Modify the monitoring requirements [Part 6.2.1.2] for Sectors Q and R such that all four of the quarterly monitoring samples must meet the benchmarks rather than the average of the four before no further monitoring is required.

9.1.3 MAR05I000: Indian country within the Commonwealth of Massachusetts

No additional requirements.

9.1.4 NHR050000: State of New Hampshire

Permittees in New Hampshire must also meet the following conditions:

9.1.4.1 ***Consider Opportunities for on-site infiltration of stormwater.*** In Part 2.1.1 Control Measure Selection and Design Considerations, you are required to consider opportunities for infiltrating runoff onsite. This is encouraged, but it should only be done if consistent with the statutes and rules of the Department of Environmental Services written to protect groundwater, including Env-Wq 1507.04(e). Infiltration best management practices are not recommended at industrial sites except in areas where industrial activities do not occur, such as at office buildings and their associated parking facilities, or in drainage areas at the facility where a certification of no exposure will always be possible [see 40 CFR 122.26(g)].

9.1.4.2 ***Maintenance of Infiltration Best Management Practices.*** In Part 2.1.2.3 you are required to maintain control measures. In Parts 5.2.2, 5.2.5.1, and 5.5 you are required to document the location of control measures, perform inspections and maintenance, and keep records. Accordingly, the SWPPP must contain the following:

- A description of and the location of each on-site infiltration BMP installed;
- The maintenance procedures that will be followed to ensure proper operation, including the removal of sediment from pretreatment devices;
- The inspection produces that will be followed at least annually. These should include the produces for ensuring that the stormwater being infiltrated is not exposed to industrial pollutants and the procedures for ensuring proper drainage to prevent mosquito breeding;
- The employee name (or title of the position) who is a member of the stormwater pollution prevention team (see Part 5.2.1) who will be responsible for the maintenance required in this section, the inspection required in this section, and any necessary corrective action required in Part 4; and
- Records for all maintenance performed, inspections conducted, and corrective actions taken.

9.1.4.3 ***Discontinue, Permit or Register On-site Infiltration BMP if Necessary.*** If at any time a certification of no exposure can no longer be made for any of the stormwater to be infiltrated, then the infiltration BMP must cease for that portion of the runoff or

the discharge must be permitted or registered as appropriate. The following may be required:

- Infiltration BMP that meets the definition of a Class V well or that infiltrates stormwater via a subsurface structure (i.e. concrete chambers, dry well, leach field, etc.) will need an underground injection control (UIC) registration from NHDES; and
- Permitting as a groundwater discharge as required in Env-Wq 402, if the stormwater will or may contain regulated contaminants.

The SWPPP must be modified immediately if new infiltration BMPs are proposed or if existing infiltration BMPs will cease.

9.1.4.4 Required NHDES notification.

- Notify the NHDES Groundwater Discharge Permit Coordinator immediately if you believe that any infiltration BMP may need to be permitted or registered (See Part 9.1.4.3) during the permit term.
- Notify the NHDES Wastewater Engineering Bureau immediately of any plans to discharge any new non-stormwater discharges during the permit term. This does not include the allowable non-stormwater discharges listed in Part 1.1.3.

9.1.4.5 Information That May Be Requested by NHDES. To ensure compliance with RSA 485-C, RSA 485-A, RSA 485-A:13, I(a), Env-Wq 400 and Env-Wq 401 the following information may be requested by NHDES. This information must be kept on site unless you receive a written request from NHDES that it be sent to the address shown in Part 9.1.4.6.

- The site map required in Part 5.2.2, showing the type and location of all on-site infiltration BMP utilized at the facility or the reason(s) why none were installed.
- A list of all non-stormwater discharges that occur at the facility, including their source locations and the control measures being used (See Sections 1.1.3 and 5.2.3.4).
- A copy of the Annual Reports required in Part 7.5

9.1.4.6 Where to Submit Information. Information submitted to NHDES must be sent to the following address:

NH Department of Environmental Services
Wastewater Engineering Bureau, Permits & Compliance Section
P.O. Box 95
Concord, NH 03302-0095

9.1.4.7 Modification of Clean Water Act Section 401 Water Quality Certification. When NHDES determines that additional water quality certification requirements are necessary to protect water quality, it may require individual dischargers to meet additional conditions to obtain or continue coverage under the MSGP. Any such conditions shall be supplied to the permittee in writing. Any required pollutant loading analyses and any designs for structural best management practices necessary to protect water quality must be prepared by a civil or sanitary engineer registered in New Hampshire.

9.1.5 RIR05I000: Indian country within the State of Rhode Island

No additional requirements.

9.1.6 VTR05F000: Areas in the State of Vermont subject to industrial activity by a Federal Operator

No additional requirements.

9.2 EPA Region 2: New Jersey, New York, Puerto Rico, Virgin Islands.

9.2.1 PRR050000: Commonwealth of Puerto Rico

No additional requirements.

9.3 EPA Region 3: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.

9.3.1 DCR050000: District of Columbia

Permittees in the District of Columbia must also meet the following conditions:

9.3.1.1 Compliance with District of Columbia Laws and Regulations. Discharges covered by the MSGP must comply with the District of Columbia Water Pollution Control Act of 1984, as amended, D.C. Official Code § 8-103.01 *et seq*.; and its implementing regulations in Title 21, Chapters 11 and 19 of the District of Columbia Municipal Regulations. Nothing in this permit will be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to District of Columbia laws and regulations.

9.3.1.2 Submission of SWPPP. The Stormwater Pollution Prevention Plan (SWPPP) shall be submitted to the District Department of the Environment (DDOE) at the same time the Notice of Intent (NOI) is submitted to EPA.

9.3.1.3 Submission of No Exposure Certification and NOT. Copies of the No Exposure Certification and Notice of Termination (NOT) shall be submitted to DDOE at the same time they are submitted to EPA.

9.3.1.4 Authorization to Inspect. The permittee shall allow DDOE to inspect any facility, equipment, practices, or operations regulated or required under this permit and to access records maintained under the conditions of this permit.

9.3.1.5 Submission of Reports. Signed copies of all reports required under this permit including the reporting requirements of Appendix B.12 shall be submitted to DDOE at the same time they are submitted to EPA.

9.3.1.6 Where to Submit Information. All required or requested documents shall be sent to the:

Attention: Associate Director
Water Quality Division, Natural Resources Administration
District Department of the Environment
1200 First Street, NE, 5th Floor
Washington, D.C. 20002

9.3.2 DER05F000: Areas in the State of Delaware subject to industrial activity by a Federal Operator

No additional requirements.

9.4 EPA Region 4: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Coverage not available under this permit.

9.5 EPA Region 5: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

9.5.1 MIR05I000: Indian country within the State of Michigan

No additional requirements.

9.5.2 MNR05I000: Indian country within the State of Minnesota

9.5.2.1 Fond du Lac Reservation

The following conditions apply only to discharges on the Fond du Lac Reservation.

9.5.2.1.1 Submission of SWPPP. A copy of the Stormwater Pollution Plan (SWPPP) must be submitted to the Office of Water Protection at least thirty (30) days in advance of sending the Notice of Intent to EPA. MSGP applicants are encouraged to work with the Fond du Lac Office of Water Protection in the identification of all proposed receiving waters.

9.5.2.1.2 Submission of NOI and NOT. Copies of the Notice of Intent (NOI) and Notice of Termination (NOT) must be sent to the Fond du Lac Office of Water Protection at the same time they are submitted to EPA.

9.5.2.1.3 Benchmark Monitoring for Turbidity. The Benchmark Monitoring Concentration (BMC) for Turbidity shall NOT exceed 10% of natural background as determined by Office of Water Protection staff as measured in NTU.

9.5.2.1.4 Effluent Limitations. The Effluent Limitations for ALL sectors shall NOT exceed more than two times (2x) Fond du Lac's ambient concentrations (based upon 15 years of monitoring data) for the following:

a) Ammonia	Ambient = <0.3 mg/l
b) Arsenic	Ambient = <3.0 µg/l
c) Chromium	Ambient = <0.8 µg/l
d) Total Phosphorus	Ambient = <0.09 mg/l
e) Total Suspended Solids	Ambient = <16.0 mg/l
f) Zinc	Ambient = <24.0 mg/l

9.5.2.1.5 Outstanding Reservation Resource Waters (ORRW). This Certification does not pertain to any new discharge to Outstanding Reservation Resource Waters (ORRW) as described in § 105 b.3. of the Fond du Lac Water Quality Standards (Ordinance #12/98). Although additional waters may be designated in the future, currently Perch Lake, Rice Portage Lake, Miller Lake, Deadfish Lake, and Jaskari Lake are designated as ORRWs. New dischargers wishing to discharge to an ORRW must obtain an individual permit for storm water discharges.

9.5.2.1.6 ***Water Quality Criteria.*** All industrial activities shall be carried out in such a manner as will prevent violations of water quality criteria as stated in the Water Quality Standards of the Fond du Lac Reservation, Ordinance 12/98, as amended. This includes, but is not limited to, the prevention of any discharge that causes a condition in which visible solids, bottom deposits, or turbidity impairs the usefulness of water of the Fond du Lac Reservation for any of the uses designated in the Water Quality Standards of the Fond du Lac Reservation. These uses include wildlife, aquatic life, warm and cold water fisheries, subsistence farming (netting), primary contact recreation, cultural, wild rice areas, aesthetic waters, agriculture, navigation, and commercial.

9.5.2.1.7 ***Impacts to cultural sites.*** This certification does not authorize impacts to cultural, historical, or archeological features or sites, or properties that may be eligible for such listing.

9.5.2.1.8 ***Where to Submit Information.*** All required or requested documents shall be sent to the:

Fond du Lac Reservation
Office of Water Protection
1720 Big Lake Road
Cloquet, Minnesota 55720

9.5.2.2 ***Grand Portage Band of the Minnesota Chippewa Tribe***

The following conditions apply to industrial storm water discharges into Waters of the Grand Portage Reservation:

9.5.2.2.1 ***Definitions.*** The definitions set forth in the Grand Portage Water Resources Ordinance, as amended, ("Water Resources Ordinance") govern these certification conditions.

9.5.2.2.2 ***Water Quality Standards.*** All industrial storm water discharges authorized by this permit must comply with the Grand Portage Water Quality Standards, Applicable Federal Standards, and the Water Resources Ordinance.

9.5.2.2.3 ***Additional Monitoring.*** Grand Portage reserves the right to require monitoring of storm water discharges as determined on a case-by-case basis. If the Grand Portage Environmental Resources Board ("Board") determines that a monitoring plan is necessary, the monitoring plan must be prepared and incorporated into the Storm Water Pollution Prevention Plan ("SWPPP") before the SWPPP is submitted to the U.S. EPA. Accordingly, the Board must be contacted, at the address listed below, at the onset of writing the SWPPP.

9.5.2.2.4 ***Submission of SWPPP, NOI, and NOT.*** In addition, a copy of the SWPPP, Notice of Intent ("NOI"), and Notice of Termination (NOT) (collectively the "application") must be submitted to the Board at least 30 days before submitting the NOI to the U.S. EPA. Applications should be sent to the address below.

9.5.2.2.5 ***Additional information.*** Upon receipt of the application, the Board shall order the Grand Portage Environmental Department (Department) to conduct a technical review of the application materials. If necessary, Department staff will send a

request for additional information to the applicant within 30 days of receipt of the application.

9.5.2.2.6 ***Preliminary coverage determination.*** After considering the application and such other information and data as the Department staff deems relevant, the Department Director will evaluate whether there is a reasonable probability that the proposed activity will violate the Grand Portage Water Quality Standards or any Applicable Federal Standards and recommend one of the following preliminary determinations:

- Unconditionally grant coverage under the MSGP;
- Grant coverage under the MSGP subject to certain conditions; or
- Deny coverage under the MSGP.

9.5.2.2.7 ***Final coverage determination.*** Within 30 days of the Department Director's recommendation, the Board will provide public notice of the application for coverage under the MSGP and the Department Director's recommendations. Upon request, the Department will schedule a hearing as provided in 40 CFR Part 25. If, after considering the evidence provided at the hearing and the entire record, the Board determines by a preponderance of the evidence that the proposed activity will violate the Grand Portage Water Quality Standards or any Applicable Federal Standards, the Board shall deny eligibility for coverage under the MSGP, unless there is a reasonable certainty that compliance can be achieved by the applicant's adherence to reasonable conditions. If the Board finds insufficient evidence to show that the proposed activity will violate the Grand Portage Water Quality Standards or any Applicable Federal Standards, it shall approve coverage under the MSGP.

9.5.2.2.8 ***Appeals.*** Appeals related to water quality certification decisions or permits will be heard by the Grand Portage Tribal Court.

9.5.2.2.9 ***Prohibition of Discharge.*** The applicant is prohibited from discharging into the Waters of the Reservation pursuant to the MSGP unless the Board has granted coverage under the MSGP, or until the applicant has adhered to conditions required by the Board's conditional grant of coverage.

9.5.2.2.10 ***Compliance.*** The Board retains full authority provided by the Water Resources Ordinance to ensure compliance with and enforce the provisions of the Water Resource Ordinance, the Grand Portage Water Quality Standards, Applicable Federal Standards, and these certification conditions.

9.5.2.2.11 ***Where to Submit Information.*** All required or requested information mentioned above shall be sent to:

Grand Portage Environmental Resources Board
P.O. Box 428
Grand Portage, MN 55605

9.5.3 WIR05I000: Indian country within the State of Wisconsin, except those on Bad River Band of Lake Superior Tribe of Chippewa Indians lands and on Sokaogon Chippewa Community lands

No additional requirements.

Note: Facilities in the Bad River Band of Lake Superior Tribe of Chippewa Indians land Sokaogon Chippewa Community lands and are not eligible for stormwater discharge coverage under this permit. Contact the EPA Region 5 office for an individual permit application.

9.6 EPA Region 6: Arkansas, Louisiana, Oklahoma, Texas, and New Mexico (except see Region 9 for Navajo lands, and see Region 8 for Ute Mountain Reservation lands).

9.6.1 LAR05I000: Indian country within the State of Louisiana

No additional requirements.

9.6.2 NMR050000: The State of New Mexico, except Indian country

Permittees in New Mexico must also meet the following conditions:

9.6.2.1 Benchmark Monitoring Concentrations. The benchmark values for the indicated pollutants in the table below must be modified to reflect New Mexico water quality standards for the facilities in New Mexico, based on benchmark values from the *Standards for Interstate and Intrastate Surface Waters* (as approved on June. 5, 2013), 20.6.4.900 NMAC).

Pollutant	MSGP Benchmark	Lowest New Mexico Water Quality Standard	Hardness dependent value (if appropriate)[1]
Ammonia*	2.14 mg/L	No Standard	
Biochemical Oxygen Demand (BOD 5 day)	30 mg/L	No Standard	
Chemical Oxygen Demand (COD)	120 mg/L	No Standard	
Total Suspended Solids	100 mg/L	Segment specific	
Turbidity	50 NTU	Segment specific	
Nitrate + Nitrite Nitrogen	0.68 mg/L	132 mg/L	
Total Phosphorus	2.0 mg/L	Segment specific	
pH	6.0 – 9.0 SU	Segment specific	
Aluminum (T) (pH 6.5 – 9)*	0.75 mg/L	--	3.4 mg/L (acute) 1.37 mg/L (chronic)
Antimony (T)	0.64 mg/L	0.006 mg/L	
Arsenic (T) (Freshwater)*	0.15 mg/L	0.01 mg/L	
Beryllium (T)	0.13 mg/L	0.004 mg/L	
Cadmium (T) (Freshwater)*	0.0021 mg/L	--	0.00165 mg/L (acute) 0.00045 mg/L (chronic)
Copper (T) (Freshwater)*	0.014 mg/L	--	0.013 mg/L (acute) 0.009 mg/L (chronic)
Cyanide (Freshwater)*	0.022 mg/L	0.0052 (WH)	
Iron (T)	1.0mg/L	No standard	
Lead (Freshwater)*	0.082 mg/L		0.065 mg/L (acute) 0.003 mg/L (chronic)
Magnesium (T)	0.064 mg/L	No standard	
Mercury (Freshwater)*	0.0014 mg/L	0.00077 mg/L	
Nickel (T) (Freshwater)*	0.47 mg/L		0.47 mg/L (acute) 0.052 mg/L (chronic)
Selenium (T) (Freshwater)* [2]	0.005 mg/L	0.005 mg/L (WH)	

Pollutant	MSGP Benchmark	Lowest New Mexico Water Quality Standard	Hardness dependent value (if appropriate)[1]
Silver (Freshwater)*	0.0038 mg/L		0.0032 mg/L (acute)
Zinc (T) (Freshwater)*	0.12 mg/L		0.16 mg/L (acute) 0.121 mg/L (chronic)

* EPA's Criteria are based on receiving water hardness of 100 mg/L. The facility will need to test their receiving water these hardness values and use Table 1 in Appendix J of this permit to determine their applicable limit.

[1] New Mexico Environment Department's criteria are listed at a hardness value of 100 mg/L as $CaCO_3$ for comparison to EPA's benchmark standard.

[2] SO_4 dependent

EPA defines saline/salt waters as having salinity concentrations greater than or equal to 10 parts per thousand 95 percent or more of the time (as discussed on Page 55 of the permit's proposed fact sheet). Saltwater values may apply to certain areas of New Mexico, such as the Pecos Basin below Santa Rosa and the Rio Grande below Elephant Butte. These values may also apply to waters that are part of the Colorado River Basin.

New Mexico water quality hardness-based values in the table below replace values listed in Appendix J and are the applicable benchmark values for New Mexico in this permit.

All Units mg/L	*	(mg/L, dissolved)						
		Aluminum	Cadmium	Copper	Lead	Nickel	Silver	Zinc
25	Acute	0.512	0.00051	0.004	0.014	0.140	0.0003	0.045
	Chronic	0.205	0.00017	0.003	0.001	0.016		0.034
30	Acute	0.658	0.00059	0.004	0.017	0.170	0.0004	0.054
	Chronic	0.263	0.00019	0.003	0.001	0.019		0.041
40	Acute	0.975	0.00076	0.006	0.024	0.220	0.0007	0.070
	Chronic	0.391	0.00023	0.004	0.001	0.024		0.053
50	Acute	1.324	0.00091	0.007	0.03	0.260	0.0010	0.085
	Chronic	0.530	0.00028	0.005	0.001	0.029		0.065
60	Acute	1.699	0.00107	0.008	0.037	0.300	0.0013	0.101
	Chronic	0.681	0.00031	0.006	0.001	0.034		0.076
70	Acute	2.099	0.00122	0.010	0.044	0.350	0.0017	0.116
	Chronic	0.841	0.00035	0.007	0.002	0.038		0.088
80	Acute	2.520	0.00137	0.011	0.051	0.390	0.0022	0.131
	Chronic	1.010	0.00039	0.007	0.002	0.043		0.099
90	Acute	2.961	0.00151	0.012	0.058	0.430	0.0027	0.145
	Chronic	1.186	0.00042	0.008	0.002	0.048		0.110
100	Acute	3.421	0.00165	0.013	0.065	0.470	0.0032	0.160
	Chronic	1.370	0.00045	0.009	0.003	0.052		0.121
200	Acute	8.838	0.00298	0.026	0.14	0.840	0.011	0.301
	Chronic	3.541	0.00075	0.016	0.005	0.09		0.228
220	Acute	10.071						
	Chronic	4.035						
300	Acute	10.071	0.00421	0.038	0.210	1.190	0.021	0.435
	Chronic	4.035	0.00100	0.023	0.008	0.130		0.329
400+	Acute	10.071	0.00538	0.050	0.280	1.510	0.035	0.564
	Chronic	4.035	122	0.029	0.011	0.170		428

*Acute vs. Chronic applicability: Acute numeric standards shall be attained at the "point of discharge" (end-of-pipe) for any discharge to surface water with a *designated aquatic life use*. TSS values will be important for any criteria differences between total and dissolved measurements.

9.6.2.2 ***Notice of Termination.*** Requirements in Part 8 of the this permit, in sectors G (Metal Mining), H (Coal Mines and Coal Mining-Related Facilities), I (Oil and Gas Extraction), and J (Non-Metallic Mineral Mining and Dressing), at the Requirements Applicable to Earth-Disturbing Activities Conducted Prior to Active Mining Activities" section were made more stringent as to inspection frequencies and timing of inspections and corrective actions required as a result of a rain event. These certification requirements will apply to these sectors mentioned in this condition, as follows:

Permittees can only use the option to "plant the area so that within 3 years the 70% cover requirement is met" as stated in Part 8.G.4.2.11, Part 8.H.4.2.11, and Part 8.J.4.2.11 of this Permit, in New Mexico as a method for final vegetative stabilization for purposes of filing a Notice of Termination (NOT) under the following conditions:

If this option is selected, you must notify New Mexico Environment Department (NMED) at the address listed below at the time the NOT is submitted to EPA. The information to be submitted includes:

- A copy of the NOT;
- Contact information, including individual name or title, address, and phone number for the party responsible for implementing the final stabilization measures; and
- The date that the permanent vegetative stabilization practice was implemented and the projected timeframe that the 70% native vegetative cover requirements are expected to be met. (Note that if more than three years is required to establish 70 percent of the natural vegetative cover, this technique cannot be used or cited for fulfillment of the final stabilization requirement- you remain responsible for establishment of final stabilization.)

NMED also requires that operators periodically (minimum once/year) inspect and properly maintain the area until the criteria for final stabilization, as specified in Part 2.2 of the Construction General Permit (CGP), have been met. Operators must prepare an inspection report documenting the findings of these inspections and signed in accordance with Appendix B.11. This inspection record must be retained along with the SWPPP for three years after the NOT is submitted for the site and additionally submitted to NMED at the address listed below. The inspections must at a minimum include the following:

- Observations of all areas of the site disturbed by construction activity;
- Best Management Practices (BMPs)/post-construction storm water controls must be observed to ensure they are effective;
- An assessment of the status of vegetative re-establishment; and
- Corrective actions required to ensure vegetative success within three years, and control of pollutants in storm water runoff from the site, including implementation dates.

9.6.2.3 ***Where to Submit Information.*** All required or requested information mentioned above shall be sent to:

Program Manager
Point Source Regulation Section
NMED Surface Water Quality Bureau
PO Box 5469
Santa Fe, NM 87502

9.6.3 NMR05I000: Indian country within the State of New Mexico, except Ute Mountain Reservation lands that are covered under Colorado permit COR05I000 and Navajo Reservation lands that are covered under Arizona permit AZR05I000

9.6.3.1 ***Pueblo of Sandia***

The following conditions apply only to discharges on the Pueblo of Sandia:

9.6.3.1.1 ***Submission of NOI.*** Copies of all Notices of Intent (NOI) submitted to the EPA must also be sent concurrently to the Pueblo of Sandia Environment Department. Discharges are not authorized by this permit unless an accurate and complete NOI has been submitted to the Pueblo of Sandia.

9.6.3.1.2 ***SWPPP Availability.*** The Stormwater Pollution Prevention Plan (SWPPP) must be available to the Pueblo of Sandia Environment Department either electronically or hard copy upon request for review. Failure to provide a SWPPP to the Pueblo of Sandia Environment Department may result in denial of the water quality certification.

9.6.3.1.3 ***SWPPP Amendments.*** Any Stormwater Pollution Prevention Plan (SWPPP) modification, update or amendment shall be submitted to the Pueblo of Sandia Environment Department either electronically or hard copy within seven (7) calendar days of its finalization. Failure to provide a SWPPP to the Pueblo of Sandia Environment Department may result in denial of the water quality certification.

9.6.3.1.4 ***Submission of Monitoring Data.*** All monitoring and analytical data (e.g., Discharge Monitoring Reports (DMRs), follow-up monitoring reports, Exceedance Reports for Numeric Effluent Limits, etc.) submitted to the EPA must also be sent concurrently to the Pueblo of Sandia Environment Department.

9.6.3.1.5 ***Submission of Annual Reports.*** Copies of all Annual Reports submitted to the EPA must also be sent concurrently to the Pueblo of Sandia Environment Department. Discharges are not authorized by this permit unless an accurate and complete Annual Report has been submitted to the Pueblo of Sandia.

9.6.3.1.6 ***Submission of Quarterly Visual Assessments.*** Copies of all "Quarterly Visual Assessments" (Part 3.2) must be submitted either electronically or hard copy to the Pueblo of Sandia Environment Department within seven (7) calendar days.

9.6.3.1.7 ***Submission of Corrective Action Documentation.*** Copies of all "Corrective Action Documentation" (Part 4.4) must be submitted electronically or hard copy to the Pueblo of Sandia Environment Department within seven (7) calendar days.

9.6.3.1.8 ***Additional Reporting.*** Any notice of release of oils or hazardous substances shall be submitted to the Pueblo of Sandia Environment Department within twenty-four (24)

hours of becoming aware of the situation or circumstance, followed by the reporting requirements of 40 CFR 110, 40 CFR 300, and 40 CFR 302 relating to spills or other releases of oil or hazardous substances. The permittee must also telephone the Pueblo of Sandia Environment Department at (505) 867-4533 of any non-emergency spills or unauthorized discharges that may affect drinking water supplies, ceremonial and recreational surface waters, elicit fish kills, harm wildlife or endangered and threatened species, or endanger human health or the environment within eight (8) hours of becoming aware of the situation or circumstance, followed by the written report when it is sent to the EPA.

9.6.3.1.9 ***Authorization to Inspect.*** If requested by the Pueblo of Sandia Environment Department, the permittee must allow the Pueblo of Sandia to perform its own routine or compliance inspection to ensure the permittee is in compliance and any discharge is not contributing to a violation of the permit and the Pueblo of Sandia's Water Quality Standards.

9.6.3.1.10 ***Water Quality Standards.*** If requested by the Pueblo of Sandia Environment Department, the permittee shall provide additional information necessary for a "case by case" eligibility determination to assure compliance with the Pueblo of Sandia's Water Quality Standards. *****Note: Upon receipt of a determination by the Pueblo of Sandia that discharges from a permittee under this general permit have reasonable potential to be causing or contributing to a violation of the Pueblo of Sandia's Water Quality Standards, EPA Region 6 would be notified. EPA Region 6 would then notify the permittee to either improve their Stormwater Pollution Prevention Plan (SWPPP) to achieve compliance with the Pueblo of Sandia's Water Quality Standards or have the permittee apply for and obtain an individual NPDES permit for these discharges per CFR 122.28(B)(3).

9.6.3.1.11 ***Alternative Permit.*** Any industry discharging to waters of the United States that has been designated by the EPA or the Pueblo of Sandia as impaired or degraded water shall not be covered under this general permit but will be required to obtain an individual permit.

9.6.3.1.12 ***Submission of NOT.*** Before submitting a Notice of Termination (NOT), permittees must clearly demonstrate to the Pueblo of Sandia Environment Department through a site visit or documentation that requirements for site stabilization have been met and any degradation has been mitigated. A short letter stating the stabilization requirements have been met will be sent to the permittee. Upon receipt the permittee may apply for an NOT to the EPA. Copies of the NOT submitted to the EPA must also be sent concurrently to the Pueblo of Sandia Environment Department.

9.6.3.1.13 ***Where to Submit Information.*** All required or requested information mentioned above shall be sent to:

- Regular U.S. Delivery Mail:

  Pueblo of Sandia Environment Department
  Attention: Scott Bulgrin, Water Quality Manager
  481 Sandia Loop
  Bernalillo, New Mexico 87004

- Or Electronically to: sbulgrin@sandiapueblo.nsn.us

9.6.3.2 ***Pueblo of Santa Clara.***

The following condition applies only to discharges on the Santa Clara Indian Pueblo:

9.6.3.2.1 ***Submission of NOI and NOT.*** The Notice of Intent (NOI) and Notice of Termination (NOT) must be provided to the Santa Clara Pueblo Governor's Office at the same time it is provided to EPA.

9.6.3.2.2 ***SWPPP Availability.*** A copy of the Stormwater Pollution Prevention Plan must be made available to the Pueblo of Santa Clara staff upon request.

9.6.3.2.3 ***Where to Submit Information.*** All required or requested documents shall be sent to the:

Santa Clara Pueblo
Governor's Office
P.O. Box 580
Espanola, NM 87532

9.6.4 OKR05I000: Indian country within the State of Oklahoma

9.6.4.1 ***Certification Requirements.*** In accordance with Oklahoma's Water Quality Standards (OAC 785:45-5-25) certification is denied for any new or proposed discharges located within the watershed of any part of the Oklahoma Scenic Rivers system, including the Illinois River, Flint Creek, Barren Fork Creek, Upper Mountain Fork Creek, Little Lee Creek, Big Lee Creek or to any water designated as an Outstanding Resource Water (ORW). Existing discharges of stormwater in these watersheds may be permitted under this permit only from point sources existing as of June 25, 1992, whether or not such stormwater discharges were permitted as point sources prior to June 25, 1992. For any such existing discharge, increased load of any pollutant above levels of June 25, 1992 is prohibited.

Note: Operators of facilities within the watershed of any part of the Oklahoma Scenic Rivers system must contact the EPA Region 6 office for an individual permit application.

9.6.5 OKR05F000: Facilities in the State of Oklahoma not under the jurisdiction of the Oklahoma Department of Environmental Quality or the Oklahoma Department of Agriculture, Food and Forestry, except those on Indian Country. EPA jurisdiction facilities include SIC Codes 1311, 1381, 1382, 1389, and 5171

9.6.5.1 ***Certification Requirements.*** In accordance with Oklahoma's Water Quality Standards (OAC 785:45-5-25), Certification is denied for any new or proposed discharges located within the watershed or any part of the Oklahoma Scenic Rivers system, including the Illinois River, Flint Creek, Barren Fork Creek, Upper Mountain Fork River, Little Lee Creek, Big Lee Creek or to any water designated as an Outstanding Resource Water (ORW). Existing discharges of stormwater in these watersheds may be permitted under this permit only from point sources existing as of June 25, 1992, whether or not such stormwater discharges were permitted as point sources prior to June 25, 1992. For any such existing discharge, increased load of any pollutant above levels of June 25, 1992 is prohibited.

Note: Operators of facilities within the watershed of any part of the Oklahoma Scenic Rivers system must contact the EPA Region 6 office for an individual permit application.

9.6.6 TXR05F000: Facilities in the State of Texas not under the jurisdiction of the Texas Commission on Environmental Quality, except those on Indian Country. EPA-jurisdiction facilities include SIC Codes 1311, 1321, 1381, 1382, and 1389 (other than oil field service company "home base" facilities)

No additional requirements.

9.6.7 TXR05I000: Indian country within the State of Texas

No additional requirements.

9.7 EPA Region 7: Iowa, Kansas, Missouri, Nebraska (except see Region 8 for Pine Ridge Reservation Lands).

9.7.1 IAR05I000: Indian country within the State of Iowa

No additional requirements.

9.7.2 KSR05I000: Indian country within the State of Kansas

No additional requirements.

9.7.3 NER05I000: Indian country within the State of Nebraska, except Pine Ridge Reservation lands (see Region 8)

No additional requirements.

9.8 EPA Region 8: Colorado, Montana, North Dakota, South Dakota, Wyoming, Utah (except see Region 9 for Goshute Reservation and Navajo Reservation Lands), the Ute Mountain Reservation in NM, and the Pine Ridge Reservation in NE.

9.8.1 COR05F000: Areas in the State of Colorado, except those located on Indian country, subject to industrial activity by a Federal Operator

No additional requirements.

9.8.2 COR05I000: Indian country within the State of Colorado, as well as the portion of the Ute Mountain Reservation located in New Mexico

No additional requirements

9.8.3 MTR05I000: Indian country within the State of Montana

No additional requirements.

9.8.4 NDR05I000: Indian country within the State of North Dakota, as well as that portion of the Standing Rock Reservation located in South Dakota (except for the portion of the lands within the former boundaries of the Lake Traverse Reservation which is covered under South Dakota permit SDR05I000 listed below)

No additional requirements.

9.8.5 SDR05I000: Indian country within the State of South Dakota, as well as the portion of the Pine Ridge Reservation located in Nebraska and the portion of the lands within the former boundaries of the Lake Traverse Reservation located in North Dakota

(except for the Standing Rock Reservation which is covered under North Dakota permit NDR05I000 listed above)

No additional requirements.

9.8.6 UTR05I000: Indian country within the State of Utah, except Goshute and Navajo Reservation lands (see Region 9)

No additional requirements.

9.8.7 WYR05I000: Indian country within the State of Wyoming

No additional requirements.

9.9 EPA Region 9: California, Hawaii, Nevada, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Confederated Tribes of the Goshute Reservation in Utah and Nevada, Indian Country within the State of Arizona including the Navajo Reservation in Utah and New Mexico and Arizona, the Duck Valley Reservation in Idaho, and the Fort McDermitt Reservation in Oregon.

9.9.1 ASR050000: American Samoa

No additional requirements.

9.9.2 AZR05I000: Indian country within the State of Arizona, including Navajo Reservation lands in New Mexico and Utah

9.9.2.1 Hualapai Tribe

The following condition applies only to discharges on the Hualapai Tribe:

9.9.2.1.1 Submission of NOI and SWPPP. All Notices of Intent (NOI) for proposed stormwater discharges under this permit and all Stormwater Pollution Plans (SWPPPs) for stormwater discharges on Hualapai Tribal lands shall be submitted to the Water Resource Program through the Tribal Chairwoman for review and approval.

9.9.2.1.2 Where to Submit Information. All required or requested documents shall be sent to:

Water Resource Program through the Tribal Chairwoman
P.O. Box 179
Peach Springs, AZ 86434

9.9.2.2 Navajo Nation

The following conditions apply only to discharges on the Navajo Nation:

9.9.2.2.1 Submission of NOI and SWPPP. Courtesy copies of Notices of Intent (NOI) and Stormwater Water Pollution Plans (SWPPPs) shall be made available to Navajo EPA for facilities located on Navajo lands.

9.9.2.2.2 Submission of Monitoring Data. Copies of all monitoring reports must be provided to Navajo EPA for facilities located on Navajo lands.

9.9.2.2.3 Authorization to Inspect. Facilities located on Navajo lands and covered under this permit will be subject to compliance inspections by Navajo EPA staff with active Federal Inspector Credentials under authority of the Clean Water Act.

9.9.2.3 *White Mountain Apache Tribe*

The following condition applies only to discharges on the White Mountain Apache Tribe:

9.9.2.3.1 ***Submission of SWPPP.*** The Storm Water Pollution Prevention Plan (SWPPP) must be available to the White Mountain Apache Water Resources Programs either electronically or hard copy upon request for review before a Notice of Intent (NOI) for comments from the White Mountain Apache Water Resources Programs. Failure to provide a SWPPP to the White Mountain Apache Water Resources Programs may result in denial of the water quality certification.

9.9.2.3.2 **Submission of NOI.** Copies of all Notices of Intent (NOI)) submitted to the EPA must also be sent concurrently to the White Mountain Apache Water Resources Programs. Discharges are not authorized by this permit unless an accurate and complete NOI has been submitted to the White Mountain Apache Tribe.

9.9.2.3.3 ***SWPPP Modification.*** Any Storm Water Pollution Prevention Plan (SWPPP) modification, update or amendment shall be submitted to the White Mountain Apache Water Resources Programs either electronically or hard copy within seven (7) calendar days of its finalization. Failure to provide a SWPPP to the White Mountain Apache Water Resources Programs may result in denial of the water quality certification.

9.9.2.3.4 ***Submission of Monitoring Data.*** All monitoring and analytical data (e.g. Discharge Monitoring Reports (DMRs), follow-up monitoring reports, Exceedance Reports for Numerical Effluent Limits, etc.) submitted to EPA must also be sent concurrently to the White Mountain Apache Water Resources Programs.

9.9.2.3.5 ***Submission of Annual Reports.*** Copies of all Annual Reports submitted to the EPA must also be sent concurrently to the White Mountain Apache Water Resources Programs. Discharges are not authorized by this permit unless an accurate and complete Annual Report has been submitted to the White Mountain Apache Tribe.

9.9.2.3.6 ***Submission of Quarterly Visual Assessments.*** Copies of all "Quarterly Visual Assessments" (Part 3.2) must be submitted either electronically or hard copy to the White Mountain Apache Water Resources Programs within seven (7) calendar days.

9.9.2.3.7 ***Submission of Corrective Action Documentation.*** Copies of all "Corrective Action Documentation" (Part 4.4) must be submitted either electronically or hard copy to the White Mountain Apache Water Resources Programs within seven (7) calendar days.

9.9.2.3.8 ***Additional Reporting.*** Any notice of release of oils or hazardous substances shall be submitted to the White Mountain Apache Water Resources Programs within twenty-four (24) hours of becoming aware of the situation or circumstance, followed by the reporting requirements of 40 CFR 110, 40 CFR 300, and 40 CFR 302 relating to spills or other releases of oils or hazardous substances. The permittee must also telephone the White Mountain Apache Water Resources Programs at (928) 338-4267 of any non-emergency spills or unauthorized discharge that may affect drinking water, supplies, ceremonial and recreational surface waters, elicit fish kills, harm wildlife or endangered and threaten species, or endanger human health or

the environment within eight (8) hours of becoming aware of the situation or circumstance, followed by a written report when it is sent to the EPA.

9.9.2.3.9 ***Authorization to Inspect.*** If requested by the White Mountain Apache Water Resources Programs, the permittee must allow the White Mountain Apache Tribe to perform its own routine or compliance inspection to ensure the permittee is in compliance and any discharge is not contributing to a violation of the permit and the White Mountain Apache Tribe's Water Quality Standards.

9.9.2.3.10 ***Water Quality Standards.*** If requested by the White Mountain Apache Water Resources Programs, the permittee shall provide additional information necessary for a "case by case" eligibility determination to assure compliance with the White Mountain Apache Tribe's Water Quality Standards. *Note: Upon receipt of a determination by the White Mountain Apache Tribe that discharges from a permittee under this general permit have reasonable potential to be causing or contributing to a violation of the White Mountain Apache Tribe's Water Quality Standards, EPA Region 9 would be notified. EPA Region 9 would then notify the permittee to either improve their Stormwater Pollution Prevention Plan (SWPPP) to achieve compliance with the White Mountain Apache Tribe's Water Quality Standards or have the permittee apply for and obtain an individual NPDES permit for those discharges per CFR 122.28 (B)(3).

9.9.2.3.11 ***Alternative Permit.*** Any industry discharging into waters of the United States that has been designated by the EPA or the White Mountain Apache Tribe as impaired or degraded water shall not be covered under this general permit but will be required to obtain an individual permit.

9.9.2.3.12 ***Submission of NOT.*** Before submitting a Notice of Termination (NOT), permittees must clearly demonstrate to the White Mountain Apache Water Resources Programs through a site visit or documentation that requirements for site stabilization have been met and any degradation has been mitigated. A short letter stating the stabilization requirements have been met will be sent to the permittee. Upon receipt the permittee may apply for an NOT to the EPA. Copies of the NOT submitted to the EPA must also be sent concurrently to the White Mountain Apache Water Resources Programs.

9.9.2.3.13 ***Where to Submit Information.*** All required or requested information mentioned above shall be sent to:

- Regular U.S. Delivery Mail:

  White Mountain Apache Tribe Water Resources Programs
  Attention: Tara Chief, Water Quality Officer
  P.O. Box 816
  Fort Apache, AZ 85926

- Or Electronically to: tarachief@wmat.us

9.9.3 CAR05I000: Indian country within the State of California

9.9.3.1 Hoopa Valley Tribe

The following conditions apply only to discharges on the Hoopa Valley Tribe:

9.9.3.1.1 ***Submission of NOI.*** All Notices of Intent (NOI) submitted for stormwater discharges under the general permits in Hoopa Valley Indian Reservation (HVIR) shall be submitted to the Tribal Environmental Protection Agency (TEPA).

9.9.3.1.2 ***Submission of SWPPP.*** All Stormwater Pollution Plans (SWPPPs) for stormwater discharge in HVIR shall be submitted to TEPA for review and approval.

9.9.3.2 ***Twenty-Nine Palms Band of Mission Indians***

The following conditions apply only to discharges on the Twenty-Nine Palms Band of Mission Indians:

9.9.3.2.1 ***Submission of Monitoring Data.*** The Twenty-Nine Palms Tribal Water Quality Standards require that routine monitoring be performed quarterly at each sampling site. Additional special monitoring requirements include: a) Sampling following a significant storm event; and b) Sampling in the event of an accidental spill. Monitoring results for discharges into Twenty-Nine Palms Tribal waters must be reported to Twenty-Nine Palms Tribal EPA.

9.9.3.2.2 ***Certification.*** Certification does not relieve the applicant of the responsibility to comply with applicable local, state, or federal regulations or statutes, including regulations affecting any discharge into waters of the U.S. Copies of this certification shall be kept on the job site and readily available for reference by tribal members and tribal representatives. If the project is operated in a manner not consistent with the MSGPs, the permittee will be in violation of this certification.

9.9.3.2.3 ***Pollution Prevention.*** All practicable measures and precautions must be taken to prevent pollution affecting public health, fish, shellfish, wildlife, and recreation due to turbidity, pH, temperature, nutrients, suspended solids, floating debris, visible oil and grease, or other pollutants entering tribal waters, including wetlands.

9.9.3.2.4 ***Spills or Leaks.*** All equipment operated within any tribal waters must be cleaned away from the tribal waters and maintained to prevent fuel and oil leaks. These methods include, but are not limited to: offsite/ upland fuel and oil storage and refueling areas, on-site spill containment equipment, a spill contingency plan, and spill prevention/contaminant training for on-site personnel. Should a spill of petroleum products or chemicals occur, immediately call the National Response Center at (800) 424-8802 and the Tribal Environmental Protection Agency at (760) 398-6767.

9.9.3.2.5 ***Ground Disturbance.*** Ground disturbance shall not exceed the minimum necessary.

9.9.3.2.6 ***Minimizing Adverse Impacts.*** All projects using the MSGP must avoid discharges to the maximum extent practicable, and utilize the best available and practicable means of minimizing the adverse impact of discharges that cannot be avoided.

9.9.4 GUR050000: Island of Guam

No additional requirements.

9.9.5 JAR050000: Johnston Atoll

No additional requirements.

9.9.6 MWR050000: Midway Island and Wake Island

No additional requirements.

9.9.7 MPR050000: Commonwealth of the Northern Mariana Islands

No additional requirements.

9.9.8 NVR05I000: Indian country within the State of Nevada, including the Duck Valley Reservation in Idaho, the Fort McDermitt Reservation in Oregon and the Confederated Tribes of the Goshute Reservation in Utah

No additional requirements.

9.10 Region 10: Alaska, Idaho (except see Region 9 for Duck Valley Reservation lands), Oregon (except see Region 9 for Fort McDermitt Reservation), Washington.

9.10.1 AKR05F000: Areas in the Denali National Park and Preserve subject to industrial activity by a Federal Operator

No additional requirements.

9.10.2 AKR05I000: Indian country lands within the State of Alaska

No additional requirements.

9.10.3 IDR050000: The State of Idaho, except Indian country lands

Permittees in the State of Idaho must meet the following conditions. For the complete text of Idaho's certification including the full anti-degradation analysis, please visit the IDEQ website at http://www.deq.idaho.gov/media/60177118/multi-sector-general-permit-401-certification.pdf.

9.10.3.1 ***New or Expanding Discharges.*** New dischargers or existing dischargers wishing to expand their discharge to high-quality waters are only eligible for coverage under the MSGP if the discharger establishes, to the satisfaction of EPA and DEQ, that the new or expanded discharge will not result in an increase in the concentration of pollutants relevant to the use for which the water is considered high quality, or that the increase constitutes insignificant degradation as defined in the WQS (IDAPA 58.01.02.052.08.a).

A new discharger or an existing discharger wishing to expand must include an analysis regarding whether the new or expanded discharge will cause an increase in the pollutants relevant to the use for which the water is considered high quality, and if there is an increase, whether that increase constitutes insignificant degradation in the NOI, or in the planned changes report. These NOIs and planned changes reports must be submitted to both EPA and DEQ.

If DEQ determines the new discharge or planned changes of an existing discharger will result in significant degradation, the permittee will need to obtain DEQ's approval of an alternatives analysis (IDAPA 58.01.02.052.08.c), a socioeconomic justification (IDAPA 58.01.02.052.08.d) and information regarding other source controls (IDAPA 59.01.02.052.08.b).

9.10.3.2 ***Follow-up Monitoring for Benchmark Concentrations***. If ***all*** four quarterly samples do not exceed the benchmark, the permittee is not required to conduct any additional quarterly monitoring for that parameter. If ***any*** of the four quarterly

samples exceed the benchmark, then the permittee must follow the additional requirements in Section 6.2.1.2 of the MSGP, with the following modifications:

- If the permittee elects to make any necessary modifications and continue quarterly monitoring, such monitoring must occur until the results from *all four consecutive quarterly samples are below the benchmark*.

9.10.3.3 ***Monitoring of Discharges to Impaired Waters***. To determine the support status of the affected water body, persons filing a Notice of Intent (NOI) for coverage under this general permit must use the most current EPA Integrated Report, available on Idaho DEQ's website: http://www.deq.idaho.gov/water-quality/surface-water/monitoring-assessment/integrated-report/. DEQ's webpage also has a link to the state's map-based Integrated Report which presents information from the Integrated Report in a searchable, map-based format: http://www.deq.idaho.gov/assistance-resources/maps-data For water bodies included on the states 303(d) list (Category 5 of the Integrated Report), identified as "cause unknown", the permittee must monitor for the pollutants listed in the cause comments section of the report (e.g., nutrients, metals, pesticides).

9.10.3.4 ***Stormwater Pollution Prevention Plan (SWPPP) Availability***. If requested by Idaho Department of Environmental Quality (DEQ), the permittee must submit a copy of the SWPPP to DEQ within fourteen (14) days of the request.

9.10.3.5 ***Submission of NOIs, Monitoring Data, and Additional Reporting***. Copies of the following information must be sent to the appropriate DEQ regional office at the same time it is submitted to EPA:

- NOIs and NOTs;
- Monitoring data collected pursuant to Part 6 of the MSGP, well as any additional monitoring data required by this Part;
- Exceedance Reports as required by Part 6.3;
- Planned Changes Reports

Both monitoring data and exceedance reports must be sent to the appropriate DEQ regional office with thirty (30) days of receipt of analytical results. DEQ Regional Office contact information is listed in Table 9.10.3.5.1.

Table 9.10.3.5.1: Idaho Regional Office contact information

Regional Office	Address	Phone	Email
Boise	1445 N. Orchard Rd, Boise 83706	208-373-0550	kati.carberry@deq.idaho.gov lance.holloway@deq.idaho.gov
Coeur d'Alene	2110 Ironwood Parkway, Coeur d'Alene 83814	208-769-1422	june.berquist@deq.idaho.gov
Idaho Falls	900 N. Skyline, Ste B, Idaho Falls 83402	208-528-2650	troy.saffle@deq.idaho.gov
Lewiston	1118 "F" St., Lewiston 83501	208-799-4370	cynthia.barrett@deq.idaho.gov
Pocatello	444 Hospital Way, Pocatello 83201	208-236-6160	lynn.vanevery@deq.idaho.gov greg.mladenka@deq.idaho.gov
Twin Falls	650 Addison Ave., W., Ste 110, Twin Falls 83301	208-736-2190	balthasar.buhidar@deq.idaho.gov
State Office	1410 N. Hilton Rd., Boise 83706	208-373-0574	nicole.deinarowicz@deq.idaho.gov

9.10.3.6 ***Benchmark Monitoring for Arsenic and Selenium.*** The benchmark values for arsenic and selenium are equal to 0.15 mg/L and 0.005 mg/L, respectively. These values are equivalent to Idaho's chronic water quality criteria. Given that storms are discrete events of relatively short duration, DEQ believes it is more appropriate to use the acute water quality criteria as benchmark values. Therefore, the benchmark value

for arsenic and selenium can be set equal to 0.34 mg/L and 0.02 mg/L, respectively, and still comply with Idaho WQS.

9.10.3.7 Additional Conditions Applicable to Sector L (Landfills, Land Application Sites and Open Dumps). Stormwater entering a landfill must be managed as leachate, including run off from areas that have received daily cover which may have contacted waste material, and thus is not eligible for coverage under the MSGP (See 40 CFR 258.26(a)(2); Municipal Solid Waste Landfill Criteria Technical Manual, EPA 530-R-93-017, 1998). Stormwater from a closed landfill or from areas of the landfill that have received final cover is not leachate, and may be covered under the MSGP.

9.10.3.8 Additional Reporting of Discharges Containing Hazardous Materials or Petroleum Products. Any unauthorized discharges containing hazardous materials or petroleum products must be reported to the Idaho State Communications Center by calling 1-800-632-8000 or 208-846-7610.

Spills must also be reported to the appropriate DEQ Regional Office (Table 9.10.3.5.1). Spills of petroleum products that exceed 25 gallons or that cause a visible sheen on nearby surface waters should be reported to DEQ within 24 hours. Petroleum product spills of less than 25 gallons or spills that do not cause a sheen on nearby surface waters must only be reported to DEQ if clean-up cannot be accomplished within 24 hours (IDAPA 58.01.02.850, 58.01.02.851, 58.01.02.852).

9.10.3.9 Numeric Effluent Limitations and Benchmark Monitoring for pH. The MSGP includes a pH range of 6.0 – 9.0 standard units, which does not comply with Idaho WQS (IDAPA 58.01.02.250.01.a). Therefore, numeric effluent limitations and benchmark monitoring concentrations for pH shall be 6.5 – 9.0 standard units.

9.10.3.10 Numeric Effluent Limitations for Total Arsenic and Total Zinc. The MSGP includes a total arsenic effluent limitation (Sector K) of 1.1 mg/L, which exceeds Idaho's acute and chronic criteria of 0.34 mg/L and 0.15 mg/L, respectively. Given that storms are discrete events of relatively short duration, DEQ believes it is more appropriate to use the acute water quality criteria as benchmark values; therefore DEQ requires the total arsenic effluent limit to be set equal to Idaho's acute criterion of 0.34 mg/L.

The MSGP includes a monthly average maximum numeric effluent limit for zinc of 0.296 mg/L (Sector K), which will only comply with water quality standards when hardness is greater than 290 mg/L. Similarly, the maximum daily limit and the monthly average maximum limit for zinc is 0.2 mg/L and 0.11 mg/L, respectively (Sector L); these limits do not generally comply with WQS when hardness values for the receiving water are less than 130 mg/L and 85 mg/L, respectively. Therefore, DEQ requires that the total zinc numeric effluent limit be equal to the acute water quality criterion of 0.12 mg/L.

9.10.4 IDR05I000: Indian country lands within the State of Idaho, except Duck Valley Reservation lands, which are covered under Nevada permit NVR05I000

9.10.4.1 Shoshone-Bannock Tribes

The following conditions apply only to discharges to waters of the Shoshone-Bannock Tribes:

9.10.4.1.1 ***Submission of NOI, Monitoring Data, and Reports.*** Copies of the Notices of Intent (NOI), Monitoring data collected pursuant to section 6.2 of this permit, and Exceedance Reports must be sent to the Shoshone-Bannock Tribes Water Resources Department (SBT-WRD). The monitoring data and exceedance reports must be sent to the SBT-WRD within thirty (30) days of receipt of analytical results.

9.10.4.1.2 ***Submission of SWPPP.*** If requested by the SBT-WRD, the permittee must submit a copy of the SWPPP to SBT-WRD within fourteen (14) days of the request.

9.10.4.1.3 ***Where to Submit Information***. All required or requested documents shall be sent to:

Shoshone-Bannock Tribes Water Resources Department
P.O. Box 306 Pima Drive
Fort Hall, ID 83203
Phone: (208) 239-4582
Fax: (208) 239-4592

9.10.5 ORR05I000: Indian country lands within the State of Oregon, except Fort McDermitt Reservation lands, which are covered under Nevada permit NVR05I000

9.10.5.1 Confederated Tribes of the Umatilla Indian Reservation

Projects located within the exterior boundaries of the Umatilla Indian Reservation must meet the following conditions:

9.10.5.1.1 ***Water Quality Standards.*** The operator shall be responsible for achieving compliance with Confederated Tribes of the Umatilla Indian Reservation's (CTUIR) Water Quality Standards.

9.10.5.1.2 ***Submission of NOI.*** The operator shall submit a copy of the Notice of Intent (NOI to be covered by this permit to the CTUIR Water Resources Program at the address below, at the same time it is submitted to EPA.

9.10.5.1.3 ***Submission of SWPPP.*** The operator shall be responsible for submitting all Stormwater Pollution Prevention Plans (SWPPPs) required under this general permit to the CTUIR Water Resources Program for review and determination that the SWPPP is sufficient to meet Tribal Water Quality Standards, prior to the beginning of any discharge activities taking place.

9.10.5.1.4 ***Additional Reporting.*** The operator shall be responsible for reporting an exceedance to Tribal Water Quality Standards to the CTUIR Water Resources Program at the same time it is reported to EPA.

9.10.5.1.5 ***Additional Requirements for Historic Properties Preservation.*** The applicant shall submit copies of each NOI to the CTUIR Tribal Historic Preservation Office (THPO). The NOI shall define the undertaking's area of potential effect (APE). This information will be used to determine whether or not the undertaking has the potential to affect historic properties. To be in compliance with the NHPA and be eligible for coverage under this permit, the operator must meet the following criteria:

- The THPO will be provided 30 days to comment on the APE as defined in the permit application.

- If the project is an undertaking, a cultural resource investigation must occur. All fieldwork must be conducted by qualified personnel (as outlined by the Secretary of Interior's Standards and Guidelines) and documented using Oregon Reporting Standards. The resulting report must be submitted to the THPO and the THPO must concur with the findings and recommendations before any ground disturbing work can occur. The THPO requires 30 days to review all reports.
- The operator must obtain THPO concurrence in writing. If historic properties are present, this written concurrence will outline measures to be taken to prevent or mitigate effects to historic properties.

9.10.5.1.6 Where to Submit Information. The NOI, SWPPP, and reports must be sent to:

Confederated Tribes of the Umatilla Indian Reservation
Water Resources Program
46411 Timine Way
Pendleton, OR 97801
(541) 966-2420

All required Historic Properties Preservation information must be sent to:

Confederated Tribes of the Umatilla Indian Reservation
Cultural Resources Protection Program
Tribal Historic Preservation Office
46411 Timine Way
Pendleton, OR 97801
(541) 429-7234

9.10.5.2 Confederated Tribes of the Warm Springs Indian Reservation

The following conditions apply for projects within the exterior boundaries of the Warm Springs Indian Reservation:

9.10.5.2.1 Water Quality Standards. The operator shall be responsible for achieving compliance with the Confederated Tribes of the Warm Springs Indian Reservation's Water Quality Standards. (Tribal Ordinance 80).

9.10.5.2.2 Submission of NOI. The operator shall submit a copy of the Notice of Intent (NOI) to be covered by this permit to the Tribes' Environmental Office at the address below, at the same time it is submitted to EPA.

9.10.5.2.3 Submission of SWPPP. The operator shall be responsible for filing all Stormwater Pollution Prevention Plans (SWPPP) required under this permit to the Tribes' Environmental Office for review and determination that the SWPPP is sufficient to meet Tribal Water Quality Standards, prior to the beginning of any discharge activities taking place.

9.10.5.2.4 Additional Reporting. The operator shall be responsible for reporting an exceedance to Tribal Water Quality Standards to the Tribes' Environmental Office at the same time it is reported to EPA.

9.10.5.2.5 Tribal Cultural Resources. The applicant shall submit copies of each NOI to the Tribal Historic Preservation Office (THPO). The NOI shall define the undertaking's area of potential effect (APE). This information will be used to determine whether or not the

undertaking has the potential to affect historic properties. To be in compliance with the NHPA and be eligible for coverage under this permit, the operator must meet the following criteria:

- The THPO will be provided 30 days to comment on the APE as defined in the permit application.
- If the project is an undertaking, a cultural resource investigation must occur. All fieldwork must be conducted by qualified personnel (as outlined by the Secretary of Interior's Standards and Guidelines). The resulting report must be submitted to the THPO and the THPO must concur with the findings and recommendations before any ground disturbing work can occur. The THPO requires 30 days to review all reports.
- The operator must obtain THPO concurrence in writing. If historic properties are present, this written concurrence will outline measures to be taken to prevent or resolve effects to historic properties.

9.10.5.2.6 Where to Submit Information. All required or requested documents shall be sent to:

Confederated Tribes of Warm Springs
Branch of Natural Resources
Tribal Environmental Office
P.O. Box C
Warm Springs
Oregon, 97761
541-553-2002

9.10.6 WAR05I000: Indian country lands within the State of Washington

9.10.6.1 Confederated Tribes of the Colville Reservation

No Additional Requirements.

9.10.6.2 Lummi Nation

The following conditions apply only to discharges within the Lummi Nation:

9.10.6.2.1 Certification. This certification does not exempt and is provisional upon compliance with other applicable statutes and codes administered by federal and Lummi tribal agencies. Pursuant to Lummi Code of Laws (LCL) 17.05.020(a), the operator must also obtain a land use permit from the Lummi Planning Department as provided in Title 15 of the Lummi Code of Laws and regulations adopted thereunder.

9.10.6.2.2 Submission of SWPPP. Pursuant to LCL 17.05.020, each operator shall develop and submit a Storm Water Pollution Prevention Plan to the Lummi Water Resources Division for review and approval by the Water Resources Manager prior to beginning any discharge activities.

9.10.6.2.3 Water Quality Standards. Pursuant to LCL Title 17, each operator shall be responsible for achieving compliance with the Water Quality Standards for Surface Waters of the Lummi Indian Reservation (Lummi Administrative Regulations [LAR] 17 LAR 07.010 through 17 LAR 07.210).

9.10.6.2.4 Submission of NOI, Monitoring Data, Reports and NOT. Each operator shall submit a copy of the Notice of Intent (NOI), analytical monitoring results, any Exceedance Reports, Annual Reports, and Notice of Termination (NOT) to the Lummi Water

Resources Division at the same time it is submitted to the Environmental Protection Agency (EPA).

9.10.6.2.5 Where to Submit Information. All required or requested documents shall be sent to:

Lummi Natural Resources Department
ATTN: Water Resources Manager
2665 Kwina Road
Bellingham, WA 98226

Please see the Lummi Nation website (www.lummi-nsn.gov) to review a copy of Title 17 of the Lummi Code of Laws and the references upon which the conditions identified above are based.

9.10.6.3 Puyallup Tribe of Indians

The following conditions apply only to discharges to waters of the Puyallup Tribe of Indians:

9.10.6.3.1 Submission of NOI, NOT and No Exposure. Copies of the Notice of Intent (NOI), Notice of Termination (NOT), and No Exposure Certification shall be submitted to the Tribe's Natural Resources Department.

9.10.6.3.2 Submission of SWPPP. A copy of the Stormwater Pollution Plan (SWPPP) shall be submitted to the Tribe's Natural Resources Department at least thirty (30) days in advance of submitting the NOI to EPA.

9.10.6.3.3 Compliance with Tribe's Water Quality Standards. Each permittee shall be responsible for achieving compliance with the Tribe's Water Quality Standards, including anti-degradation provisions.

9.10.6.3.4 Submission and Approval of Sampling Plan. A sampling plan shall be submitted to the Tribe's Natural Resources Department and approved by the Tribe prior to initiation of monitoring required under Part 6 of this permit.

9.10.6.3.5 Submission of Monitoring Data and Reports. The results of any monitoring required by this permit and reports must be sent to the Tribe's Natural Resources Department, including a description of the corrective actions required and undertaken to meet effluent limits or benchmarks (as applicable).

9.10.6.3.6 Authorization to Inspect. The Natural Resources Department may conduct an inspection of any facility covered by this permit to ensure compliance with tribal water quality standards. The Department may enforce its certification conditions.

9.10.6.3.7 Tribal Endangered Species Act Consultation. Consultation with the Tribe that addresses the effects of your facility's stormwater discharges, allowable non-stormwater discharges, and stormwater discharge-related activities on federally-listed threatened or endangered species and designated critical habitat. Information required as part of the consultation shall include:

- Basis of the determination that your stormwater discharges, allowable non-stormwater discharges, and stormwater discharge-related activities will not adversely affect federally-listed as endangered or threatened ("listed") under the Endangered Species Act (ESA) and will not result in the adverse

modification or destruction of designated critical habitat including appropriate measures to be undertaken to avoid or eliminate the likelihood of adverse effects (under Criterion C in Section 1.1.4.5); and

- Notice of Intent form complete with extent of action area, list of federally-listed threatened or endangered species or designated critical habitat likely to occur in action area, list of potential pollutants (if you are a new discharger) or list of pollutants for which you have ever exceeded an applicable benchmark of effluent limitation guideline, or for which your discharge has ever been found to cause or contribute to an exceedance of an applicable water quality standard (if you are an existing discharger).

9.10.6.3.8 ***Discharges to CERCLA Sites.*** This permit does not authorize direct stormwater discharges to certain sites undergoing remedial cleanup actions pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) unless first approved by the appropriate EPA Regional office. In the case of the Commencement Bay, Near Shore/Tide Flats (WAD980726368), the Puyallup Tribe also requests notification by the facility and consultation with EPA prior to discharge. Contaminants at this site include but are not limited to: dioxins, furans, arsenic, copper, lead, zinc, 4-methly-phenol, Hex-CB, HPAHs, PCBs, PCE, cadmium, mercury, and LPAHs.

9.10.6.3.9 ***Discharge-related Activities that have Potential to Cause an Adverse Effect on Historic Properties.*** Installation of stormwater controls that involve subsurface disturbances may potentially have an adverse impact on historic properties. Procedures detailed in Appendix F of the permit shall be completed. Brandon Reynon, the Puyallup Tribe's Cultural Regulatory Specialist, shall be contacted prior to initiating discharge-related activities that may have an impact on historic properties. His contact information is (253) 573-7986 and Brandon.reynon@puyalluptribe.com

9.10.6.3.10 ***Where to Submit Information.*** All required or requested documents shall be sent to the:

Puyallup Tribe of Indians
Department of Natural Resources c/o Bill Sullivan and Char Naylor
3009 E. Portland Avenue
Tacoma, Washington 98404

9.10.6.4 ***Spokane Tribe of Indians***

Permit coverage not available until Clean Water Act (CWA) 401 certification is received.

9.10.6.5 ***Swinomish Indian Tribal Community***

The following conditions apply only to discharges to waters of the Swinomish Indian Tribal Community:

9.10.6.5.1 ***Certification.*** This certification does not exempt and is provisional upon compliance with other applicable statutes and codes administered by federal and Swinomish Indian Tribal Community (SITC) agencies. Operator must obtain any applicable SITC permits.

9.10.6.5.2 ***Submission of SWPPP.*** Each operator shall develop a Storm Water Pollution Prevention Plan (SWPPP) and submit it to the Swinomish Department of Environmental Protection (SDEP) for review and approval by the Director prior to beginning any discharge activities under the permit.

9.10.6.5.3 ***Water Quality Standards.*** Each operator shall be responsible for achieving compliance with applicable Water Quality Standards for Surface Waters of the Swinomish Indian Reservation.

9.10.6.5.4 ***Submission of NOI, Monitoring Data, Reports and NOT.*** Each operator shall submit a copy of the Notice of Intent (NOI), analytical monitoring results and Exceedance Reports if any, Annual Reports, and Notice of Termination (NOT) to the Swinomish DEP at the same time it is submitted to EPA.

9.10.6.5.5 ***Alternative Permit.*** The permit does not allow discharge of any pollutant on EPA's Persistent Bioaccumulative and Toxic pollutant list. Operator must eliminate such discharge or apply for an Individual permit.

9.10.6.5.6 ***Historic Properties Preservation.*** If any archeological/cultural resources or human remains are uncovered during the course of operations, all work will cease and operator must contact the Swinomish Tribal Historic Preservation Officer at 466-7352 or (cell) 840-4127.

9.10.6.5.7 ***Where to Submit Information.*** All submittals and correspondence required by this certification including but not limited to Storm Water Pollution Prevention Plans (SWPPP), monitoring results, reports of exceedances, and other notices are to be directed to the Environmental Director, Swinomish Department of Environmental Protection, 11430 Moorage Way, LaConner, WA 98257, phone (360) 466-7201, fax (360) 466-1615, and shall reference 401 Certification # 2014-01 and NPDES MSGP WAR-5I000.

9.10.6.6 ***Tulalip Tribes***

The following conditions apply only to discharges on waters of the Tulalip Tribes:

9.10.6.6.1 ***Submission of NOI, NOT, and No Exposure.*** Copies of the Notice of Intent (NOI), Notice of Termination (NOT), and No Exposure Certification shall be submitted to the Tribe's Natural Resources Department.

9.10.6.6.2 ***Submission of SWPPP.*** A copy of the Stormwater Pollution Prevention Plan (SWPPP) shall be submitted to the Tribe's Natural Resources Department at least thirty (30) days in advance of submitting the NOI to EPA.

9.10.6.6.3 ***Compliance with Tribe's Water Quality Standards.*** Each permittee shall be responsible for achieving compliance with the Tribe's Water Quality Standards.

9.10.6.6.4 ***Submission and approval of Sampling Plans.*** A sampling plan shall be submitted to the Tribe's Natural Resources Department and approved by the Tribe prior to initiation of monitoring required under Part 6 of this permit.

9.10.6.6.5 ***Submission of Monitoring Data and Reports.*** The results of any monitoring required by this permit and reports must be sent to the Tribe's Natural Resources Department,

including a description of the corrective actions required and undertaken to meet effluent limits or benchmarks (as applicable).

9.10.6.6.6 Authorization to Inspect. The Natural Resources Department may conduct an inspection of any facility covered by this permit to ensure compliance with tribal water quality standards. The Department may enforce its certification conditions.

9.10.6.6.7 Incorporation by reference. This certification does not exempt the applicant from compliance with other statues and codes administered by the tribes, county, state and federal agencies.

9.10.6.6.8 Invalidation. This certification will cease to be valid if the project is constructed and/or operated in a manner not consistent with the project description contained in the permit. This certification will also cease to be valid and the applicant must reapply with an updated application if information contained in the permit is voided by subsequent submittals.

9.10.6.6.9 Modification. Nothing in this certification waives the Tulalip Tribes of Washington's authority to issue modifications to this certification if additional impacts due to operational changes are identified, or if additional conditions are necessary to protect water quality or further protect the Tribal Communities interest.

9.10.6.6.10 Permits on-site. A copy of the permit shall be kept on the job site and readily available for reference by the construction supervisor, construction managers and foreman, and Tribal inspectors.

9.10.6.6.11 Project Management. The applicant shall ensure that project managers, construction managers and foreman, and other responsible parties have read and understand conditions of the permit, this certification, and other relevant documents, to avoid violations or noncompliance with this certification.

9.10.6.6.12 Emergencies/Contingency Measures. In the event the operator is unable to comply with the permit terms and conditions due to any cause, the contractor shall immediately take action to stop the violation and correct the problem, and immediately report spill events to EPA's 24-hour Spill Response Team at (206) 553-1263 and the Tulalip Tribes Police Department (425) 508-1565. Compliance with this condition does not relieve the applicant from responsibility to maintain continuous compliance with the terms and conditions of this certification or the resulting liability from failure to comply.

9.10.6.6.13 Tribal Endangered Species Act Consultation. Consultation with the Tribes that addresses the effects of a facility's stormwater discharges, allowable non-stormwater discharges, and stormwater discharge-related activities on federally-listed threatened or endangered species and designated critical habitat. Information required as part of the consultation shall include:

- Basis of the determination that your stormwater discharges, allowable non-stormwater discharges, and stormwater discharge-related activities will not adversely affect federally-listed as endangered or threatened ("listed") under the Endangered Species Act (ESA) and will not result in the adverse modification or destruction of designated critical habitat including appropriate measures to be undertaken to avoid or eliminate the likelihood of adverse effects (under Criterion C in Section 1.1.4.5); and

- Notice of Intent form complete with extent of action area, list of federally-listed threatened or endangered species or designated critical habitat likely to occur in action area, list of potential pollutants (if you are a new discharger) or list of pollutants for which you have ever exceeded an applicable benchmark or effluent limitations guideline, or for which your discharge has ever been found to cause or contribute to an exceedance of an applicable water quality standard (if you are an existing discharger).

9.10.6.6.14 Discharges to CERCLA Sites. This permit does not authorize direct stormwater discharges to certain sites undergoing remedial cleanup actions pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) unless first approved by the appropriate EPA Regional office. In the case of the Tulalip Landfill site (WAD980639256), the Tulalip Tribes also requests notification by the facility and consultation with EPA prior to discharge. Contaminants at this site may include but are not limited to: dioxins, furans, arsenic, copper, lead, zinc, 4-methyl-phenol, Hex-CB, HPAHs, PCBs, PCE, cadmium, mercury, and LPAHs.

9.10.6.6.15 Discharge-related Activities that have Potential to Cause an Adverse Effect on Historic Properties. Installation of stormwater controls that involve subsurface disturbances may potentially have an adverse impact on historic properties. Procedures detailed in Appendix F of the permit shall be completed. Richard Young, of the Tulalip Tribe's Cultural Resources Department shall be contacted prior to initiating discharge-related activities that may have an impact on historic properties. His contact information is (360) 716-2652 and ryoung@tulaliptribesnsn.gov.

9.10.6.6.16 Where to Submit Information: All required or requested documents shall be sent to the:

Tulalip Tribes Natural Resources Environmental Division
c/o Kurt Nelson and Valerie Streeter
6704 Marine Drive, Tulalip, Washington 98271

9.10.7 WAR05F000: Areas in the State of Washington, except those located on Indian Country lands, subject to industrial activity by a Federal Operator

Permittees in the State of Washington must meet the following conditions:

9.10.7.1 Discharges shall not cause or contribute to a violation of surface water quality standards (Chapter 173-201A WAC), ground water quality standards (Chapter 173-200 WAC), sediment management standards (Chapter 173-204 WAC), and human health-based criteria in the National Toxics Rule (40 CFR Part 131.36). Discharges that are not in compliance with these standards are not authorized.

9.10.7.2 Prior to the discharge of stormwater and non-stormwater to waters of the state, the Permittee shall apply all known, available, and reasonable methods of prevention, control, and treatment (AKART). This includes the preparation and implementation of an adequate Stormwater Pollution Prevention Plan (SWPPP), with all appropriate best management practices (BMPs) installed and maintained in accordance with the SWPPP and the terms and conditions of this permit.

9.10.7.3 Additional Sampling Requirements and Effluent Limits for Discharges to Certain Impaired Waters and Puget Sound Sediment Cleanup Sites.

1. Permittees discharging to a 303(d)-listed waterbody (Category 5), either directly or indirectly through a stormwater drainage system, shall comply with the applicable sampling requirements and numeric effluent limits in Table 9.10.7.3.1.

   For purposes of this condition, "applicable sampling requirements and effluent limits" means the sampling and effluent limits in Table 1 that correspond to the specific parameter(s) the receiving water is 303(d)-listed for at the time of permit coverage, or Total Suspended Solids (TSS) if the waterbody is 303(d)-listed (Category 5) for sediment quality at the time of MSGP coverage.

   If a discharge point is subject to an impaired waterbody effluent limit for a parameter that also has a benchmark, the effluent limit supersedes the benchmark. All references to Category 5 pertain to the 2012 EPA-approved Water Quality Assessment.

   The 2012 EPA-approved Water Quality Assessment may be viewed online at: http://www.ecy.wa.gov/programs/wq/links/wq_assessments.html.

Table 9.10.7.3.1: Sampling and Effluent Limits Applicable to Discharges to 303(d)-listed Waters

Parameter	Units	Maximum Daily[a]		Analytical Method[b]	Laboratory Quantitation Level[c]	Sampling Frequency[d]
		Freshwater	Marine			
Turbidity	NTUs	25	25	EPA 180.1 Meter	0.5	1/quarter
pH	SU	j	Between 7.0 and 8.5	Meter	±0.1	1/quarter
Fecal Coliform Bacteria	# colonies/ 100 mL	i	i	SM 9222D	20 CFU/ 100 mL	1/quarter
TSS[f]	mg/L	30	30	SM2540-D	5	1/quarter
Phosphorus, Total	mg/L	g	g	EPA 365.1	0.01	1/quarter
Total Ammonia (as N)	mg/L	g	g	SM 4500 NH^3-GH	0.3	1/quarter
Copper, Total	µg/L	g	g	EPA 200.8	2.0	1/quarter
Lead, Total	µg/L	g	g	EPA 200.8	0.5	1/quarter
Mercury, Total	µg/L	2.1	1.8	EPA1631E	0.0005	1/quarter
Zinc, Total	µg/L	g	g	EPA 200.8	2.5	1/quarter
Pentachlorophenol	µg/L	9[h]	g	EPA 625	1.0	1/quarter

a. Maximum daily effluent limit means the highest allowable daily discharge. The daily discharge means the discharge of a pollutant measured during a calendar day. The daily discharge is the average measurement of the pollutant over the day; this does not apply to pH.

b. Or other equivalent method with the same reporting level.

c. The Permittee shall ensure laboratory results comply with the quantitation level (QL) specified in the table. However, if an alternate method from 40 CFR Part 136 is sufficient to produce measurable results in the sample, the Permittee may use that method for analysis. If the Permittee uses an alternative method it must report the test method and QL on the DMR. If the Permittee is unable to obtain the required QL due to matrix effects, the Permittee must report the matrix-specific method detection level (MDL) and QL on the DMR.

d. 1/quarter means at least one sample taken each quarter, e.g., Q1 = Jan 1 – March 31, Q2 = April 1 – June 30.

e. Permittees shall use either a calibrated pH meter consistent with EPA 9040 or an approved state method.

f. Permittees who discharge to a waterbody 303(d)-listed (Category 5) for sediment quality shall sample the discharge for TSS.

g. Site-specific effluent limitation will be assigned at the time of permit coverage.

h. Based on a pH of 7.0.

i. A numeric effluent limit does not apply, but Permittees must sample according to Table 9.10.7.3.1. In addition, the following mandatory BMPs shall be incorporated into the SWPPP and implemented; the Permittee must:

1) Use all known, available and reasonable methods to prevent rodents, birds, and other animals from feeding/nesting/roosting at the facility. Nothing in this section shall be construed as allowing violations of any applicable federal, state or local statutes, ordinances, or regulations including the Migratory Bird Treaty Act.
2) Perform at least one annual dry weather inspection of the stormwater system to identify and eliminate sanitary sewer cross-connections.
3) Install structural source control BMPs to address on-site activities and sources that could cause bacterial contamination (e.g., dumpsters, compost piles, food waste, and animal products).
4) Implement operational source control BMPs to prevent bacterial contamination from any known sources of fecal coliform bacteria (e.g., animal waste).
5) Conduct additional bacteria-related sampling and/or BMPs, if ordered by Ecology on a case-by-case basis.

j. The effluent limit for a Permittee who discharges to a freshwater body 303(d)-listed for pH is: Between 6.0 and 8.5, if the 303(d)-listing is for high pH only; Between 6.5 and 9.0, if the 303(d)-listing is for low pH only; and Between 6.5 and 8.5 if the 303(d)-listing is for both low and high pH. All pH effluent limits are applied end-of-pipe.

2. Permittees discharging to a Puget Sound Sediment Cleanup Site[1], either directly or indirectly through a stormwater drainage system, shall comply with this section:

a. Permittees shall sample the discharge for Total Suspended Solids (TSS) in accordance with Table 9.10.7.3.2.

b. If the waterbody is listed within Category 5 (sediment medium) where the outfall discharges to the waterbody, the discharge is subject to the TSS numeric effluent limit in Table 9.10.7.3.1.

c. If the waterbody is not listed within Category 5 (sediment medium) where the outfall discharges to the waterbody (e.g., Category 4B, etc.), the discharge is subject to the TSS benchmark in Table 9.10.7.3.2. If the discharge is subject to more than one TSS benchmark value (i.e., two different benchmarks), the lower benchmark supersedes the higher one. If a discharge exceeds the TSS benchmark, the Permittee shall implement corrective actions in accordance with the MSGP.

d. Permittees shall remove accumulated solids from storm drain lines (including inlets, catch basins, sumps, conveyance lines, and oil/water separators) owned or controlled by the Permittee at least once during the term of the MSGP.

Permittees shall conduct line cleaning operations (e.g., jetting, vacuuming, removal, loading, storage, and/or transport) using BMPs to prevent discharges of storm drain solids to surface waters of the state.

Removed storm drain solids and liquids shall be disposed of in accordance with applicable laws and regulations and documented in the SWPPP.

[1] Puget Sound Sediment Cleanup Site means: Category 4B (Sediment) portions of Budd Inlet (Inner), Commencement Bay (Inner), Commencement Bay (Outer), Dalco Passage and East Passage, Duwamish Waterway (including East and West Waterway), Eagle Harbor, Elliot Bay, Hood Canal (North), Liberty Bay, Rosario Strait, Sinclair Inlet, and Thea Foss Waterway; Category 5 (Sediment) portions of the Duwamish Waterway (including East and West Waterway), and Port Gardner and Inner Everett Harbor; and the Port Angeles Harbor sediment cleanup area, as mapped on Ecology's ISGP website. All references to Category 4B and 5 pertain to the 2012 EPA-approved Water Quality Assessment, available online at: http://www.ecy.wa.gov/programs/wq/links/wq_assessments.html

e. Prior to removing storm drain solids according to Condition 2.D, Permittees shall sample and analyze storm drain solids in accordance with Table 9.10.7.3.3. Storm drain solids must be collected/sampled from a representative catch basin, sump, pipe, or other feature within the storm drain system that corresponds to the discharge point where Total Suspended Solids (TSS) samples are collected per these conditions. Samples may be either a single grab sample or a composite sample. Samples must be representative of the storm drain solids generated and accumulated in the facility's drainage system. To the extent possible, sample locations must exclude portions of the drainage system affected by water from off-site sources (e.g., run-on from off-site properties, tidal influence, and backflow).

f. All storm drain solids sampling data shall be reported to EPA no later than the DMR due date for the reporting period in which the solids were sampled. A copy of the lab report shall be submitted to EPA.

Table 9.10.7.3.2: Benchmarks and Sampling Requirements Applicable to Discharges to Puget Sound Sediment Cleanup Sites that are not Category 5 for Sediment Quality

Parameter	Units	Benchmark Value[a]	Analytical Method	Laboratory Quantitation Level[b]	Minimum Sampling Frequency[c]
TSS	mg/L	30	SM2540-D	5	1/quarter

a. Permittees sampling more than once per quarter shall average the sample results and compare the average value to the benchmark to determine if it the discharge has exceeded the benchmark value. However, if Permittees collect more than one sample during a 24-hour period, they must first calculate the daily average of the individual grab sample results collected during that 24-hour period; then use the daily average to calculate a quarterly average.

b. The Permittee shall ensure laboratory results comply with the quantitation level (QL) specified in the table. However, if an alternate method from 40 CFR Part 136 is sufficient to produce measurable results in the sample, the Permittee may use that method for analysis. If the Permittee uses an alternative method it must report the test method and QL on the DMR. If the Permittee is unable to obtain the required QL due to matrix effects, the Permittee must report the matrix-specific method detection level (MDL) and QL on the DMR.

c. 1/quarter means at least one sample taken each quarter, year-round.

Table 9.10.7.3.3: Sampling and Analytical Procedures for Storm Drain Solids

Analyte	Method in Sediment	Quantitation Level[a]
Conventional Parameters		
Percent total solids	SM 2540G, or ASTM Method D 2216	NA
Total organic carbon	Puget Sound Estuary Protocols (PSEP 1997), or EPA 9060	0.1%
Grain size	Ecology Method Sieve and Pipette (ASTM 1997), ASTMD422, or PSEP 1986/2003	NA
Metals		
Antimony, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.2 mg/kg dw[b]
Arsenic, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.1 mg/kg dw
Beryllium, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.2 mg/kg dw
Cadmium, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.2 mg/kg dw
Chromium, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.5 mg/kg dw

Analyte	Method in Sediment	Quantitation Level[a]
Copper, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.2 mg/kg dw
Lead, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.2 mg/kg dw
Mercury, Total	EPA Method 1631E, or EPA Method 7471B	0.005 mg/kg dw
Nickel, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.1 mg/kg dw
Selenium, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.5 mg/kg dw
Silver, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.1 mg/kg dw
Thallium, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.2 mg/kg dw
Zinc, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	5.0 mg/kg dw
Organics		
PAH compounds[c]	EPA Method 8270 D	70 µg/kg dw
PCBs (aroclors), Total[d]	EPA Method 8082	10 µg/kg dw
Petroleum Hydrocarbons		
NWTPH-Dx	NWTPH-Dx	25.0-100.0 mg/kg dw

a. The Permittee shall ensure laboratory results comply with the quantitation level (QL) specified in the table. However, if an alternate method is sufficient to produce measurable results in the sample, the Permittee may use that method for analysis. If the Permittee uses an alternative method, it must report the test method and QL on the sediment monitoring report. All results shall be reported. For values below the QL, or where a QL is not specified, report results at the method detection level (MDL) from the lab and the qualifier of "U" for undetected at that concentration. If the Permittee is unable to obtain the required QL due to matrix effects, the Permittee must report the matrix-specific MDL and QL on the DMR.

b. dw = dry weight.

c. PAH compounds include: 1-methylnaphthalene, 2-methylnaphthalene, 2-chloronaphthalene, acenaphthylene, acenaphthene, anthracene, benzo(a)anthracene, benzo(a)pyrene, benzo(b, k)fluoranthene, benzo(ghi)perylene, dibenzo(a,h)anthracene, dibenzofuran, carbazole, chrysene, fluoranthene, fluorene, indeno(1,2,3-cd)pyrene, naphthalene, phenanthrene, and pyrene.

d. Total = sum of PCB aroclors 1016+1221+1232+1242+1248+1254+1260.

9.10.7.4 Requirements for Discharges to Waters with Applicable TMDLs

1. The Permittee shall comply with applicable TMDL determinations. Applicable TMDLs or TMDL determinations are TMDLs which have been completed by the issuance date of this permit, or which have been completed prior to the date that the Permittee's NOI is received by EPA, whichever is later. EPA will list the Permittee's requirements to comply with this condition on the letter of permit coverage.
2. TMDL requirements associated with TMDLs completed after the issuance date of this permit only become effective if they are imposed through an administrative order issued by EPA.
3. Where Ecology has established a TMDL wasteload allocation and sampling requirements for the Permittee's discharge, the Permittee shall comply with all requirements of the TMDL.
    a. If a discharge point is subject to a TMDL-related effluent limit for a parameter that also has a benchmark, the effluent limit supersedes the benchmark.

4. Where Ecology has established a TMDL general wasteload allocation for industrial stormwater discharges for a parameter present in the Permittee's discharge, but has not identified specific requirements, EPA will assume the Permittee's compliance with the terms and conditions of the permit complies with the approved TMDL.
5. Where Ecology has not established a TMDL wasteload allocation for industrial stormwater discharges for a parameter present in the Permittee's discharge, but has not excluded these discharges, EPA will assume the Permittee's compliance with the terms and conditions of this permit complies with the approved TMDL.
6. Where a TMDL for a parameter present in the Permittee's discharge specifically precludes or prohibits discharges of stormwater associated with industrial activity, the Permittee is not eligible for coverage under the MSGP.

Appendix A - Definitions, Abbreviations, and Acronyms (for the purposes of this permit).

A.1. DEFINITIONS

Action Area – all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action. See 50 CFR 402. For the purposes of this permit and for application of Endangered Species Act requirements, the following areas are included in the definition of action area:

- The areas where stormwater discharges originate and flow from the industrial facility to the point of discharge into receiving waters. (Example: Where stormwater flows into a ditch, swale, or gully that leads to receiving waters and where listed species (such as listed amphibians) are found in the ditch, swale, or gully.)
- The areas where stormwater from industrial activities discharge into receiving waters and the areas in the immediate vicinity of the point of discharge. (Example: Where stormwater from industrial activities discharges into a stream segment that is known to harbor listed aquatic species.)
- The areas where stormwater controls will be constructed and operated, including any areas where stormwater flows to and from the stormwater controls. (Example: Where a stormwater retention pond would be built.)
- The areas upstream and/or downstream from the stormwater discharge into a stream segment that may be affected by these discharges. (Example: Where sediment discharged to a receiving stream settles downstream and impacts a breeding area of a listed aquatic species.)

Antidegradation Policy or Antidegradation Requirements – the water quality standards regulation that requires States and Tribes to establish a three-tiered antidegradation program:

1. Tier 1 maintains and protects existing uses and water quality conditions necessary to support such uses. An existing use can be established by demonstrating that fishing, swimming, or other uses have actually occurred since November 28, 1975, or that the water quality is suitable to allow such uses to occur. Where an existing use is established, it must be protected even if it is not listed in the water quality standards as a designated use. Tier 1 requirements are applicable to all surface waters.

2. Tier 2 maintains and protects "high quality" waters -- water bodies where existing conditions are better than necessary to support CWA § 101(a)(2) "fishable/swimmable" uses. Water quality can be lowered in such waters. However, state and tribal Tier 2 programs identify procedures that must be followed and questions that must be answered before a reduction in water quality can be allowed. In no case may water quality be lowered to a level which would interfere with existing or designated uses.

3. Tier 3 maintains and protects water quality in outstanding national resource waters (ONRWs). Except for certain temporary changes, water quality cannot be lowered in such waters. ONRWs generally include the highest quality waters of the United States. However, the ONRW classification also offers special protection for waters of exceptional ecological significance, i.e., those which are important, unique, or sensitive ecologically. Decisions regarding which water bodies qualify to be ONRWs are made by States and authorized Indian Tribes.

Arid Areas – areas where annual rainfall averages from 0 to 10 inches.

Bypass – the intentional diversion of waste streams from any portion of a treatment facility. See 40 CFR 122.41(m)(1)(i).

CERCLA Site (i.e., Superfund Site) - for the purposes of this permit, a site as defined in Section 101(9) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601(9), that is undergoing a remedial investigation and feasibility study, or for which a Record of Decision for remedial action has been issued in accordance with the National Contingency Plan, 40 CFR Part 300.

Co-located Industrial Activities – any industrial activities, excluding your primary industrial activity(ies), located on-site that are defined by the stormwater regulations at 122.26(b)(14)(i)-(ix) and (xi). An activity at a facility is not considered co-located if the activity, when considered separately, does not meet the description of a category of industrial activity covered by the stormwater regulations or identified by the SIC code list in Appendix D.

Confidential Business Information (CBI) – see 40 CFR Part 2 for relevant definitions of CBI: http://www.gpo.gov/fdsys/pkg/CFR-2013-title40-vol1/pdf/CFR-2013-title40-vol1-part2-subpartB.pdf.

Control Measures – refers to any stormwater control or other method (including narrative effluent limitations) used to prevent or reduce the discharge of pollutants to waters of the United States.

Corrective Action – for the purposes of the permit, any action taken, or required to be taken, to (1) repair, modify, or replace any stormwater control used at the site; (2) clean up and dispose of spills, releases, or other deposits found on the site; and (3) remedy a permit violation.

Critical Habitat – as defined in the Endangered Species Act at 16 U.S.C. 1531 for a threatened or endangered species, (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Endangered Species Act, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Endangered Species Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Director – a Regional Administrator of the Environmental Protection Agency or an authorized representative. See 40 CFR 122.2.

Discharge – when used without qualification, means the "discharge of a pollutant." See 40 CFR 122.2.

Discharge of a Pollutant – any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. This includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. See 40 CFR 122.2.

Discharge Point – for the purposes of this permit, the location where collected and concentrated stormwater flows are discharged from the facility such that the first receiving waterbody into which the discharge flows, either directly or through a separate storm sewer system, is a water of the U.S.

Discharge-Related Activity – activities that cause, contribute to, or result in stormwater and allowable non-stormwater point source discharges, and measures such as the siting, construction and operation of stormwater controls to control, reduce, or prevent pollution in the discharges.

Discharge to an Impaired Water – for the purposes of this permit, a discharge to an impaired water occurs if the first water of the U.S. to which you discharge is identified by a state, tribe, or EPA as not meeting an applicable water quality standard, and requires development of a total maximum daily load (TMDL) (pursuant to Section 303(d) of the Clean Water Act), or is addressed by an EPA-approved or established TMDL, or is not in either of the above categories but the waterbody is covered by pollution control requirements that meet the requirements of 40 CFR 130.7(b)(1). For discharges that enter a separate storm sewer system prior to discharge, the water of the U.S. to which you discharge is the waterbody that receives the stormwater discharge from the storm sewer system.

Drought-Stricken Area – for the purposes of this permit, an area in which the National Oceanic and Atomospheric Administration's U.S. Seasonal Drought Outlook indicates for the period that any of the following conditions are likely: (1) "Drought to persist or intensify", (2) "Drought ongoing, some improvement", (3) "Drought likely to improve, impacts ease", or (4) "Drought development likely". See http://www.cpc.ncep.noaa.gov/products/expert_assessment/season_drought.gif.

Effective Operating Condition – for the purposes of this permit, a stormwater control is kept in effective operating condition if it has been implemented and maintained in such a manner that it is working as designed to minimize pollutant discharges.

Effluent Limitations – for the purposes of this permit, any of the Part 2 or Part 3 requirements.

Effluent Limitations Guideline (ELG) – defined in 40 CFR § 122.2 as a regulation published by the Administrator under section 304(b) of CWA to adopt or revise effluent limitations.

Eligible – for the purposes of this permit, refers to stormwater and allowable non-stormwater discharges that are authorized for coverage under this general permit.

Endangered Species – defined in the Endangered Species Act at 16 U.S.C. 1531 as any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man.

Existing Discharger – an operator applying for coverage under this permit for discharges authorized previously under an NPDES general or individual permit.

Facility or Activity – any NPDES "point source" (including land or appurtenances thereto) that is subject to regulation under the NPDES program. See 40 CFR 122.2.

Feasible – for the purposes of this permit, feasible means technologically possible and economically practicable and achievable in light of best industry practices. EPA notes that it does not intend for any permit requirement to conlict with state water rights law.

Federal Operator – an entity that meets the definition of "Operator" in this permit and is either any department, agency or instrumentality of the executive, legislative, and judicial branches of the Federal government of the United States, or another entity, such as a private contractor, operating for any such department, agency, or instrumentality.

Hazardous Materials or Hazardous Substances or Toxic Materials – for the purposes of this permit, any liquid, solid, or contained gas that contain properties that are dangerous or potentially harmful to human health or the environment. See also 40 CFR §261.2.

Historic Property – as defined in the National Historic Preservation Act regulations means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

Impaired Water (or "Water Quality Impaired Water" or "Water Quality Limited Segment") – for the purposes of this permit, waters identified by a state, tribe, or EPA as not meeting an applicable water quality standard, and require development of a total maximum daily load (TMDL) (pursuant to Section 303(d) of the CWA), or are addressed by an EPA-approved or established TMDL, or are covered by pollution controls requirements that meet the requirements of 40 FR 130.7(b)(1). For discharges that enter a separate 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.

Indian Country or Indian Country Lands – defined at 40 CFR 122.2 as:

a). All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

b). All dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State: and

c). All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. This definition includes all land held in trust for an Indian tribe. (18 U.S.C. 1151)

Infeasible – for the purposes of this permit, infeasible means not technologically possible or not economically practicable and achievable in light of best industry practices. EPA notes that it does not intend for any permit requirement to conflict with state water rights law.

Industrial Activity – the 10 categories of industrial activities included in the definition of "stormwater discharges associated with industrial activity" as defined in 40 CFR 122.26(b)(14)(i)-(ix) and (xi).

Industrial Stormwater – stormwater runoff from industrial activity.

Measurable Storm Event – a precipitation event that results in a measurable amount of precipitation (i.e., a storm event that results in an actual discharge) and that follows the preceding storm event by at least 72 hours (3-days). The 72-hour storm interval does not apply if you document that less than a 72-hour interval is representative for local storm events.

Minimize – for the purposes of this permit, minimize means to reduce and/or eliminate to the extent achievable using control measures that are technologically available and economically practicable and achievable in light of best industry practices.

Municipal Separate Storm Sewer (MS4) – defined at 40 CFR §122.26(b)(8) as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

1. Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;

2. Designed or used for collecting or conveying stormwater;

3. Which is not a combined sewer; and

4. Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2. See 40 CFR 122.26(b)(4) and (b)(7).

National Pollutant Discharge Elimination System (NPDES) – defined at 40 CFR §122.2 as the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA. The term includes an 'approved program.'

New Discharger – a facility from which there is or may be a discharge, that did not commence the discharge of pollutants at a particular site prior to August 13, 1979, which is not a new source, and which has never received a finally effective NPDES permit for discharges at that site. See 40 CFR 122.2.

New Source – any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced:

- after promulgation of standards of performance under section 306 of the CWA which are applicable to such source, or
- after proposal of standards of performance in accordance with section 306 of the CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal. See 40 CFR 122.2.

New Source Performance Standards (NSPS) – technology-based standards for facilities that qualify as new sources under 40 CFR 122.2 and 40 CFR 122.29.

No Exposure – all industrial materials or activities protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. See 40 CFR 122.26(g).

Non-Stormwater Discharges – discharges that do not originate from storm events. They can include, but are not limited to, discharges of process water, air conditioner condensate, non-contact cooling water, pavement wash water, external building washdown, irrigation water, or uncontaminated ground water or spring water.

Notice of Intent (NOI) – the form (electronic or paper) required for authorization of coverage under the Multi-Sector General Permit.

Notice of Termination (NOT) – the form (electronic or paper) required for terminating coverage under the Multi-Sector General Permit.

Operator – any entity with a stormwater discharge associated with industrial activity that meets either of the following two criteria:

1. The entity has operational control over industrial activities, including the ability to make modifications to those activities; or

2. The entity has day-to-day operational control of activities at a facility necessary to ensure compliance with the permit (e.g., the entity is authorized to direct workers at a facility to carry out activities required by the permit).

Outfall – see "Discharge Point."

Permitting Authority – for the purposes of this permit, EPA, a Regional Administrator of EPA, or an authorized representative.

Person – an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof. See 40 CFR 122.2.

Point Source – any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff. See 40 CFR 122.2.

Pollutant – defined at 40 CFR §122.2. A partial listing from this definition includes: dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal and agricultural waste discharged into water. See 40 CFR 122.2.

Pollutant of Concern – a pollutant which causes or contributes to a violation of a water quality standard, including a pollutant which is identified as causing an impairment in a state's 303(d) list.

Primary Industrial Activity – includes any activities performed on-site which are (1) identified by the facility's primary SIC code and included in the descriptions of 122.26(b)(14)(ii), (iii), (vi), or (viii); or (2) included in the narrative descriptions of 122.26(b)(14)(i), (iv), (v), (vii), or (ix). [For co-located activities covered by multiple SIC codes, it is recommended that the primary industrial determination be based on the value of receipts or revenues or, if such information is not available for a particular facility, the number of employees or production rate for each process may be compared. The operation that generates the most revenue or employs the most personnel is the operation in which the facility is primarily engaged. In situations where the vast majority of on-site activity falls within one SIC code, that activity may be the primary industrial activity.] Narrative descriptions in 40 CFR 122.26(b)(14) identified above include: (i) activities subject to stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards; (iv) hazardous waste treatment storage, or disposal facilities including those that are operating under interim status or a permit under subtitle C of the Resource Conservation and Recovery Act (RCRA); (v) landfills, land application sites and open

dumps that receive or have received industrial wastes; (vii) steam electric power generating facilities; and (ix) sewage treatment works with a design flow of 1.0 mgd or more.

Qualified Personnel – qualified personnel are those who are knowledgeable in the principles and practices of industrial stormwater controls and pollution prevention, and who possess the education and ability to assess conditions at the industrial facility that could impact stormwater quality, and the education and ability to assess the effectiveness of stormwater controls selected and installed to meet the requirements of the permit.

Reportable Quantity Release – a release of a hazardous substance at or above the established legal threshold that requires emergency notification. Refer to 40 CFR Parts 110, 117, and 302 for complete definitions and reportable quantities for which notification is required.

Restricted Information – for the purposes of this permit, information that is privileged or that is otherwise protected from disclosure pursuant to applicable statutes, Executive Orders, or regulations. Such information includes, but is not limited to: classified national security information, protected critical infrastructure information, sensitive security information, and proprietary business information.

Runoff Coefficient – the fraction of total rainfall that will appear at the conveyance as runoff. See 40 CFR 122.26(b)(11).

Run-On – sources of stormwater that drain from land located upslope or upstream from the regulated facily in question.

Saline Water or Saltwater – for the purposes of this permit, a waterbody with salinity that is equal to or exceeds 10 parts per thousand 95 percent or more of the time, unless otherwise defined as a coastal or marine water by the applicable state or tribal surface water quality standards.

Semi-Arid Areas – areas where annual rainfall averages from 10 to 20 inches.

Significant Materials – includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with stormwater discharges. See 40 CFR 122.26(b)(12).

Special Aquatic Sites – sites identified in 40 CFR 230 Subpart E. These are geographic areas, large or small, possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted ecological values. These areas are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire ecosystem of a region.

Spill – for the purpose of this permit, the release of a hazardous or toxic substance from its container or containment.

Stormwater – stormwater runoff, snow melt runoff, and surface runoff and drainage. See 40 CFR 122.26(b)(13).

Stormwater Controls – see "Control Measures."

Stormwater Discharges Associated with Construction Activity – as used in this permit, a discharge of pollutants in stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or excavating) occur, or where construction materials or equipment storage or maintenance (e.g., fill piles, borrow areas, concrete truck washout, fueling), or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located. See 40 CFR 122.26(b)(14)(x) and 40 CFR 122.26(b)(15).

Stormwater Discharges Associated with Industrial Activity – the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under Part 122. For the categories of industries identified in this section, the term includes, but is not limited to, stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at part 401 of this chapter); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. For the purposes of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with stormwater drained from the above described areas. Industrial facilities include those that are federally, state, or municipally owned or operated that meet the description of the facilities listed in 40 CFR 122.26(b)(14). The term also includes those facilities designated under the provisions of 40 CFR 122.26(a)(1)(v). See 40 CFR 122.26(b)(14).

Stormwater Team – the group of individuals responsible for oversight of the development and modifications of the SWPPP, and oversight of compliance with the permit requirements. The individuals on the "Stormwater Team" must be identified in the SWPPP.

Storm Event – a precipitation event that results in a measurable amount of precipitation.

Threatened Species – defined in the Endangered Species Act at 16 U.S.C. 1531 as any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Tier 2 Waters – For antidegradation purposes, pursuant to 40 CFR 131.12(a)(2), Tier 2 waters are characterized as having water quality that exceeds the levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water.

Tier 2.5 Waters – For antidegradation purposes, Tier 2.5 waters are those waters designated by States or Tribes as requiring a level of protection equal to and above that given to Tier 2 waters, but less than that given Tier 3 waters.States have special requirements for these waters.

Tier 3 Waters – For antidegradation purposes, pursuant to 40 CFR 131.12(a)(3), Tier 3 waters are identified by states as having high quality waters constituting an Outstanding National Resource Water (ONRW), such as waters of National Parks and State Parks, wildlife refuges, and waters of exceptional recreational or ecological significance.

Total Maximum Daily Loads (TMDLs) – The sum of the individual wasteload allocations (WLAs) for point sources and load allocations (LAs) for nonpoint sources and natural background. If receiving water has only one point source discharger, the TMDL is the sum of that point source WLA plus the LAs for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. (See section 303(d) of the Clean Water Act and 40 CFR 130.2 and 130.7).

Toxic Waste – see "Hazardous Materials."

Uncontaminated Discharge – a discharge that does not cause or contribute to an exceedance of applicable water quality standards.

Upset – Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond your reasonable control. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. See 40 CFR 122.41(n)(1).

Water Quality Impaired – See "Impaired Water."

Water Quality Standards – defined in 40 CFR § 131.3, and are provisions of State or Federal law which consist of a designated use or uses for the waters of the United States, water quality criteria for such waters based upon such uses, and an antidegradation policy to protect high-quality waters. Water quality standards protect the public health or welfare, enhance the quality of water and serve the purposes of the Act.

Waters of the United States – See definition at at 40 CFR §122.2.

A.2. ABBREVIATIONS AND ACRONYMS

BAT – Best Available Technology Economically Achievable

BOD5 – Biochemical Oxygen Demand (5-day test)

BMP – Best Management Practice

BPJ – Best Professional Judgment

BPT – Best Practicable Control Technology Currently Available

CERCLA – Comprehensive Environmental Response, Compensation and Liability Act

CGP – Construction General Permit

CFR – Code of Federal Regulations

COD – Chemical Oxygen Demand

CWA – Clean Water Act (or the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq*)

CWT – Centralized Waste Treatment

DMR – Discharge Monitoring Report

ELG – Effluent Limitations Guideline

EPA – U. S. Environmental Protection Agency

ESA – Endangered Species Act

FWS – U. S. Fish and Wildlife Service

LA – Load Allocations

MGD – Million Gallons per Day

MOS – Margin of Safety

MS4 – Municipal Separate Storm Sewer System

MSGP – Multi-Sector General Permit

NAICS – North American Industry Classification System

NEPA – National Environmental Policy Act

NET – NPDES eReporting Tool

NHPA – National Historic Preservation Act

NMFS – U. S. National Marine Fisheries Service

NOI – Notice of Intent

NOE – No Exposure

NOT – Notice of Termination

NPDES – National Pollutant Discharge Elimination System

NRC – National Response Center

NRHP – National Register of Historic Places

NSPS – New Source Performance Standard

NTU – Nephelometric Turbidity Unit

OMB – U. S. Office of Management and Budget

ORW – Outstanding Resource Water

OSM – U. S. Office of Surface Mining

POTW – Publicly Owned Treatment Works

RCRA – Resource Conservation and Recovery Act

RQ – Reportable Quantity

SARA – Superfund Amendments and Reauthorization Act

SDS – Safety Data Sheet

SHPO – State Historic Preservation Officer

SIC – Standard Industrial Classification

SMCRA – Surface Mining Control and Reclamation Act

SPCC – Spill Prevention, Control, and Countermeasures

SWPPP – Stormwater Pollution Prevention Plan

THPO – Tribal Historic Preservation Officer

TMDL – Total Maximum Daily Load

TSDF – Treatment, Storage, or Disposal Facility

TSS – Total Suspended Solids

USGS – United States Geological Survey

WLA – Wasteload Allocation

WQS – Water Quality Standard

Appendix B - Standard Permit Conditions.

Standard permit conditions in Appendix B are consistent with the general permit provisions required under 40 CFR 122.41.

B.1 Duty To Comply.

You must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

A. You must comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards, even if the permit has not yet been modified to incorporate the requirement.

B. Penalties for Violations of Permit Conditions: The Director will adjust the civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (61 FR 252, December 31, 1996, pp. 69359-69366, as corrected in 62 FR 54, March 20, 1997, pp.13514-13517) as mandated by the Debt Collection Improvement Act of 1996 for inflation on a periodic basis. This rule allows EPA's penalties to keep pace with inflation. The Agency is required to review its penalties at least once every 4 years thereafter and to adjust them as necessary for inflation according to a specified formula. The civil and administrative penalties following were adjusted for inflation starting in 1996.

1. Criminal Penalties.

1.1 Negligent Violations. The CWA provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to criminal penalties of not less than $2,500 nor more than $25,000 per day of violation, or imprisonment of not more than one year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than $50,000 per day of violation or by imprisonment of not more than two years, or both.

1.2. *Knowing Violations.* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than $100,000 per day of violation, or imprisonment of not more than 6 years, or both.

1.3. *Knowing Endangerment.* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he or she is placing another person in imminent danger of death or serious bodily injury shall upon conviction be subject to a fine of not more than $250,000 or by imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person

shall be subject to a fine of not more than $500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the Act, shall, upon conviction of violating the imminent danger provision be subject to a fine of not more than $1,000,000 and can fined up to $2,000,000 for second or subsequent convictions.

1.4. *False Statement.* The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both. The Act further provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

2. *Civil Penalties.* The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently $37,500 per day for each violation).

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

3.1. *Class I Penalty.* Not to exceed the maximum amounts authorized by Section 309(g)(2)(A) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently $16,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed $37,500).

3.2. *Class II Penalty.* Not to exceed the maximum amounts authorized by Section 309(g)(2)(B) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently $11,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $177,500).

B.2 Duty to Reapply.

If you wish to continue an activity regulated by this permit after the expiration date of this permit, you must apply for and obtain authorization as required by the new permit once EPA issues it.

B.3 Need to Halt or Reduce Activity Not a Defense.

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

B.4 Duty to Mitigate.

You must take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

B.5 Proper Operation and Maintenance.

You must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by you to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by you only when the operation is necessary to achieve compliance with the conditions of this permit.

B.6 Permit Actions.

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

B.7 Property Rights.

This permit does not convey any property rights of any sort, or any exclusive privileges.

B.8 Duty to Provide Information.

You must furnish to EPA or an authorized representative (including an authorized contractor acting as a representative of EPA), within a reasonable time, any information which EPA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. You must also furnish to EPA or an authorized representative upon request, copies of records required to be kept by this permit.

B.9 Inspection and Entry.

You must allow EPA or an authorized representative (including an authorized contractor acting as a representative of EPA), upon presentation of credentials and other documents as may be required by law, to:

A. Enter upon your premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

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

C. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

D. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

B.10 Monitoring and Records.

A. Samples and measurements taken for the purpose of monitoring must be representative of the volume and nature of the monitored activity.

B. You must retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date the permit expires or the date the permittee's authorization is terminated. This period may be extended by request of EPA at any time.

C. Records of monitoring information must include:

1. The date, exact place, and time of sampling or measurements;

2. The individual(s) who performed the sampling or measurements;

3. The date(s) analyses were performed

4. The individual(s) who performed the analyses;

5. The analytical techniques or methods used; and

6. The results of such analyses.

D. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in the permit.

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

B.11 Signatory Requirements.

A. NOIs, NOTs, and NOEs must be signed as follows:

1. For a corporation: By a responsible corporate officer. For the purpose of this subsection, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment

recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

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

3. For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator of EPA).

B. Your SWPPP, including changes to your SWPPP to document any corrective actions taken as required by Part 3.1, and any other compliance documentation required under this permit, including the Annual Report, DMRs, inspection reports, and corrective action reports, must be signed by a person described in Appendix B, Subsection 11.A above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in Appendix B, Subsection 11.A;

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

3. The signed and dated written authorization is included in the SWPPP. A copy must be submitted to EPA, if requested.

C. All other changes to your SWPPP, and other compliance documentation required under Part 5.4, must be signed and dated by the person preparing the change or documentation.

D. Changes to Authorization. If an authorization under Part 1.3.1.3 is no longer accurate because the industrial facility has been purchased by a different entity, a new NOI satisfying the requirements of Part 1.3 must be submitted to EPA. See Table 1-2 in Part 1.3.1.1 of the permit. However, if the only change that is occurring is a change in contact information or a change in the facility's address, the operator need only make a modification to the existing NOI submitted for authorization.

E. Any person signing documents in accordance with Appendix B, Subsections 11.A or 11.B above must include the following certification:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the

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

F. For persons signing documents electronically, in addition to meeting other applicable requirements in Appendix I, Subsection B.11, such signatures must be legally dependable with no less evidentiary value than their paper equivalent.

G. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

B.12 Reporting Requirements.

A. Planned changes. You must give notice to EPA as soon as possible, but no fewer than 30 days, of any planned physical alterations or additions to the permitted facility. Notice is required only when:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 40 CFR 122.42(a)(1).

B. Anticipated noncompliance. You must give advance notice to EPA of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

C. Transfers. This permit is not transferable to any person except after notice to EPA. Where a facility wants to change the name of the permittee, the original permittee (the first owner or operators) must submit a Notice of Termination pursuant to Part 1.4. The new owner or operator must submit a Notice of Intent in accordance with Part 1.3.1 and Table 1-2. See also requirements in Appendix B, Subsections 11.B and 11.D.

D. Monitoring reports. Monitoring results must be reported at the intervals specified elsewhere in this permit.

1. Pursuant to Part 7.1, all monitoring data collected pursuant to Part 6 must be submitted to EPA using EPA's online DMR system (http://www.epa.gov/netdmr/).

2. If you monitor any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or as specified in the permit, the results of this monitoring must be included in the calculation and reporting of the data submitted in the DMR.

3. Calculations for all limitations which require averaging of measurements must use an arithmetic mean. For averaging purposes, use a value of zero for any individual sample parameter, which is determined to be less than the method detection limit. For sample values that fall between the method detection level and the quantitation limit (i.e., a confirmed detection but below the level that can be reliably quantified), use a value halfway between zero and the quantitation limit.

E. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than 14 days following each schedule date.

F. Twenty-four hour reporting.

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

2. The following shall be included as information which must be reported within 24 hours under this paragraph.

a. Any unanticipated bypass which exceeds any effluent limitation in the permit. (See 40 CFR 122.41(m)(3)(ii))

b. Any upset which exceeds any effluent limitation in the permit

c. Violation of a maximum daily discharge limit for any numeric effluent limitation. (See 40 CFR 122.44(g).)

3. EPA may waive the written report on a case-by-case basis for reports under Appendix B, Subsection 12.F.2 if the oral report has been received within 24 hours.

G. Other noncompliance. You must report all instances of noncompliance not reported under Appendix B, Subsections 12.D, 12.E, and 12.F, at the time monitoring reports are submitted. The reports must contain the information listed in Appendix B, Subsection 12.F.

H. Other information. Where you become aware that you failed to submit any relevant facts in your NOI, or submitted incorrect information in your NOI or in any report to the Permitting Authority, you must promptly submit such facts or information.

B.13 Bypass.

A. Definitions.

1. Bypass means the intentional diversion of waste streams from any portion of a treatment facility See 40 CFR 122.41(m)(1)(i).

2. Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production. See 40 CFR 122.41(m)(1)(ii).

B. Bypass not exceeding limitations. You may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Appendix B, Subsections 13.C and 13.D. See 40 CFR 122.41(m)(2).

C. Notice.

1. Anticipated bypass. If you know in advance of the need for a bypass, you must submit prior notice, if possible at least ten days before the date of the bypass. See 40 CFR 122.41(m)(3)(i).

2. Unanticipated bypass. You must submit notice of an unanticipated bypass as required in Appendix B, Subsection 12.F (24-hour notice). See 40 CFR 122.41(m)(3)(ii).

D. Prohibition of bypass. See 40 CFR 122.41(m)(4).

1. Bypass is prohibited, and EPA may take enforcement action against you for bypass, unless:

a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

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

c. You submitted notices as required under Appendix B, Subsection 13.C.

2. EPA may approve an anticipated bypass, after considering its adverse effects, if EPA determines that it will meet the three conditions listed above in Appendix B, Subsection 13.D.1.

B.14 Upset.

A. Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond your reasonable control. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. See 40 CFR 122.41(n)(1).

B. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements

of Appendix B, Subsection 14.C are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review. See 40 CFR 122.41(n)(2).

C. Conditions necessary for a demonstration of upset. See 40 CFR 122.41(n)(3). A permittee who wishes to establish the affirmative defense of upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and that you can identify the cause(s) of the upset;

2. The permitted facility was at the time being properly operated; and

3. You submitted notice of the upset as required in Appendix B, Subsection 12.F.2.b (24 hour notice).

4. You complied with any remedial measures required under Appendix B, Subsection 4.

D. Burden of proof. In any enforcement proceeding, you, as the one seeking to establish the occurrence of an upset, have the burden of proof. See 40 CFR 122.41(n)(4).

B.15 Retention of Records.

Copies of the SWPPP and all documentation required by this permit, including records of all data used to complete the NOI to be covered by this permit, must be retained for at least three years from the date that permit coverage expires or is terminated. This period may be extended by request of EPA at any time.

B.16 Reopener Clause.

A. Procedures for modification or revocation. Permit modification or revocation will be conducted according to 40 CFR §122.62, §122.63, §122.64 and §124.5.

B. Water quality protection. If there is evidence indicating that the stormwater discharges authorized by this permit cause, have the reasonable potential to cause or contribute to an excursion above any applicable water quality standard, you may be required to obtain an individual permit in accordance with Part 1.3.3 of this permit, or the permit may be modified to include different limitations and/or requirements.

C. Timing of permit modification. EPA may elect to modify the permit prior to its expiration (rather than waiting for the new permit cycle) to comply with any new statutory or regulatory requirements, such as for effluent limitation guidelines that may be promulgated in the course of the current permit cycle.

Appendix C - Permit Areas Eligible for Coverage.

EPA can only provide permit coverage in these areas and for classes of discharges that are outside the scope of a state's NPDES program authorization.

C.1 EPA Region 1: Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont.

This permit offers NPDES permit coverage for stormwater discharges associated with industrial activity from the following areas in EPA Region 1:

Master Permit Number	Areas of Coverage/Where EPA Is Permitting Authority
CTR05I000	Indian Country within the State of Connecticut
MAR050000	Commonwealth of Massachusetts, except Indian country
MAR05I000	Indian country within the Commonwealth of Massachusetts
NHR050000	State of New Hampshire
RIR05I000	Indian country within the State of Rhode Island
VTR05F000	Areas in the State of Vermont subject to industrial activity by a Federal Operator

For stormwater discharges in EPA Region 1 outside the areas of coverage identified above, please contact your state NPDES permitting authority to obtain coverage under a state-issued NPDES permit.

C.2 EPA Region 2: New Jersey, New York, Puerto Rico, Virgin Islands.

This permit offers NPDES permit coverage for stormwater discharges associated with industrial activity from the following areas in EPA Region 2:

Master Permit Number	Areas of Coverage/Where EPA Is Permitting Authority
PRR050000	Commonwealth of Puerto Rico

For stormwater discharges in EPA Region 2 outside the areas of coverage identified above, please contact your state NPDES permitting authority to obtain coverage under a state-issued NPDES permit.

C.3 EPA Region 3: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.

This permit offers NPDES permit coverage for stormwater discharges associated with industrial activity from the following areas in EPA Region 3:

Master Permit Number	Areas of Coverage/Where EPA Is Permitting Authority
DCR050000	District of Columbia
DER05F000	Areas in the State of Delaware subject to industrial activity by a Federal Operator

For stormwater discharges in EPA Region 3 outside the areas of coverage identified above, please contact your state NPDES permitting authority to obtain coverage under a state-issued NPDES permit.

C.4 EPA Region 4: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee (Coverage not available under this permit).

For stormwater discharges in EPA Region 4, please contact your state NPDES permitting authority to obtain coverage under a state-issued NPDES permit.

C.5 EPA Region 5: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

This permit offers NPDES permit coverage for stormwater discharges associated with industrial activity from the following areas in EPA Region 5:

Master Permit Number	Areas of Coverage/Where EPA Is Permitting Authority
MIR05I000	Indian country within the State of Michigan
MNR05I000	Indian country within the State of Minnesota
WIR05I000	Indian country within the State of Wisconsin (except for facilities on Sokaogon Chippewa Community lands and Bad River Band of Lake Superior Tribe of Chippewa Indians lands, see EPA Region 5 for an individual permit application).

For stormwater discharges in EPA Region 5 outside the areas of coverage identified above, please contact your state NPDES permitting authority to obtain coverage under a state-issued NPDES permit.

C.6 EPA Region 6: Arkansas, Louisiana, Oklahoma, Texas, and New Mexico (except see Region 9 for Navajo lands, and see Region 8 for Ute Mountain Reservation lands).

This permit offers NPDES permit coverage for stormwater discharges associated with industrial activity from the following areas in EPA Region 6:

Master Permit Number	Areas of Coverage/Where EPA Is Permitting Authority
LAR05I000	Indian country within the State of Louisiana
NMR050000	The State of New Mexico, except Indian country
NMR05I000	Indian country within the State of New Mexico, except Ute Mountain Reservation lands that are covered under Colorado permit COR05I000 and Navajo Reservation lands that are covered under Arizona permit AZR05I000
OKR05I000	Indian country within the State of Oklahoma
OKR05F000	Facilities in the State of Oklahoma not under the jurisdiction of the Oklahoma Department of Environmental Quality or the Oklahoma Department of Agriculture, Food and Forestry, except those on Indian Country. EPA jurisdiction facilities include SIC Codes 1311, 1381, 1382, 1389, and 5171.

Master Permit Number	Areas of Coverage/Where EPA Is Permitting Authority
TXR05F000	Facilities in the State of Texas not under the jurisdiction of the Texas Commission on Environmental Quality, except those on Indian Country. EPA-jurisdiction facilities include SIC Codes 1311, 1321, 1381, 1382, 1389, and 5171 (other than oil field service company "home base" facilities).
TXR05I000	Indian country within the State of Texas

For stormwater discharges in EPA Region 6 outside the areas of coverage identified above, please contact your state NPDES permitting authority to obtain coverage under a state-issued NPDES permit.

C.7 EPA Region 7: Iowa, Kansas, Missouri, Nebraska (except see Region 8 for Pine Ridge Reservation Lands).

This permit offer NPDES permit coverage for stormwater discharges associated with industrial activity from the following areas in EPA Region 7:

Master Permit Number	Areas of Coverage/Where EPA Is Permitting Authority
IAR05I000	Indian country within the State of Iowa
KSR05I000	Indian country within the State of Kansas
NER05I000	Indian country within the State of Nebraska, except Pine Ridge Reservation lands (see Region 8)

For stormwater discharges in EPA Region 7 outside the areas of coverage identified above, please contact your state NPDES permitting authority to obtain coverage under a state-issued NPDES permit.

C.8 EPA Region 8: Colorado, Montana, North Dakota, South Dakota, Wyoming, Utah (except see Region 9 for Goshute Reservation and Navajo Reservation Lands), the Ute Mountain Reservation in NM, and the Pine Ridge Reservation in NE.

This permit offers NPDES permit coverage for stormwater discharges associated with industrial activity from the following areas in EPA Region 8:

Master Permit Number	Areas of Coverage/Where EPA Is Permitting Authority
COR05F000	Areas in the State of Colorado, except those located on Indian country, subject to industrial activity by a Federal Operator
COR05I000	Indian country within the State of Colorado, as well as the portion of the Ute Mountain Reservation located in New Mexico
MTR05I000	Indian country within the State of Montana
NDR05I000	Indian country within the State of North Dakota, as well as that portion of the Standing Rock Reservation located in South Dakota (except for the portion of the lands within the former boundaries of the Lake Traverse Reservation, which is covered under South Dakota permit SDR05I000 listed below)

Master Permit Number	Areas of Coverage/Where EPA Is Permitting Authority
SDR05I000	Indian country within the State of South Dakota, as well as the portion of the Pine Ridge Reservation located in Nebraska and the portion of the lands within the former boundaries of the Lake Traverse Reservation located in North Dakota (except for the Standing Rock Reservation, which is covered under North Dakota permit NDR05I000 listed above)
UTR05I000	Indian country within the State of Utah, except Goshute and Navajo Reservation lands (see Region 9)
WYR05I000	Indian country within the State of Wyoming

For stormwater discharges in EPA Region 8 outside the areas of coverage identified above, please contact your state NPDES permitting authority to obtain coverage under a state-issued NPDES permit.

C.9 EPA Region 9: California, Hawaii, Nevada, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Confederated Tribes of the Goshute Reservation in Utah and Nevada, Indian Country within the State of Arizona including the Navajo Reservation in Utah and New Mexico and Arizona, the Duck Valley Reservation in Idaho, and the Fort McDermitt Reservation in Oregon.

This permit offers NPDES permit coverage for stormwater discharges associated with industrial activity from the following areas in EPA Region 9:

Master Permit Number	Areas of Coverage/Where EPA Is Permitting Authority
ASR050000	American Samoa
AZR05I000	Indian country within the State of Arizona, including Navajo Reservation lands in New Mexico and Utah
CAR05I000	Indian country within the State of California
GUR050000	Island of Guam
JAR050000	Johnston Atoll
MWR050000	Midway Island and Wake Island
MPR050000	Commonwealth of the Northern Mariana Islands
NVR05I000	Indian country within the State of Nevada, including the Duck Valley Reservation in Idaho, the Fort McDermitt Reservation in Oregon and the Confederated Tribes of the Goshute Reservation in Utah

For stormwater discharges in EPA Region 9 outside the areas of coverage identified above, please contact your state NPDES permitting authority to obtain coverage under a state-issued NPDES permit.

C.10 Region 10: Alaska, Idaho (except see Region 9 for Duck Valley Reservation lands), Oregon (except see Region 9 for Fort McDermitt Reservation), Washington.

This permit offers NPDES permit coverage for stormwater discharges associated with industrial activity from the following areas in EPA Region 10:

Master Permit Number	Areas of Coverage/Where EPA Is Permitting Authority
AKR05F000	Denali National Park and Preserve
AKR05I000	Indian country lands as defined in 18 U.S.C. 1151 within the State of Alaska
IDR050000	The State of Idaho, except Indian country lands
IDR05I000	Indian country lands within the State of Idaho, except Duck Valley Reservation lands, which are covered under Nevada permit NVR05I000
ORR05I000	Indian country lands within the State of Oregon, except Fort McDermitt Reservation lands, which are covered under Nevada permit NVR05I000
WAR05I000	Indian country lands within the State of Washington
WAR05F000	Areas in the State of Washington, except those located on Indian country lands, subject to industrial activity by a Federal Operator

For stormwater discharges in EPA Region 10 outside the areas of coverage identified above, please contact your state NPDES permitting authority to obtain coverage under a state-issued NPDES permit.

Appendix D - Facilities and Activities Covered

Your permit eligibility is limited to discharges from facilities in the "sectors" of industrial activity summarized in Table D-1. These sector descriptions are based on Standard Industrial Classification (SIC) Codes and Industrial Activity Codes. References to "sectors" in this permit (e.g., sector-specific monitoring requirements) refer to these groupings.

Table D-1. Sectors of Industrial Activity Covered by This Permit

Subsector (May be subject to more than one sector/subsector)	SIC Code or Activity Code[1]	Activity Represented
SECTOR A: TIMBER PRODUCTS		
A1	2421	General Sawmills and Planing Mills
A2	2491	Wood Preserving
A3	2411	Log Storage and Handling
A4	2426	Hardwood Dimension and Flooring Mills
	2429	Special Product Sawmills, Not Elsewhere Classified
	2431-2439 (except 2434)	Millwork, Veneer, Plywood, and Structural Wood (see Sector W)
	2448	Wood Pallets and Skids
	2449	Wood Containers, Not Elsewhere Classified
	2451, 2452	Wood Buildings and Mobile Homes
	2493	Reconstituted Wood Products
	2499	Wood Products, Not Elsewhere Classified
	2441	Nailed and Lock Corner Wood Boxes and Shook
SECTOR B: PAPER AND ALLIED PRODUCTS		
B1	2631	Paperboard Mills
B2	2611	Pulp Mills
	2621	Paper Mills
	2652-2657	Paperboard Containers and Boxes
	2671-2679	Converted Paper and Paperboard Products, Except Containers and Boxes
SECTOR C: CHEMICALS AND ALLIED PRODUCTS		
C1	2873-2879	Agricultural Chemicals
C2	2812-2819	Industrial Inorganic Chemicals
C3	2841-2844	Soaps, Detergents, and Cleaning Preparations; Perfumes, Cosmetics, and Other Toilet Preparations
C4	2821-2824	Plastics Materials and Synthetic Resins, Synthetic Rubber, Cellulosic and Other Manmade Fibers Except Glass

Table D-1. Sectors of Industrial Activity Covered by This Permit		
Subsector (May be subject to more than one sector/subsector)	**SIC Code or Activity Code[1]**	**Activity Represented**
C5	2833-2836	Medicinal Chemicals and Botanical Products; Pharmaceutical Preparations; in vitro and in vivo Diagnostic Substances; and Biological Products, Except Diagnostic Substances
	2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products
	2861-2869	Industrial Organic Chemicals
	2891-2899	Miscellaneous Chemical Products
	3952 (limited to list of inks and paints)	Inks and Paints, Including China Painting Enamels, India Ink, Drawing Ink, Platinum Paints for Burnt Wood or Leather Work, Paints for China Painting, Artist's Paints and Artist's Watercolors
	2911	Petroleum Refining
SECTOR D: ASPHALT PAVING AND ROOFING MATERIALS AND LUBRICANTS		
D1	2951, 2952	Asphalt Paving and Roofing Materials
D2	2992, 2999	Miscellaneous Products of Petroleum and Coal
SECTOR E: GLASS, CLAY, CEMENT, CONCRETE, AND GYPSUM PRODUCTS		
E1	3251-3259	Structural Clay Products
	3261-3269	Pottery and Related Products
E2	3271-3275	Concrete, Gypsum, and Plaster Products
E3	3211	Flat Glass
	3221, 3229	Glass and Glassware, Pressed or Blown
	3231	Glass Products Made of Purchased Glass
	3241	Hydraulic Cement
	3281	Cut Stone and Stone Products
	3291-3299	Abrasive, Asbestos, and Miscellaneous Nonmetallic Mineral Products
SECTOR F: PRIMARY METALS		
F1	3312-3317	Steel Works, Blast Furnaces, and Rolling and Finishing Mills
F2	3321-3325	Iron and Steel Foundries
F3	3351-3357	Rolling, Drawing, and Extruding of Nonferrous Metals
F4	3363-3369	Nonferrous Foundries (Castings)
F5	3331-3339	Primary Smelting and Refining of Nonferrous Metals
	3341	Secondary Smelting and Refining of Nonferrous Metals
	3398, 3399	Miscellaneous Primary Metal Products

Table D-1. Sectors of Industrial Activity Covered by This Permit		
Subsector (May be subject to more than one sector/subsector)	**SIC Code or Activity Code[1]**	**Activity Represented**
SECTOR G: METAL MINING (ORE MINING AND DRESSING)		
G1	1021	Copper Ore and Mining Dressing Facilities
G2	1011	Iron Ores
	1021	Copper Ores
	1031	Lead and Zinc Ores
	1041, 1044	Gold and Silver Ores
	1061	Ferroalloy Ores, Except Vanadium
	1081	Metal Mining Services
	1094, 1099	Miscellaneous Metal Ores
SECTOR H: COAL MINES AND COAL MINING-RELATED FACILITIES		
H1	1221-1241	Coal Mines and Coal Mining-Related Facilities
SECTOR I: OIL AND GAS EXTRACTION		
I1	1311	Crude Petroleum and Natural Gas
	1321	Natural Gas Liquids
	1381-1389	Oil and Gas Field Services
SECTOR J: MINERAL MINING AND DRESSING		
J1	1442	Construction Sand and Gravel
	1446	Industrial Sand
J2	1411	Dimension Stone
	1422-1429	Crushed and Broken Stone, Including Rip Rap
	1481	Nonmetallic Minerals Services, Except Fuels
	1499	Miscellaneous Nonmetallic Minerals, Except Fuels
J3	1455, 1459	Clay, Ceramic, and Refractory Materials
	1474-1479	Chemical and Fertilizer Mineral Mining
SECTOR K: HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES		
K1	HZ	Hazardous Waste Treatment, Storage, or Disposal Facilities, including those that are operating under interim status or a permit under subtitle C of RCRA
SECTOR L: LANDFILLS, LAND APPLICATION SITES, AND OPEN DUMPS		
L1	LF	All Landfill, Land Application Sites and Open Dumps
L2	LF	All Landfill, Land Application Sites and Open Dumps, except Municipal Solid Waste Landfill (MSWLF) Areas Closed in Accordance with 40 CFR 258.60
SECTOR M: AUTOMOBILE SALVAGE YARDS		
M1	5015	Automobile Salvage Yards

Table D-1. Sectors of Industrial Activity Covered by This Permit		
Subsector (May be subject to more than one sector/subsector)	**SIC Code or Activity Code[1]**	**Activity Represented**
SECTOR N: SCRAP RECYCLING FACILITIES		
N1	5093	Scrap Recycling and Waste Recycling Facilities except Source-Separated Recycling
N2	5093	Source-separated Recycling Facility
SECTOR O: STEAM ELECTRIC GENERATING FACILITIES		
O1	SE	Steam Electric Generating Facilities, including coal handling sites
SECTOR P: LAND TRANSPORTATION AND WAREHOUSING		
P1	4011, 4013	Railroad Transportation
	4111-4173	Local and Highway Passenger Transportation
	4212-4231	Motor Freight Transportation and Warehousing
	4311	United States Postal Service
	5171	Petroleum Bulk Stations and Terminals
SECTOR Q: WATER TRANSPORTATION		
Q1	4412-4499	Water Transportation Facilities
SECTOR R: SHIP AND BOAT BUILDING AND REPAIRING YARDS		
R1	3731, 3732	Ship and Boat Building or Repairing Yards
SECTOR S: AIR TRANSPORTATION FACILITIES		
S1	4512-4581	Air Transportation Facilities
SECTOR T: TREATMENT WORKS		
T1	TW	Treatment Works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR Part 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with section 405 of the CWA
SECTOR U: FOOD AND KINDRED PRODUCTS		
U1	2041-2048	Grain Mill Products
U2	2074-2079	Fats and Oils Products
U3	2011-2015	Meat Products
	2021-2026	Dairy Products

Table D-1. Sectors of Industrial Activity Covered by This Permit		
Subsector (May be subject to more than one sector/subsector)	**SIC Code or Activity Code[1]**	**Activity Represented**
	2032-2038	Canned, Frozen, and Preserved Fruits, Vegetables, and Food Specialties
	2051-2053	Bakery Products
	2061-2068	Sugar and Confectionery Products
	2082-2087	Beverages
	2091-2099	Miscellaneous Food Preparations and Kindred Products
	2111-2141	Tobacco Products
SECTOR V: TEXTILE MILLS, APPAREL, AND OTHER FABRIC PRODUCT MANUFACTURING; LEATHER AND LEATHER PRODUCTS		
V1	2211-2299	Textile Mill Products
	2311-2399	Apparel and Other Finished Products Made from Fabrics and Similar Materials
	3131-3199	Leather and Leather Products (note: see Sector Z1 for Leather Tanning and Finishing)
SECTOR W: FURNITURE AND FIXTURES		
W1	2434	Wood Kitchen Cabinets
	2511-2599	Furniture and Fixtures
SECTOR X: PRINTING AND PUBLISHING		
X1	2711-2796	Printing, Publishing, and Allied Industries
SECTOR Y: RUBBER, MISCELLANEOUS PLASTIC PRODUCTS, AND MISCELLANEOUS MANUFACTURING INDUSTRIES		
Y1	3011	Tires and Inner Tubes
	3021	Rubber and Plastics Footwear
	3052, 3053	Gaskets, Packing and Sealing Devices, and Rubber and Plastic Hoses and Belting
	3061, 3069	Fabricated Rubber Products, Not Elsewhere Classified
Y2	3081-3089	Miscellaneous Plastics Products
	3931	Musical Instruments
	3942-3949	Dolls, Toys, Games, and Sporting and Athletic Goods
	3951-3955 (except 3952 – see Sector C)	Pens, Pencils, and Other Artists' Materials
	3961, 3965	Costume Jewelry, Costume Novelties, Buttons, and Miscellaneous Notions, Except Precious Metal
	3991-3999	Miscellaneous Manufacturing Industries
SECTOR Z: LEATHER TANNING AND FINISHING		
Z1	3111	Leather Tanning and Finishing

Table D-1. Sectors of Industrial Activity Covered by This Permit		
Subsector (May be subject to more than one sector/subsector)	**SIC Code or Activity Code[1]**	**Activity Represented**
SECTOR AA: FABRICATED METAL PRODUCTS		
AA1	3411-3499 (except 3479)	Fabricated Metal Products, Except Machinery and Transportation Equipment, and Coating, Engraving, and Allied Services.
	3911-3915	Jewelry, Silverware, and Plated Ware
AA2	3479	Fabricated Metal Coating and Engraving
SECTOR AB: TRANSPORTATION EQUIPMENT, INDUSTRIAL OR COMMERCIAL MACHINERY		
AB1	3511-3599 (except 3571-3579)	Industrial and Commercial Machinery, Except Computer and Office Equipment (see Sector AC)
	3711-3799 (except 3731, 3732)	Transportation Equipment Except Ship and Boat Building and Repairing (see Sector R)
SECTOR AC: ELECTRONIC, ELECTRICAL, PHOTOGRAPHIC, AND OPTICAL GOODS		
AC1	3571-3579	Computer and Office Equipment
	3812-3873	Measuring, Analyzing, and Controlling Instruments; Photographic and Optical Goods, Watches, and Clocks
	3612-3699	Electronic and Electrical Equipment and Components, Except Computer Equipment
SECTOR AD: NON-CLASSIFIED FACILITIES		
AD1	Other stormwater discharges designated by the Director as needing a permit (see 40 CFR 122.26(a)(9)(i)(C) & (D)) or any facility discharging stormwater associated with industrial activity not described by any of Sectors A-AC. NOTE: Facilities may not elect to be covered under Sector AD. Only the Director may assign a facility to Sector AD.	

[1] A complete list of SIC Codes (and conversions from the newer North American Industry Classification System" (NAICS)) can be obtained from the Internet at www.census.gov/epcd/www/naics.html or in paper form from various locations in the document titled *Handbook of Standard Industrial Classifications*, Office of Management and Budget, 1987.

Appendix E - Procedures Relating to Endangered Species Protection

E.1 Assessing the Effects of Your Discharges and Discharge-Related Activities

You must follow the procedures in this appendix to determine which of the eligibility criteria in Part 1.1.4.5 (i.e., criterion A - E), if any, you qualify under, by assessing the potential effects of applicable stormwater discharges, discharge-related activities, and allowable non-stormwater discharges on listed threatened and endangered species and their designated critical habitat. In accordance with Part 5.2.6.1 of this permit, you must keep any documentation that supports your eligibilty determination, including the completed *Criterion Selection Worksheet* in Part E.4 of this appendix, with your Stormwater Pollution Prevention Plan (SWPPP). You must complete your eligibility determination prior to submitting your Notice of Intent (NOI) for coverage under the MSGP, and must provide all information as required on your NOI form that supports the Part 1.1.4.5 eligibility criterion you qualify under. **Note that if you have determined that you may be eligible under criterion C, you must submit a completed *Criterion C Eligibility Form* to EPA a minimum of 30 days prior to submitting your NOI for permit coverage.**

When evaluating the potential effects of your activities, you must consider effects to listed species or critical habitats within the "action area" of your industrial activity. Action area is defined in Appendix A of the MSGP as all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action. This includes areas beyond the footprint of the facility that are likely to be affected by stormwater discharges, discharge-related activities, and allowable non-stormwater discharges. For example, discharges of pollutants into downstream areas can increase the "action area" beyond the footprint of the facility.

E.2 Eligibility Criterion

As required by Part 1.1.4.5, you must meet one or more of the following five criteria (A - E) to be eligible for coverage under the permit:

Criterion A. No federally listed threatened or endangered species or their designated critical habitat(s) are likely to occur in the "action area" as defined in Appendix A. To certify your eligibility under this criterion, you must use the *Criterion Selection Worksheet* in Part E.4 of Appendix E. You must also provide a description of the basis for the criterion you selected on your NOI form and provide documentation supporting your eligibility determination in your SWPPP.

Criterion B. Your industrial activity's discharges and discharge-related activities were already addressed in another operator's valid certification of eligibility for your action area under this permit and there is no reason to believe that federally listed species or designated critical habitat not considered in the prior certification may be present or located in the "action area" (e.g., due to a new species listing or critical habitat designation). To certify your eligibility under this criterion, you must use the *Criterion Selection Worksheet* in Part E.4 of Appendix E. There must be no lapse of NPDES permit coverage in the other operator's certification. You must also comply with any additional measures that formed the basis of the other operator's valid certification of eligibility to ensure that your discharges and discharge-related activities are protective of listed species and/or critical habitat. You must include in your NOI the NPDES ID (i.e., permit tracking number) assigned to the other operator's authorization under this permit, and a description of the basis for the criterion selected on your NOI form, including the eligibility criterion selected by the

other operator's certification. You must also provide any documentation in your SWPPP that supports the other operator's eligibility determination, including any additional measures that formed the basis of the other operator's eligibility determination.

Criterion C. Federally listed threatened or endangered species or their designated critical habitat(s) are likely to occur in or near your facility's "action area," and your industrial activity's discharges and discharge-related activities are not likely to adversely affect listed threatened or endangered species or critical habitat. To certify your eligibility under this criterion, you must use the *Criterion Selection Worksheet* in Part E.4 of Appendix E, including completion of the *Criterion C Eligibility Form*, which you must submit to EPA at least 30 days prior to filing your NOI for permit coverage. After evaluation of your *Criterion C Eligibility Form*, EPA may require additional measures that you must implement to avoid or eliminate likely adverse effects on listed species and critical habitat from discharges and discharge-related activities. You may submit your NOI for permit coverage 30 days after submitting to EPA your completed *Criterion C Eligibility Form*. You must also provide a description of the basis for the criterion you selected on your NOI form and provide documentation supporting your eligibility determination in your SWPPP.

Criterion D. Consultation between a Federal Agency and the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service under section 7 of the Endangered Species Act (ESA) has been concluded. Consultations can be either formal or informal, and would have occurred only as a result of a separate federal action (e.g., during application for an individual wastewater discharge permit or the issuance of a wetlands dredge and fill permit), and consultation must have addressed the effects of the industrial activity's discharges and discharge-related activities on all federally listed threatened or endangered species and federally designated critical habitat. The result of this consultation must be one of the following:

i. A biological opinion that concludes that the action in question (taking into account the effects of your facility's discharges and discharge-related activities) is not likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of critical habitat;

ii. A biological opinion that concludes that the action is likely to jeopardize listed species or to result in the destruction or adverse modification of critical habitat, and any recommended reasonable and prudent alternatives or reasonable and prudent measures are being implemented; or

iii. Written concurrence from the applicable Service(s) with a finding that your facility's discharges and discharge-related activities are not likely to adversely affect listed species or critical habitat.

To certify your eligibility under this criterion, you must use the *Criterion Selection Worksheet* in Part E.4 of Appendix E. You must verify that the consultation does not warrant reinitiation under 50 CFR §402.16. If reinitiation of consultation is required, in order to be eligible under this criterion you must ensure consultation is reinitiated and the result of the consultation must be consistent with (i), (ii), or (iii) above.

If eligible, you must also provide supporting documentation for your determination in your NOI and SWPPP, including the Biological Opinion (or PCTS tracking number) or concurrence letter.

Criterion E. Your industrial activities are the subject of a permit under section 10 of the ESA, and this authorization addresses the effects of your facility's discharges and discharge-related activities on federally listed species and designated critical habitat. To certify your eligibility under this criterion, you must use the *Criterion Selection Worksheet* in Part E.4 of Appendix E. You must also provide supporting documentation for your determination in your NOI and SWPPP, including a copy of the permit from the Services.

E.3 Eligibility Compliance

You must comply with any measures that formed the basis of your eligibility determination in Part 1.1.4.5 for the duration of your coverage under the MSGP in order to maintain your eligibility for coverage under the permit. These measures become permit requirements per Part 2.3. Documentation of these measures must be kept as part of your SWPPP (see Part 5.2.6.1).

E.4 Criterion Selection Worksheet

Instructions:

You must follow the step-by-step instructions in this worksheet in order to determine your eligibility under the Part 1.1.4.5 criteria. Alternatively, if you prefer to use a Biological Evaluation (or its equivalent) in making a determination of your eligibility, you should ensure all of the information requested below for the criterion you are selecting is fully addressed in such a document. You must attach this completed document or Biological Evaluation (or equivalent) to your SWPPP to support your Part 1.1.4.5 eligibility determination.

You may need the following information in order to determine your eligibility:

1) Your facility's draft Stormwater Pollution Prevention Plan (SWPPP), including information on receiving waters.
2) Any additional site-specific information related to your facility's discharges and discharge-related activities.
3) The list(s) of endangered and threatened species and any designated critical habitat in your action area, as acquired from the Fish and Wildlife Service and/or the National Marine Fisheries Services. Directions on how to acquire species lists is described in a subsequent section below.

Note that much of the information needed to complete this worksheet is also needed in order to prepare your NOI for permit coverage, and is also information that you must develop as part of your SWPPP. You may copy and paste any information that is already required and completed in your SWPPP into this worksheet. (*You may also decide to make minor changes or additions to your SWPPP while filling out the worksheet for clarification purposes or to address any concerns that are identified below.)*

STEP 1: DETERMINE IF THE ELIGIBILITY REQUIREMENTS OF CRITERION B, D, OR E CAN BE MET.

A. You should first determine whether you are eligible under criterion B (because another operator has accounted for your action area in their valid certification of eligibility under the 2015 MSGP), criterion D (because of a previously completed ESA section 7 consultation), or criterion E (because of a previously issued ESA section 10 permit).

B. If your facility is likely to be eligible under criterion B, D or E, you may skip ahead to the applicable criterion's requirements to determine if you are eligible. If after completing the relevant section you find that your facility does not in fact meet criteria B, D, or E (e.g., due to difference in action area described, lack of analysis of appropriate effects, new listings or designation of critical habitat), proceed to Step 2 below.

C. If your facility is not likely to be eligible under criterion B, D or E, you may proceed directly to Step 2.

Criterion B Eligibility Requirements

If your industrial activities were already addressed in another operator's valid certification of eligibility under the current 2015 MSGP, you may be eligible for coverage under criterion B. In order to be eligible for coverage under criterion B, you must confirm that all the following are true:

☐ You have confirmed that the other operator's certification of eligibility accounted for your action area and that the eligibility determination was valid.

☐ There has been no lapse of NPDES permit coverage in the other operator's certification.

☐ You will comply with all measures that formed the basis of the other operator's valid certification of eligibility. List any measures here (or enter "N/A" if none exist):

- **If all of the above are true, you may select criterion B on your NOI.** You must include in your NOI the NPDES ID assigned to the other operator's authorization under this permit, and a description of the basis for the criterion selected on your NOI form, including the eligibility criterion selected by the other operator's certification. You must include this completed worksheet in your SWPPP.
- **If any of the above are not true, you may not select criterion B and must proceed to Step 2.** For example, if there are any listed species in your action area that were not addressed in the other operator's certification, you are not eligible under criterion B.

Criterion D Eligibility Requirements

If consultation under section 7 of the ESA has been concluded, you may be eligible for coverage under criterion D. In order to be eligible or coverage under criterion D, you must confirm that all the following are true:

☐ A consultation between a federal agency and the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service under section 7 of the ESA has been concluded. Consultations can be either formal or informal, and would have occurred only as a result of a separate federal action (e.g., during application for an individual wastewater discharge permit or the issuance of a wetlands dredge and fill permit), and the consultation must have addressed the effects of your industrial activity's discharges and discharge-related activities on all federally listed threatened or endangered species and all designated critical habitat in your action area. The result of this consultation must be either:

i. A biological opinion that concludes that the action in question (taking into account the effects of your facility's discharges and discharge-related activities) is not likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of critical habitat. The biological opinion must have included the effects of your facility's discharges[a] and discharge-related activities on all the listed species and designated critical habitat in your action area;

ii. A biological opinion that concludes that the action is likely to jeopardize listed species or to result in the destruction or adverse modification of critical habitat, and any recommended reasonable and prudent alternatives or reasonable and prudent measures are being implemented; or

iii. Written concurrence (e.g., letter of concurrence) from the applicable Service(s) with a finding that concludes that your facility's discharges and discharge-related activities are not likely to adversely affect listed species or designated critical habitat. The concurrence letter must have included the effects of your facility's discharges and discharge-related activities on all the listed species and designated critical habitat on your species list(s) acquired from the Service(s) as part of this worksheet.

☐ The consultation does not warrant reinitiation under 50 CFR §402.16; or, if reinitiation of consultation is required (e.g., due to a new species listing or critical habitat designation; new information), you have reinitiated the cosultation and the result of the consultation is consistent with the statements above. Attach a copy of any reinitiation documentation from the Services or other consulting federal agency.

- **If all of the above are true, you may select criterion D on your NOI.** You must also provide a description of the basis for the criterion selected on your NOI form and you must include this completed worksheet in your SWPPP. In both your SWPPP and NOI you must also provide the Biological Opinion (or PCTS tracking number) or concurrence letter and any other documentation supporting your eligibility determination.
- **If any of the above are not true, you may not select criterion D and must proceed to Step 2.** For example, if the biological opinion or written concurrence did not include the effects of the discharge or discharge-related activities as described above (e.g., the previous consultation covered some but not all of the species or critical habitat in your action area as shown on your species list), or if the consultation is no longer valid (e.g., due to new species listings), you are not eligible under criterion D.

Criterion E Eligibility Requirements

If your industrial activities are the subject of a permit under section 10 of the ESA, and this authorization addresses the effects of your facility's discharges and discharge-related activities on federally listed species and designated critical habitat in your action area, you may be eligible for coverage under criterion E. In order to be eligible or coverage under criterion E, you must confirm that the following is true:

☐ A permit has been issued under section 10 of the ESA. The permit authorization specifically addresses the effects of your facility's discharges and discharge-related activities (if applicable) on all federally-listed species and designated critical habitat in your action area.

[a] Effects of discharge includes, but is not limited to, the analysis of the hydrological, chemical, and biological effects of the discharge on listed species, their prey, and their habitat, as well as critical habitat, where designated. For example, the effects analysis would have evaluated whether the various pollutants in the discharge (e.g., TSS, metals) would adversely affect listed species through exposure to the pollutants, or to their prey or habitat. Effects that look only at short-term effects unrelated to the stormwater discharge effects to listed species are not sufficient for these purposes.

- **If the above is true, you may select criterion E on your NOI.** You must also provide a description of the basis for the criterion selected on your NOI form and must include this completed worksheet in your SWPPP. In both your SWPPP and your NOI you must provide a copy of the section 10 permit issued by the Services.
- **If the above is not true, you may not select criterion E and must proceed to Step 2.** For example, if a permit has been issued under section 10 of the ESA, but the permit authorization did not address the effects of your facility's discharges and/or discharge-related activities on all federally-listed species and designated critical habitat in your action area, you are not eligible under criterion E, but you should attach a copy of the permit to the SWPPP for reference.

STEP 2: DETERMINE THE EXTENT OF YOUR ACTION AREA

You must determine whether species listed as either threatened or endangered, or their critical habitat(s) (see definitions of these terms in Appendix A), are located in your facility's action area (i.e., all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action, including areas beyond the footprint of the facility that are likely to be affected by stormwater discharges, discharge-related activities, and allowable non-stormwater discharges). Consider the following in determining the action area for your facility:

- Discharges of pollutants into downstream areas can expand the action area well beyond the footprint of your facility and the discharge point(s). Take into account the controls you will be implementing to minimize pollutants and the receiving waterbody characteristics (e.g., perennial, intermittent, ephemeral) in determining the extent of physical, chemical, and/or biotic effects of the discharges. All receiving waterbodies that could receive pollutants from your facility must be included in your action area.
- Discharge-related activities must also be accounted for in determining your action area. Discharge-related activities are any activities that cause, contribute to, or result in stormwater and allowable non-stormwater point source discharges, and measures such as the siting, construction, and operation of stormwater controls to control, reduce, or prevent pollutants from being discharged. For example, any new or modified stormwater controls that will have noise or other similar effects, and any disturbances associated with construction of controls, are part of your action area.

If you have any questions about determining the extent of your action area, you may contact EPA or the Services for assistance.

You must include a map **and a written description of** the action area of your facility in Attachment 1 of this appendix. You may choose to include the map that is generated from the FWS' on-line mapping tool IPaC (the *Information, Planning, and Consultation System*) located at http://ecos.fws.gov/ipac/ (see Step 3 for information about using this tool).

You must proceed to Step 3 below.

STEP 3: DETERMINE IF LISTED THREATENED OR ENDANGERED SPECIES AND/OR CRITICAL HABITAT ARE PRESENT IN YOUR ACTION AREA.

You must determine whether species listed as either threatened or endangered under the Endangered Species Act (ESA), and/or their designated critical habitat(s)[b], are located in your facility's action area. Federally listed species and designated critical habitat are under the purview of the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) (together, "Services"), and in many cases, species and critical habitat lists will need to be acquired from both Services.

[b] See definitions of these terms in Appendix A of the MSGP.

- For NMFS species and critical habitat information, use the following webpages, which provide up-to-date information on listed species (http://www.nmfs.noaa.gov/pr/species/esa/) and critical habitat (http://www.nmfs.noaa.gov/pr/species/criticalhabitat.htm). To determine the field office that corresponds to your facility, go to http://www.nmfs.noaa.gov/ (under the left tab for "Regions"). For NMFS species in the Greater Atlantic Region, go to http://www.greateratlantic.fisheries.noaa.gov/protected/section7/guidence/maps/index.html.
- For FWS species information, use the on-line mapping tool IPaC (the *Information, Planning, and Consultation System*) located at http://ecos.fws.gov/ipac/, and follow these steps:
  - *Select Get Started*.
  - Select Enter Project Location
  - Use an address, city name or other location to zoom into your project area
  - Use the zoom feature to see the entire extent of your action area on the screen.
  - Use one of the mapping features (e.g., Polygon or line feature) to draw your action.
    - For the aquatic portion of your action area, trace the waterbody(ies) with the tool to characterize your action area.
    - If your proposal will include any upland activities (i.e., discharge-related activities), or if there is some aspect of your discharge that would potentially result in effects to terrestrial species, include the corresponding upland areas within your action area.
    - When you are done, press *Continue*.
  - Select Request an Official Species List
  - Complete the fields on the Official Species List Request page, and include "(MSGP)" at the end of the project description.
    - For Classification, select "Water Quality Modification".
    - Select the appropriate requesting agency/organization type (for most applicants, this should be "Other").
  - Submit the request to acquire an Official Species List, which should show both listed species as well as any designated critical habitat that are present in the action area in the previous step.
  - Note: *If a link to an Official Species List is not available on the page, follow the web link of the office(s) indicated, or contact the office directly by mail or phone if a web link is not shown*.

The principle authority for critical habitat designations and associated requirementsis found at 50 CFR Parts 17 and 226. See http://www.access.gpo.gov.

Attach a copy of the species and critical habitat list(s) from the Service(s) to Attachment 2 of this appendix and use the list(s) to complete the rest of this worksheet. For FWS species, include the full printout from your IPaC query/Official Species List in Attachment 2. You can include the map from your IPaC query in Attachment 1.

If after following the steps you have determined that there are no listed species and/or designated critical habitat in your action area, you may be eligible for coverage under criterion A.

If you have determined that there are or may be listed species and/or designated critical habitat in your action area, you are not eligible under criterion A and must proceed to Step 4 below.

Criterion A Eligibility Requirements

In order to be eligible for coverage under criterion A, you must confirm that the following is true:

☐ I have confirmed there to be no listed species and no critical habitat in my action area.

- **If the above is true, you may select criterion A on your NOI form.** You must also provide a description of the basis for the criterion selected on your NOI form. You must include this completed worksheet in your SWPPP. *Note: If your Official Species List from the USFWS indicated no species or critical habitat were present in your action area, include the full consultation tracking code at the top of your Official Species List in your NOI submittal in the question "Provide a brief summary of the basis for the criterion selected in Appendix E." If an Official Species List was not available on IPaC, list the contact date and name of the Service staff with whom you corresponded to verify no USFWS species or critical habitat were present in your action area.*
- If the above is not true, you may not select criterion A and must proceed to **Step 4** to determine if you can become eligible under criterion C.

Note: For existing dischargers that have previously obtained coverage under criterion A, you must verify whether listed species and/or critical habitat are expected to exist in your action area, as described above. Please note that if you now find that your action area overlaps with listed species or critical habitat, you must proceed to Step 4.

STEP 4: DETERMINE IF YOUR INDUSTRIAL FACILITY'S DISCHARGES OR DISCHARGE-RELATED ACTIVITIES ARE LIKELY TO ADVERSELY AFFECT LISTED THREATENED OR ENDANGERED SPECIES OR DESIGNATED CRITICAL HABITAT AND ANY MEASURES THAT MUST BE IMPLEMENTED TO AVOID ADVERSE EFFECTS

If in Step 3 you determined that listed species and/or designated critical habitat could exist in your action area, you must next assess whether your discharges and discharge-related activities are likely to adversely affect listed threatened or endangered species or designated critical habitat, and whether any additional measures are necessary to ensure no likely adverse effects. In order to make a determination of your facility's likelihood of adverse effects, you must complete the attached *Criterion C Eligibility Form* and must submit this form to EPA a minimum of 30 days prior to filing your NOI for permit coverage. After you submit your *Criterion C Eligibility Form*, you may be contacted by EPA with additional measures that you must implement in order to ensure your eligibililty under criterion C.

Criterion C Eligibility Form

Instructions:

In order to be eligible for coverage under criterion C, you must complete the following form and you must submit it to EPA following the instructions in Section VII a **minimum of 30 days prior to filing your NOI for permit coverage.** After you submit your form, you may be contacted by EPA with additional measures (e.g., additional stormwater controls or modifications to your discharge-related activities) that you must implement in order to ensure your eligibility under criterion C.

If after completing this worksheet you cannot make a determination that your discharges and discharge-related activities are not likely to adversely affect listed threatened or endangered species or designated critical habitat, you must submit this completed worksheet to EPA, and you may not file your NOI for permit coverage until you receive a determination from EPA that your discharges and/or discharge-related activities are not likely to adversely affect listed species and critical habitat.

Note: Much of the information needed for this form can be obtained from your draft SWPPP which will be needed when you file your NOI.

SECTION I. OPERATOR, FACILITY, AND SITE LOCATION INFORMATION.

1) **Operator Information**

   a) **Operator Name:** _____

   b) **Point of Contact**

   First Name: _____ **Last Name:** _____

   Phone Number: _____

   E-mail: _____

2) **Facility Information**

   a) **Facility Name:** _____

   b) **Check which of the following applies:**

   ☐ I am seeking coverage under the MSGP as a new discharger or as a new source

   ☐ I am seeking coverage under the MSGP as an existing discharger and my facility has modifications to its discharge characteristics (e.g., changes in discharge flow or area drained, different pollutants) and/or discharge-related activities (e.g., stormwater controls)

   Indicate the number of years the facility has been in operation: _____ years

   Provide your NPDES ID (i.e., permit tracking number) from your previous MSGP coverage: _____

   ☐ I am seeking coverage under the MSGP as an existing discharger and there are no modifications to my facility.

   Indicate the number of year the facility has been in operation: _____ years

   Provide your NPDES ID (i.e., permit tracking number) from your previous MSGP coverage: _____

c) Facility Address:

Address 1: _____

Address 2: _____

City: _____ **State:** _____ **Zip Code:** _____

d) Identify the primary industrial sector to be covered under the 2015 MSGP:

SIC Code _____ or Primary Activity Code _____

Sector _____ and Subsector _____

e) Identify the sectors of any co-located activities to be covered under the 201r MSGP:

Sector _____ Subsector _____

Sector _____ Subsector _____

Sector _____ Subsector _____

Sector _____ Subsector _____

Sector _____ Subsector _____

Sector _____ Subsector _____

f) Estimated area of industrial activity exposed to stormwater: _____ **acres**

g) Provide a general description of the industrial activities that are taking place at this facility:

3) <u>Receiving Waters Information</u>

List all the stormwater outfalls from your facility.				**For each outfall, provide the following receiving water information:**	
Outfall ID	**Design Capacity (if known)**	**Latitude (decimal degrees)**	**Longitude (decimal degrees)**	**Name of the receiving water that receives stormwater from the outfall and/or from the MS4 that the outfall discharges to**	**Type of Waterbody (e.g., lake, pond, river/stream/creek, estuarine/marine water)**
		_ _ _ . _ _ _ _	_ _ _ . _ _ _ _		
		_ _ _ . _ _ _ _	_ _ _ . _ _ _ _		
		_ _ _ . _ _ _ _	_ _ _ . _ _ _ _		
		_ _ _ . _ _ _ _	_ _ _ . _ _ _ _		
		_ _ _ . _ _ _ _	_ _ _ . _ _ _ _		

SECTION II. ACTION AREA

Ensure that your action area is described in Attachment 1, as required in Step 2.

SECTION III. LISTED SPECIES AND CRITICAL HABITAT LIST

Ensure that the listed species and critical habitat list is included in Attachment 2, as required in Step 3.

Review your species list in Attachment 2, choose one of the following three statements, and follow the corresponding instructions:

> ***Note:*** For the purposes of this permit, "terrestrial species" would not include animal or plant species that 1) spends any portion of its life cycle in a waterbody or wetland, or 2) if an animal, depends on prey or habitat that occurs in a waterbody or wetland. For example, shorebirds, wading birds, amphibians, and certain reptiles would not be considered terrestrial species under this definition. Please also be aware that some terrestrial animals (e.g., certain insects, amphibians) may have an aquatic egg or larval/juvenile phase.

☐ The species list includes only terrestrial species and/or their designated critical habitat. No aquatic or aquatic-dependent species or their critical habitat are present in the action area. **You may skip to Section IV of this form. You are not required to fill out Section V.**

☐ The species list includes only aquatic and/or aquatic-dependent species and/or their designated critical habitat. No terrestrial species or their critical habitat are present in the action area. **You may skip to Section V of this form and are not required to fill out Section IV.**

☐ The species list includes both terrestrial and aquatic or aquatic-dependent species and/or their designated critical habitat. **You must fill out both Sections IV and V of this form.**

SECTION IV. EVALUATION OF DISCHARGE-RELATED ACTIVITIES EFFECTS

Note: You are only required to fill out this section if your facility's action area contains terrestrial species and/or their designated critical habitat. If your action area only contains aquatic and/or aquatic-dependent species and/or their designated critical habitat, you can skip directly to Section V.

Most of the potential effects related to coverage under the MSGP are assumed to occur to aquatic and/or aquatic-dependent species. However, in some cases, potential effects to terrestrial species and/or their critical habitat should be considered as well from any discharge-related activities that occur during coverage under the MSGP. Examples of discharge-related activities that could have potential effects on listed terrestrial species or their critical habitat include the storage of materials and land disturbances associated with stormwater management-related activities (e.g., the installation or placement of stormwater control measures).

A. Select the applicable statement(s) below and follow the corresponding instructions:

☐ There are no discharge-related activities that are planned to occur during my coverage under the MSGP. You can conclude that your discharge-related activities will have no likely adverse effects, and:

- If there are any aquatic or aquatic-dependent species and/or their critical habitat in your action area, you must skip to Section V, *Evaluation of Discharge Effects,* below.
- If there are no aquatic or aquatic-dependent species you may skip to Section VI and verify that your activities will have no likely adverse effects. You must submit this form to EPA as specified in Section VII of this form. You may select criterion C on your NOI form and may submit your NOI for permit coverage 30 days after you have submitted this *Criterion C Eligibility Form*. You must also provide a description of the basis for the criterion you selected on your NOI form, **including the species and critical habitat list(s) in your action area**, as well as any other documentation supporting your eligibility. You must also include this completed *Criterion C Eligiblity Form* in your SWPPP.

☐ There are discharge-related activities planned as part of the proposal. Describe your discharge-related activities in the following box and continue to (b) below.

Describe discharge-related activities:

B. In order to ensure any discharge-related activities will have no likely adverse effects on listed species and/or their designated critical habitat, you must certify that all the following are true:

☐ Discharge-related activities will occur:

- on previously cleared/developed areas of the site where maintenance and operation of the facility are currently occurring or where existing conditions of the area(s) in which the discharge-related activities will occur precludes its use by listed species (e.g., work on existing impervious surfaces, work occurring inside buildings, area is not used by species), and
- if discharge-related activities will include the establishment of structures (including, but not limited to, infiltration ponds and other controls) or any related disturbances, these structures and/or disturbances will be sited in areas that will not result in isolation or degradation of nesting, breeding, or foraging habitat or other habitat functions for listed animal species (or their designated critical habitat), and will avoid the destruction of native vegetation (including listed plant species).

☐ If vegetation removal (e.g., brush clearing) or other similar activities will occur, no terrestrial listed species that use these areas for habitat would be expected to be present during vegetation removal.

If all the above are true, you can conclude that your discharge-related activities will have no likely adverse effects, and:

- If there are any aquatic or aquatic-dependent species and/or critical habitat in your action area, you must skip to Section V, *Evaluation of Discharge Effects,* below.
- If there are no aquatic or aquatic-dependent species you may skip to Section VI and verify that your activities will have no likely adverse effects. You must submit this form to EPA as specified in Section VII of this form. You may select criterion C on your NOI and may submit your NOI for permit coverage 30 days after you have submitted this completed form. You must also provide a description of the basis for the criterion you selected on your NOI form, **including the species and critical habitat list(s)**, and any other documentation supporting your eligibility. You must also include this completed *Criterion C Eligibility Form* in your SWPPP.
- **If any of the above are not true**, you cannot conclude that your discharge-related activities will have no likely adverse effects. You must complete the rest of this form (if applicable), and must submit the form to EPA for assistance in determining your eligibility for coverage.

SECTION V. EVALUATION OF DISCHARGE EFFECTS

Note: *You are only required to fill out this section if your facility's action area includes aquatic and/or aquatic-dependent species and/or their critical habitat.*

In this section, you will evaluate the likelihood of adverse effects from your facility's discharges. The scope of effects to consider will vary with each facility and species/critical habitat characteristics. The following are examples of discharge effects you should consider:

- *Hydrological Effects.* Stormwater discharges may adversely affect receiving waters from pollutant parameters such as turbidity, temperature, salinity, or pH. These effects will vary with the amount of stormwater discharged and the volume and condition of the receiving water. Where a stormwater discharge constitutes a minute portion of the total volume of the receiving water, adverse hydrological effects are less likely.
- *Toxicity of Pollutants.* Pollutants in stormwater may have toxic effects on listed species and may adversely affect critical habitat. Exceedances of benchmarks, effluent limitation guidelines, or state or tribal water quality requirements may be indicative of potential adverse effects on listed species or critical habitat. However, some listed species may be adversely affected at pollutant concentrations below benchmarks, effluent limitation guidelines, and state or tribal water quality standards. In addition, stormwater pollutants identified in Part 5.2.3.2 of your SWPPP, but not monitored as benchmarks or effluent limitation guidelines, may also adversely affect listed species and critical habitat.

As these effects are difficult to analyze for listed species, their prey, habitat, and designated critical habitat, this form helps you to analyze your discharges and make a determination of whether your discharges will have likely adverse effects and whether there are any additional controls you can implement to ensure no likely adverse effects.

A. Evaluation of Pollutants and Controls to Avoid Adverse Effects. In this section, you must document all of your pollutant sources and pollutants expected to be discharged in stormwater. You must also document the controls you will implement to avoid adverse effects on listed aquatic and aquatic-dependent species. You must include specific details about the expected effectiveness of the controls in avoiding adverse effects to the listed aquatic-and aquatic-dependent species. Attach additional pages if needed.

Potential Pollutant Source	Potential Pollutants	**Controls to Avoid Adverse Effects on Listed Aquatic and Aquatic-Dependent Species.** Include information supporting why the control(s) will ensure no adverse effects, including any data you have about the effectiveness of the control(s) in reducing pollutant concentrations. You may also attach photos of your controls to this form.
e.g., **vehicle and equipment fueling**	***e.g.,*** • **Oil & grease** • **Diesel** • **Gasoline** • **TSS** • **Antifreeze**	***e.g.,*** • **Fueling operators (including the transfer of fuel from tank trucks) will be conducted on an impervious or contained pad or under cover** • **Drip pans will be used where leaks or spills of fuel can occur and where making and breaking hose connections** • **Spill kit will be kept on-site in close proximity to potential spill areas** • **Any spills will be cleaned-up immediately using dry clean up methods** • **Stormwater runoff will be diverted around fueling areas using diversion dikes and curbing**

Potential Pollutant Source	Potential Pollutants	Controls to Avoid Adverse Effects on Listed Aquatic and Aquatic-Dependent Species.

Potential Pollutant Source	Potential Pollutants	Controls to Avoid Adverse Effects on Listed Aquatic and Aquatic-Dependent Species.

☐ Check if you are not able to make a preliminary determination that any of your pollutants will be controlled to a level necessary to avoid adverse effects on aquatic and/or aquatic-dependent listed species and their designated critical habitat. You must check in Section VI that you are unable to make a determination of no likely adverse effects, and must complete the rest of the form. You must submit your completed form to EPA for assistance in determining your eligibility for coverage.

B. Analysis of Effects Based on Past Monitoring Data. Select which of the following applies to your facility:

☐ I have no previous monitoring data for my facility because there are no applicable monitoring requirements for my facility's sector(s).

☐ I have no previous monitoring data for my facility because I am a new discharger or a new source, but I am subject to monitoring under the 2015 MSGP. You must provide information to support a conclusion that your facility's discharges are not expected to result in benchmark or numeric effluent limit exceedances that will adversely affect listed species or their critical habitat:

☐ My facility has not had any exceedances under the 2008 MSGP of any required benchmark(s) or numeric effluent limits.

☐ My facility has had exceedances of one or more benchmark(s) or numeric effluent limits under the 2008 MSGP, but I have addressed them during my coverage under the 2008 MSGP, or in my evaluation of controls to avoid adverse effects in (A) above. Describe all actions (including specific controls) that you will implement to ensure that the pollutants in your discharge(s) will not result in likely adverse effects from future exceedances.

☐ Check if your facility has had exceedances of one or more benchmarks or numeric effluent limits under the 2008 MSGP and you have not been able to address them to avoid adverse effects from future exceedances, or if you are a new discharger or a new source but you are not sure if you can avoid adverse effects from possible exceedances. You must check in Section VI that you are unable to make a determination of no likely adverse effects. You must submit your completed form to EPA for assistance in determining your eligibility for coverage. You may not file your NOI for permit coverage until you are able to make a determination that your discharges will avoid adverse effects on listed species and designated critical habitat.

SECTION VI VERIFICATION OF PRELIMINARY EFFECTS DETERMINATION

Based on Steps I – V of this form, you must verify your preliminary determination of effects on listed species and designated critical habitat from your discharges and/or discharge-related activities :

☐ Following the applicable Steps in I – V above, I have made a preliminary determination that my discharges and/or discharge-related activities are not likely to adversely affect listed species and designated critical habitats.

☐ Following the applicable Steps in I – V above, I am **not** able to make a preliminary determination that my discharges and/or discharge-related activities are not likely to adversely affect listed species and designated critical habitats.

Certification Information

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

First Name, Middle Initial, Last Name:

Title:

Signature: _____ Date: / /

E-mail:

SECTION VII CRITERION C ELIGIBILITY FORM SUBMISSION INSTRUCTIONS

You must submit this completed form to EPA at msgpesa@epa.gov, including any attachments and any additional information that demonstrates how you will avoid or eliminate adverse effects to listed species or critical habitat (e.g., specific controls you will implement to avoid or eliminate adverse effects). **Any missing or incomplete information may result in a delay of your coverage under the permit**.

If you have made a preliminary determination that your discharges and/or discharge-related activities are not likely to adversely affect listed species and critical habitat, this form must be submitted a minimum of 30 days prior to submitting your NOI for permit coverage under criterion C. Please note that during either the 30-day *Criterion C Eligibility Form* review period prior to your NOI submission, or within 30 days after your NOI submission and before you have been authorized for permit coverage, EPA may advise you that additional information is needed, or that there are additional measures you must implement to avoid likely adverse effects.

If you are unable to make a preliminary determination that your discharges and/or discharge-related activities are not likely to adversely affect listed species and critical habitat, this worksheet must be submitted to EPA, but you may not file your NOI for permit coverage until you have received a determination from EPA that your discharges and/or discharge-related activities are not likely to adversely affect listed species and critical habitat.

Attachment 1

Include a map **and a written description** of the action area of your facility, as required in Step 2. You may choose to include the map that is generated from the FWS' on-line mapping tool IPaC (the *Information, Planning, and Consultation System*) located at http://ecos.fws.gov/ipac/.

The written description of your action area that accompanies your action area map must explain your rationale for the extant of the action area drawn on your map. For example, your action area written description may look something like this:

> *The action area for the (name of your facility)'s stormwater discharges extends downstream from the outfall(s) in (name of receiving waterbody) (# of meters/feet/kilometers/miles). The downstream limit of the action area reflects the approximate distance at which the discharge waters and any pollutants would be expected to cause potential adverse effects to listed species and/or critical habitat because (insert rationale). The action area does/does not extend to the (name of receiving waterbody)'s confluence with (name of confluence waterbody) because (insert rationale).*

Note that you action area written description will be highly site-specific, depending on the expected effects of your facility's dishcarges and discharge-related activities, receiving waterbody characteristics, etc.

Attachment 2

List or attach the listed species and critical habitat in your action area on this sheet, as required in Step 3. You must include a list for applicable listed NMFS and FWS species and critical habitat. If there are listed species and/or critical habitat for only one Service, you must include a statement confirming there are no listed species and/or critical habitat for the other Service. For FWS species, include the full printout from your IPaC query. *Note: If your Official Species List from the USFWS indicated no species or critical habitat were present in your action area, include the full consultation tracking code at the top of your Official Species List in your NOI submittal in the question "Provide a brief summary of the basis for the criterion selected in Appendix E." If an Official Species List was not available on IPaC, list the contact date and name of the Service staff with whom you corresponded to identify the existence of any USFWS species or critical habitat present in your action area.*

Appendix F - Procedures Relating to Historic Properties Preservation

F.1 Background

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to take into account the effects of Federal "undertakings", such as the issuance of this permit, on historic properties that are either listed or eligible for listing on the National Register of Historic Places. To address any issues relating to historic properties in connection with the issuance of this permit, EPA has developed the screening process in this appendix that enables facility operators to appropriately consider the potential impacts, if any, from the installation of stormwater controls that involve subsurface disturbance, on historic properties and to determine whether actions can be taken, if applicable, to mitigate any such impacts. Although the coverage of individual industrial facilities under this permit does not constitute separate Federal undertakings, the screening process in this appendix provides an appropriate site-specific means of addressing historic property issues in connection with EPA's issuance of the permit.

Before an operator is eligible for coverage under the 2015 MSGP (unless otherwise noted, all references to "eligible" or "eligibility" refer only to coverage under the 2015 MSGP), the operator must meet one of the certification criteria related to historic properties included in the permit. In the event an operator cannot meet any of the certification criteria included in the permit relating to historic properties, the operator must apply for an individual permit.

Key Terms

Historic Property – Prehistoric or historic districts, sites, buildings, structures, or objects that are included in or eligible for inclusion in the National Register of Historic Places, including artifacts, records, and remains that are related to and located within such properties.

***ACHP* – Advisory Council on Historic Preservation**; an independent Federal agency.

***SHPO* –** The State Historic Preservation Officer for a particular state.

***THPO or Authorized Tribal Representative* –** The Tribal Historic Preservation Officer for a particular Tribe, or if there is no THPO, the representative designated by such Tribe for NHPA purposes. Historic properties could have significance to more than one Indian tribe; therefore, all Indian tribes that attach religious and cultural significance to a historic property must be identified and included in the historic properties screening process.

Area of Potential Effects (APE) – The geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

You must meet one or more of the four criteria (A-D), which are also included in Part 1.1.4.6, to be eligible for coverage under this permit.

Activities with No Potential to Have an Effect on Historic Properties

A determination that a Federal undertaking has no potential to have an effect on historic properties fulfills an agency's obligations under the NHPA. EPA has reason to believe that the vast majority of activities authorized under the MSGP have no potential to have effects on historic properties. The purpose of this permit is to control pollutants that may be transported in stormwater runoff from industrial facilities. EPA does not anticipate effects on historic properties from the pollutants in the stormwater and allowable non-stormwater discharges from these industrial facilities. Thus, to the extent EPA's issuance of this general permit authorizes discharges of such constituents, confined to existing stormwater channels or natural drainage areas; the permitting action does not have the potential to cause effects on historic properties.

In addition, the overwhelming majority of sources covered under this permit will be facilities that are seeking renewal of previous permit coverage. These existing dischargers should have already addressed NHPA issues in the 2008 MSGP as they were required to certify that they

were either not affecting historic properties or they had obtained written agreement from the applicable State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) regarding methods of mitigating potential impacts. Both existing and new dischargers must follow the historic property screening procedures to determine their eligibility. EPA is not aware of any impacts on historic properties from activities covered under the 2008 MSGP, or, for that matter, any need for a written agreement. Therefore, to the extent this permit authorizes renewal of prior coverage without relevant changes in operations, it has no potential to have an effect on historic properties.

Activities with Potential to Have an Effect on Historic Properties

EPA believes this permit may have some potential to have an effect on historic properties where permittees construct and/or install stormwater control measures that involve subsurface disturbance and impact less than one (1) acre of land to comply with this permit. (Ground disturbances of one (1) acre or more require coverage under a different permit, the Construction General Permit.) Where you have to disturb the land through the construction and/or installation of control measures, there is a possibility that artifacts, records, or remains associated with historic properties could be impacted. Therefore, if you are establishing new or altering existing control measures to manage your stormwater that will involve subsurface ground disturbance of less than one (1) acre, you will need to ensure (1) that historic properties will not be impacted by your activities or (2) that you have consulted with the appropriate SHPO, THPO, or other tribal representative regarding measures that would mitigate or prevent any adverse effects on historic properties.

Examples of Control Measures Which Involve Subsurface Disturbance

EPA reviewed typical control measures currently employed to determine which practices involve some level of earth disturbance. The types of control measures that are presumptively expected to cause subsurface ground disturbance include:

- Dikes
- Berms
- Catch Basins
- Ponds
- Ditches
- Trenches
- Culverts
- Land manipulation: contouring, sloping, and grading
- Channels
- Perimeter Drains
- Swales

EPA cautions dischargers that this list is non-inclusive. Other control measures that involve earth disturbing activities that are not on this list must also be examined for the potential to affect historic properties.

Historic Property Screening Process

You should follow the following screening process in order to certify your compliance with historic property eligibility requirements under this permit (see Part 1.1.4.6). The following four steps describe how applicants can meet the permit eligibility criteria for protection of historic properties under this permit:

Step One: *Are you an existing facility that is reapplying for certification under the 2015 MSGP?*

If you are an existing facility you should have already addressed NHPA issues. To gain coverage under the 2008 MSGP you were required to certify that you were either not affecting historic properties or had obtained written agreement from the relevant SHPO or THPO regarding methods of mitigating potential impacts. As long as you are not constructing or installing any new stormwater control measures then you have met eligibility Criterion A of the MSGP. After you submit your NOI, there is a 30-day waiting period during which the SHPO, THPO, or other tribal representative may review your NOI. The SHPO, THPO, or other tribal representative may request that EPA hold up authorization based on concerns about potential adverse impacts to historic properties. EPA will evaluate any such request and notify you if any additional measures to address adverse impacts to historic properties are necessary.

If you are an existing facility and will construct or install stormwater control measures that require subsurface disturbance of less than one (1) acre then you should proceed to Step Three. (Note: Construction activities disturbing one (1) acre or more are not eligible for coverage under this permit.)

If you are a new facility then you should proceed to Step Two.

Step Two: *Are you constructing or installing any stormwater control measures that require subsurface disturbance of less than one (1) acre?*

If, as part of your coverage under this permit, you are not building or installing control measures on your site that cause less than one (1) acre of subsurface disturbance, then your discharge-related activities do not have the potential to have an effect on historic properties. You have no further obligations relating to historic properties. You have met eligibility Criterion A of the MSGP. After you submit your NOI, there is a 30-day waiting period during which the SHPO, THPO, or other tribal representative may review your NOI. The SHPO, THPO, or other tribal representative may request that EPA hold up authorization based on concerns about potential adverse impacts to historic properties. EPA will evaluate any such request and notify you if any additional measures to address adverse impacts to historic properties are necessary.

If the answer to the Step Two question is yes, then you should proceed to Step Three.

Step Three: *Have prior earth disturbances determined that historic properties do not exist, or have prior disturbances precluded the existence of historic properties?*

If previous construction either revealed the absence of historic properties or prior disturbances preclude the existence of historic properties, then you have no further obligations relating to historic properties. You have met eligibility Criterion B of the MSGP. After you submit your NOI, there is a 30-day waiting period during which the SHPO, THPO, or other tribal representative may review your NOI. The SHPO, THPO, or other tribal representative may request that EPA hold up authorization based on concerns about potential adverse impacts to historic properties. EPA will evaluate any such request and notify you if any additional measures to address adverse impacts to historic properties are necessary.

If the answer to the Step Three question is no, then you should proceed to Step Four.

Step Four: *Contact the appropriate historic preservation authorities*

Where you are building and/or installing control measures affecting less than one (1) acre of land to control stormwater or allowable non-stormwater discharges associated with this

permit, and the answer to Step Three is no, then you should contact the relevant SHPO, THPO, or other tribal representative to determine the likelihood that artifacts, records, or remains are potentially present on your site. This may involve examining local records to determine if historic artifacts have been found in nearby areas, as well as limited surface and subsurface examination carried out by qualified professionals.

If through this process it is determined that such historic properties potentially exist and may be impacted by your construction or installation of control measures, you should contact the relevant SHPO, THPO, or tribal representative in writing and request to discuss mitigation or prevention of any adverse effects. The letter should describe your facility, the nature and location of subsurface disturbance activities that are contemplated, any known or suspected historic properties in the area, and any anticipated effects on such properties. The letter should state that if the SHPO, THPO, or tribal representative does not respond within 30 days of receiving your letter, you may submit your NOI without further consultation. EPA encourages applicants to contact the appropriate authorities as soon as possible in the event of a potential adverse effect to an historic property.

If the SHPO, THPO, or tribal representative sent you a response within 30 days of receiving your letter and you enter into, and comply with, a written agreement with the SHPO, THPO, or other tribal representative regarding how to address any adverse impacts on historic properties, you have met eligibility Criterion C. In this case, you should retain a copy of the written agreement consistent with Part 5.1.6.2 of the MSGP. After you submit your NOI, there is a 30-day waiting period during which the SHPO, THPO, or other tribal representative may review your NOI. The SHPO, THPO, or other tribal representative may request that EPA delay authorization based on concerns about potential adverse impacts to historic properties. However, EPA would generally accept any written agreement as fully addressing such concerns unless new information was brought to the Agency's attention that was not considered in your previous discussions with the SHPO, THPO or other tribal representative.

If you receive a response within 30 days after the SHPO, THPO, or tribal representative received your letter and you consult with the SHPO, THPO or tribal representative regarding adverse impacts to historic properties and measures to mitigate them but an agreement cannot be reached between you and the SHPO, THPO, or other tribal representative, you have still met the eligibility for Criterion C. In this case you should include in your SWPPP a brief description of potential effects to historic properties, the consultation process, any measures you will adopt to address the potential adverse impacts, and any significant remaining disagreements between you and the SHPO, THPO or other tribal representative. After you submit your NOI, there is a 30-day waiting period during which the SHPO, THPO, or other tribal representative may review your NOI. The SHPO, THPO, or other tribal representative may request that EPA delay authorization based on concerns about potential adverse impacts to historic properties. EPA will evaluate any such request and notify you if any additional measures to address adverse impacts to historic properties are necessary.

If you have contacted the SHPO, THPO, or tribal representative in writing regarding your potential to have an effect on historic properties and the SHPO, THPO, or tribal representative did not respond within 30 days of receiving your letter, you have met eligibility Criterion D. You are advised to get a receipt from the post office or other carrier confirming the date on which your letter was received. In this case, you should submit a copy of your letter notifying the SHPO, THPO or tribal representative of potential impacts with your NOI. After you submit your NOI, there is a 30-day waiting period during which the SHPO, THPO, or other tribal representative may review your NOI. The SHPO, THPO, or other tribal representative may request that EPA hold up authorization based on concerns about potential adverse impacts to historic properties. EPA will

evaluate any such request and notify you if any additional measures to address adverse impacts to historic properties are necessary.

Addresses for State Historic Preservation Officers and Tribal Historic Preservation Officers may be found on the Advisory Council on Historic Preservation's website (www.achp.gov/programs.html). In instances where a Tribe does not have a Tribal Historic Preservation Officer, you should contact the appropriate Tribal government office when responding to this permit eligibility condition.

Appendix G - Notice of Intent (NOI) Form

Part 7.1 requires you to use the NPDES eReporting Tool, or "NeT", to prepare and submit your NOI. However, if you are given a waiver by the EPA Regional Office to use a paper NOI form, and you elect to use it, you must complete and submit the following form.

NPDES FORM 3510-6	EPA	UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, DC 20460 NOTICE OF INTENT (NOI) FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY UNDER THE NPDES MULTI-SECTOR GENERAL PERMIT	Form Approved. OMB No. 2040-0004

Submission of this Notice of Intent (NOI) constitutes notice that the operator identified in Section C of this form requests authorization to discharge pursuant to the NPDES Stormwater Multi-Sector General Permit (MSGP) permit number identified in Section B of this form. Submission of this NOI also constitutes notice that the operator identified in Section C of this form meets the eligibility conditions of Part 1.1 of the MSGP for the facility identified in Section D of this form. To obtain authorization, you must submit a complete and accurate NOI form. Discharges are not authorized if your NOI is incomplete or inaccurate or if you were never eligible for permit coverage. Refer to the instructions at the end of this form to complete your NOI.

A. Approval to Use Paper NOI Form

1. Have you been granted a waiver from electronic reporting from the EPA Regional Office*? ☐ YES ☐ NO

If yes, check which waiver you have been granted, the name of the EPA Regional Office staff person who granted the waiver, and the date of approval:

Waiver granted:
- ☐ The owner/operator's 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.
- ☐ The owner/operator has issues regarding available computer access or computer capability.

Name of EPA staff person that granted the waiver:

Date approval obtained: / /

*** Note: You are required to obtain approval from the applicable EPA Regional Office prior to using this paper NOI form. If you have not obtained a waiver, you must file this form electronically using the NPDES eReporting Tool (NeT) at http://water.epa.gov/polwaste/npdes/stormwater/Stormwater-eNOI-System-for-EPAs-MultiSector-General-Permit.cfm**

B. Permit Information

NPDES ID (EPA Use Only):

1. Master Permit Number: (see Appendix C of the MSGP for the list of eligible master permit numbers)

2. Are you a new discharger or a new source as defined in Appendix A? ☐ YES ☐ NO (If yes, skip to Part C of this form).

3. If you are not a new discharger or a new source, have stormwater discharges from your facility been covered previously under an NPDES permit?

☐ YES ☐ NO

If yes, provide the NPDES ID if you had coverage under EPA's 2008 MSGP or the NPDES ID if you had coverage under an EPA individual permit:

C. Facility Operator Information

1. Operator Information:

Operator Name:

Mailing Address:

Street:

City: State: ZIP Code: -

County or Similar Government Subdivision:

Phone: - - Ext.

E-mail:

2. Operator Point of Contact Information:

First Name, Middle Initial, Last Name:

Title:

3. NOI Preparer Information (Complete if NOI was prepared by someone other than the certifier):

First Name, Middle Initial, Last Name:

Organization:

Phone: - - Ext.

E-mail:

D. Facility Information

1. Facility Name:

2. Facility Address:

Street/Location:

City: State: ZIP Code: -

County or Similar Government Subdivision:

3. Latitude/Longitude for the facility:

Latitude: __ __. __ __ __ __° N (decimal degrees) Longitude: __ __ __. __ __ __ __° W (decimal degrees)

Latitude/Longitude Data Source: ☐ Map ☐ GPS ☐ Other

If you used a USGS topographic map, what was the scale? _____

Horizontal Reference Datum: ☐ NAD 27 ☐ NAD 83 ☐ WGS 84

4. Is your facility located on Indian Country lands? ☐ YES ☐ NO

If yes, provide the name of the Indian tribe associated with the area of Indian country (including name of Indian reservation, if applicable):

_____

5. Are you requesting coverage under this NOI as a "federal operator" as defined in Appendix A? ☐ YES ☐ NO

6. What is the ownership type of the facility? ☐ Federal Facility (U.S. Government) ☐ Privately Owned Facility ☐ Municipality ☐ County Government

☐ Corporation ☐ State Government ☐ Tribal Government ☐ School District

☐ District ☐ Mixed Ownership (e.g. Public/Private) ☐ Municipal or Water District

7. Estimated area of industrial activity at your facility exposed to stormwater: _____ (to the nearest quarter acre)

8. Sector-Specific Information

Identify the 4-digit Standard Industrial Classification (SIC) code or 2-letter Activity Code that best represents the products produced or services rendered for which your facility is primarily engaged, as defined in the MSGP, and the applicable sector and subsector of your primary industrial activity (See Appendix D):

Primary SIC Code: OR **Primary Activity Code:**

Sector: **Subsector:**

Identify the applicable sector(s) and subsector(s) of any co-located industrial activity for which you are requesting permit coverage:

Sector: **Subsector:** **Sector:** **Subsector:** **Sector:** **Subsector:**

Sector: **Subsector:** **Sector:** **Subsector:** **Sector:** **Subsector:**

If you are a Sector S (Air Transportation) facility, do you anticipate using more than 100,000 gallons of pure glycol in glycol-based deicing fluids and/or 100 tons or more of urea on an average annual basis? ☐ YES ☐ NO

If you are a Sector G (Metal Mining) facility, do you have discharges from waste rock and overburden piles? ☐ YES ☐ NO

Check the type of ore you mine at your facility: ☐ Tungsten Ore ☐ Nickel Ore ☐ Aluminum Ore

☐ Mercury Ore ☐ Iron Ore ☐ Platinum Ore ☐ Titanium Ore ☐ Vanadium Ore ☐ Molybdenum ☐ Uranium, Radium, and/or Vanadium Ore

9. Is your facility presently inactive and unstaffed?* ☐ YES ☐ NO

* Note that if your facility becomes inactive and unstaffed during the permit term, you must submit an NOI modification to reflect the change.

E. Discharge Information

1. By indicating "Yes" below, I confirm that I understand that the MSGP only authorizes the allowable stormwater discharges in Part 1.1.2 and the allowable non-stormwater discharges listed in Part 1.1.3. Any discharges not expressly authorized in this permit cannot become authorized or shielded from liability under CWA section 402(k) by disclosure to EPA, state, or local authorities after issuance of this permit via any means, including the Notice of Intent (NOI) to be covered by the permit, the Stormwater Pollution Prevention Plan (SWPPP), during an inspection, etc. If any discharges requiring NPDES permit coverage other than the allowable stormwater and non-stormwater discharges listed in Parts 1.1.2 and 1.1.3 will be discharged, they must be covered under another NPDES permit. ☐ YES

2. Federal Effluent Limitation Guidelines

Are you requesting permit coverage for any stormwater discharges subject to effluent limitation guidelines? ☐ YES ☐ NO

If yes, which effluent limitation guidelines apply to your stormwater discharges?

40 CFR Part/Subpart	Eligible Discharges	Affected MSGP Sector	New Source Date	Check if Applicable
Part 411, Subpart C	Runoff from material storage piles at cement manufacturing facilities	E	2/20/1974	☐
Part 418 Subpart A	Runoff from phosphate fertilizer manufacturing facilities that comes into contact with any raw materials, finished product, by-products or waste products (SIC 2874)	C	4/8/1974	☐
Part 423	Coal pile runoff at steam electric generating facilities	O	11/19/1982 10/8/1974[1]	☐
Part 429, Subpart I	Discharges resulting from spray down or intentional wetting of logs at wet deck storage areas	A	1/26/1981	☐
Part 436, Subpart B, C, or D	Mine dewatering discharges at crushed stone mines, construction sand and gravel mines, or industrial sand mines	J	N/A	☐
Part 443, Subpart A	Runoff from asphalt emulsion facilities	D	7/28/1975	☐
Part 445, Subparts A & B	Runoff from hazardous waste and non-hazardous waste landfills	K, L	2/2/2000	☐
Part 449	Runoff containing urea from airfield pavement deicing at existing and new primary airports with 1,000 or more annual non-propeller aircraft departures	S	6/15/2012	☐

[1]NSPS promulgated in 1974 were not removed via the 1982 regulation; therefore wastewaters generated by Part 423-applicable sources that were New Sources under the 1974 regulations are subject to the 1974 NSPS.

3. Receiving Waters Information: (Attach a separate list if necessary)

List all of the stormwater outfalls from your facility. Each outfall must be identified by a unique 3-digit ID (e.g., 001, 002). Also provide the latitude and longitude in degrees decimal for each outfall.		**For each outfall, provide the following receiving water information:**		
		Provide the name of the first water of the U.S. that receives stormwater directly from the outfall and/or from the MS4 that the outfall discharges to:	**If the receiving water is impaired (on the CWA 303(d) list), list the pollutants that are causing the impairment:**	**If a TMDL been completed for this receiving waterbody, providing the following information:**
Outfall ID				**TMDL Name and ID:**
Latitude				**Pollutant(s) for which there is a TMDL:**
Longitude				
Outfall ID				**TMDL Name and ID:**
Latitude				**Pollutant(s) for which there is a TMDL:**
Longitude				
If substantially identical to other outfall, list identical outfall ID: _____				

Outfall ID				**TMDL Name and ID:**
Latitude				**Pollutant(s) for which there is a TMDL:**
Longitude				
If substantially identical to other outfall, list identical outfall ID: _____				
Outfall ID				**TMDL Name and ID:**
Latitude				**Pollutant(s) for which there is a TMDL:**
Longitude				
If substantially identical to other outfall, list identical outfall ID: _____				
Outfall ID				**TMDL Name and ID:**
Latitude				**Pollutant(s) for which there is a TMDL:**
Longitude				
If substantially identical to other outfall, list identical outfall ID: _____				
Outfall ID				**TMDL Name and ID:**
Latitude				**Pollutant(s) for which there is a TMDL:**
Longitude				
If substantially identical to other outfall, list identical outfall ID: _____				

4. Provide the following Information about your outfall latitude longitude:

Latitude/Longitude Data Source: ☐ Map ☐ GPS ☐ Other

If you used a USGS topographic map, what was the scale? _____

Horizontal Reference Datum: ☐ NAD 27 ☐ NAD 83 ☐ WGS 84

5. Does your facility discharge into a Muncipal Separate Storm Sewer System (MS4)? ☐ YES ☐ NO

If yes, provide the name of the MS4 operator: _____

6. Check if you discharge to any of the waters of the U.S. that are designated by the state or tribal authority under its antidegradation policy as a Tier 2 (or Tier 2.5) water (water quality exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water) or as a Tier 3 water (Outstanding National Resource Water)? (See Appendix L).

☐ Tier 2/2.5. Provide the name(s) of receiving water(s): _____

☐ Tier 3 (Outstanding National Resource Waters)*

*** Note: You are ineligible for coverage if you are a new discharger or new source to waters designated as Tier 3 (outstanding national resource waters) for antidegradation purposes under 40 CFR 131.13(a)(3).**

7. If you are subject to benchmark monitoring requirements for a hardness-dependent metal, what is the hardness of your receiving water(s) (see Appendix J)?

_____ (mg/L)

8. If you are subject to benchmark monitoring requirements for a hardness-dependent metal, does your facility discharge into any saltwater receiving waters? ☐ YES ☐ NO

9. Does your facility discharge to a federal CERCLA site listed in Appendix P? ☐ YES ☐ NO

If yes, did you notify the EPA Regional Office in advance of filing your NOI, and did the EPA Regional Office determine that you are eligible for permit coverage pursuant to Part 1.1.4.10*? ☐ YES ☐ NO

*** Note: If you discharge to a federal CERCLA site listed in Appendix P, you are ineligible for coverage under this permit unless you notify the EPA Regional Office in advance and the EPA Regional Office determines you are eligible coverage under this permit. In determining your eligibility for coverage under this Part, the EPA Regional Office may evaluate whether you have included adequate controls and/or procedures to ensure that your discharges will not lead to recontamination of aquatic media at the CERCLA Site such that it will to cause or contribute to an exceedance of a water quality standard.**

F. Stormwater Pollution Prevention Plan (SWPPP) Information

1. Has the SWPPP been prepared in advance of filing this NOI, as required? ☐ YES ☐ NO

2. SWPPP Contact Information:

First Name, Middle Initial, Last Name:

Professional Title:

Phone: - - Ext.

E-mail:

3. SWPPP Availability:

Your current SWPPP or certain information from your SWPPP must be made available through one of the following two options. Select one of the options and provide the required information*:

*** Note: You are not required to post any confidential business information (CBI) or restricted information (as defined in Appendix A) (such information may be redacted), but you must clearly identify those portions of the SWPPP that are being withheld from public access.**

☐ **Option 1**: Maintain a current copy of your SWPPP on an Internet page (Universal Resource Locator or URL).

Provide the web address URL: _____

☐ **Option 2**: Provide the following information from your SWPPP:

A. Describe your onsite industrial activities exposed to stormwater (e.g., material storage; equipment fueling, maintenance, and cleaning; cutting steel beams), and potential spill and leak areas:

B. List the pollutant(s) or pollutant constituent(s) associated with each industrial activity exposed to stormwater that could be discharged in stormwater and any authorized non-stormwater discharges listed in Part 1.1.3:

C. Describe the control measures you will employ to comply with the non-numeric technology-based effluent limits required in Part 2.1.2 and Part 8, and any other measures taken to comply with the requirements in Part 2.2 Water Quality-Based Effluent Limitations (see Part 5.2.4):

D. Provide a schedule for good housekeeping and maintenance (see Part 5.2.5.1) and a schedule for all inspections required in Part 4 (see Part 5.2.5.2):

G. Endangered Species Protection

1. Using the instructions in Appendix E of the MSGP, under which endangered species criterion listed in Part 1.1.4.5 are you eligible for coverage under this permit (only check 1 box)?*

☐ A ☐ B ☐ C ☐ D ☐ E

*** Note: After you submit your NOI and before your NOI is authorized, EPA may notify you if any additional controls are necessary to ensure your discharges have no likely adverse affects on listed species and critical habitat.**

2. Provide a brief summary of the basis for the criterion selected in Appendix E (e.g., communication with U.S. Fish and Wildlife Service or National Marine Fisheries Service to determine no species in action area; implementation of controls approved by EPA and the Services):

3. If you select criterion B, provide the NPDES ID from the other operator's NOI authorized under this permit: ☐☐☐☐☐☐☐☐☐

4. If you select criterion C, you must answer the following questions:

a. What federally-listed species or designated critical habitat are located in your "action area":

b. Using the Appendix E worksheet, check which of the following is applicable to your facility and answer any corresponding questions:

☐ I submitted my completed *Criterion C Eligibility Form* to EPA at least 30 days prior to submitting this NOI and agree to implement any additional measures that were determined by EPA to be necessary to ensure that my discharges and/or discharge-related activities will not have likely adverse affects on listed species and critical habitat.

Date your *Criterion C Eligibilty Form* was sent to EPA: ☐☐ / ☐☐ / ☐☐☐☐

Describe any EPA-approved measures you will implement to ensure no likely adverse affects on listed species and critical habitat:

☐ I submitted my completed *Criterion C Eligibility Form* to EPA at least 30 days prior to submitting this NOI and have not been notified of any additional measures necessary to ensure no likely adverse affects on listed species and critical habitat.

Date your *Criterion C Eligibility Form* was sent to EPA: ☐☐ / ☐☐ / ☐☐☐☐

5. If you select criterion D or E, you must attach copies of any letters or other communications with the U.S. Fish and Wildlife Service or National Marine Fisheries Service.

H. Historic Preservation

1. If your facility is not located on Indian country lands, is your facility located on a property of religious or cultural significance to an Indian tribe?

   ☐ YES ☐ NO

   If yes, provide the name of the Indian tribe associated with the property:_____

2. Using the instructions in Appendix F of the MSGP, under which historic properties preservation criterion listed in Part 1.1.4.6 are you eligible for coverage under this permit (only check 1 box)?

   ☐ A ☐ B ☐ C ☐ D

I. Certification Information

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

First Name, Middle Initial, Last Name:

Title:

Signature: Date: / /

E-mail:

Notice of Intent (NOI) for Stormwater Discharges Associated with Industrial Activity Under the NPDES Multi-Sector General Permit

NPDES Form Date (06/15) This Form Replaces From 3510-6 (09/08) Form Approved OMB No. 2040-0004

Who Must File an NOI Form

Under section 402(p) of the Clean Water Act (CWA) and regulations at 40 CFR Part 122, stormwater discharges associated with industrial activity are prohibited to waters of the United States unless authorized under a National Pollutant Discharge Elimination System (NPDES) permit. You can obtain coverage under the MSGP by submitting a completed Notice of Intent (NOI) if you are an operator a facility:

- that is located in a jurisdiction where EPA is the permitting authority, listed in Appendix C of the MSGP,
- that discharges stormwater associated with industrial activities, identified in Appendix D of the MSGP,
- that meets the eligibility requirements in Part 1.1 of the permit,
- that has developed a stormwater pollution prevention plan (SWPPP) in accordance with Part 5 of the MSGP; and
- that installs and implements control measures in accordance with Part 2 and Part 8 to meet numeric and non-numeric effluent limits.

Completing the Form

Obtain and read a copy of the 2015 MSGP, viewable at http://water.epa.gov/polwaste/npdes/stormwater/EPA-Multi-Sector-General-Permit-MSGP.cfm. To complete this form, type or print, using uppercase letters, in the appropriate areas only. Please place each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use only one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. **Please submit original document with signature in ink - do not send a photocopied signature.**

Section A. Approval to Use Paper NOI Form

You must indicate whether you have been granted a waiver from electronic reporting from the EPA Regional Office. Note that you are not authorized to use this paper NOI form unless the EPA Regional Office has approved its use. Where you have obtained approval to use this form, indicate the waiver that you have been granted, the name of the EPA staff person who granted the waiver, and the date that approval was provided.

See http://water.epa.gov/polwaste/npdes/stormwater/Stormwater-Contacts.cfm for a list of EPA Regional Office contacts.

Section B. Permit Information

Provide the master permit number of the permit under which you are applying for coverage (see Appendix C of the general permit for the list of eligible master permit numbers).

You must indicate whether you are a new discharger or a new source (see Appendix A for the definitions). If you are not a new discharger or a new source, you must indicate whether stormwater discharges from your facility have been previously covered under another NPDES permit. If yes, you must provide the unique NPDES ID (i.e., permit tracking number) for the previous permit your facility was covered under.

Section C. Facility Operator Information

Provide the legal name of the person, firm, public organization, or any other entity that operates the facility described in this NOI. An operator of a facility is the legal entity that controls the operation of the facility. Refer to Appendix A of the permit for the definition of "operator". Provide the operator's mailing address, phone number, and e-mail. Correspondence for the NOI will be sent to this address. Also provide the name and title for the operator point of contact (note that the point of contact name may be the same as the operator name).

If the NOI was prepared by someone other than the certifier (for example, if the NOI was prepared by the facility SWPPP contact or a consultant for the certifier's signature), include the full name, organization, phone number, and email address of the NOI preparer.

Section D. Facility Information

Enter the official or legal name and complete address, including city, state, ZIP code, and county or similar government subdivision of the facility. If the facility lacks a street address, indicate the general location of the facility (e.g., Intersection of State Highways 61 and 34). Complete facility information must be provided for permit coverage to be granted.

Provide the latitude and longitude of your facility in decimal degrees format. The latitude and longitude of your facility can be determined in several different ways, including through the use of global positioning system (GPS) receivers, U.S. Geological Survey (U.S.G.S.) topographic or quadrangle maps. Refer to http://transition.fcc.gov/mb/audio/bickel/DDDMMSS-decimal.html/ for assistance in providing the proper latitude/longitude format. For consistency, EPA requests that measurements be taken from the approximate center of the facility. Specify which method you used to determine latitude and longitude. If a U.S.G.S. topographic map is used, specify the scale of the map used. Enter the horizontal reference datum for your latitude and longitude. The horizontal reference datum used on USGS topographic maps is shown on the bottom left corner of USGS topographic maps; it is also available for GPS receivers.

Indicate whether the facility is on Indian country lands, and if so, provide the name of the Indian tribe associated with the area of Indian country (including name of Indian reservation, if applicable).

Indicate whether you are seeking coverage under this permit as a "federal operator" as defined in Appendix A. Also check the ownership type for the facility (e.g., Federal Facility, Privately Owned Facility, Municipality, County Government, Corporation, State Government, Tribal Government, School District, District, Mixed Ownership [e.g., public/private], Municipal or Water District).

Enter the estimated area of industrial activity at your facility exposed to stormwaterto the nearest quarter acre.

List the four-digit Standard Industrial Classification (SIC) code or two character activity code that best describes the primary industrial activities performed by your facility under which you are required to obtain permit coverage. Your primary industrial activity includes any activities performed on-site which are (1) identified by the facility's primary SIC code and included in the descriptions of 40 CFR 122.26(b)(14)(ii), (iii), (vi), or (viii); or (2) included in the narrative descriptions of 40 CFR 122.26(b)(14)(i), (iv), (v), (vii), or (ix). See Appendix D of the MSGP for a complete list of SIC codes and activities codes covered under the MSGP. Also provide the applicable sector and subsector associated with the SIC code or activity code for your primary industrial activities. For a complete list of sector and subsector codes, see Appendix D of the MSGP.

If your facility has co-located industrial activities that are not identified as your primary industrial activity, identify the sector and subsector codes that describe these other industrial activities.

For Sector S facilities (Air Transportation), indicate whether you anticipate that the entire airport facility will use more than 100,000 gallons of pure glycol in glycol-based deicing fluids and/or 100 tons or more of urea on an average annual basis. If so, additional effluent limits and monitoring conditions apply to your discharge (see Part 8.S of the permit).

For Sector G facilities (Metal Mining), check the type of ore(s) mined at the facility.

Indicate whether your facility is currently inactive and unstaffed. Note that if your facility becomes inactive and unstaffed during the permit term, you must submit an NOI modification to reflect the change.

Section E. Discharge Information

You must confirm that you understand that the MSGP only authorizes the allowable stormwater discharges listed in Part 1.1.2 and the allowable non-stormwater discharges listed in Part 1.1.3. Any discharges not expressly authorized under the MSGP are not covered by the MSGP or the permit shield provision of the CWA Section 402(k) and they cannot become authorized or shielded by disclosure to EPA, state, or local authorities via the NOI to be covered by the permit or by any other means (e.g., in the SWPPP or during an inspection). If any discharges requiring NPDES permit coverage other than the allowable stormwater and non-stormwater discharges listed in Parts 1.1.2 and 1.1.3 will be discharged, they must either be eliminated or covered under another NPDES permit.

Depending on your industrial activities, your facility may be subject to federal effluent limitation guidelines which include additional effluent limits and monitoring requirements for your facility. Please review these requirements, described in Part 2.1.3 of the MSGP, and check any appropriate boxes on the NOI form.

You must identify all the outfalls from your facility that discharge stormwater. Each outfall must be assigned a unique 3-digit ID (e.g., 001, 002, 003). You must also provide the latitude and longitude for each outfall from your facility. Indicate whether any outfalls are substantially identical to an outfall already listed, and identify the outfall it is identical to. For each unique outfall you list, you must specify the name of the first water of the U.S. that receives stormwater directly from the outfall and/or from the MS4 that the outfall discharges to. You must specify whether any receiving waters that you discharge to are listed as "impaired" as defined in Appendix A, and the pollutants for which the water is impaired. You must also check identify any Total Maximum Daily Loads (TMDL) that have been completed for any of the waters of the U.S. that you discharge to. You must also provide information about the outfall latitude/longitude, including data source, the scale (if applicable), and the horizontal reference datum. See the instructions in Section D for more information about determining the latitude and longitude.

Identify whether your facility discharges into a Municipal Separate Storm Sewer System (MS4). If yes, provide the name of the MS4 operator. If you are uncertain of the MS4 operator, contact your local government for that information.

Indicate whether discharges from the facility will enter into a water of the U.S that is designated as a Tier 2, Tier 2.5, or Tier 3 water. A list of Tier 2, 2.5, and 3 waters is provided as Appendix L. If the answer is "yes", name all waters designated as Tier 2, Tier 2.5, or Tier 3 to which the facility will discharge. Note that you are ineligible for coverage if you are a new discharger or a new source to waters designated as Tier 3 (outstanding national resource waters) for antidegradation purposes under 40 CFR 131.13(a)(3).

If you are subject to any benchmark monitoring requirements for metals (see the requirements applicable to your Sector(s) in Part 8 of the permit), indicate the hardness for your receiving water(s). See Appendix J of the permit for information about determining waterbody hardness.

If you are subject to benchmark monitoring requirements for hardness-dependent metals you must also answer whether your facility discharges into any saltwater receiving waters.

Indicate whether your facility will discharge to a federal CERCLA site listed in Appendix P. Note that if your facility will discharge into a federal CERCLA site listed in Appendix P, you are not eligible for coverage under this permit unless you notify the EPA Regional Office in advance and the EPA Regional Office authorizes overage under this permit after you have included adequate controls and/or procedures designed to ensure that discharges will not lead to recontamination of aquatic media at the CERCLA site such that your discharge will cause or contribute to an exceedance of a water quality standard.

Section F. Stormwater Pollution Prevention Plan (SWPPP) Information

All facilities eligible for coverage under this permit are required to prepare a SWPPP in advance of filing the NOI, in accordance with Part 5. Indicate whether the SWPPP has been prepared in advance of filing the NOI.

Indicate the contact information (name, phone, and email) for the person who developed the SWPPP for this facility.

You identify how your SWPPP information will be made available, consistent with Part 5.4 and 7.3 of the permit. If you are making your SWPPP publicly available on a web site, check Option 1 and provide the appropriate Internet URL address. If you are not providing a URL, check Option 2 and provide the selected SWPPP information on this NOI form. You may copy and paste this information directly from your SWPPP.

Section G. Endangered Species Protection

Using the instructions in Appendix E, indicate the Part 1.1.4.5 criterion (i.e., A, B, C, D, or E) you are eligible under with regard to the protection of federally listed endangered and threatened species and designated critical habitat. A description of the basis for the criterion selected must also be provided.

If criterion B is selected, provide the NPDES ID (i.e., permit tracking number) for the other operator who has certified their eligibility under this permit. The NPDES ID was assigned when the operator received coverage under this permit.

If criterion C is selected, you must specify the federally-listed species or designated critical habitat that are located in the "action area" of the facility. You must also indicate under which scenario you determined you were eligible to submit your NOI under criterion C using Appendix E, and answer any corresponding questions.

If criterion D or E is selected, attach copies of any communications between you and the U.S. Fish and Wildlife Service and National Marine Fisheries Service to this NOI.

Section H. Historic Preservation

If the project is not located in Indian country lands, indicate whether the project is located on a property of religious or cultural significance to an Indian tribe, and if so, provide the name of the Indian tribe associated with the property. Use the instructions in Appendix F to complete the questions on the NOI form regarding historic preservation.

Instructions for Completing EPA Form 3510-6

Notice of Intent (NOI) for Stormwater Discharges Associated with Industrial Activity Under the NPDES Multi-Sector General Permit

NPDES Form Date (06/15) This Form Replaces From 3510-6 (09/08) Form Approved OMB No. 2040-0004

Section H. Certification

Certification statement and signature (see Section B.11 of Appendix B of the MSGP for more information). Enter certifier's printed name, title and email address. Sign and date the form. (CAUTION: An unsigned or undated NOI form will prevent the granting of permit coverage.) Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

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

For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this Part, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator of EPA). Include the name and title of the person signing the form and the date of signing.

An unsigned or undated NOI form will not be considered eligible for permit coverage.

Modifying Your NOI

If you have been granted a waiver from your Regional Office from electronic reporting, and if after submitting your NOI you need to correct or update any fields on this NOI form, you may do so by indicating changes on this same form.

Paperwork Reduction Act Notice

Public reporting burden for this NOI is estimated to average 3.7 hours, plus an additional 2 hours for certain respondents required to gather hardness data. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number on any correspondence. Do not send the completed form to this address.

Submitting Your Form

If you have been granted a waiver from your Regional Office to submit a paper NOI form, you must send your NOI by mail to one of the following addresses:

For Regular U.S. Mail Delivery:
Stormwater Notice Processing Center
Mail Code 4203M, ATTN: 2015 MSGP Reports
U.S. EPA
1200 Pennsylvania Avenue, NW
Washington, DC 20460

For Overnight/Express Mail Delivery:
Stormwater Notice Processing Center
William Jefferson Clinton East Building - Room 7420
ATTN: 2015 MSGP Reports
U.S. EPA
1201 Constitution Avenue, NW
Washington, DC 20004

Visit this website for instructions on how to submit electronically:
http://water.epa.gov/polwaste/npdes/stormwater/Stormwater-eNOI-System-for-EPAs-MultiSector-General-Permit.cfm

Appendix H - Notice of Termination (NOT) Form

Part 7.1 requires you to use the NPDES eReporting Tool, or "NeT", to prepare and submit your Notice of Termination (NOT). However, if you are given a waiver by the EPA Regional Office to use a paper NOT form, and you elect to use it, you must complete and submit the following form.

NPDES FORM 3510-7	EPA	UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, DC 20460 NOTICE OF TERMINATION (NOT) FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY UNDER THE NPDES MULTI-SECTOR GENERAL PERMIT	Form Approved. OMB No. 2040-0004

Submission of this Notice of Termination constitutes notice that the operator identified in Section C of this form is no longer authorized to discharge pursuant to the NPDES Multi-Sector General Permit (MSGP) from the facility identified in Section D of this form. All necessary information must be included on this form. Refer to the instructions at the end of this form.

A. Approval to use Paper NOT Form

1. Have you been granted a waiver from electronic reporting from the Regional Office*? ☐ YES ☐ NO

If yes, check which waiver you have been granted, the name of the EPA Regional Office staff person who granted the waiver, and the date of approval:

Waiver granted:
- ☐ The owner/operator's 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.
- ☐ The owner/operator has issues regarding available computer access or computer capability.

Name of EPA staff person that granted the waiver: _____

Date approval obtained: ___ / ___ / ____

*** Note: You are required to obtain approval from the applicable Regional Office prior to using this paper NOT form. If you have not obtained a waiver, you must file this form electronically using the NPDES eReporting Tool (NeT) at http://water.epa.gov/polwaste/npdes/stormwater/Stormwater-eNOI-System-for-EPAs-MultiSector-General-Permit.cfm**

B. Permit Information

1. NPDES ID: _____

2. Reason for Termination (check one only):

- ☐ A new owner or operator has taken over responsibility for the facility.
- ☐ You have ceased operations at the facility, there are not or no longer will be discharges of stormwater associated with industrial activity from the facility, and you have already implemented necessary sediment and erosion controls as required by Part 2.1.2.5.
- ☐ You are a Sector G, H, or J facility and you have met the applicable termination requirements.
- ☐ You obtained coverage under an individual or alternative general permit for all discharges required to be covered by an NPDES permit.

C. Facility Operator Information

1. Operator Name: _____

2. Mailing Address:

Street: _____

City: _____ State: ___ ZIP Code: _____ - _____

3. Phone: ___ - ___ - ____ Ext. ____

4. E-mail: _____

D. Facility Information

1. Facility Name: _____

2. Facility Address:

Street: _____

City: _____ State: ___ ZIP Code: _____ - _____

County or similar government subdivision: _____

E. Certification Information

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

First Name, Middle Initial, Last Name:

Title:

Signature: _____ Date: / /

E-mail:

Instructions for Completing EPA Form 3510-7

Notice of Termination for Stormwater Discharges Associated with Industrial Activity Under the NPDES Multi-Sector General Permit

NPDES Form Date (06/15) This Form Replaces From 3510-7 (09/08) Form Approved OMB No. 2040-0004

Who May File Notice of Termination (NOT) Form

Permittees currently covered by EPA's NPDES Stormwater Multi-Sector General must submit a Notice of Termination (NOT) within 30 days after one or more of the following conditions have been met:

- A new owner or operator has assumed responsibility for the facility;
- You have ceased operations at the facility and there are not or no longer will be discharges of stormwater associated with industrial activity from the facility and you have already implemented necessary sediment and erosion controls per Part 2.1.2.5;
- You are a Sector G, H, or J facility and you have met the applicable termination requirements; or
- You obtained coverage under an individual or alternative general permit for all discharges required to be covered by an NPDES permit.

See the MSGP Part 1.3.3 for more information.

Completing the Form

To complete this form, type or print, using uppercase letters, in the appropriate areas only. Please place each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use only one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. Please submit original document with signature in ink - do not send a photocopied signature.

Section A. Approval to Use Paper NOT Form

You must indicate whether you have been granted a waiver from electronic reporting from the EPA Regional Office. Note that you are not authorized to use this paper NOT form unless the EPA Regional Office has approved its use. Where you have obtained approval to use this form, indicate the waiver that you have been granted, the name of the EPA Regional Office staff person who granted the waiver, and the date that approval was provided. See http://water.epa.gov/polwaste/npdes/stormwater/Stormwater-Contacts.cfm for a list of EPA Regional Office contacts.

Section B. Permit Information

Enter the existing NPDES ID (i.e., NOI tracking number) assigned to your permit authorization.

Indicate your reason for submitting this Notice of Termination by checking the appropriate box. Check only one box (see MSGP Part 1.3.3 for more information).

Section C. Facility Operator Information

Provide the legal name of the person, firm, public organization, or any other entity that operates the facility described in this NOT. An operator of a facility is the legal entity that controls the operation of the facility. Refer to Appendix A of the permit for the definition of "operator". Provide the operator's mailing address, phone number, and e-mail.

Section D. Facility Information

Enter the official or legal name and complete street address, including city, state, ZIP code, and county or similar government subdivision of the facility. If the facility lacks a street address, indicate the general location of the facility (e.g., Intersection of State Highways 61 and 34). Complete facility information must be provided for termination of permit coverage to be valid.

Section E. Certification Information

All NOTs must be signed as follows:

For a corporation: By a responsible corporate officer. For the purpose of this Section, a responsible corporate officer means: (i)a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

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

For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this Part, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator of EPA). Include the name and title of the person signing the form and the date of signing.

Include the name, title, and email address of the person signing the form and the date of signing. An unsigned or undated NOT form will not be considered valid termination of permit coverage.

Paperwork Reduction Act Notice

Public reporting burden for this Notice of Termination is estimated to average 0.5 hours, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number of this form on any correspondence. Do not send the completed NOT form to this address.

Instructions for Completing EPA Form 3510-7

Notice of Termination for Stormwater Discharges Associated with Industrial Activity Under the NPDES Multi-Sector General Permit

NPDES Form Date (06/15) This Form Replaces From 3510-7 (09/08) Form Approved OMB No. 2040-0004

Submitting Your Form

If you have been granted a waiver from your Regional Office to submit a paper NOT form, you must send your NOT by mail to one of the following addresses:

For Regular U.S. Mail Delivery:

Stormwater Notice Processing Center
Mail Code 4203M, ATTN: 2015 MSGP Reports
U.S. EPA
1200 Pennsylvania Avenue, NW
Washington, DC 20460

For Overnight/Express Mail Delivery:

Stormwater Notice Processing Center
William Jefferson Clinton East Building - Room 7420
ATTN: 2015 MSGP Reports
U.S. EPA
1201 Constitution Avenue, NW
Washington, DC 20004

Visit this website for instructions on how to submit electronically:
http://water.epa.gov/polwaste/npdes/stormwater/Stormwater-eNOI-System-for-EPAs-MultiSector-General-Permit.cfm

Appendix I - Annual Report Form

Part 7.1 requires you to use the NPDES eReporting Tool, or "NeT", to prepare and submit your Annual Report. However, if you are given a waiver by the EPA Regional Office to use a paper annual report form, and you elect to use it, you must complete and submit the following form.

NPDES FORM 6100-28	EPA	UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, DC 20460 ANNUAL REPORT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY UNDER THE NPDES THE NPDES MULTI-SECTOR GENERAL PERMIT	Form Approved. OMB No. 2040-0004

A. Approval to Use Paper Annual Report Form

1. Have you been granted a waiver from electronic reporting from the EPA Regional Office*? ☐ YES ☐ NO

If yes, check which waiver you have been granted, the name of the EPA Regional Office staff person who granted the waiver, and the date of approval:

Waiver granted:

☐ The owner/operator's 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.

☐ The owner/operator has issues regarding available computer access or computer capability.

Name of EPA staff person that granted the waiver:

Date approval obtained: / /

*** Note: You are required to obtain approval from the applicable EPA Regional Office prior to using this paper annual report form. If you have not obtained a waiver, you must file this form electronically using the NPDES eReporting Tool (NeT) at http://water.epa.gov/polwaste/npdes/stormwater/Stormwater-eNOI-System-for-EPAs-MultiSector-General-Permit.cfm**

B. Permit Information

1. NPDES ID:

C. Facility Information

1. Facility Name:

2. Facility Phone: - - Ext.

3. Facility Mailing Address:

Street:

City: State: ZIP Code: -

County or Similar Government Subdivision:

4. Point of Contact:

First Name, Middle Initial, Last Name:

D. General Findings

1. Provide a summary of your past year's routine facility inspection documentation (see Part 3.1.2 of the permit). In addition, if you are an operator of an airport facility (Sector S) that is subject to the airport effluent limitations guidelines, and are complying with the MSGP Part 8.S.8.1 effluent limitation through the use of non-urea-containing deicers, provide a statement certifying that you do not use pavement deicers containing urea (e.g., "Urea was not used at [name of airport] for pavement deicing in the past year and will also not be used in 2015." (Note: Operators of airport facilities that are complying with Part 8.S.8.1 by meeting the numeric effluent limitation for ammonia do not need to include this statement.)

2. Provide a summary of your past year's quarterly visual assessment documentation (see Part 3.2.2 of the permit).

3. For any four-sample (minimum) average benchmark monitoring exceedance, if after reviewing the selection, design, installation, and implementation of your control measures and considering whether any modifications are necessary to meet the effluent limits in the permit, you determine that no further pollutant reductions are technologically available and economically practicable and achievable in light of best industry practice, provide your rationale for why you believe no further reductions are achievable (see Part 6.2.1.2 of the permit). Enter "NA" if not applicable.

4. Provide a summary of your past year's corrective action documentation (See Part 4.4 of the permit). (Note: If corrective action is not yet completed at the time of submission of this annual report, you must describe the status of any outstanding corrective action(s).) Also describe any incidents of noncompliance in the past year or currently ongoing, or if none, provide a statement that you are in compliance with the permit.

E. Certification Information

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

First Name, Middle Initial, Last Name:

Title:

Signature: _____ Date: / /

E-mail:

Instructions for Completing the Annual Report Form

Annual Report for Stormwater Discharges Associated with Industrial Activity Under an NPDES General Permit

Who Must File an Annual Report

Operators must submit an Annual Report to EPA electronically, per Part 7.5, by January 30th for each year of permit coverage containing information generated from the past calendar year.

Completing the Form

To complete this form, type or print, using uppercase letters, in the appropriate areas only. Please place each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use only one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. Please submit original document with signature in ink - do not send a photocopied signature.

Section A. Approval to Use Paper Annual Report Form

You must indicate whether you have been granted a waiver from electronic reporting from the EPA Regional Office. Note that you are not authorized to use this paper form unless the EPA Regional Office has approved its use. Where you have obtained approval to use this form, indicate the waiver that you have been granted, the name of the EPA staff person who granted the waiver, and the date that approval was provided. See http://water.epa.gov/polwaste/npdes/stormwater/Stormwater-Contacts.cfm for a list of EPA Regional Office contacts.

Section B. Permit Information

Provide the NPDES ID (i.e., NOI tracking number) assigned to your facility.

Section C. Facility Information

Enter the official or legal name, phone number, and complete street address, including city, state, ZIP code, and county or similar government subdivision, for the facility that is covered by the NPDES ID identified in Section B. If the facility lacks a street address, indicate the general location of the facility (e.g., Intersection of State Highways 61 and 34). Also provide a point of contact name for the facility.

Section D. General Findings

To complete this section you must provide the following information in your annual report:

1. A summary of your past year's routine facility inspection documentation required by Part 3.1.2 of the permit.
2. A summary of your past year's quarterly visual assessment documentation required by Part 3.2.2 of the permit.
3. If, after finding the average of your four monitoring values for any pollutant exceeds the benchmark, you decide no further pollutant reductions are technologically available and economically practicable and achievable in light of best industry practice, your rationale for why you believe no further reductions are achievable.
4. Information copied or summarized from the corrective action documentation required per Part 4.4 (if applicable). If corrective action is not yet completed at the time of submission of this Annual Report, you must describe the status of any outstanding corrective action(s). You must also describe any incidents of noncompliance in the past year or currently ongoing, or if none, provide a statement that you are in compliance with the permit.

Section E. Certification Information

The Annual Report must be signed by a person described below, or by a duly authorized representative of that person.

For a corporation: By a responsible corporate officer. For the purpose of this Section, a responsible corporate officer means:

(i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

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

For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this Part, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator of EPA). Include the name and title of the person signing the form and the date of signing.

A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described above;

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

3. The written authorization is submitted to the Director.

An unsigned or undated Annual Report form be considered incomplete.

Paperwork Reduction Act Notice

Public reporting burden for this form is estimated to average 2.5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number of this form on any correspondence. Do not send the completed Annual Report form to this address.

Instructions for Completing the Annual Report Form

Annual Report for Stormwater Discharges Associated with Industrial Activity Under an NPDES General Permit

Submitting Your Form

If you have been granted a waiver from your Regional Office to submit a paper Annual Report form, you must send your Annual Report form by mail to one of the following addresses:

For Regular U.S. Mail Delivery:

Stormwater Notice Processing Center
Mail Code 4203M, ATTN: 2015 MSGP Reports
U.S. EPA
1200 Pennsylvania Avenue, NW
Washington, DC 20460

For Overnight/Express Mail Delivery:

Stormwater Notice Processing Center
William Jefferson Clinton East Building - Room 7420
ATTN: 2015 MSGP Reports
U.S. EPA
1201 Constitution Avenue, NW
Washington, DC 20004

Visit this website for instructions on how to submit electronically:
http://water.epa.gov/polwaste/npdes/stormwater/Stormwater-eNOI-System-for-EPAs-MultiSector-General-Permit.cfm

Appendix J - Calculating Hardness in Freshwater Receiving Waters for Hardness Dependent Metals

Overview

For any sectors required to conduct benchmark samples for a hardness-dependent metal, EPA includes 'hardness ranges' from which benchmark values are determined. To determine which hardness range to use, you must collect data on the hardness of your receiving water(s). Once the site-specific hardness data have been collected, the corresponding benchmark value for each metal is determined by comparing where the hardness data fall within hardness ranges, as shown in Table 1. You only need to determine hardness for your discharges into freshwater as the benchmark values for metals do not vary for discharges to saline waters.

Table 1. ***Hardness Ranges to Be Used to Determine Benchmark Values for Cadmium, Copper, Lead, Nickel, Silver, and Zinc.***

All Units mg/L	Benchmark Values (mg/L, total)					
	Cadmium	Copper	Lead	Nickel	Silver	Zinc
0-24.99 mg/L	0.0005	0.0038	0.014	0.15	0.0007	0.04
25-49.99 mg/L	0.0008	0.0056	0.023	0.20	0.0007	0.05
50-74.99 mg/L	0.0013	0.0090	0.045	0.32	0.0017	0.08
75-99.99 mg/L	0.0018	0.0123	0.069	0.42	0.0030	0.11
100-124.99 mg/L	0.0023	0.0156	0.095	0.52	0.0046	0.13
125-149.99 mg/L	0.0029	0.0189	0.122	0.61	0.0065	0.16
150-174.99 mg/L	0.0034	0.0221	0.151	0.71	0.0087	0.18
175-199.99 mg/L	0.0039	0.0253	0.182	0.80	0.0112	0.20
200-224.99 mg/L	0.0045	0.0285	0.213	0.89	0.0138	0.23
225-249.99 mg/L	0.0050	0.0316	0.246	0.98	0.0168	0.25
250+ mg/L	0.0053	0.0332	0.262	1.02	0.0183	0.26

How to Determine Hardness for Hardness-Dependent Parameters in Freshwater.

You may select one of three methods to determine hardness, including: individual grab sampling, grab sampling by a group of operators which discharge to the same receiving water, or using third-party data. Regardless of the method used, you are responsible for documenting the procedures used for determining hardness values. The hardness value is required to be submitted to EPA with your Notice of Intent (NOI) so that your electronic Discharge Monitoring Report (DMR) which you will submit through NetDMR will include the appropriate limits. You must retain all report and monitoring data in accordance with Part 7.5 of the permit. The three method options for determining hardness are detailed in the following sections.

(1) Permittee Samples for Receiving Stream Hardness

This method involves collecting samples in the receiving water and submitting these to a laboratory for analysis. If you elect to sample your receiving water(s) and submit samples for analysis, hardness must be determined from the closest intermittent or perennial stream downstream of your point of discharge. The sample can be collected during either dry or wet weather. Collection of the sample during wet weather is more representative of conditions

during stormwater discharges; however, collection of in-stream samples during wet weather events may be impracticable or present safety issues.

Hardness must be sampled and analyzed using approved methods as described in 40 CFR Part 136 (Guidelines Establishing Test Procedures for the Analysis of Pollutants).

(2) Group Monitoring for Receiving Stream Hardness

You can be part of a group of permittees discharging to the same receiving waters and collect samples that are representative of the hardness values for all members of the group. In this scenario, hardness of the receiving water must be determined using 40 CFR Part 136 procedures and the results shared by group members. To use the same results, hardness measurements must be taken on a stream reach within a reasonable distance of the discharge points of each of the group members.

(3) Collection of Third-Party Hardness Data

You can submit receiving stream hardness data collected by a third party provided the results are collected consistent with the approved 40 CFR Part 136 methods. These data may come from a local water utility, previously conducted stream reports, TMDLs, peer reviewed literature, other government publications, or data previously collected by the permittee. Data should be less than 10 years old.

Water quality data for many of the nation's surface waters are available on-line or by contacting EPA or a state environmental agency. EPA's data system STORET, short for STOrage and RETrieval, is a repository for receiving water quality, biological, and physical data and is used by state environmental agencies, EPA and other federal agencies, universities, private citizens, and many others. Similarly, state environmental agencies and the U.S. Geological Service (USGS) also have water quality data available that, in some instances, can be accessed online. "Legacy STORET" codes for hardness include: 259 hardness, carbonate; 260 hardness, noncarbonated; and 261 calcium + magnesium, while more recent, "Modern STORET" data codes include: 00900 hardness, 00901 carbonate hardness, and 00902 noncarbonate hardness; or the discrete measurements of calcium (00915) and magnesium (00925) can be used to calculate hardness. Hardness data historically has been reported as "carbonate," "noncarbonate," or "Ca + Mg." If these are unavailable, then individual results for calcium (Ca) and magnesium (Mg) may be used to calculate hardness using the following equation:

$$\text{mg/L } CaCO_3 = 2.497 \text{ (Ca mg/L)} + 4.118 \text{ (Mg mg/L)}$$

When interpreting the data for carbonate and non-carbonate hardness, note that total hardness is equivalent to the sum of carbonate and noncarbonate hardness if both forms are reported. If only carbonate hardness is reported, it is more than likely that noncarbonate hardness is absent and the total hardness is equivalent to the available carbonate hardness.

Appendix K - No Exposure Certification Form

Part 7.1 requires you to use the NPDES eReporting Tool, or "NeT", to prepare and submit your No Exposure Certification (NOE) form. However, if you are given a waiver by the EPA Regional Office to use a paper NOE form, and you elect to use it, you must complete and submit the following form.

NPDES FORM 3510-11	EPA	UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, DC 20460 NO EXPOSURE CERTIFICATION (NOE) FOR EXCLUSION FROM EPA'S MULTI-SECTOR GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY (MSGP)	Form Approved OMB No. 2040-0004

Submission of this No Exposure Certification constitutes notice that the operator identified in Section C does not require permit authorization under EPA's Stormwater Multi Sector General Permit for its stormwater discharges associated with industrial activity from the facility identified in Section D of this form due to the existence of a condition of no exposure.

A condition of no exposure exists at an industrial facility when all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product. A storm resistant shelter is not required for the following industrial materials and activities:

- drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak. "Sealed" means banded or otherwise secured and without operational taps or valves;
- adequately maintained vehicles used in material handling; and
- final products, other than products that would be mobilized in stormwater discharges (e.g., rock salt).

A No Exposure Certification must be provided for each facility qualifying for the no exposure exclusion. In addition, the exclusion from NPDES permitting is available on a facility-wide basis only, not for individual outfalls. If any industrial activities or materials are or will be exposed to precipitation, the facility is not eligible for the no exposure exclusion.

By signing and submitting this No Exposure Certification form, the operator in Section C is certifying that a condition of no exposure exists at its facility or site, and is obligated to comply with the terms and conditions of 40 CFR 122.26(g).

A. Approval to Use Paper NOE Form

1. Have you been granted a waiver from electronic reporting from the EPA Regional Office*? ☐ YES ☐ NO

If yes, check which waiver you have been granted, the name of the EPA Regional Office staff person who granted the waiver, and the date of approval:

Waiver granted:

☐ The owner/operator's 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.

☐ The owner/operator has issues regarding available computer access or computer capability.

Name of EPA staff person that granted the waiver:

Date approval obtained: / /

*** Note: You are required to obtain approval from the applicable EPA Regional Office prior to using this paper NOE form. If you have not obtained a waiver, you must file this form electronically using the NPDES eReporting Tool (NeT) at http://water.epa.gov/polwaste/npdes/stormwater/Stormwater-eNOI-System-for-EPAs-MultiSector-General-Permit.cfm**

B. Reason for Submission

Select the purpose for filling out this form (check only 1).

☐ **To obtain a new No Exposure Certification.** Fill in Sections C, D, E and F.

☐ **To discontinue an existing No Exposure Certification**. Select this option if you would like to discontinue an existing No Exposure Certification because your facility is no longer subject to regulation under 40 CFR 122.26 (e.g., the facility has ceased the industrial activity that necessitated the No Exposure Certification)*. Provide the following information and fill out Section G.

Provide the existing NPDES ID for the No Exposure Certification that you would like to discontinue:

*** Note that if your facility no longer qualifies for the No Exposure Certification because permit coverage is required for exposed industrial materials or activities, you should not check this box, and must instead file for coverage under the Multi-Sector General Permit or an individual permit. Your No Exposure Certification will be automatically discontinued after you obtain coverage under the MSGP or an individual permit.**

C. Facility Operator Information

1. Operator Name:

2. Mailing Address

Street:

City: State: ZIP Code: -

3. Phone: - - Ext.

4. E-mail:

5. Operator Point of Contact Information:

First Name, Middle Initial, Last Name:

Title:

D. Facility Information

1. Facility Name:

2. Facility Address:

Street/Location:

City: State: ZIP Code: -

County or Similar Government Subdivision:

3. Latitude/Longitude for the facility:

Latitude: __ __. __ __ __ __° N (decimal degrees) Longitude: __ __ __. __ __ __ __° W (decimal degrees)

Latitude/Longitude Data Source: ☐ Map ☐ GPS ☐ Other: _____

If you used a USGS topographic map, what was the scale? _____

Horizontal Reference Datum: ☐ NAD 27 ☐ NAD 83 ☐ WGS 84

4. Is your project/site located on Indian country lands? ☐ YES ☐ NO

If yes, provide the name of the Indian tribe associated with the area of Indian country (including name of Indian reservation, if applicable):

_____

5. Are you a "federal operator" as defined in Appendix A? ☐ YES ☐ NO

6. What is the ownership type of the facility? ☐ Federal Facility (U.S. Government) ☐ Privately Owned Facility ☐ Municipality

☐ County Government ☐ Corporation ☐ State Government ☐ Tribal Government ☐ School District

☐ District ☐ Mixed Ownership (e.g. Public/Private) ☐ Municipal or Water District

7. Have stormwater discharges from your facility been covered previously under an NPDES permit? ☐ YES ☐ NO

If yes, provide the NPDES ID if you had coverage under EPA's MSGP or the NPDES permit number if you had coverage under an EPA individual permit:

8. Has your facility previously been covered by a No Exposure exclusion? ☐ YES ☐ NO

If yes, provide the NPDES ID for your previous No Exposure exclusion:

9. Identify the 4-digit Standard Industrial Classification (SIC) code or 2-letter Activity Code that best represents the products produced or services rendered for which your facility is primarily engaged, as defined in MSGP:

Primary SIC Code: OR **Primary Activity Code**

10. Total size of site associated with industrial activity: _____ (to the nearest quarter acre)

11. Have you paved or roofed over a formerly exposed, pervious area in order to qualify for the no exposure exclusion? ☐ YES ☐ NO

If yes, please indicate approximately how much area was paved or roofed over. Completing this question does not disqualify you for the no exposure exclusion. However, your permitting authority may use this information in considering whether stormwater discharges from your site are likely to have an adverse impact on water quality, in which case you could be required to obtain permit coverage.

☐ Less than one (1) acre ☐ One (1) to five (5) acres ☐ More than five (5) acres

E. Exposure Checklist

Are any of the following materials or activities exposed to precipitation, now or in the foreseeable future?

(Please check either "Yes" or "No" in the appropriate box.) **If you answer "Yes" to any of these questions, you are <u>not</u> eligible for the no exposure exclusion.**

	Yes	No
Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to stormwater	☐	☐
Materials or residuals on the ground or in stormwater inlets from spills/leaks	☐	☐
Materials or products from past industrial activity	☐	☐
Material handling equipment (except adequately maintained vehicles)	☐	☐
Materials or products during loading/unloading or transporting activities	☐	☐
Materials or products stored outdoors (except final products intended for outside use [e.g., new cars] where exposure to stormwater does not result in the discharge of pollutants)	☐	☐
Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers	☐	☐
Materials or products handled/stored on roads or railways owned or maintained by the discharger	☐	☐
Waste material (except waste in covered, non-leaking containers [e.g., dumpsters])	☐	☐
Application or disposal of process wastewater (unless otherwise permitted)	☐	☐
Particulate matter or visible deposits of residuals from roof stacks and/or vents not otherwise regulated (i.e., under an air quality control permit) and evident in the stormwater outflow	☐	☐

F. Certification Information

I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from NPDES stormwater permitting.

I certify under penalty of law that there are no discharges of stormwater contaminated by exposure to industrial activities or materials from the industrial facility or site identified in this document (except as allowed under 40 CFR 122.26(g)(2)).

I understand that I am obligated to submit a no exposure certification form once every five years to the NPDES permitting authority and, if requested, to the operator of the local municipal separate storm sewer system (MS4) into which the facility discharges (where applicable). I understand that I must allow the NPDES permitting authority, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under an NPDES permit prior to any point source discharge of stormwater from the facility.

Additionally, I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

First Name, Middle Initial, Last Name:

Title:

Signature: _____ Date: / /

E-mail:

G. Discontinuation of No Exposure Certification Information

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

First Name, Middle Initial, Last Name:

Title:

Signature: _____ Date: / /

E-mail:

Instructions for Completing EPA Form 3510-11

No Exposure Certification (NOE) for Exclusion from Stormwater Discharges Associated with Industrial Activity Under an NPDES General Permit

NPDES Form Date (06/15) This Form Replaces From 3510-11 (09/08) Form Approved OMB No. 2040-0004

Who May File a No Exposure Certification

Federal law at 40 CFR Part 122.26 prohibits point source discharges of stormwater associated with industrial activity to waters of the U.S. without a National Pollutant Discharge Elimination System (NPDES) permit. However, NPDES permit coverage is not required for discharges of stormwater associated with industrial activities identified at 40 CFR 122.26(b)(14)(i)-(ix) and (xi) if the discharger can certify that a condition of "no exposure" exists at the industrial facility or site.

Stormwater discharges from construction activities identified in 40 CFR 122.26(b)(14)(x) and (b)(15) are not eligible for the no exposure exclusion.

Obtaining and Maintaining the No Exposure Exclusion

This form is used to certify that a condition of no exposure exists at the industrial facility or site described herein. This certification is only applicable in jurisdictions where EPA is the NPDES permitting authority and must be re-submitted at least once every five years.

The industrial facility operator must maintain a condition of no exposure at its facility or site in order for the no exposure exclusion to remain applicable. If conditions change resulting in the exposure of materials and activities to stormwater, the facility operator must obtain coverage under an NPDES stormwater permit immediately.

Completing the Form

You must type or print, using uppercase letters, in appropriate areas only. Enter only one character per space (i.e., between the marks). Abbreviate if necessary to stay within the number of characters allowed for each item. Use one space for breaks between words. One form must be completed for each facility or site for which you are seeking to certify a condition of no exposure. Please make sure you have addressed all applicable questions and have made a photocopy for your records before sending the completed form to the above address.

Section A. Approval to Use Paper NOE Form

You must indicate whether you have been granted a waiver from electronic reporting from the EPA Regional Office. Note that you are not authorized to use this paper No Exposure Certification (NOE) form unless the EPA Regional Office has approved its use. Where you have obtained approval to use this form, indicate the waiver that you have been granted, the name of the EPA Regional Office staff person who granted the waiver, and the date that approval was provided. See http://water.epa.gov/polwaste/npdes/stormwater/Stormwater-Contacts.cfm for a list of EPA Regional Office contacts.

Section B. Reason for Submission

You must check your reason for submitting this form. You may submit this form for obtaining a new No Exposure Certification, for renewing a previous No Exposure Certification, or for discontinuing an existing No Exposure Certification (for facilities that no longer need the exclusion from permit coverage for industrial stormwater discharges).

Section C. Facility Operator Information

Provide the legal name of the person, firm, public organization, or any other entity that operates the facility described in this certification form. An operator of a facility is the legal entity that controls the operation of the facility. Refer to Appendix A of the MSGP for the definition of "operator". Provide the operator's mailing address, phone number, and e-mail. Correspondence for the NOE will be sent to this address. Also provide the name and title for the operator point of contact (note that the point of contact name may be the same as the operator name).

Section D. Facility Information

Enter the official or legal name and complete street address, including city, state, ZIP code, and county or similar government subdivision of the facility. If the facility lacks a street address, indicate the general location of the facility (e.g., Intersection of State Highways 61 and 34). Complete facility information must be provided for permit coverage to be granted.

Provide the latitude and longitude of your facility in decimal degrees format. The latitude and longitude of your facility can be determined in several different ways, including through the use of global positioning system (GPS) receivers and U.S. Geological Survey (U.S.G.S.) topographic or quadrangle maps. Refer to http://transition.fcc.gov/mb/audio/bickel/DDDMMSS-decimal.html/ for assistance in providing the proper latitude/longitude format. For consistency, EPA requests that measurements be taken form the approximate center of the facility. Specify which method you used to determine latitude and longitude. If a U.S.G.S. topographic map is used, specify the scale of the map used. Enter the horizontal reference datum for your latitude and longitude. The horizontal reference datum used on USGS topographic maps is shown on the bottom left corner of USGS topographic maps; it is also available for GPS receivers.

Indicate whether the facility is on Indian country lands, and if so, provide the name of the Indian tribe associated with the area of Indian country (including name of Indian reservation, if applicable).

Indicate whether you are a "federal operator" as defined in Appendix A of the MSGP. Also check the facility's ownership type.

Indicate whether the facility was previously covered under an NPDES stormwater permit. If so, include the NPDES ID (i.e., NOI tracking number).

List the four-digit Standard Industrial Classification (SIC) code or two character activity code that best describes the primary industrial activities performed by your facility.

Enter the total size of the site associated with industrial activity in acres.

Check "Yes" or "No" as appropriate to indicate whether you have paved or roofed over a formerly exposed, pervious area (i.e., lawn, meadow, dirt or gravel road/parking lot) in order to qualify for no exposure. If yes, also indicate approximately how much area was paved or roofed over and is now impervious area.

Instructions for Completing EPA Form 3510-11

No Exposure Certification (NOE) for Exclusion from Stormwater Discharges Associated with Industrial Activity Under an NPDES General Permit

NPDES Form Date (06/15) This Form Replaces From 3510-11 (09/08) Form Approved OMB No. 2040-0004

Section E. Exposure Checklist

Check "Yes" or "No" as appropriate to describe the exposure condition at your facility. If you answer "Yes" to **ANY** of the questions in this section, a potential for exposure exists at your site and you cannot certify to a condition of no exposure. You must obtain (or already have) coverage under an NPDES stormwater permit. After obtaining permit coverage, you can institute modifications to eliminate the potential for a discharge of stormwater exposed to industrial activity, and then certify to a condition of no exposure.

Section F and G. Certification Information

The NOE form must be signed as follows:

For a corporation: By a responsible corporate officer. For the purpose of this Section, a responsible corporate officer means:

(i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

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

For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this Part, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator of EPA). Include the name and title of the person signing the form and the date of signing.

Include the name, title, and email address of the person signing the form and the date of signing.

An unsigned or undated NOE certification will not be considered valid.

Paperwork Reduction Act Notice

Public reporting burden for this certification is estimated to average 1.0 hour per certification, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose to provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number of this form on any correspondence. Do not send the completed No Exposure Certification form to this address.

Submitting Your Form

If you have been granted a waiver from your Regional Office to submit a paper No Exposure Certification form, you must send your No Exposure Certification form by mail to one of the following addresses:

For Regular U.S. Mail Delivery:

Stormwater Notice Processing Center
Mail Code 4203M, ATTN: MSGP No Exposure
U.S. EPA
1200 Pennsylvania Avenue, NW
Washington, DC 20460

For Overnight/Express Mail Delivery:

Stormwater Notice Processing Center
William Jefferson Clinton East Building - Room 7420
ATTN: MSGP No Exposure
U.S. EPA
1201 Constitution Avenue, NW
Washington, DC 20004

Visit this website for instructions on how to submit electronically: http://water.epa.gov/polwaste/npdes/stormwater/Stormwater-eNOI-System-for-EPAs-MultiSector-General-Permit.cfm

Appendix L - List of Tier 3, Tier 2, and Tier 2.5 Waters

EPA's MSGP has special requirements for discharges to waters designated by a state or tribe as Tier 2/2.5 or Tier 3 for antidegradation purposes under 40 CFR 131.12(a). See Parts 1.1.4.8 and 1.1.4.10

The list below is provided as a resource for operators who must determine whether they discharge to a Tier 2/2.5 or Tier 3 water. Only Tier 2/2.5 or Tier 3 waters specifically identified by a water quality standard authority (e.g., a state, territory, or tribe) are identified in the table below. Many authorities evaluate the existing and protected quality of the receiving water on a pollutant-by-pollutant basis and determine whether water quality is better than the applicable criteria that would be affected by a new discharger or a new source or an increase in an existing discharge of the pollutant. In instances where water quality is better, the authority may choose to allow lower water quality, where lower water quality is determined to be necessary to support important social and economic development. Permittees are not required to identify those waters which are evaluated on an individual basis.

Permit Number	Areas of Coverage/Where EPA Is Permitting Authority	
MAR050000	**Commonwealth of Massachusetts, except Indian Country lands**	
	Tier 2, Tier 2.5, and 3 waters are identified and listed in the Massachusetts Water Quality Standards 314 CMR 4.00. Surface water qualifiers that correspond with Tier classifications are defined at 314 CMR 4.06(1)(d)m and listed in tables and figures at the end of 314 CMR 4.06. See MassDEP's web page at http://www.mass.gov/eea/agencies/massdep/water/regulations/314-cmr-4-00-mass-surface-water-quality-standards.html.	
	Tier 2	Listed as "High Quality Waters", and all wetlands that are not designated as an Outstanding Resource Water
	Tier 2.5	Listed as "Outstanding Resource Water", "Public Water Supply", "Tributary to Public Water Supply", all wetlands bordering Outstanding Resource Waters, and vernal pools
	Tier 3	Defined as "Special Resource Water". Note: No waters have been defined as a Special Resource Water as of the issuance of this permit.
NHR050000	**State of New Hampshire**	
	Tier 2/2.5	There is no list of Tier 2/Tier 2.5 waters. New dischargers and new sources should contact Thelma Murphy (EPA Region 1's stormwater coordinator) at murphy.thelma@epa.gov.
	Tier 3	Env-Ws 1708.05(a) Surface waters of national forests and surface waters designated as "natural" under RSA 483:7-a, I shall be considered outstanding resource waters (ORW). "Natural waters" are listed at http://www.gencourt.state.nh.us/rsa/html/L/483/483-15.htm. Surface waters of national forests are not included in an official list. For further questions, new dischargers and new sources should contact Thelma Murphy (EPA Region 1's stormwater coordinator) at murphy.thelma@epa.gov.

Permit Number	Areas of Coverage/Where EPA Is Permitting Authority	
PRR050000	**Commonwealth of Puerto Rico**	
	Tier 3	Tier III waters are those which are classified as either Class SA or Class SE. Class SA waters are defined as "Coastal waters and estuarine waters of high quality and/or exceptional ecological or recreational value whose existing characteristics shall not be altered, except by natural causes, in order to preserve the existing natural phenomena." Class SA waters include bioluminescent lagoons and bays such as La Parguera and Monsio José on the Southern Coast, Bahía de Mosquito in Vieques, and any other coastal or estuarine waters of exceptional quality of high ecological value or recreational which may be designated by Puerto Rico, through Resolution, as requiring this classification for protection of the waters. Class SE waters are defined as "Surface waters and wetlands of exceptional ecological value, whose existing characteristics should not be altered in order to preserve the existing natural phenomena." Class SE waters include Laguna Tortuguero, Laguna Cartagena and any other surface water bodies of exceptional ecological value as may be designated by Puerto Rico through Resolution.
DCR050000	**District of Columbia**	
	Tier 2/2.5	Rule 1102.4 SPECIAL WATERS OF THE DISTRICT OF COLUMBIA (SWDC): Any segment or segments of the surface waters of the District that are of water quality better than needed for the current use or have scenic or aesthetic importance shall be designated as Special Waters of the District of Columbia (SWDC). Rock Creek and its tributaries and Battery Kemble Creek and its tributaries are considered Special Waters of the District of Columbia (SWDC) under its antidegradation program.
MNR05000I	**Fond du Lac Band of MN Chippewa**	
	Tier 3	Six lakes are presently identified as Tier 3: (1) Dead Fish, (2) Jaskari, (3) Miller (Mud), (4) Perch, (5) Rice Portage, (6) Wild Rice.
	Grand Portage Band of MN Chippewa	
	Tier 2/2.5	All waters, not already classified as Tier 3, are high quality Tier 2 waters. (see Grand Portage Reservation Water Quality Standards, Section VI & VII, Pages 14-16).
	Tier 3	"The portion of Lake Superior north of latitude 47 degrees, 57 minutes, 13 seconds, east of Hat Point, south of the Minnesota-Ontario boundary, and west of the Minnesota-Michigan boundary." (see Section VII, Page 16).
WIR05000I	**Lac du Flambeau Band of the Lake Superior Chippewa**	
	Tier 2	All named waters, including wetlands, not specified under an antidegradation classification.
	Tier 2.5	Bills Lake, Birch Lake, Bobidosh Lake, Bog Lake (SE SE Sec. 31, T40NR6E), Bolton Lake, Broken Bow Lake, Chewalah Lake, Clear Lake (Sec. 2, T39NR4E), Corn Great, Great, Corn Lake, Little "Least/Lesser", Crawling Stone Lake, Big, Crawling Stone Lake, Little, Crescent Lake, Crooked Lake, Big, David Lake, Ellerson Lake, Middle, Ellerson Lake, West, Elsie Lake "Boundary Lake", Fat Lake, Fence Lake, Gresham

Permit Number	Areas of Coverage/Where EPA Is Permitting Authority	
		Creek, Green Lake (NW NW Sec. 19, T41R6E), Grey Lake, Gunlock Lake, Haskell Lake, Headflyer Lake (Sec. 19, T41NR5E), Highway Lake (NW NW Sec. 19, T41NR5E), Horsehead Lake (SE SW Sec. 9, T40NR5E), Hutton's Creek, Ike Walton Lake, Lily Lake (SE SW Sec. 35, T40NR5E), Little Ten Lake, Lodge Lake "L. Rice" (NW NW Sec. 8, T41NR6E), Lucy Lake, Mindys Lake (Sec. 8, T40NR5E), Minette Lake, Mitten Lake, Monk's Lake (Sec. 13, T40NR5E), Moving Cloud Lake, Mud Creek, Muskesin Lake, Patterson Lake, Placid Twin Lake (North), Placid Twin Lake (South), Plummer Lake, Poupart Lake, Prairie Lake (NE SW Sec. 13, T40NR4E), Raven Lake, Ross Allen Lake, Sand Lake, Little, Scott Lake (Sec. 22, T40N, R4E), Shishebogama Lake, Signal Lake, Snort Lake (Sec. 5, T41N, R6E), Spring Lake "Jerms", Squirrel Lake, Statenaker Lake "Hollow", Stearns Lake "Hourglass", Sugarbush "Hidden Lake" (NW NW Sec. 17, T41NR5E), Sugarbush Creek, Sugarbush Lake, Little, Sugarbush Lake, Lower, Sugarbush Lake, Middle, Sugarbush Lake, Upper, Sunfish Lake, Tippecanoe Lake, Tomahawk River, To-To Tom Lake, Toulish Lake, Trout River, Warrior Lake, White Sand Lake, Whitefish Lake "Cattail Lake" (Sec. 34, T40N5R), Wishow Lake, Wyandock Lake
	Tier 3	Bear River (1st bridge to Reservation boundary), Big Springs (Sec. 25, T40NR4E), Black Lake, Cranberry Lake, Doud Lake, Eagle Lake, Gene Lake, Johnson Springs, Little Trout Lake, Lost Lake (Sect. 1, T41NR4E), Mishonagon Creek, Munnomin (Jesse, Duck) Lake, Negani (Hegani) Lake, Reservation Line Lake, Spring Creek, Tank Lake, Thomas Lake, Wild Rice Lake, Zee Lake
	Mole Lake Band of the Lake Superior Tribe of the Chippewa Indians, Sokaogon Chippewa Community	
	Tier 2.9	One Tribal Water, Wetland 22, is classified as Exceptional High Quality Water (EHQW). It is a high-quality water body of significant cultural, religious, social, ecological and recreational attributes.
	Tier 3	All waters in the Sokaogon Chippewa Community (WI) as classified as Tier 3, with one exception (Wetland 22).
COR0500I	**State of Colorado**	
	Ute Mountain Ute Tribe	
	Tier 3	(2010 Proposed) Designations: 1. Ute Spring and unnamed creek from Ute Spring downstream within Section 12, TWP35N R18W (Colorado). 2. Allen Canyon Creek, Sections 17, 20, 29, 30, 31, TWP 35S, R21E (Utah) 3. "Lopez" Spring and unnamed creek tributary to and downstream from the spring, within Section 35, TWP 34N, R18W
NMR050000	**State of New Mexico**	
	Tier 3	(1) Rio Santa Barbara, including the west, middle and east forks from their headwaters downstream to the boundary of the Pecos Wilderness; and (2) the waters within the United States forest service Valle Vidal special management unit including:

Permit Number	Areas of Coverage/Where EPA Is Permitting Authority	
		(a) Rio Costilla, including Comanche, La Cueva, Fernandez, Chuckwagon, Little Costilla, Holman, Gold, Grassy, LaBelle and Vidal creeks, from their headwaters downstream to the boundary of the United States forest service Valle Vidal special management unit; (b) Middle Ponil creek, including the waters of Greenwood Canyon, from their headwaters downstream to the boundary of the Elliott S. Barker wildlife management area; (c) Shuree lakes; (d) North Ponil creek, including McCrystal and Seally Canyon creeks, from their headwaters downstream to the boundary of the United States forest service Valle Vidal special management unit; and (e) Leandro creek from its headwaters downstream to the boundary of the United States forest service Valle Vidal special management unit. (3) the named perennial surface waters of the state, identified in Subparagraph (a) below, located within United States department of agriculture forest service wilderness. Wilderness are those lands designated by the United States congress as wilderness pursuant to the Wilderness Act. Wilderness areas included in this designation are the Aldo Leopold wilderness, Apache Kid wilderness, Blue Range wilderness, Chama River Canyon wilderness, Cruces Basin wilderness, Dome wilderness, Gila wilderness, Latir Peak wilderness, Pecos wilderness, San Pedro Parks wilderness, Wheeler Peak wilderness, and White Mountain wilderness. (a) The following waters are designated in the Rio Grande basin: (i) in the Aldo Leopold wilderness: Byers Run, Circle Seven creek, Flower canyon, Holden Prong, Indian canyon, Las Animas creek, Mud Spring canyon, North Fork Palomas creek, North Seco creek, Pretty canyon, Sids Prong, South Animas canyon, Victorio Park canyon, Water canyon; (ii) in the Apache Kid wilderness Indian creek and Smith canyon; (iii) in the Chama River Canyon wilderness: Chavez canyon, Ojitos canyon, Rio Chama; (iv) in the Cruces Basin wilderness: Beaver creek, Cruces creek, Diablo creek, Escondido creek, Lobo creek, Osha creek; (v) in the Dome wilderness: Capulin creek, Medio creek, Sanchez canyon/creek; (vi) in the Latir Peak wilderness: Bull creek, Bull Creek lake, Heart lake, Lagunitas Fork, Lake Fork creek, Rito del Medio, Rito Primero, West Latir creek; (vii) in the Pecos wilderness: Agua Sarca, Hidden lake, Horseshoe lake (Alamitos), Jose Vigil lake, Nambe lake, Nat lake IV, No Fish lake, North Fork Rio Quemado, Rinconada, Rio Capulin, Rio de las Trampas (Trampas creek), Rio de Truchas, Rio Frijoles, Rio Medio, Rio Molino, Rio Nambe, Rio San Leonardo, Rito con Agua, Rito Gallina, Rito Jaroso, Rito Quemado, San Leonardo lake, Santa Fe lake, Santa Fe river, Serpent lake, South Fork Rio Quemado, Trampas lake (East), Trampas lake (West); (viii) in the San Pedro Parks wilderness: Agua Sarca, Cañon Madera, Cave creek, Cecilia Canyon creek, Clear creek (North SPP), Clear creek (South SPP), Corralitos creek, Dove creek, Jose Miguel creek, La

Permit Number	Areas of Coverage/Where EPA Is Permitting Authority	
		Jara creek, Oso creek, Rio Capulin, Rio de las Vacas, Rio Gallina, Rio Puerco de Chama, Rito Anastacio East, Rito Anastacio West, Rito de las Palomas, Rito de las Perchas, Rito de los Pinos, Rito de los Utes, Rito Leche, Rito Redondo, Rito Resumidero, San Gregorio lake; (ix) in the Wheeler Peak wilderness: Black Copper canyon, East Fork Red river, Elk lake, Horseshoe lake, Lost lake, Sawmill creek, South Fork lake, South Fork Rio Hondo, Williams lake. (b) The following waters are designated in the Pecos River basin: (i) in the Pecos wilderness: Albright creek, Bear creek, Beatty creek, Beaver creek, Carpenter creek, Cascade canyon, Cave creek, El Porvenir creek, Hollinger creek, Holy Ghost creek, Horsethief creek, Jack's creek, Jarosa canyon/creek, Johnson lake, Lake Katherine, Lost Bear lake, Noisy brook, Panchuela creek, Pecos Baldy lake, Pecos river, Rio Mora, Rio Valdez, Rito Azul, Rito de los Chimayosos, Rito de los Esteros, Rito del Oso, Rito del Padre, Rito las Trampas, Rito Maestas, Rito Oscuro, Rito Perro, Rito Sebadilloses, South Fork Bear creek, South Fork Rito Azul, Spirit lake, Stewart lake, Truchas lake (North), Truchas lake (South), Winsor creek; (ii) in the White Mountain wilderness: Argentina creek, Aspen creek, Bonito creek, Little Bonito creek, Mills canyon/creek, Rodamaker creek, South Fork Rio Bonito, Turkey canyon/creek. (c) The following waters are designated in the Gila River basin: (i) in the Aldo Leopold wilderness: Aspen canyon, Black Canyon creek, Bonner canyon, Burnt canyon, Diamond creek, Falls canyon, Fisherman canyon, Running Water canyon, South Diamond creek; (ii) in the Gila wilderness: Apache creek, Black Canyon creek, Brush canyon, Canyon creek, Chicken Coop canyon, Clear creek, Cooper canyon, Cow creek, Cub creek, Diamond creek, East Fork Gila river, Gila river, Gilita creek, Indian creek, Iron creek, Langstroth canyon, Lilley canyon, Little creek, Little Turkey creek, Lookout canyon, McKenna creek, Middle Fork Gila river, Miller Spring canyon, Mogollon creek, Panther canyon, Prior creek, Rain creek, Raw Meat creek, Rocky canyon, Sacaton creek, Sapillo creek, Sheep Corral canyon, Skeleton canyon, Squaw creek, Sycamore canyon, Trail canyon, Trail creek, Trout creek, Turkey creek, Turkey Feather creek, Turnbo canyon, West Fork Gila river, West Fork Mogollon creek, White creek, Willow creek, Woodrow canyon. (d) The following waters are designated in the Canadian River basin: in the Pecos wilderness Daily creek, Johns canyon, Middle Fork Lake of Rio de la Casa, Middle Fork Rio de la Casa, North Fork Lake of Rio de la Casa, Rito de Gascon, Rito San Jose, Sapello river, South Fork Rio de la Casa, Sparks creek (Manuelitas creek). (e) The following waters are designated in the San Francisco River basin: (i) in the Blue Range wilderness: Pueblo creek; (ii) in the Gila wilderness: Big Dry creek, Lipsey canyon, Little Dry creek, Little Whitewater creek, South Fork Whitewater creek, Spider creek, Spruce creek, Whitewater creek.

Permit Number	Areas of Coverage/Where EPA Is Permitting Authority	
		(f) The following waters are designated in the Mimbres Closed basin: in the Aldo Leopold wilderness Corral canyon, Mimbres river, North Fork Mimbres river, South Fork Mimbres river. (g) The following waters are designated in the Tularosa Closed basin: in the White Mountain wilderness Indian creek, Nogal Arroyo, Three Rivers. (h) The wetlands designated are identified on the maps and list of wetlands within United States forest service wilderness areas designated as outstanding national resource waters published at the New Mexico state library and available on the department's website.
CAR05000I	**Hualapai Tribe**	
	Tier 3	Spencer, Meriwhitica, Willow Spring, Upper Milkweed Spring, Bridge Canyon, Travertine Spring, Travertine Falls, Diamond Creek, Diamond Creek Spring, Blue Mountain, Metuck, Peach Springs Spring, Westwater, Clay Tank, Hockey Puck, Pocamote Spring, Mohawk Spring, Granite Spring, Three Spring, Warm Spring, Honga Spring, National Canyon Spring, National Canyon, Moss Spring
	White Mountain Apache Tripe of the Fort Apache Indian Reservation	
	Tier 2/2.5	East Fork White River, above R52 Road, East Fork White River below R52 Road, above Rock Cr., Paradise Creek, above Wohlenberg, Ord Creek, Smith Cienega, Bull Cienega, Smith Creek, Big Bonito , Tonto Creek, below Y47 Crossing, Crooked Creek, Boggy Creek, Lofer Cienego Creek, Little Bonito Creek, above Y55 Crossing, Flash Creek, Squaw Creek, Hurricane Lake, Hurricane Creek, Hughey Creek, Bonito Cienega, West Fork Black River, Hall Cienega, Purcell Cienega, Thompson Creek, Carrizo Creek below Corduroy, Carrizo Creek above Corduroy, Cedar Creek, Big Canyon (E. Cedar Creek), Middle Cedar Creek, West Cedar Creek, Cibecue Creek in Box Canyon to Salt river, Cibecue Creek, Box CallYon up to confluence with Salt Creek, Spring Creek, Salt Creek, Cibecue Creek, from confluence w/Salt Cr, to Big Springs, Cibecue Creek, above Big Springs, Rock Springs Creek, Salt Draw, Canyon Creek S. of Chediski Farms, Willow Creek (Lower Canyon Cr), Oak Creek, Canyon Creek. N. of Chedlski Fanns,
	Tier 3	East Fork While River, in Wilderness Area, Pumpkin Lake
IDR050000	**State of Idaho**	
	For Tier 2 and Tier 3 waters, please consult the Idaho Integrated Report, available at: http://www.deq.idaho.gov/water-quality/surface-water/monitoring-assessment/integrated-report.aspx and the closest regional office of the Idaho Department of Environmental Quality: http://www.deq.idaho.gov/regional-offices-issues.aspx	

Appendix M - Discharge Monitoring Report (DMR) Form

Part 7.1 requires you to use the electronic NetDMR system to prepare and submit your Discharge Monitoring Report (DMR) form. However, if you are given approval by the EPA Regional Office to use a paper DMR form, and you elect to use it, you must complete and submit the following form.

NPDES FORM 6100-29	EPA	UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, DC 20460 MSGP INDUSTRIAL DISCHARGE MONITORING REPORT (DMR) FORM	Form Approved. OMB No. 2040-0004

A. Approval to Use Paper DMR Form

1. Have you been granted a waiver from electronic reporting from the EPA Regional Office*? ☐ YES ☐ NO

If yes, check which waiver you have been granted, the name of the EPA Regional Office staff person who granted the waiver, and the date of approval:

Waiver granted:
- ☐ The owner/operator's 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.
- ☐ The owner/operator has issues regarding available computer access or computer capability.

Name of EPA staff person that granted the waiver:

Date approval obtained: / /

*** Note: You are required to obtain approval from the applicable EPA Regional Office prior to using this paper DMR form. If you have not obtained a waiver, you must file this form electronically using the NetDMR at http://www.epa.gov/netdmr/**

B. Permit Information

1. NPDES ID:

2. Reason(s) for Submission (Check all that apply):

- ☐ Submitting monitoring data (Fill in all Sections).
- ☐ Reporting no discharge for all outfalls for this monitoring period (Fill in Sections A, B, C, D, E.1, and G).
- ☐ Reporting that your site status has changed to inactive and unstaffed (Fill in Sections A, B, C, D, and F and include date of status change in comment field in Section F.4).
- ☐ Reporting that your site status has changed to active (Fill in all Sections and include date of status change in comment field in Section F.4).
- ☐ Reporting that no further pollutant reductions are achievable for all outffalls and for all pollutants via Part 6.2.1.2 of the MSGP (Fill in Sections A, B, C, D, and G).

C. Facility Operator Information

1. Operator Information

Operator Name:

Mailing Address:

Street:

City: State: ZIP Code: -

Phone: - - Ext.

E-mail:

2. DMR Preparer (Complete if DMR was prepared by someone other than the certifier):

First Name, Middle Initial, Last Name:

Organization:

Phone: - - Ext.

E-mail:

D. Facility Information

1. Facility Name:

2. Facility Address:

Street/Location:

City: State: ZIP Code: -

County or Similar Government Subdivision:

E. Discharge Information

1. Identify monitoring period: ☐ Check here if proposing alternative monitoring periods due to irregular stormwater runoff. Identify alternative monitoring schedule and indicate for which alternative monitoring period you are reporting monitoring data:

☐ Quarter 1 (January 1 – March 31)	☐ Quarter 1: From / To /	
☐ Quarter 2 (April 1 – June 30)	☐ Quarter 2: From / To /	
☐ Quarter 3 (July 1 – September 30)	☐ Quarter 3: From / To /	
☐ Quarter 4 (October 1 – December 31)	☐ Quarter 4: From / To /	

2. Are you required to monitor for cadmium, copper, chromium, lead, nickel, silver, or zinc in freshwater? ☐ Yes (Skip to 3) ☐ No (Skip to 4)

3. What is the hardness level of the receiving water? (mg/L)

4. Does your facility discharge into any saltwater receiving waters? ☐ Yes ☐ No

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460
MSGP INDUSTRIAL DISCHARGE MONITORING REPORT (DMR)

Form Approved. OMB No. 2040-0004

F. Monitoring Information **Note: Make additional copies of this form as necessary.**

1. Nature of Discharge: ☐ Rainfall (Complete line items 2.a., 2.b., & 2.c.) ☐ Snowmelt

2.a. Duration of the rainfall event (hours): ☐☐ 2.b. Rainfall amount (inches): ☐☐.☐ 2.c. Time since previous measurable storm event (days): ☐☐☐

3.a. Outfall ID (list the same 3-digit outfalls identified on the NOI form)	3.b. Check if Any Outfalls are Substantially Identical to Other Outfalls Listed	3.c. Check if No Discharge	3.d. Monitoring Type QBM, ELG, S/T, I, O*	3.e. Parameter	3.f. Quality or Concentration	3.g. Units	3.h. Results Description	3.i. Collection Date	3.j. Exceedance due to natural background pollutant levels	3.k. No further pollutant reductions achievable?
		☐							☐	☐
	☐ Substantially identical to outfall:_____	☐							☐	☐
	☐ Substantially identical to outfall:_____	☐							☐	☐
	☐ Substantially identical to outfall:_____	☐							☐	☐
	☐ Substantially identical to outfall:_____	☐							☐	☐
	☐ Substantially identical to outfall:_____	☐							☐	☐
	☐ Substantially identical to outfall:_____	☐							☐	☐
	☐ Substantially identical to outfall:_____	☐							☐	☐

* (QBM) - Quarterly benchmark monitoring; (ELG) - Annual effluent limitations guidelines monitoring; (S/T) - State- or tribal-specific monitoring; (I) - Impaired waters monitoring; (O) -Other monitoring as required by EPA

4. Comment and/or Explanation of Any Violations (Reference all attachments here)

G. Certification

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

First Name, Middle Initial, Last Name:

Title:

Signature: _____ Date: / /

E-mail:

Instructions for Completing EPA Form 6100-29

Discharge Monitoring Report (DMR) for Stormwater Discharges Associated with Industrial Activity Under the NPDES Multi-Sector General Permit

NPDES Form Date (06/15) Form Approved OMB No. 2040-0004

Who Must Submit A Discharge Monitoring Report to EPA?

Facilities covered under the Multi-Sector General Permit (MSGP or permit) that are required to monitor pursuant to Parts 6.2 and 8 of the permit must submit Discharge Monitoring Reports (DMRs) consistent with the reporting requirements specified in Part 7.1 of the permit.

Completing the Form

Obtain and read a copy of the 2015 MSGP, viewable at http://water.epa.gov/polwaste/npdes/stormwater/EPA-Multi-Sector-General-Permit-MSGP.cfm. To complete this form, type or print, using uppercase letters, in the appropriate areas only. Please place each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use only one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. Please submit original document with signature in ink - do not send a photocopied signature. **Photocopy your DMR form for your records before you send the completed original form to the appropriate address.**

Section A. Approval to Use Paper DMR Form

You must indicate whether you have been granted a waiver from electronic reporting from the EPA Regional Office. Note that you are not authorized to use this paper DMR form unless the EPA Regional Office has approved its use. Where you have obtained approval to use this form, indicate the waiver that you have been granted, the name of the EPA staff person who granted the waiver, and the date that approval was provided. See http://water.epa.gov/polwaste/npdes/stormwater/EPA-Multi-Sector-General-Permit-MSGP.cfm for a list of EPA Regional Office contacts.

Section B. Permit Information

Provide the NPDES ID (i.e., NOI tracking number) assigned to the facility for which this DMR is being submitted.

Indicate your reason(s) for submitting this DMR by checking all boxes that apply. The reasons for submission are defined as follows:

- *Submitting monitoring data*: For each storm sampled, submit one DMR form with data for all outfalls sampled. Select this reason even if you only have monitoring data for some of your outfalls (i.e., some outfalls did not discharge). If you select this reason you are required to complete all Sections of the form.
- *Reporting no discharge for all outfalls for this monitoring period*: Indicates that there were no discharges from all outfalls during this monitoring period. If you select this reason you are only required to complete Sections A, B, C, D, E.1, and G.
- *Reporting that your site status has changed to inactive and unstaffed*: Indicates that your facility is currently inactive and unstaffed (See Part 6.2.1.3 of the permit for more information). If you select this reason you are only required to complete Sections A, B, C, D, and F and include date of status change in comment field in Section F.4
- *Reporting that your site status has changed from inactive to active*: Indicates that your facility is currently active (See Part 6.2.1.3 of the permit for more information). If you select this reason you are required to complete all Sections of the form and include date of status change in the comment field in Section F.4.
- *Reporting that no further reductions are achievable for all outfalls and for all pollutants via Part 6.2.1.2 of the permit*: Indicates that you have determined that no further pollutant reductions are technologically and economically practicable in light of best industry practice to meet the technology-based effluent limits or are necessary to meet the water-quality-based effluent limitations in Parts 2 of the permit (See Part 6.2.1.2 of the permit for more information). If you select this reason you are required to complete Sections A, B, C, D and G. However, if you can make this finding for some outfalls and pollutants, but not for others, you cannot select this reason; you will instead be able to identify which outfalls and which pollutants you can make this finding for in Section F.

Section C. Facility Operator Information.

Provide the legal name of the person, firm, public organization, or any other entity that operates the facility for which this DMR is being submitted. An operator of a facility is the legal entity that controls the operation of the facility. Refer to Appendix A of the permit for the definition of "operator". Provide the operator's mailing address, phone number, and e-mail. The operator information in this Section should match the operator information provided on your NOI form.

Provide the name, organization, phone number, an email address for the person who prepared this DMR form.

Section D. Facility Information

Enter the official or legal name and complete street address, including city, state, ZIP code, and county or similar government subdivision of the facility. If the facility lacks a street address, indicate the general location of the facility (e.g., Intersection of State Highways 61 and 34). Complete facility information must be provided for permit coverage to be granted. The facility information in this Section should match the facility information provided on your NOI form.

Section E. Discharge Information.

Indicate the appropriate monitoring period (Quarter 1, 2, 3, or 4) covered by the DMR. "Alternative" monitoring periods can apply to facilities located in arid and semi-arid climates, or in areas subject to snow or prolonged freezing. To use alternative monitoring periods, you must provide a revised monitoring schedule here. If using alternative monitoring periods, identify the first day of the monitoring period through the last day of the monitoring period for each of the four periods. The dates should be displayed as month (Mo) / day (Day). See Parts 6.1.6 and 6.1.7 of the permit for more information.

If you are submitting benchmark monitoring data, identify if your facility is required to collect benchmark samples for one or more hardness-dependent metals (i.e., cadmium, copper, lead, nickel, silver, and zinc). If you select "yes" to this question provide the hardness level of the receiving water (in mg/L)). If you select "no" to this question, you must identify if your facility discharges into any saltwater receiving waters.

F. Monitoring Information

For the reported monitoring event indicate whether the discharge was from a rainfall or snowmelt event. If you select "rainfall" then indicate the duration (in hours) of the rainfall event, rainfall total (in inches) for that rainfall event, and time (in days) since the previous measurable storm event in line items 2.a-c. For both rainfall and snowmelt monitoring, you must identify the date of collection for the monitoring event in column 3.i. of the table. If the discharge occurs during a period of both rainfall and snowmelt, check both the rainfall and snowmelt boxes and report the appropriate rainfall information in item 2.a-c. To report multiple monitoring events in the same reporting period, copy this form and enter each monitoring event separately with data for all outfalls sampled.

Identify all the outfalls from your facility that discharge stormwater. Each outfall must be assigned a unique 3-digit number (e.g., 001, 002, 003), and should match the outfalls identified on your NOI form.

If any outfalls are substantially identical, check the box in 3.b and identify the outfall that the outfall in 3.a is substantially identical to. In 3.d – k, you only need to provide benchmark monitoring data for one of the outfalls.

For any outfall for which there was no discharge during the monitoring period, check the box in 3.

In 3.d, identify the type of monitoring using the specified codes, in parentheses, below:

- (QBM) – Quarterly benchmark monitoring
- (ELG) – Annual effluent limitations guidelines monitoring;
- (S/T) – State- or Tribal-specific monitoring;
- (I) – Impaired waters monitoring; or
- (O) – Other monitoring as required by EPA.

In 3.e, enter each "parameter" (or "pollutant") monitored. For QBM and ELG monitoring, use the same parameter name as in Part 8 of the permit.

In 3.f., enter a sample measurement value for each parameter analyzed and required to be reported. Enter "ND" (i.e., not detected) for any sample results below the method detection limit or "BQL" (i.e., below quantitation limit) for sample results above the detection limit but below the quantitation limit.

In 3.g., enter the units for sample measurement values (i.e., "mg/L" for milligrams per liter) for each parameter analyzed and required to be reported. For monitoring results reported as ND or BQL this space will be left blank and the units will be reported in Column 3.f.

3.h. must be completed for any monitoring results reported as ND or BQL in the "Quality or Concentration" column. For ND, report the laboratory detection level and units in this column. For BQL, report the laboratory quantitation limit and units in this column.

In 3.i. identify the sampling date for each parameter monitoring result reported on this form.

3.h. *Exceedance due to natural background pollutant levels:* Check box if following the first 4 quarters of benchmark monitoring (or sooner if the exceedance is triggered by less than 4 quarters of data) you have determined that the exceedance of the benchmark is attributable solely to the presence of that pollutant in the natural background for that outfall and any substantially identical outfalls, or for impaired waters monitoring, the presence of the pollutant is caused solely by natural background. See Part 6.2.1.2 and 6.2.4.1 of the permit for more information.

In 3.j .check the box if after collection of 4 quarterly samples (or sooner if the exceedance is triggered by less than 4 quarters of data), the average of the 4 monitoring values for any parameter exceeds the benchmark and you have made the determination that no further pollutant reductions are technologically available and economically practicable and achievable in light of best industry practice to meet the technology-based effluent limits or are necessary to meet the water-quality-based effluent

Where violations of the permit requirements are reported, include a brief explanation to describe the cause and corrective actions taken, and reference each violation by date. Also, this section should include any additional comments such as are required when changing site status from inactive and unstaffed to active or vice versa. Attach additional pages if you need more space.

Attach additional copies of Section F as necessary to address all outfalls and parameters.

Section G. Certification Information

DMRs must be signed by a person described below, or by a duly authorized representative of that person.

For a corporation: By a responsible corporate officer. For the purpose of this Section, a responsible corporate officer means:

(i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

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

For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this Part, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator of EPA). Include the name and title of the person signing the form and the date of signing.

A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described above;

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

3. The written authorization is submitted to the Director.

An unsigned or undated DMR form be considered incomplete.

Paperwork Reduction Act Notice

Public reporting burden for this form is estimated to average 7.25 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number of this form on any correspondence. Do not send the completed DMR form to this address.

Submitting Your Form

If you have been granted a waiver from your Regional Office to submit a paper DMR form, you must send your DMR form by mail to one of the following addresses:

Region 1
MSGP Discharge Monitoring Reports (OES4-SMR)
EPA New England, Region 1
5 Post Office Square - Suite 100
Boston, MA 02109-3912

Region 2
MSGP Discharge Monitoring Reports
290 Broadway
DECA/CAPBS/DMT
21st Floor
New York, NY, 10007-1866

Region 3
Nancy Ford
U.S. EPA Region 3
1650 Arch Street
Mail Code #3WP60
Philadelphia, PA 19103

Region 5
U.S. Environmental Protection Agency Region 5
77 West Jackson Boulevard (WN-16J)
Chicago, Illinois 60604
Attn: Brian Bell - Storm Water Coordinator

Region 6
U.S. EPA, Region 6 MSGP DMRs
Water Enforcement Branch (6EN-WC)
1445 Ross Avenue
Dallas, TX 75202

Region 7
Neal Gilbert
U.S. Environmental Protection Agency, Region 7
Enforcement Coordination Office
11201 Renner Blvd
Lenexa, KS 66219

Region 8
U.S. EPA, Region 8 (ENF-PJ)
Attention: DMR Coordinator
1595 Wynkoop Street
Denver, CO 80202-1129

Region 9
Sandra Chew
U.S. EPA Region 9
Information Management Section, ENF-4-1
75 Hawthorne Street
San Francisco, CA 94105

Region 10
U.S. EPA Region 10
Attn: NPDES Data Manager, OCE-101
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Visit this website for instructions on how to submit electronically:
http://water.epa.gov/polwaste/npdes/stormwater/Stormwater-eNOI-System-for-EPAs-MultiSector-General-Permit.cfm

Sector A. Timber Products					
Sub-sector	**SIC Codes**		**NAICS Codes**		**Notes**
A3	**2411**	Logging (log storage and handling activities only; wet deck storage areas only authorized if no chemical additives are used in the spray water or applied to the logs.)	**113310**	Logging	
A1	**2421**	General Sawmills and Planing Mills (sawmills)	**321113**	Sawmills	
		(lumber manufacturing from purchased lumber, softwood cut stock, wood lath, fence pickets, and planing mill products)	**321912**	Cut Stock, Resawing Lumber, and Planing	
		(softwood flooring)	**321918**	Other Millwork (including Flooring)	
		(box lumber made from purchased lumber)	**321920**	Wood Container and Pallet Manufacturing	
		(kiln drying)	**321999**	All Other Miscellaneous Wood Product Manufacturing	
A4	**2426**	Hardwood Dimension and Flooring Mills (hardwood dimension lumber made from logs or bolts)	**321113**	Sawmills	
		(hardwood cut stock, resawing hardwood lumber, and planing purchased hardwood lumber except flooring)	**321912**	Cut Stock, Resawing Lumber, and Planing	
		(hardwood flooring)	**321918**	Other Millwork (including Flooring)	
		(wood furniture frames and finished furniture parts)	**337215**	Showcase, Partition, Shelving, and Locker Manufacturing	
	2429	Special Product Sawmills, Not Elsewhere Classified (shingle mills, shakes)	**321113**	Sawmills	
		(stave manufacturing from purchased lumber)	**321912**	Cut Stock, Resawing Lumber, and Planing	
		(cooperage stock)	**321920**	Wood Container and Pallet Manufacturing	
		(excelsior)	**321999**	All Other Miscellaneous Wood Product Manufacturing	

	2431	Millwork (wood windows and doors)	**321911**	Wood Window and Door Manufacturing	
		(except wood windows and doors)	**321918**	Other Millwork (including Flooring)	
	2435	Hardwood Veneer and Plywood	**321211**	Hardwood Veneer and Plywood Manufacturing	
	2436	Softwood Veneer and Plywood	**321212**	Softwood Veneer and Plywood Manufacturing	
	2439	Structural Wood Members, Not Elsewhere Classified (except trusses)	**321213**	Engineered Wood Member (except Truss) Manufacturing	
		(trusses)	**321214**	Truss Manufacturing	
A5	**2441**	Nailed and Lock Corner Wood Boxes and Shook	**321920**	Wood Container and Pallet Manufacturing	
A4	**2448**	Wood Pallets and Skids	**321920**	Wood Container and Pallet Manufacturing	
	2449	Wood Containers, Not Elsewhere Classified	**321920**	Wood Container and Pallet Manufacturing	
	2451	Mobil Homes	**321991**	Manufactured Home (Mobil Home) Manufacturing	
	2452	Prefabricated Wood Buildings and Components	**321992**	Prefabricated Wood Building Manufacturing	
A2	**2491**	Wood Preserving	**321114**	Wood Preservation	
A4	**2493**	Reconstituted Wood Products	**321219**	Reconstituted Wood Product Manufacturing	
	2499	Wood Products, Not Elsewhere Classified (wood containers, such as noncoopered vats and reed or straw baskets)	**321920**	Wood Container and Pallet Manufacturing	
		(except wood containers, wood cooling towers, cork life preservers, mirror or picture frames, and laundry hampers of reed, rattan, and willow)	**321999**	All Other Miscellaneous Wood Product Manufacturing	
		(wood cooling towers)	**333415**	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing	
		(laundry hampers of reed, rattan, and willow)	**337125**	Household Furniture (except Wood and Metal) Manufacturing	
		(cork life preservers)	**339113**	Surgical Appliance and Supplies Manufacturing	
		(mirror and picture frames)	**339999**	All Other Miscellaneous Manufacturing	

Sector B. Paper and Allied Products Manufacturing

Sub-sector	SIC Codes		NAICS Codes		Notes
B2	2611	Pulp Mills			
		(pulp producing mills only)	322110	Pulp Mills	
		(producing paper except newsprint)	322121	Paper (except Newsprint) Mills	
		(producing newsprint)	322122	Newsprint Mills	
		(producing paperboard)	322130	Paperboard Mills	
	2621	Paper Mills			
		(except newsprint mills)	322121	Paper (except Newsprint) Mills	
		(newsprint mills)	322122	Newsprint Mills	
B1	2631	Paperboard Mills	322130	Paperboard Mills	
B2	2652	Setup Paperboard Boxes	322213	Setup Paperboard Box Manufacturing	
	2653	Corrugated and Solid Fiber Boxes	322211	Corrugated and Solid Fiber Boxes Manufacturing	
	2655	Fiber Cans, Tubes, Drums, and Similar Products	322214	Fiber Can, Tube, Drum, and Similar Products Manufacturing	
	2656	Sanitary Food Containers, Except Folding	322215	Nonfolding Sanitary Food Container Manufacturing	
	2657	Folding Paperwork Boxes	322212	Folding Paperboard Box Manufacturing	
	2671	Packaging Paper and Plastics Film, Coated and Laminated			
		(except single-web and multi-web plastics packaging film and sheets)	322221	Coated and Laminated Packaging Paper and Plastics Film Manufacturing	
		(single-web and multi-web plastics packaging film and sheets)	326112	Plastics Packaging Film and Sheet (including Laminated) Manufacturing	Any facility whose primary activity is manufacturing single-web and multi-web plastics packaging film and sheets (SIC 2671 / NAICS 326112) should be regulated under Sector Y, but may continue to be regulated under Sector B, or alternatively, under Sector AD. Sectors Y, B, and AD do not have specific requirements for facilities manufacturing single-web and multi-web plastics packaging film and sheets. However, under Sector AD EPA could establish additional facility-specific monitoring and reporting requirements. Regulatory burden would not differ between Sectors B and Y.
	2672	Coated and Laminated Paper, NEC	322222	Coated and Laminated Paper Manufacturing	

	2673	Plastics, Foil, and Coated Paper Bags (except single-web or multi-web plastics bags)	**322223**	Plastics, Foil, and Coated Paper Bags Manufacturing	
		(single-web and multi-web plastics bags)	**326111**	Plastics Bag Manufacturing	Any facility whose primary activity is manufacturing single-web and multi-web plastics bags (SIC 2673 / NAICS 326111) should be regulated under Sector Y, but may continue to be regulated under Sector B, or alternatively, under Sector AD. Sectors Y, B, and AD do not have specific requirements for facilities manufacturing single-web and multi-web plastics bags. However, under Sector AD EPA could establish additional facility-specific monitoring and reporting requirements. Regulatory burden would not differ between Sectors B and Y.
	2674	Uncoated Paper and Multiwall Bags	**322224**	Uncoated Paper and Multiwall Bags Manufacturing	
	2675	Die Cut Paper and Paperboard and Cardboard (pasted, lined, laminated, or surface-coated paperboard)	**322226**	Surface-Coated Paperboard Manufacturing	
		(die cut paper and paperboard office supplies, such as file folders, tabulating cards, and report covers)	**322231**	Die Cut Paper and Paperboard Office Supplies Manufacturing	
		(except pasted, lined, laminated, or surface-coated paperboard and die-cut paper and paperboard office supplies)	**322299**	All Other Converted Paper Product Manufacturing	
	2676	Sanitary Paper Products	**322291**	Sanitary Paper Product Manufacturing	
	2677	Envelopes	**322232**	Envelope Manufacturing	
	2678	Stationery, Tablets, and Related Products	**322233**	Stationery, Tablets, and Related Product Manufacturing	
	2679	Converted Paper and Paperboard Products, NEC (corrugated paper)	**322211**	Corrugated and Solid Fiber Box Manufacturing	
		(wallpaper and gift wrap paper)	**322222**	Coated and Laminated Paper Manufacturing	
		(paper supplies for business machines, such as adding machine tape, and other paper office supplies)	**322231**	Die Cut Paper and Paperboard Office Supplies Manufacturing	

		(except corrugated paper, wall paper, gift wrap paper, paper supplies for business machines, and other paper office supplies)	**322299**	All Other Converted Paper Product Manufacturing	

Sector C. Chemical and Allied Products Manufacturing

Sub-sector	SIC Codes		NAICS Codes		Notes
C2	**2812**	Alkalies and Chlorine	**325181**	Alkalies and Chlorine Manufacturing	
	2813	Industrial Gases	**325120**	Industrial Gas Manufacturing	
	2816	Inorganic Pigments (except bone and lamp black)	**325131**	Inorganic Dye and Pigment Manufacturing	
		(bone and lamp black)	**325182**	Carbon Black Manufacturing	
	2819	Industrial Inorganic Chemicals, Not Elsewhere Classified (recovering sulfur from natural gas)	**211112**	Natural Gas Liquid Extraction	
		(inorganic dyes)	**325131**	Inorganic Dye and Pigment Manufacturing	
		(other)	**325131**	All Other Basic Inorganic Chemical Manufacturing	
		(activated carbon and charcoal)	**325998**	All Other Miscellaneous Chemical Product and Preparation Manufacturing	
		(alumina)	**331311**	Alumina Refining	Any facility whose primary activity is alumina refining (NAICS 331311) should be regulated under Sector F, but may continue to be regulated under Sector C. Sector C requires sector/subsector specific benchmark monitoring for total aluminum, total iron, and nitrate plus nitrite nitrogen. Sector F applies additional technology-based effluent limits comprised of good housekeeping measures; additional SWPPP requirements; and additional inspection requirements. Regulatory burdens differ between Sectors C and F but determining which sector would be more burdensome would depend on the regulated facility.
C4	**2821**	Plastics Materials, Synthetic Resins, and Nonvulcanizable Elastomers	**325211**	Plastics Material and Resin Manufacturing	
	2822	Synthetic Rubber	**325212**	Synthetic Rubber Manufacturing	

	2823	Cellulosic Manmade Fibers	**325221**	Cellulosic Organic Fiber Manufacturing	
	2824	Manmade Organic Fibers, Except Cellulosic	**325222**	Noncellulosic Organic Fiber Manufacturing	
C5	**2833**	Medicinal Chemicals and Botanical Products	**325411**	Medicinal and Botanical Manufacturing	
	2834	Pharmaceutical Preparations	**325412**	Pharmaceutical Preparation Manufacturing	
	2835	In Vitro and In Vivo Diagnostic Substances			
		(except in vitro diagnostic)	**325412**	Pharmaceutical Preparation Manufacturing	
		(in vitro diagnostic substances)	**325413**	In Vitro Diagnostic Substance Manufacturing	
	2836	Biological Products, Except Diagnostic Substances	**325414**	Biological Product (except Diagnostic) Manufacturing	
C3	**2841**	Soaps and Other Detergents, Except Specialty Cleaners	**325611**	Soap and Other Detergent Manufacturing	
	2842	Specialty Cleaning, Polishing, and Sanitation Preparations	**325612**	Polish and Other Sanitation Good Manufacturing	
	2843	Surface Active Agents, Finishing Agents, Sulfonated Oils, and Assistants	**325613**	Surface Active Agent Manufacturing	
	2844	Perfumes, Cosmetics, and Other Toilet Preparations			
		(toothpaste, gel and dentifrice powders)	**325611**	Soap and Other Detergent Manufacturing	
		(except toothpaste, gel and dentifrice powders)	**325620**	Toilet Preparation Manufacturing	
C5	**2851**	Paints, Varnishes, Lacquers, Enamels, and Allied Products	**325510**	Paint and Coating Manufacturing	
	2861	Gum and Wood Chemicals	**325191**	Gum and Wood Chemical Manufacturing	
	2865	Cyclic Organic Crudes and Intermediates, and Organic Dyes and Pigments			
		(aromatics)	**325110**	Petrochemical Manufacturing	
		(organic dyes and pigments)	**325132**	Synthetic Organic Dye and Pigment Manufacturing	
		(except aromatics and organic dyes and pigments)	**325192**	Cyclic Crude and Intermediate Manufacturing	
	2869	Industrial Organic Chemicals, Not Elsewhere Classified			
		(aliphatics)	**325110**	Petrochemical Manufacturing	
		(fluorocarbon gases)	**325120**	Industrial Gas Manufacturing	
		(carbon bisulfide)	**325188**	All Other Basic Inorganic Chemical Manufacturing	

		(cyclopropane, diethylcyclohexane, naphthalene sulfonic acid)	**325192**	Cyclic Crude and Intermediate Manufacturing	
		(ethyl alcohol)	**325193**	Ethyl Alcohol Manufacturing	
		(except aliphatics, carbon bisulfide, ethyl alcohol, cyclopropane, diethylcyclohexane, napthalene sulfonic acid, synthetic hydraulic fluids, and fluorocarbon gases)	**325199**	All Other Basic Organic Chemical Manufacturing	
		(synthetic hydraulic fluids)	**325998**	All Other Miscellaneous Chemical Product and Preparation Manufacturing	
C1	**2873**	Nitrogenous Fertilizers	**325311**	Nitrogenous Fertilizer Manufacturing	
	2874	Phosphatic Fertilizers	**325312**	Phosphatic Fertilizer Manufacturing	
	2875	Fertilizers, Mixing Only	**325314**	Fertilizers (Mixing Only) Manufacturing	
	2879	Pesticides and Agricultural Chemicals, NEC	**325320**	Pesticides and Other Agricultural Chemical Manufacturing	
C5	**2891**	Adhesives and Sealants	**325520**	Adhesive Manufacturing	
	2892	Explosives	**325920**	Explosives Manufacturing	
	2893	Printing Ink	**325910**	Printing Ink Manufacturing	
	2895	Carbon Black	**325182**	Carbon Black Manufacturing	
	2899	Chemicals and Chemical Preparations, NEC			
		(table salt)	**311942**	Spice and Extract Manufacturing (table salt only)	
		(fatty acids)	**325199**	All Other Basic Organic Chemical Manufacturing	
		(frit and plastic wood fillers)	**325510**	Paint and Coating Manufacturing	
		(except frit, plastic wood fillers, fatty acids, and table salt)	**325998**	All Other Miscellaneous Chemical Product and Preparation Manufacturing	
	2911	Petroleum Refining	**324110**	Petroleum Refineries	
	3952	Lead Pencils, Crayons, and Artists' Materials (limited to inks and paints, including china painting enamels)			
		(drawing inks and india ink)	**325998**	All Other Miscellaneous Chemical Product and Preparation Manufacturing	
		(china painting enamels, platinum paint for burnt wood or leather work, paints for china painting, artist's paints, and artist's watercolors)	**339942**	Lead Pencil and Art Good Manufacturing	

Sector D. Asphalt Paving and Roofing Materials Manufacturers and Lubricant Manufacturers

Sub-sector	SIC Codes		NAICS Codes		Notes
D1	2951	Asphalt Paving Mixtures and Blocks	324121	Asphalt Paving Mixture and Block Manufacturing	
	2952	Asphalt Felt and Coatings	324122	Asphalt Shingle and Coating Materials Manufacturing	
D2	2992	Lubricating Oils and Greases	324191	Petroleum Lubricating Oil and Grease Manufacturing	
	2999	Products of Petroleum and Coal, Not Elsewhere Classified	324199	All Other Petroleum and Coal Products Manufacturing	

Sector E. Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing

Sub-sector	SIC Codes		NAICS Codes		Notes
E3	3211	Flat Glass	327211	Flat Glass Manufacturing	
	3221	Glass Containers	327213	Glass Container Manufacturing	
	3229	Pressed and Blown Glass and Glassware, Not Elsewhere Classified	327212	Other Pressed and Blown Glass and Glassware Manufacturing	
	3231	Glass Product Manufacturing Made of Purchased Glass	327215	Glass Product Manufacturing Made of Purchased Glass	
	3241	Hydraulic Cement	327310	Cement Manufacturing	
E1	3251	Brick and Structural Clay Tile (except slumped brick)	327121	Brick and Structural Clay Tile Manufacturing	
		(slumped brick)	327331	Concrete Block and Brick Manufacturing	
	3253	Ceramic Wall and Floor Tile	327122	Ceramic Wall and Floor Tile Manufacturing	
	3255	Clay Refractories	327124	Clay Refractory Manufacturing	
	3259	Structural Clay Products, Not Elsewhere Classified	327123	Other Structural Clay Product Manufacturing	
	3261	Vitreous China Plumbing Fixtures and China and Earthenware Fittings and Bathroom Accessories	327111	Vitreous China Plumbing Fixture and China and Earthenware Bathroom Accessories Manufacturing	
	3262	Vitreous China Table and Kitchen Articles	327112	Vitreous China, Fine Earthenware, and Other Pottery Product Manufacturing	
	3263	Fine Earthenware (Whiteware) Table and Kitchen Articles	327112	Vitreous China, Fine Earthenware, and Other Pottery Product Manufacturing	
	3264	Porcelain Electrical Supplies	327113	Porcelain Electrical Supply Manufacturing	
	3269	Pottery Products, Not Elsewhere Classified	327112	Vitreous China, Fine Earthenware, and Other Pottery Product Manufacturing	

E2	**3271**	Concrete Block and Brick	**327331**	Concrete Block and Brick Manufacturing	
	3272	Concrete Products, Except Block and Brick (concrete pipe)	**327332**	Concrete Pipe Manufacturing	
		(concrete products, except dry mix concrete and pipe)	**327390**	Other Concrete Product Manufacturing	
		(dry mixture concrete)	**327999**	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing	
	3273	Ready-Mixed Concrete	**327320**	Ready-Mix Concrete Manufacturing	
	3274	Lime Manufacturing Calcium hydroxide (i.e., hydrated lime) manufacturing	**327410**	Lime Manufacturing	
		Calcium oxide (i.e., quicklime) manufacturing	**327410**	Lime Manufacturing	
		Dolomite, dead-burned, manufacturing	**327410**	Lime Manufacturing	
		Hydrated lime (i.e., calcium hydroxide) manufacturing	**327410**	Lime Manufacturing	
		Quicklime (i.e., calcium oxide) manufacturing	**327410**	Lime Manufacturing	
		Agricultural lime manufacturing	**327410**	Lime Manufacturing	
		Dolomitic lime manufacturing	**327410**	Lime Manufacturing	
	3275	Gypsum Products	**327420**	Gypsum Product Manufacturing	
E3	**3281**	Cut Stone and Stone Products	**327991**	Cut Stone and Stone Product Manufacturing	
	3291	Abrasive Products (except steel wool manufacturing)	**327910**	Abrasive Product Manufacturing	
		(steel wool manufacturing)	**332999**	All Other Miscellaneous Fabricated Metal Product Manufacturing	Any facility whose primary activity is steel wool manufacturing (NAICS 332999) should be regulated under Sector AA, but may continue to be regulated under Sector E. Sector AA applies additional technology-based effluent limits comprised of good housekeeping measures, spill prevention and response procedures, and spills and leaks; additional SWPPP requirements; and additional inspection requirements. Sector E applies additional technology-based effluent limits comprised of good housekeeping measures, and additional SWPPP requirements.

					Regulatory burden would likely be greater under Sector AA.
	3292	Asbestos Products			
		(except brake pads and linings)	**327999**	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing	
		(asbestos brake linings and pads)	**336340**	Motor Vehicle Brake System Manufacturing	
		(asbestos clutch facings, motor vehicle)	**336350**	Motor Vehicle Transmission and Power Train Parts Manufacturing	
	3295	Minerals and Earths, Ground or Otherwise Treated			
		(grinding, washing, separating, etc. of kaolin and ball clay)	**212324**	Kaolin and Ball Clay Mining	
		(grinding, washing, separating, etc. of clay, ceramic, and refractory minerals not elsewhere classified)	**212325**	Clay and Ceramic and Refractory Minerals Mining	
		(grinding, washing, separating, etc. of chemical and fertilizer minerals, not elsewhere classified)	**212393**	Other Chemical and Fertilizer Mineral Mining	
		(grinding, washing, separating, etc. of nonmetallic minerals, not elsewhere classified)	**212399**	All Other Nonmetallic Mineral Mining	
		(except grinding, washing, separating, etc. of nonmetallic minerals)	**327992**	Ground or Treated Mineral and Earth Manufacturing	
	3296	Mineral Wool	**327993**	Mineral Wool Manufacturing	
	3297	Nonclay Refractories	**327125**	Nonclay Refractory Manufacturing	
	3299	Nonmetallic Mineral Products, Not Elsewhere Classified			
		(clay statuary)	**327112**	Vitreous China, Fine Earthenware, and Other Pottery Product Manufacturing	
		(moldings, ornamental and architectural plaster work, and gypsum statuary)	**327420**	Gypsum Product Manufacturing	
		(except moldings, ornamental and architectural plaster work, clay statuary, and gypsum statuary)	**327999**	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing	

Sector F. Primary Metals

Sub-sector	SIC Codes		NAICS Codes		Notes
F1	**3312**	Steel Works, Blast Furnaces (Including Coke Ovens), and Rolling Mills			

		(coke oven products [e.g., coke, gases, tars] made in coke oven establishments)	**324199**	All Other Petroleum and Coal Products Manufacturing	Any facility whose primary activity is manufacturing coke oven products (e.g., coke, gases, tars) made in coke oven establishments should be regulated under Sector D, but may continue to be regulated under Sector F. Sector F requires sector-specific benchmark monitoring requirements for total aluminum and total zinc, Sector D does not require benchmark monitoring from these facilities. Regulatory burden would be greater under Sector F.
		(except coke ovens not integrated with steel mills and hot-rolling purchased steel)	**331111**	Iron and Steel Mills	
		(hot-rolling purchased steel)	**331221**	Rolled Steel Shape Manufacturing	
	3313	Electrometallurigcal Products, Except Steel	**331112**	Electrometallurigcal Ferroalloy Product Manufacturing	
	3315	Steel Wiredrawing and Steel Nails and Spikes (steel wire drawing)	**331222**	Steel Wire Drawing	
	3316	Cold-Rolled Steel Sheet, Strip, and Bars	**331221**	Rolled Steel Shape Manufacturing	
	3317	Steel Pipe and Tubes	**331210**	Iron and Steel Pipe and Tube Manufacturing from Purchased Steel	
F2	**3321**	Gray and Ductile Iron Foundries	**331511**	Iron Foundries	
	3322	Malleable Iron Foundries	**331511**	Iron Foundries	
	3324	Steel Investment Foundries	**331512**	Steel Investment Foundries	
	3325	Steel Foundries, NEC	**331513**	Steel Foundries (except Investment)	
F5	**3331**	Primary Smelting and Refining of Copper	**331411**	Primary Smelting and Refining of Copper	
	3334	Primary Production of Aluminum	**331312**	Primary Aluminum Production	
	3339	Primary Smelting and Refining of Nonferrous Metals, Except Copper and Aluminum	**331419**	Primary Smelting and Refining of Nonferrous Metal (except Copper and Aluminum)	
	3341	Secondary Smelting and Refining of Nonferrous Metals (aluminum)	**331314**	Secondary Smelting and Alloying of Aluminum	
		(copper)	**331423**	Secondary Smelting, Refining and Alloying of Copper	

		(except copper and aluminum)	**331492**	Secondary Smelting, Refining and Alloying of Nonferrous Metal (except Copper and Aluminum)	
F3	**3351**	Rolling, Drawing, and Extruding of Copper	**331421**	Copper Rolling, Drawing, and Extruding	
	3353	Aluminum Sheet, Plate, and Foil	**331315**	Aluminum Sheet, Plate, and Foil Manufacturing	
	3354	Aluminum Extruded Products	**331316**	Aluminum Extruded Product Manufacturing	
	3355	Aluminum Rolling and Drawing, Not Elsewhere Classified	**331319**	Other Aluminum Rolling and Drawing	
	3356	Rolling, Drawing, and Extruding of Nonferrous Metals, Except Copper and Aluminum	**331491**	Nonferrous Metal (Except Copper and Aluminum) Rolling, Drawing, and Extruding	
	3357	Drawing and Insulating of Nonferrous Wire			
		(aluminum wire drawing)	**331319**	Other Aluminum Rolling and Drawing	
		(copper wire drawing)	**331422**	Copper Wire (except Mechanical) Drawing	
		(wire drawing except copper or aluminum)	**331491**	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, and Extruding	
		(fiber optic cable-insulating only)	**335921**	Fiber Optic Cable Manufacturing	
		(communication and energy wire, except fiber optic-insulating only)	**335929**	Other Communication and Energy Wire Manufacturing	
F4	**3363**	Aluminum Die Castings	**331521**	Aluminum Die Casting Foundries	
	3364	Nonferrous Die Castings, Except Aluminum	**331522**	Nonferrous (Except Aluminum) Die Casting Foundries	
	3365	Aluminum Foundries	**331524**	Aluminum Foundries (Except Die-Casting)	
	3366	Copper Foundries	**331525**	Copper Foundries (Except Die-Casting)	
	3369	Nonferrous Foundries, Except Copper and Aluminum	**331528**	Other Nonferrous Foundries (Except Die-Casting)	
F5	**3398**	Metal Heat Treating	**332811**	Metal Heat Treating	
	3399	Primary Metal Products, Not Elsewhere Classified			
		(iron ore recovery from open hearth slag)	**331111**	Iron and Steel Mills	
		(ferrous powder, paste, flakes, etc.)	**331221**	Rolled Steel Shape Manufacturing	
		(aluminum powder, paste, flakes, etc.)	**331314**	Secondary Smelting and Alloying of Aluminum	
		(copper powder, paste, flakes, etc.)	**331423**	Secondary Smelting, Refining, and Alloying of Copper	
		(nonferrous powder, paste, flakes, etc. except copper and aluminum)	**331492**	Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum)	
		(nonferrous nails, brads, staples, tacks, etc. made from purchased nonferrous wire)	**332618**	Other Fabricated Wire Product Manufacturing	

Sector G. Metal Mining (Ore Mining and Dressing)

Sub-sector	SIC Codes		NAICS Codes		Notes
G1	1021	Copper Ores	212234	Copper Ore and Nickel Ore Mining	
G2	1011	Iron Ores	212210	Iron Ore Mining	
	1021	Copper Ores	212234	Copper Ore and Nickel Ore Mining	
	1031	Lead and Zinc Ores	212231	Lead Ore and Zinc Ore Mining	
	1041	Gold Ores	212221	Gold Ore Mining	
	1044	Silver Ores	212222	Silver Ore Mining	
	1061	Ferroalloy Ores, Except Vanadium (nickel)	212234	Copper Ore and Nickel Ore Mining	
		(other ferroalloys except nickel)	212299	All Other Metal Ore Mining	
	1081	Metal Mining Services (except site preparation and related activities performed on a contract or fee basis and geophysical surveying and mapping)	213114	Support Activities for Metal Mining	
		(site preparation and related construction activities on a contract basis)	238910	Site Preparation Contractors	
	1094	Uranium-Radium-Vanadium Ores	212291	Uranium-Radium-Vanadium Ore Mining	
	1099	Miscellaneous Metal Ores, Not Elsewhere Classified	212299	All Other Metal Ore Mining	

Sector H. Coal Mines and Coal Mining-Related Facilities

Sub-sector	SIC Codes		NAICS Codes		Notes
H1	1221	Bituminous Coal and Lignite Surface Mining	212111	Bituminous Coal and Lignite Surface Mining	
	1222	Bituminous Coal Underground Mining	212112	Bituminous Coal Underground Mining	
	1231	Anthracite Mining	212113	Anthracite Mining	
	1241	Coal Mining Services (except site preparation and related construction activities on a contract basis)	213113	Support Activities for Coal Mining	
		(site preparation and related construction activities on a contract basis)	238910	Site Preparation Contractors	

Sector I. Oil and Gas Extraction

Sub-sector	SIC Codes		NAICS Codes		Notes
I1	1311	Crude Petroleum and Natural Gas	211111	Crude Petroleum and Natural Gas Extraction	
	1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction	
	1381	Drilling Oil and Gas Wells	213111	Drilling Oil and Gas Wells	
	1382	Oil and Gas Field Exploration Services	213112	Support Activities for Oil and Gas Operations	
	1389	Oil and Gas Field Services, Not Elsewhere Classified (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations	
		(construction of field gathering lines on a contract or fee basis)	237120	Oil and Gas Pipeline and Related Structures Construction	
		(site preparation and related construction activities on a contract basis)	238910	Site Preparation Contractors	

Sector J. Mineral Mining and Dressing

Sub-sector	SIC Codes		NAICS Codes		Notes
J2	1411	Dimension Stone	212311	Dimension Stone Mining and Quarrying	
	1422	Crushed and Broken Limestone	212312	Crushed and Broken Limestone Mining and Quarrying	
	1423	Crushed and Broken Granite	212313	Crushed and Broken Granite Mining and Quarrying	
	1429	Crushed and Broken Stone, Not Elsewhere Classified	212319	Other Crushed and Broken Stone Mining and Quarrying	
J1	1442	Construction Sand and Gravel	212321	Construction Sand and Gravel Mining	
	1446	Industrial Sand	212322	Industrial Sand Mining	
J3	1455	Kaolin and Ball Clay	212324	Kaolin and Ball Clay Mining	
	1459	Clay, Ceramic, and Refractory Minerals, Not Elsewhere Classified	212325	Clay, Ceramic, and Refractory Minerals Mining	
	1474	Potash, Soda, and Borate Minerals	212391	Potash, Soda, and Borate Mineral Mining	
	1475	Phosphate Rock	212392	Phosphate Rock Mining	
	1479	Chemical and Fertilizer Mineral Mining, Not Elsewhere Classified	212393	Other Chemical and Fertilizer Mineral Mining	
J2	1481	Nonmetallic Minerals Services, Except Fuels			

		(except geophysical surveying and mapping and site preparation and related construction activities performed on a contract or fee basis)	**213115**	Support Activities for Nonmetallic Minerals (except Fuels)	
		(site preparation and related construction activities on a contract basis)	**238910**	Site Preparation Contractors	
	1499	Miscellaneous Nonmetallic Minerals, Except Fuels			
		(except bituminous limestone and bituminous sandstone)	**212399**	All Other Nonmetallic Mineral Mining	

Sector K. Hazardous Waste Treatment, Storage or Disposal Facilities

Sub-Sector	Activity Code	Narrative Description	Notes
K1	**HZ**	• Hazardous waste treatment • Hazardous waste storage • Hazardous waste disposal • Hazardous waste facilities operating under interim status • Hazardous waste facilities operating under a permit under Subtitle C of RCRA	HZ is the Activity Code (i.e., non-SIC / non-NAICS designation) for this Sector. It potentially applies to any facility regardless of SIC / NAICS Code, in addition to these specifically related to hazardous waste: • SIC 4953 Refuse Systems (hazardous waste treatment and disposal); • NAICS 562211 Hazardous Waste Treatment and Disposal; • NAICS 562112 Hazardous Waste Collection (hazardous waste transfer stations).

Sector L. Landfills and Land Application Sites

Sub-Sector	Activity Code	Narrative Description	Notes
L1	**LF**	• All Landfill, Land Application Sites and Open Dumps	LF is the Activity Code (i.e., non-SIC and non-NAICS designation) for this Sector. It may apply to any facility / SIC Code / NAICS Code, in addition to these specifically related to landfills and landfill application sites: • SIC 4953 Refuse Systems (solid waste landfills); • NAICS 562212 Solid Waste Landfill. Industrial waste is waste from any of the facilities covered by the MSGP (also described in 40 CFR 122.26(b)(14)).
L2	**LF**	All Landfill, Land Application Sites and Open Dumps, except Municipal Solid Waste Landfill (MSWLF) Areas Closed in Accordance with 40 CFR 258.	

Sector M. Automobile Salvage Yards

Sub-sector	SIC Codes		NAICS Codes		Notes
M1	**5015**	Motor Vehicle Parts, Used (merchant wholesalers except those selling via retail method)	**423140**	Motor Vehicle Parts (Used) Merchant Wholesalers	

Sector N. Scrap Recycling Facilities

Sub-sector	SIC Codes		NAICS Codes		Notes
N1	5093	Scrap and Waste Materials (merchant wholesalers except Source-Separated Recycling)	423930	Recyclable Material Merchant Wholesalers	
N2	5093	Scrap and Waste Materials (Source-Separated Recycling)	423930	Recyclable Material Merchant Wholesalers	

Sector O. Steam Electric Generating Facilities

Sub-Sector	Activity Code	Narrative Description	Notes
O1	SE	• steam electric power generation using coal, including coal handling areas • steam electric power generation using natural gas • steam electric power generation using oil • steam electric power generation using nuclear energy • steam electric power generation using any other fuel to produce a steam source • coal pile runoff (includes effluent limitations established by 40 CFR 423) • dual fuel co-generation (i.e., steam generation using fossil fuel to augment a heat-capture generation system)	SE is the Activity Code (i.e., non-SIC and non-NAICS designation) for this Sector. It may apply to any facility / SIC Code / NAICS Code, in addition to these specifically related to steam electric generation: • SIC 4911 Electric Services (fossil fuel power generation, nuclear electric power generation & other electric power generation) • NAICS 221112 Fossil Fuel Electric Power Generation • NAICS 221113 Nuclear Electric Power Generation

Sector P. Land Transportation

Sub-sector	SIC Codes		NAICS Codes		Notes
P1	4011	Railroads, Line-Haul Operating	482111	Line-Haul Railroads	
	4013	Railroad Switching and Terminal Establishments (short line railroads)	482112	Short Line Railroads	
		(except short line railroads)	488210	Support Activities for Rail Transportation	
	4111	Local and Suburban Transit (mixed mode)	485111	Mixed Mode Transit Systems	
		(commuter rail)	485112	Commuter Rail Systems	
		(bus and motor vehicle)	485113	Bus and Other Motor Vehicle Transit Systems	
		(except mixed mode, commuter rail, airport transportation service, and bus and motor vehicle)	485119	Other Urban Transit Systems	
		(airport transportation service)	485999	All Other Transit and Ground Passenger Transportation	
	4119	Local Passenger Transportation, Not Elsewhere Classified			

		(limousine rental with driver and automobile rental with driver)	**485320**	Limousine Service	
		(employee transportation)	**485410**	School and Employee Bus Transportation	
		(special needs transportation)	**485991**	Special Needs Transportation	
		(hearse rental with driver and carpool and vanpool operation)	**485999**	All Other Transit and Ground Passenger Transportation	
		(sightseeing buses and cable and cog railways, except scenic)	**487110**	Scenic and Sightseeing Transportation, Land	
		(land ambulance)	**621910**	Ambulance Services	
	4121	Taxicabs	**485310**	Taxi Service	
	4131	Intercity and Rural Bus Transportation	**485210**	Interurban and Rural Bus Transportation	
	4141	Local Bus Charter Service	**485510**	Charter Bus Industry	
	4142	Bus Charter Service, Except Local	**485510**	Charter Bus Industry	
	4151	School Buses	**485410**	School and Employee Bus Transportation	
	4173	Terminal and Service Facilities for Motor Vehicle Passenger Transportation	**488490**	Other Support Activities for Road Transportation	
	4212	Local Trucking Without Storage (general freight)	**484110**	General Freight Trucking, Local	
		(household goods moving)	**484210**	Used Household and Office Goods Moving	
		(specialized freight)	**484220**	Specialized Freight (except Used Goods) Trucking, Local	
		(solid waste collection without disposal)	**562111**	Solid Waste Collection	
		(hazardous waste collection without disposal)	**562112**	Hazardous Waste Collection	
		(other waste collection without disposal)	**562119**	Other Waste Collection	
	4213	Trucking, Except Local (general freight, truckload)	**484121**	General Freight Trucking, Long-Distance, Truckload	
		(general freight, less than truckload)	**484122**	General Freight Trucking, Long-Distance, Less Than Truckload	
		(household goods moving)	**484210**	Used Household and Office Goods Moving	
		(specialized freight)	**484230**	Specialized Freight (except Used Goods) Trucking, Long-Distance	
	4214	Local Trucking With Storage (general freight)	**484110**	General Freight Trucking, Local	
		(household goods moving)	**484210**	Used Household and Office Goods Moving	
		(specialized freight)	**484220**	Specialized Freight (except Used Goods) Trucking, Local	

	4215	Courier Services, Except by Air (hub and spoke intercity delivery)	**492110**	Couriers	
		(local delivery)	**492210**	Local Messengers and local Delivery	
	4226	Special Warehousing and Storage, Not Elsewhere Classified (warehousing in foreign trade zones)	**493110**	General Warehousing and Storage	
		(fur storage)	**493120**	Refrigerated Warehousing and Storage	
		(except fur storage and warehousing in foreign trade zones)	**493190**	Other Warehousing and Storage	
	4231	Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation	**488490**	Other Support Activities for Road Transportation	
	4311	United States Postal Service	**491110**	Postal Service	
	5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	**424710**	Petroleum Bulk Stations and Terminals	
		(heating oil sold to final consumer)	**454311**	Heating Oil Dealers	
		(LP gas sold to final consumer)	**454312**	Liquefied Petroleum Gas (Bottled Gas) Dealers	

Sector Q. Water Transportation

Sub-sector	SIC Codes		NAICS Codes		Notes
Q1	**4412**	Deep Sea Foreign Transportation of Freight	**483111**	Deep Sea Freight Transportation	
	4424	Deep Sea Domestic Transportation of Freight	**483113**	Coastal and Great Lakes Freight Transportation	
	4432	Freight Transportation on the Great Lakes - St. Lawrence Seaway	**483113**	Coastal and Great Lakes Freight Transportation	
	4449	Water Transportation of Freight, Not Elsewhere Classified	**483211**	Inland Water Freight Transportation	
	4481	Deep Sea Transportation of Passengers, Except by Ferry (deep sea activities)	**483112**	Deep Sea Passenger Transportation	
		(coastal activities)	**483114**	Coastal and Great Lakes Passenger Transportation	
	4482	Ferries (coastal and Great Lakes)	**483114**	Coastal and Great Lakes Passenger Transportation	
		(inland)	**483212**	Inland Water Passenger Transportation	

	4489	Water Transportation of Passengers, Not Elsewhere Classified (water taxis)	**483212**	Inland Water Passenger Transportation	
		(airboats, excursion boats, and sightseeing boats)	**487210**	Scenic and Sightseeing Transportation, Water	
	4491	Marine Cargo Handling (dock and pier operations)	**488310**	Port and Harbor Operations	
		(all but dock and pier operations)	**488320**	Marine Cargo Handling	
	4492	Towing and Tugboat Services	**488330**	Navigational Services to Shipping	
	4493	Marinas	**713930**	Marinas	
	4499	Water Transportation Services, Not Elsewhere Classified (lighterage)	**483211**	Inland Water Freight Transportation	
		(lighthouse and canal operations)	**488310**	Port and Harbor Operations	
		(piloting vessels in and out of harbors and marine salvage)	**488330**	Navigational Services to Shipping	
		(all but lighthouse operations, piloting vessels in and out of harbors, boat and ship rental, marine salvage, lighterage, marine surveyor services, and canal operations)	**488390**	Other Support Activities for Water Transportation	
		(boat and ship rental, commercial)	**532411**	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing	

Sector R. Ship and Boat Building and Repair Yards

Sub-sector	SIC Codes		NAICS Codes		Notes
R1	**3731**	Ship Building and Repairing (except repairs in floating drydocks)	**336611**	Ship Building and Repairing	
		(repair services provided by floating drydocks)	**488390**	Other Support Activities for Water Transportation (includes ship scaling facilities)	
	3732	Boat Building and Repairing (boat building)	**336612**	Boat Building	
		(pleasure boat repair and maintenance services without retailing new boats)	**811490**	Other Personal and Household Goods Repair and Maintenance	
		(ship scaling)	**488390**	Other Support Activities for Water Transportation (drydocks, floating [i.e., routine repair and maintenance of ships]; other support activities for water transportation; ship dismantling at floating drydock; ship scaling services not done at a shipyard)	
		(motorboat [i.e., inboard and outboard] repair and maintenance	**811490**	Other Personal and Household Goods Repair and Maintenance	

		services; outboard motor repair shops)			

Sector S. Air Transportation Facilities

Sub-sector	SIC Codes		NAICS Codes		Notes
S1	**4512**	Air Transportation, Scheduled (passenger)	**481111**	Scheduled Passenger Air Transportation	
		(freight)	**481112**	Scheduled Freight Air Transportation	
	4513	Air Courier Services	**492110**	Couriers	
	4522	Air Transportation, Nonscheduled (passenger)	**481211**	Nonscheduled Chartered Passenger Air Transportation	
		(freight)	**481212**	Nonscheduled Chartered Freight Air Transportation	
		(using general purpose aircraft for a variety of passenger, freight, courier, and other uses)	**481219**	Other Nonscheduled Air Transportation	
		(sightseeing planes)	**487990**	Scenic and Sightseeing Transportation, Other	
		(air ambulance)	**621910**	Ambulance Services	
	4581	Airports, Flying Fields, and Airport Terminal Services (air freight handling at airports, hangar operations, airport terminal services, aircraft storage, airports, and flying fields)	**488119**	Other Airport Operations	
		(aircraft servicing and repairing)	**488190**	Other Support Activities for Air Transportation	

Sector T. Treatment Works

Sub-sector	Activity Code	Narrative Description	Notes
T1	TW	• treatment works with a design flow of 1.0 MGD or more treating domestic sewage or any other sewage sludge; • wastewater treatment devices or system used by the treatment works for the storage, treatment, recycling and reclamation of municipal or domestic sewage; • land located within the confines of the treatment works that is dedicated to the disposal of sewage sludge; • treatment works required to have an approved pretreatment program under 40 CFR Part 403	TW is the Activity Code (i.e., non-SIC and non-NAICS designation) for this Sector. It may apply to any facility / SIC Code / NAICS Code, in addition to these specifically related to treatment works: • SIC 4952 Sewerage Systems • NAICS 221320 Sewage Treatment Facilities

Sector U. Food and Kindred Products

Sub-sector	SIC Codes		NAICS Codes		Notes
U3	2011	Meat Packing Plants	311611	Animal (except Poultry) Slaughtering	
	2013	Sausages and Other Prepared Meat Products (except lard made from purchased materials)	311612	Meat Processed from Carcasses	
		(lard made from purchased materials)	311613	Rendering and Meat Byproduct Processing	
	2015	Poultry Slaughtering and Processing (poultry slaughtering and processing)	311615	Poultry Processing	
		(egg processing)	311999	All Other Miscellaneous Food Manufacturing	
	2021	Creamery Butter	311512	Creamery Butter Manufacturing	
	2022	Natural, Processed, and Imitation Cheese	311513	Cheese Manufacturing	
	2023	Dry, Condensed and Evaporated Dairy Products (liquid non-dairy creamer)	311511	Fluid Milk Manufacturing	
		(except liquid non-dairy creamer)	311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing	
	2024	Ice Cream and Frozen Deserts	311520	Ice Cream and Frozen Desert Manufacturing	
	2026	Fluid Milk (except ultra-high temperature)	311511	Fluid Milk Manufacturing	
		(ultra-high temperature)	311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing	
	2032	Canned Specialties (except canned puddings)	311422	Specialty Canning	
		(canned puddings)	311999	All Other Miscellaneous Food Manufacturing	
	2033	Canned Fruits, Vegetables, Preserves, Jams, and Jellies	311421	Fruit and Vegetable Canning	

	2034	Dried and Dehydrated Fruits, Vegetables and Soup Mixes (vegetable flour)	**311211**	Flour Milling	
		(except vegetable flour and soup mixes made from purchased dried and dehydrated ingredients)	**311423**	Dried and Dehydrated Food Manufacturing	
		(soup mixes made from purchased dehydrated ingredients)	**311999**	All Other Miscellaneous Food Manufacturing	
	2035	Pickled Fruits and Vegetables, Vegetable Sauces and Seasonings, and Salad Dressings (pickled fruits and vegetables)	**311421**	Fruit and Vegetable Canning	
		(sauces and salad dressings)	**311941**	Mayonnaise, Dressing, and Other Prepared Sauce Manufacturing	
	2037	Frozen Fruits, Fruit Juices, and Vegetables	**311411**	Frozen Fruit, Juice, and Vegetable Manufacturing	
	2038	Frozen Specialties, Not Elsewhere Classified	**311412**	Frozen Specialty Food Manufacturing	
U1	**2041**	Flour and Other Grain Mill Products	**311211**	Flour Milling	
	2043	Cereal Breakfast Foods (cereal breakfast foods and related preparations except grain based coffee substitutes)	**311230**	Breakfast Cereal Manufacturing	
		(grain based coffee substitutes)	**311920**	Coffee and Tea Manufacturing	
	2044	Rice Milling	**311212**	Rice Milling	
	2045	Prepared Flour Mixes and Doughs	**311822**	Flour Mixes and Dough Manufacturing from Purchased Flour	
	2046	Wet Corn Milling (except refining purchased corn oil)	**311221**	Wet Corn Milling	
		(refining purchased corn oil)	**311225**	Fats and Oils Refining and Blending	
	2047	Dog and Cat Food	**311111**	Dog and Cat Food Manufacturing	
	2048	Prepared Feeds and Feed Ingredients for Animals and Fowls, Except Dogs and Cats (except slaughtering animals for pet food)	**311119**	Other Animal Food Manufacturing	
		(slaughtering animals for pet food)	**311611**	Animal (except Poultry) Slaughtering	
U3	**2051**	Bread and Other Bakery Products, Except Cookies and Crackers	**311812**	Commercial Bakeries	
	2052	Cookies and Crackers (unleavened bread and soft pretzels)	**311812**	Commercial Bakeries	
		(except unleavened bread and pretzels)	**311821**	Cookie and Cracker Manufacturing	

		(hard pretzels and snack pretzels, except soft)	**311919**	Other Snack Food Manufacturing (pretzels, except soft)	
	2053	Frozen Bakery Products, Except Bread	**311813**	Frozen Cakes, Pies, and Other Pastries Manufacturing	
	2061	Cane Sugar, Except Refining	**311311**	Sugarcane Mills	
	2062	Cane Sugar Refining	**311312**	Cane Sugar Refining	
	2063	Beet Sugar	**311313**	Beet Sugar Manufacturing	
	2064	Candy and Other Confectionery Products			
		(chocolate confectionery)	**311330**	Confectionery Manufacturing from Purchased Chocolate	
		(nonchocolate confectionery)	**311340**	Nonchocolate Confectionery Manufacturing	
	2066	Chocolate and Cocoa Products (except chocolate products, made from purchased chocolate)	**311320**	Chocolate and Confectionery Manufacturing from Cacao Beans	
		(chocolate products made from purchased chocolate)	**311330**	Confectionery Manufacturing from Purchased Chocolate	
	2067	Chewing Gum	**311340**	Nonchocolate Confectionery Manufacturing	
	2068	Salted and Roasted Nuts and Seeds	**311911**	Roasted Nuts and Peanut Butter Manufacturing	
U2	**2074**	Cottonseed Oil Mills			
		(cottonseed processing)	**311223**	Other Oilseed Processing	
		(processing purchased cottonseed oil)	**311225**	Fats and Oils Refining and Blending	
	2075	Soybean Oil Mills (soybean processing, except edible soybean oil)	**311222**	Soybean Processing	
		(processing purchased soybean oil)	**311225**	Fats and Oils Refining and Blending	
	2076	Vegetable Oil Mills, Except Corn, Cottonseed, and Soybean			
		(oilseed processing)	**311223**	Other Oilseed Processing	
		(processing purchased vegetable and oilseed oils)	**311225**	Fats and Oils Refining and Blending	
	2077	Animal and Marine Fats and Oils			
		(animal fats and oils)	**311613**	Rendering and Meat Byproduct Processing	
		(canned marine fats and oils)	**311711**	Seafood Canning	
		(fresh and frozen marine fats and oils)	**311712**	Fresh and Frozen Seafood Processing	
	2079	Shortening, Table Oils, Margarine, and Other Edible Fats and Oils, Not Elsewhere Classified (processing soybean oil into edible cooking oils from soybeans crushed in the same establishment)	**311222**	Soybean Processing	

		(processing vegetable oils, except soybean, into edible cooking oils from oilseeds and vegetables crushed in the same establishment)	**311223**	Other Oilseed Processing	
		(except processing vegetable and soybean oils into edible oils from oilseeds and vegetables crushed in the same establishment)	**311225**	Fats and Oils Refining and Blending	
U3	**2082**	Malt Beverages			
		(malt extract)	**311942**	Spice and Extract Manufacturing	
		(except malt extract)	**312120**	Breweries	
	2083	Malt	**311213**	Malt Manufacturing	
	2084	Wines, Brandy and Brandy Spirits	**312130**	Wineries	
	2085	Distilled and Blended Liquors			
		(apple jack)	**312130**	Wineries	
		(except apple jack)	**312140**	Distilleries	
	2086	Bottled and Canned Soft Drinks and Carbonated Water			
		(except bottled water)	**312111**	Soft Drink Manufacturing	
		(bottled water)	**312112**	Bottled Water Manufacturing	
	2087	Flavoring Extracts and Flavoring Syrups, Not Elsewhere Classified			
		(coffee flavoring and syrups)	**311920**	Coffee and Tea Manufacturing	
		(flavoring syrups and concentrates except coffee)	**311930**	Flavoring Syrup and Concentrate Manufacturing	
		(flavoring extracts and natural food colorings)	**311942**	Spice and Extract Manufacturing	
		(powered drink mix)	**311999**	All Other Miscellaneous Food Manufacturing	
	2091	Canned and Cured Fish and Seafoods	**311711**	Seafood Canning	
	2092	Prepared Fresh or Frozen Fish and Seafoods	**311712**	Fresh and Frozen Seafood Processing	
	2095	Roasted Coffee	**311920**	Coffee and Tea Manufacturing	
	2096	Potato Chips, Corn Chips, and Similar Snacks	**311919**	Other Snack Food Manufacturing	
	2097	Maufactured Ice	**312113**	Ice manufacturing	
	2098	Macaroni, Spaghetti, Vermicelli, and Noodles	**311823**	Dry Pasta Manufacturing	
	2099	Food Preparations, Not Elsewhere Classified			
		(rice, uncooked and packaged with other ingredients made in rice mills)	**311212**	Rice Milling	
		(marshmallow creme)	**311340**	Nonchocolate Confectionery Manufacturing	

		(bouillon and potatoes dried and packaged with other ingredients produced in dehydrating plants)	**311423**	Dried and Dehydrated Food Manufacturing	
		(dry pasta packaged with other ingredients made in dry pasta plants)	**311823**	Dry Pasta Manufacturing	
		(tortillas)	**311830**	Tortilla Manufacturing	
		(peanut butter)	**311911**	Roasted Nuts and Peanut Butter Manufacturing	
		(tea)	**311920**	Coffee and Tea Manufacturing	
		(vinegar, prepared dip)	**311941**	Mayonnaise, Dressing, and Other Prepared Sauce Manufacturing	
		(spices, dry dip mix, dry salad dressing mix, and seasoning mix)	**311942**	Spice and Extract Manufacturing	
		(perishable prepared food)	**311991**	Perishable Prepared Food Manufacturing	
		(except bouillon, marshmallow creme, spices, peanut butter, perishable prepared foods, tortillas, tea and tea extracts, dry dip mix, prepared dips, dry salad dressing mix, seasoning mix, dried potatoes, pasta, and rice mixed with other ingredients in mills or dehydrating plants, reducing maple sap to maple syrup, wool grease, and vinegar)	**311999**	All Other Miscellaneous Food Manufacturing	
	2111	Cigarettes	**312221**	Cigarette Manufacturing	
	2121	Cigars	**312229**	Other Tobacco Product Manufacturing	
	2131	Chewing and Smoking Tobacco and Snuff	**312229**	Other Tobacco Product Manufacturing	
	2141	Tobacco Stemming and Redrying (stemming and redrying tobacco)	**312210**	Tobacco Stemming and Redrying	
		(reconstituted tobacco)	**312229**	Other Tobacco Product Manufacturing	

Sector V. Textile Mills, Apparel, and Other Fabric Product Manufacturing

Sub-sector	SIC Codes		NAICS Codes		Notes
V1	**2211**	Broadwoven Fabric Mills, Cotton	**313210**	Broadwoven Fabric Mills	
	2221	Broadwoven Fabric Mills, Manmade Fiber and Silk	**313210**	Broadwoven Fabric Mills	
	2231	Broadwoven Fabric Mills, Wool (Including Dyeing and Finishing) (except finishing wool fabric without weaving wool fabric)	**313210**	Broadwoven Fabric Mills 2231	
		(wool broadwoven fabric finishing without weaving fabric)	**313311**	Broadwoven Fabric Finishing Mills	

		(wool fabric, except broadwoven, finishing without weaving fabric)	**313312**	Textile and Fabric Finishing (except Broadwoven Fabric) Mills	
	2241	Narrow Fabric and Other Smallwares Mills: Cotton, Wool, Silk and Manmade Fiber	**313221**	Narrow Fabric Mills	
	2251	Women's Full-Length and Knee-Length Hosiery, Except Socks (dyeing and finishing sheer hosiery without knitting sheer hosiery)	**313312**	Textile and Fabric Finishing (except Broadwoven Fabric) Mills	
		(except dyeing and finishing sheer hosiery without knitting sheer hosiery)	**315111**	Sheer Hosiery Mills	
	2252	Hosiery, Not Elsewhere Classified (dyeing and finishing hosiery , except sheer, without knitting hosiery)	**313312**	Textile and Fabric Finishing (except Broadwoven Fabric) Mills	
		(girls' full length and knee length sheer hosiery)	**315111**	Sheer Hosiery Mills	
		(except girls' full-length and knee-length sheer hosiery and dyeing and finishing hosiery without knitting hosiery)	**315119**	Other Hosiery and Sock Mills	
	2253	Knit Outerwear Mills (dyeing and finishing knit outerwear without knitting outerwear)	**313312**	Textile and Fabric Finishing (except Broadwoven Fabric) Mills	
		(except bath and lounging robes and dying and finish without knitting garments)	**315191**	Outerwear Knitting Mills	
		(knitting bath or lounging robes)	**315192**	Underwear and Nightwear Knitting Mills	
	2254	Knit Underwear and Nightwear Mills (dyeing and finishing underwear and nightwear without knitting garments)	**313312**	Textile and Fabric Finishing (except Broadwoven Fabric) Mills	
		(except dyeing and finishing underwear and nightwear without knitting garments)	**315192**	Underwear and Nightwear Knitting Mills	
	2257	Weft Knit Fabric Mills (except finishing without knitting weft fabric)	**313241**	Weft Knit Fabric Mills	
		(finishing weft fabric without knitting weft fabric)	**313312**	Textile and Fabric Finishing (except Broadwoven Fabric) Mills	
	2258	Weft Knit Fabric Mills (except finishing without knitting weft fabric)	**313241**	Weft Knit Fabric Mills	
		(finishing weft fabric without knitting weft fabric)	**313312**	Textile and Fabric Finishing (except Broadwoven Fabric) Mills	

	2259	Knitting Mills, Not Elsewhere Classified			
		(knitting weft fabric and fabricating textile products, such as bedspreads, curtains, or towels)	**313241**	Weft Knit Fabric Mills	
		(knitting lace or warp fabric and fabricating textile products, such as bedspreads, curtains, or towels)	**313249**	Other Knit Fabric and Lace Mills	
		(dyeing and finishing knit gloves and mittens without knitting gloves or mittens)	**313312**	Textile and Fabric Finishing (except Broadwoven Fabric) Mills	
		(knitting gloves and mittens)	**315191**	Outerwear Knitting Mills	
		(knitting girdles and allied foundation garments)	**315192**	Underwear and Nightwear Knitting Mills	
	2261	Finishers of Broadwoven Fabrics of Cotton	**313311**	Broadwoven Fabric Finishing Mills	
	2262	Finishers of Broadwoven Fabrics of Manmade Fibers and Silk	**313311**	Broadwoven Fabric Finishing Mills	
	2269	Finishers of Textiles, Not Elsewhere Classified			
		(linen fabric finishing)	**313311**	Broadwoven Fabric Finishing Mills	
		(except linen fabric finishing)	**313312**	Textile and Fabric Finishing (except Broadwoven Fabric) Mills	
	2273	Carpets and Rugs	**314110**	Carpet and Rug Mills	
	2281	Yarn Spinning Mills	**313111**	Yarn Spinning Mills	
	2282	Yarn Texturizing, Throwing, Twisting and Spinning Mills	**313112**	Yarn Texturizing, Throwing, Twisting Mills	
	2284	Thread Mills			
		(except finishing thread without manufacturing thread)	**313113**	Thread Mills	
		(finishing thread without manufacturing thread)	**313312**	Textile and Fabric Finishing (except Broadwoven Fabric) Mills	
	2295	Coated Fabrics, Not Rubberized	**313320**	Fabric Coating Mills	
	2296	Tire Cord and Fabrics	**314992**	Tire Cord and Tire fabric Mills	
	2297	Nonwoven Fabrics	**313230**	Nonwoven Fabric Mills	
	2298	Cordage and Twine			
		(hemp rope made in spinning mills)	**313111**	Yarn Spinning Mills	
		(except hemp rope made in spinning mills)	**314991**	Rope, Cordage, and Twine Mills	
	2299	Textile Goods, Not Elsewhere Classified			

		(hemp bags made in spinning mills, & spinning yarn of flax, hemp, jute, and ramie)	**313111**	Yarn Spinning Mills	
		(manufacturing thread of hemp, linen, and ramie)	**313113**	Thread Mills	
		(broadwoven fabrics of jute, linen, hemp, and ramie and hand woven fabrics)	**313210**	Broadwoven Fabric Mills	
		(narrow woven fabric of jute, linen, hemp, and ramie)	**313221**	Narrow Fabric Mills	
		(nonwoven felt)	**313230**	Nonwoven Fabric Mills	
		(finishing hard fiber thread and yarn without manufacturing thread or yarn)	**313312**	Textile and Fabric Finishing (except Broadwoven Fabric) Mills	
		(manufacturing other textile products)	**314999**	All Other Miscellaneous Textile Product Mills	
	2311	Men's and Boys' Suits, Coats, and Overcoats			
		(contractors)	**315211**	Men's and Boys' Cut and Sew Apparel Contractors	
		(except contractors)	**315222**	Men's and Boys' Cut and Sew Suit, Coat and Overcoat Manufacturing	
	2321	Men's and Boys' Shirts, Except Work Shirts			
		(contractors)	**315211**	Men's and Boys' Cut and Sew Apparel Contractors	
		(except contractors)	**315223**	Men's and Boys' Cut and Sew Shirt (except Work Shirt) Manufacturing	
	2322	Men's and Boys' Underwear and Nightwear			
		(contractors)	**315211**	Men's and Boys' Cut and Sew Apparel Contractors	
		(except contractors)	**315221**	Men's and Boys' Cut and Sew Underwear and Nightwear Manufacturing	
	2323	Men's and Boys' Neckwear			
		(contractors)	**315211**	Men's and Boys' Cut and Sew Apparel Contractors	
		(except contractors)	**315993**	Men's and Boys' Neckwear Manufacturing	
	2325	Men's and Boys' Separate Trousers and Slacks			
		(contractors)	**315211**	Men's and Boys' Cut and Sew Apparel Contractors	
		(except contractors)	**315224**	Men's and Boys' Cut and Sew Trouser, Slack and Jean Manufacturing	

	2326	Men’s and Boys’ Work Clothing (contractors)	**315211**	Men's and Boys' Cut and Sew Apparel Contractors	
		(except contractors)	**315225**	Men’s and Boys’ Cut and Sew Work Clothing Manufacturing	
	2329	Men’s and Boys’ Clothing, Not Elsewhere Classified (contractors)	**315211**	Men's and Boys' Cut and Sew Apparel Contractors	
		(except team athletic uniforms and contractors)	**315228**	Men’s and Boys’ Cut and Sew Other Outerwear Manufacturing	
		(team athletic uniforms except contractors)	**315299**	All Other Cut and Sew Apparel Manufacturing	
	2331	Women’s, Misses’, and Juniors’ Blouses and Shirts (contractors)	**315212**	Women’s, Girls’, and Infants’ Cut and Sew Apparel Contractors	
		(except contractors)	**315232**	Women’s and Girls’ Cut and Sew Blouse and Shirt Manufacturing	
	2335	Women’s, Misses’, and Juniors’ Dresses (contractors)	**315212**	Women's, Girls', and Infants' Cut and Sew Apparel Contractors	
		(except contractors)	**315233**	Women’s and Girls’ Cut and Sew Dress Manufacturing	
	2337	Women’s, Misses’, and Juniors’ Suits, Skirts, and Coats (contractors)	**315212**	Women's, Girls', and Infants' Cut and Sew Apparel Contractors	
		(except contractors)	**315234**	Women’s and Girls’ Cut and Sew Suit, Coat, Tailored Jacket, and Skirt Manufacturing	
	2339	Women’s, Misses’, and Juniors’ Outerwear, Not Elsewhere Classified (contractors)	**315212**	Women's, Girls', and Infants' Cut and Sew Apparel Contractors	
		(except team athletic uniforms, scarves, and contractors)	**315239**	Women’s and Girls’ Cut and Sew Other Outerwear Manufacturing	
		(team athletic uniforms except contractors)	**315299**	All Other Cut and Sew Apparel Manufacturing	
		(scarves except contractors)	**315999**	Other Apparel Accessories and Other Apparel Manufacturing	

	2341	Women's, Misses', Children's, and Infants' Underwear and Nightwear			
		(boys' contractors)	**315211**	Men's and Boys' Cut and Sew Apparel Contractors	
		(women's, girls', and infants' contractors)	**315212**	Women's, Girls', and Infants' Cut and Sew Apparel Contractors	
		(boys' except contractors)	**315221**	Men's and Boys' Cut and Sew Underwear and Nightwear Manufacturing	
		(women and girls' except contractors)	**315231**	Women's and Girls' Cut and Sew Lingerie, Loungewear, and Nightwear Manufacturing	
		(infants' except contractors)	**315291**	Infants' Cut and Sew Apparel Manufacturing	
	2342	Brassieres, Girdles, and Allied Garments			
		(contractors)	**315212**	Women's, Girls', and Infants' Cut and Sew Apparel Contractors	
		(except contractors)	**315231**	Women's and Girls' Cut and Sew Lingerie, Loungewear, and Nightwear Manufacturing	
	2353	Hats, Caps, and Millinery			
		(men's and boys' contractors)	**315211**	Men's and Boys' Cut and Sew Apparel Contractors	
		(women's, girls', and infants' contractors)	**315212**	Women's, Girls', and Infants' Cut and Sew Apparel Contractors	
		(except contractors)	**315991**	Hat, Cap, and Millinery Manufacturing	
	2361	Girls', Children's, and Infants' Dresses, Blouses, and Shirts			
		(boys' contractors)	**315211**	Men's and Boys' Cut and Sew Apparel Contractors	
		(girls' and infants' contractors)	**315212**	Women's, Girls', and Infants' Cut and Sew Apparel Contractors	
		(boys' shirts except contractors)	**315223**	Men's and Boys' Cut and Sew Shirt (except Work Shirt) Manufacturing	
		(girls' blouses and shirts except contractors)	**315232**	Women's and Girls' Cut and Sew Blouse and Shirt Manufacturing	
		(girls' dresses except contractors)	**315233**	Women's and Girls' Cut and Sew Dress Manufacturing	
		(infants' except contractors)	**315291**	Infants' Cut and Sew Apparel Manufacturing	
	2369	Girls', Children's, and Infants' Outerwear, Not Elsewhere Classified			
		(boys' contractors)	**315211**	Men's and Boys' Cut and Sew Apparel Contractors	
		(girls' and infants' contractors)	**315212**	Women's, Girls', and Infants' Cut and Sew Apparel Contractors	
		(boys' robes except contractors)	**315221**	Men's and Boys' Cut and Sew Underwear and Nightwear Manufacturing	

		(boys' suits and coats except contractors)	**315222**	Men's and Boys' Cut and Sew Suit, Coat, and Overcoat Manufacturing	
		(boys' trousers, slacks, and jeans except contractors)	**315224**	Men's and Boys' Cut and Sew Trouser, Slack and Jean Manufacturing	
		(boys' other outerwear except contractors)	**315228**	Men's and Boys' Cut and Sew Other Outerwear Manufacturing	
		(girls' robes except contractors)	**315231**	Women's and Girls' Cut and Sew Lingerie, Loungewear, and Nightwear Manufacturing	
		(girls' suits, coats, jackets, and skirts except contractors)	**315234**	Women's and Girls' Cut and Sew Suit, Coat, Tailored Jacket, and Skirt Manufacturing	
		(girls' other outerwear except contractors)	**315239**	Women's and Girls' Cut and Sew Other Outerwear Manufacturing	
		(infants' except contractors)	**315291**	Infants' Cut and Sew Apparel Manufacturing	
	2371	Fur Goods			
		(men's and boys' contractors)	**315211**	Men's and Boys' Cut and Sew Apparel Contractors	
		(women's, girls', and infants' contractors)	**315212**	Women's, Girls', and Infants' Cut and Sew Apparel Contractors	
		(except contractors)	**315292**	Fur and Leather Apparel Manufacturing	
	2381	Dress and Work Gloves, Except Knit and All-Leather			
		(men's and boys' contractors)	**315211**	Men's and Boys' Cut and Sew Apparel Contractors	
		(women's, girls', and infants' contractors)	**315212**	Women's, Girls', and Infants' Cut and Sew Apparel Contractors	
		(except contractors)	**315992**	Glove and Mitten Manufacturing	
	2384	Robes and Dressing Gowns			
		(men's and boys' contractors)	**315211**	Men's and Boys' Cut and Sew Apparel Contractors	
		(women's, girls', and infants' contractors)	**315212**	Women's, Girls', and Infants' Cut and Sew Apparel Contractors	
		(men's except contractors)	**315221**	Men's and Boys' Cut and Sew Underwear and Nightwear Manufacturing	
		(women's except contractors)	**315231**	Women's and Girls' Cut and Sew Lingerie, Loungewear, and Nightwear Manufacturing	
	2385	Waterproof Outerwear			
		(men's and boys' contractors)	**315211**	Men's and Boys' Cut and Sew Apparel Contractors	
		(women's, girls', and infants' contractors)	**315212**	Women's, Girls', and Infants' Cut and Sew Apparel Contractors	
		(men's and boys' water resistant or water repellent tailored overcoats, except made from rubberized fabric, plastics, etc. and contractors)	**315222**	Men's and Boys' Cut and Sew Suit, Coat, and Overcoat Manufacturing	

		(men's and boys' water resistant or water repellent nontailored outerwear, except made from rubberized fabric, plastics, etc. and contractors)	**315228**	Men's and Boys' Cut and Sew Other Outerwear Manufacturing	
		(women's and girls' water resistant or water repellent tailored coats, except made from rubberized fabric, plastics, etc. and contractors)	**315234**	Women's and Girls' Cut and Sew Suit, Coat, Tailored Jacket, and Skirt Manufacturing"	
		(other women's and girls' water resistant or water repellent nontailored outerwear, except made from rubberized fabric, plastics, etc. and contractors)	**315239**	Women's and Girls' Cut and Sew Other Outerwear Manufacturing	
		(infants' waterproof outerwear made from rubberized fabric, plastics, etc. except contractors)	**315291**	Infants' Cut and Sew Apparel Manufacturing	
		(men's, boys', women's, and girls' waterproof outerwear made from rubberized fabric, plastics, etc. except contractors)	**315299**	All Other Cut and Sew Apparel Manufacturing	
		(accessories, such as aprons, bibs, and other miscellaneous waterproof items, made from rubberized fabric, plastics, etc. except contractors)	**315999**	Other Apparel Accessories and Other Apparel Manufacturing	
	2386	Leather and Sheep-Lined Clothing			
		(men's and boys' contractors)	**315211**	Men's and Boys' Cut and Sew Apparel Contractors	
		(women's, girls', and infants' contractors)	**315212**	Women's, Girls', and Infants' Cut and Sew Apparel Contractors	
		(except contractors)	**315292**	Fur and Leather Apparel Manufacturing	
	2387	Apparel Belts			
		(men's and boys' contractors)	**315211**	Men's and Boys' Cut and Sew Apparel Contractors	
		(women's, girls', and infants' contractors)	**315212**	Women's, Girls', and Infants' Cut and Sew Apparel Contractors	
		(except contractors)	**315999**	Other Apparel Accessories and Other Apparel Manufacturing	
	2389	Apparel and Accessories, Not Elsewhere Classified			
		(men's and boys' contractors)	**315211**	Men's and Boys' Cut and Sew Apparel Contractors	
		(women's, girls', and infants' contractors)	**315212**	Women's, Girls', and Infants' Cut and Sew Apparel Contractors	

		(garters and garter belts except contractors)	**315231**	Women's and Girls' Cut and Sew Lingerie, Loungewear, and Nightwear Manufacturing	
		(apparel, such as academic gowns, clerical outerwear, and band uniforms, except contractors)	**315299**	All Other Cut and Sew Apparel Manufacturing	
		(accessories such as, handkerchiefs, arm bands, cummerbunds, suspenders, etc., except contractors)	**315999**	Other Apparel Accessories and Other Apparel Manufacturing	
	2391	Curtains and Draperies	**314121**	Curtain and Drapery Mills	
	2392	Housefurnishings, Except Curtains and Draperies (except mops, dust rags, and bags)	**314129**	Other Household Textile Product Mills	
		(blanket, laundry, and wardrobe bags)	**314911**	Textile Bag Mills	
		(dust rags)	**314999**	All Other Miscellaneous Textile Product Mills	
		(floor and dust mops)	**339994**	Broom, Brush, and Mop Manufacturing	
	2393	Textile Bags	**314911**	Textile Bag Mills	
	2394	Canvas and Related Products	**314912**	Canvas and Related Product Mills	
	2395	Pleating, Decorative and Novelty Stitching, and Tucking for the Trade (except apparel contractors)	**314999**	All Other Miscellaneous Textile Product Mills	
		(men's and boy's apparel contractors)	**315211**	Men's and Boys' Cut and Sew Apparel Contractors	
		(women's, girls', and infants' apparel contractors)	**315212**	Women's, Girls', and Infants' Cut and Sew Apparel Contractors	
	2396	Automotive Trimmings, Apparel Findings, and Related Products (textile products except automotive and apparel trimmings and findings, printing or embossing on apparel, and contractors)	**314999**	All Other Miscellaneous Textile Product Mills	
		(men's and boys' contractors)	**315211**	Men's and Boys' Cut and Sew Apparel Contractors	
		(women's, girls', and infants' contractors)	**315212**	Women's, Girls', and Infants' Cut and Sew Apparel Contractors	
		(apparel findings and trimmings, except contractors)	**315999**	Other Apparel Accessories and Other Apparel Manufacturing	
		(printing and embossing on fabric articles)	**323113**	Commercial Screen Printing	
		(textile motor vehicle trimming except contractors)	**336360**	Motor Vehicle Seating and Interior Trim Manufacturing	
	2397	Schiffli Machine Embroideries	**313222**	Schiffli Machine Embroidery	

	2399	Fabricated Textile Products, Not Elsewhere Classified (except apparel and accessories, automotive seat belts, seat and tire covers, and contractors)	**314999**	All Other Miscellaneous Textile Product Mills	
		(men's and boys' contractors)	**315211**	Men's and Boys' Cut and Sew Apparel Contractors	
		(women's, girls', and infants' contractors)	**315212**	Women's, Girls', and Infants' Cut and Sew Apparel Contractors	
		(apparel and apparel accessories, except contractors)	**315999**	Other Apparel Accessories and Other Apparel Manufacturing	
		(seat belts, and seat and tire covers)	**336360**	Motor Vehicle Seating and Interior Trim Manufacturing	
	3131	Boot and Shoe Cut Stock and Findings (except wood heels and metal buckles)	**316999**	All Other Leather Good Manufacturing	
		(heels, boot and shoe, finished wood, manufacturing)	**321999**	All Other Miscellaneous Wood Product Manufacturing	A facility with the primary activity of NAICS 321999 "heels, boot and shoe, finished wood, manufacturing" can be regulated under Sector A or Sector V. Sector A requires additional technology-based effluent limits comprising good housekeeping; additional SWPPP requirements; additional inspection requirements; and benchmark monitoring for COD and TSS. Sector V requires additional technology-based effluent limits comprised of good housekeeping measures and employee training; additional SWPPP requirements; and additional inspection requirements. Regulatory burden would likely be greater under Sector A.
		(metal buckles)	**339993**	Fastener, Button, Needle, and Pin Manufacturing	Any facility whose primary activity is manufacturing metal buckles (SIC 3131 / NAICS 339993) should be regulated under Sector Y, but may continue to be regulated under Sector V, or alternatively, under Sector AD. Sector Y does not apply additional sector-specific requirements to metal

					buckle manufacturers. Sector V applies additional technology-based limitations comprised of good housekeeping measures for material storage areas and employee training. Under Sector AD EPA could establish additional facility-specific monitoring and reporting requirements. Regulatory burden would likely be greater under Sector V.
	3142	House Slippers	**316212**	House Slipper Manufacturing	
	3143	Men's Footwear, Except Athletic	**316213**	Men's Footwear (except Athletic) Manufacturing	
	3144	Women's Footwear, Except Athletic	**316214**	Women's Footwear (except Athletic) Manufacturing	
	3149	Footwear, Except Rubber, Not Elsewhere Classified	**316219**	Other Footwear Manufacturing	
	3151	Leather Gloves and Mittens			
		(men's and boys' contractors)	**315211**	Men's and Boys' Cut and Sew Apparel Contractors	
		(women's, girls', and infants' contractors)	**315212**	Women's, Girls', and Infants' Cut and Sew Apparel Contractors	
		(except contractors)	**315992**	Glove and Mitten Manufacturing	
	3161	Luggage	**316991**	Luggage Manufacturing	
	3171	Women's Handbags and Purses	**316992**	Women's Handbag and Purse Manufacturing	
	3172	Personal Leather Goods, Except Women's Handbags and Purses (except nonprecious metal personal goods, such as card cases, cigar cases, and comb cases)	**316993**	Personal Leather Good (except Women's Handbag and Purse) Manufacturing	
		(nonprecious metal personal goods, such as card cases, cigar cases, and comb cases)	**339914**	Costume Jewelry and Novelty Manufacturing	Any facility whose primary activity is manufacturing nonprecious metal personal goods, such as card cases, cigar cases, and comb cases (SIC 3172 / NAICS 339914) should be regulated under Sector Y, but may continue to be regulated under Sector V, or alternatively, under Sector AD. Sector Y does not apply additional sector-specific requirements to metal buckle manufacturers. Sector V applies additional technology-based limitations comprised of good

					housekeeping measures for material storage areas and employee training. Under Sector AD EPA could establish additional facility-specific monitoring and reporting requirements. Regulatory burden would likely be greater under Sector V.
	3199	Leather Goods, Not Elsewhere Classified	**316999**	All Other Leather Good Manufacturing	

Sector W. Furniture and Fixtures

Sub-sector	SIC Codes		NAICS Codes		Notes
W1	**2434**	Wood Kitchen Cabinets	**337110**	Wood Kitchen Cabinet and Countertop Manufacturing	
	2511	Wood Household Furniture, Except Upholstered			
		(except wood box spring frames)	**337122**	Nonupholstered Wood Household Furniture Manufacturing	
		(wood box spring frames (parts))	**337215**	Showcase, Partition, Shelving, and Locker Manufacturing	
	2512	Wood Household Furniture, Upholstered	**337121**	Upholstered Household Furniture Manufacturing	
	2514	Metal Household Furniture			
		(upholstered)	**337121**	Upholstered Household Furniture Manufacturing	
		(except upholstered metal furniture and metal box spring frames)	**337124**	Metal Household Furniture Manufacturing	
		(metal box spring frames)	**337215**	Showcase, Partition, Shelving, and Locker Manufacturing	
	2515	Mattresses, Foundations, and Convertible Beds			
		(convertible beds)	**337121**	Upholstered Household Furniture Manufacturing	
		(mattresses and foundations)	**337910**	Mattress Manufacturing	
	2517	Wood, Television, Radio, Phonograph, and Sewing Machine Cabinets	**337129**	Wood, Television, Radio, Phonograph, and Sewing Machine Cabinet Manufacturing	
	2519	Household Furniture, Not Elsewhere Classified	**337125**	Household Furniture (except Wood and Metal) Manufacturing	
	2521	Wood Office Furniture	**337211**	Wood Office Furniture Manufacturing	
	2522	Office Furniture, Except Wood	**337214**	Office Furniture (Except Wood) Manufacturing	

	2531	Public Building and Related Furniture			
		(seats for motor vehicles)	**336360**	Motor Vehicle Seating and Interior Trim Manufacturing	
		(except motor vehicle seats and blackboards)	**337127**	Institutional Furniture Manufacturing	
		(blackboards)	**339942**	Lead Pencil and Art Good Manufacturing	
	2541	Wood Office and Store Fixtures, Partitions, Shelving, and Lockers			
		(counter tops)	**337110**	Wood Kitchen Cabinet and Countertop Manufacturing	
		(wood lunchroom tables and chairs)	**337127**	Institutional Furniture Manufacturing	
		(custom architectural millwork)	**337212**	Custom Architectural Woodwork and Millwork Manufacturing	
		(except custom architectural millwork, counter tops, and lunchroom tables and chairs)	**337215**	Showcase, Partition, Shelving, and Locker Manufacturing	
	2542	Office and Store Fixtures, Partitions, Shelving, and Lockers, Except Wood			
		(lunchroom tables and chairs)	**337127**	Institutional Furniture Manufacturing	
		(except lunchroom tables and chairs)	**337215**	Showcase, Partition, Shelving, and Locker Manufacturing	
	2591	Drapery Hardware and Window Blinds and Shades	**337920**	Blind and Shade Manufacturing	
	2599	Furniture and Fixtures, Not Elsewhere Classified			
		(except hospital beds)	**337127**	Institutional Furniture Manufacturing	
		(hospital beds)	**339111**	Laboratory Apparatus and Furniture Manufacturing	

Sector X. Printing and Publishing

Sub-sector	SIC Codes		NAICS Codes		Notes
X1	**2711**	Newspapers: Publishing, or Publishing and Printing (except Internet newspaper publishing)	**511110**	Newspaper Publishers	
	2721	Periodicals: Publishing, or Publishing and Printing (except Internet periodical publishing)	**511120**	Periodical Publishers	
	2731	Books: Publishing, or Publishing and Printing (except Internet book publishing)			
		(except music books)	**511130**	Book Publishers	
		(music books)	**512230**	Music Publishers	

	2732	Book Printing	**323117**	Book Printing	
	2741	Miscellaneous Publishing (except Internet publishers) (shopping news and advertising periodical publishing or publishing and printing except Internet)	**511120**	Periodical Publishers	
		(technical manuals and books publishing or publishing and printing, except Internet)	**511130**	Book Publishers	
		(directory publishers, except Internet publishers)	**511140**	Directory and Mailing List Publishers	
		(except database, advertising periodicals, shopping news, technical manuals and books, and sheet music publishing or publishing and printing)	**511199**	All Other Publishers	
		(sheet music publishing or publishing and printing)	**512230**	Music Publishers	
	2752	Commercial Printing, Lithographic (except quick printing)	**323110**	Commercial Lithographic Printing	
		(quick printing)	**323114**	Quick Printing	
	2754	Commercial Printing, Gravure	**323111**	Commercial Gravure Printing	
	2759	Commercial Printing, NEC (flexographic printing)	**323112**	Commercial Flexographic Printing	
		(screen printing)	**323113**	Commercial Screen Printing	
		(digital printing, except quick printing)	**323115**	Digital Printing	
		(other commercial printing except flexographic, screen, digital, and quick printing)	**323119**	Other Commercial Printing	
	2771	Greeting Cards (except Internet greeting card publishers) (lithographic printing of greeting cards)	**323110**	Commercial Lithographic Printing	
		(gravure printing of greeting cards)	**323111**	Commercial Gravure Printing	
		(flexographic printing of greeting cards)	**323112**	Commercial Flexographic Printing	
		(screen printing of greeting cards)	**323113**	Commercial Screen Printing	
		(other printing of greeting cards)	**323119**	Other Commercial Printing	
		(publishing greeting cards)	**511191**	Greeting Card Publishers	
	2782	Blankbooks, Looseleaf Binders and Devices (checkbooks)	**323116**	Manifold Business Form Printing	
		(except checkbooks)	**323118**	Blankbook, Loose-leaf Binder, and Device Manufacturing	

	2789	Bookbinding and Related Work	**323121**	Tradebinding and Related Work	
	2791	Typesetting	**323122**	Prepress Services	
	2796	Platemaking and Related Services	**323122**	Prepress Services	

Sector Y. Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries

Sub-sector	SIC Codes		NAICS Codes		Notes
Y1	**3011**	Tires and Inner Tubes	**326211**	Tire Manufacturing (except Retreading)	
	3021	Rubber and Plastics Footwear	**316211**	Rubber and Plastics Footwear Manufacturing	
	3052	Rubber and Plastics Hose and Belting	**326220**	Rubber and Plastics Hoses and Belting Manufacturing	
	3053	Gaskets, Packing, and Sealing Devices	**339991**	Gaskets, Packing, and Sealing Device Manufacturing	
	3061	Molded, Extruded, and Lathe-Cut Mechanical Rubber Goods	**326291**	Rubber Product Manufacturing for Mechanical Use	
	3069	Fabricated Rubber Products, Not Elsewhere Classified			
		(rubberizing fabric or purchased textile products)	**313320**	Fabric Coating Mills	
		(bags made from rubberized fabric)	**314911**	Textile Bag Mills	
		(rubber cut and sew outerwear)	**315299**	All Other Cut and Sew Apparel Manufacturing	
		(bibs, bathing caps, related rubber accessories)	**315999**	Other Apparel Accessories and Other Apparel Manufacturing	
		(rubber resilient floor coverings)	**326192**	Resilient Floor Covering Manufacturing	
		(except rubberized fabric and garments, gloves, life vests, wet suits, accessories, such as bibs and bathing caps, rubber toys, bags made from rubberized fabric, rubber diaper covers, and rubber resilient floor coverings)	**326299**	All Other Rubber Product Manufacturing	
		(rubber gloves, inflatable rubber life jackets)	**339113**	Surgical and Appliance and Supplies Manufacturing	
		(wet suits)	**339920**	Sporting and Athletic Goods Manufacturing	
		(rubber toys, except dolls)	**339932**	Game, Toy, and Children's Vehicle Manufacturing	
Y2	**3081**	Unsupported Plastics Film and Sheet	**326113**	Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing	
	3082	Unsupported Plastics Profile Shapes	**326121**	Unlaminated Plastics Profile Shape Manufacturing	

	3083	Laminated Plastics Plate, Sheet, and Profile Shapes	**326130**	Laminated Plastics Plate, Sheet (except Packaging), and Shape Manufacturing	
	3084	Plastics Pipe	**326122**	Plastics Pipe and Pipe Fitting Manufacturing	
	3085	Plastics Bottles	**326160**	Plastics Bottle Manufacturing	
	3086	Plastics Foam Products (polystyrene foam products)	**326140**	Polystyrene Foam Product Manufacturing	
		(except polystyrene foam products)	**326150**	Urethane and Other Foam Product (except Polystyrene) Manufacturing	
	3087	Custom Compounding of Purchased Plastics Resins	**325991**	Custom Compounding of Purchased Resins	
	3088	Plastics Plumbing Fixtures	**326191**	Plastics Plumbing Fixture Manufacturing	
	3089	Plastics Products, Not Elsewhere Classified (plastics sausage casings)	**326121**	Unlaminated Plastics Profile Shape Manufacturing	
		(pipe fittings)	**326122**	Plastics Pipe and Pipe Fitting Manufacturing	
		(except plastics pipe fittings, inflatable plastics life jackets, plastics furniture parts, and plastics sausage casings)	**326199**	All Other Plastics Product Manufacturing	
		(finished plastic furniture parts)	**337215**	Showcase, Partition, Shelving, and Locker Manufacturing	
		(inflatable plastic life jackets)	**339113**	Surgical Appliance and Supplies Manufacturing	
	3931	Musical Instruments	**339992**	Musical Instrument Manufacturing	
	3942	Dolls and Stuffed Toys	**339931**	Doll and Stuffed Toy Manufacturing	
	3944	Games, Toys, and Children's Vehicles, Except Dolls and Bicycles (metal tricycles)	**336991**	Motorcycle, Bicycle, and Parts Manufacturing	Any facility whose primary activity is manufacturing metal tricycles (SIC 3944 / NAICS 336991) should be regulated under Sector AB, but may continue to be regulated under Sector Y, or alternatively, under Sector AD. Sector AB applies additional SWPPP requirements. Sector Y does not apply additional sector-specific requirements to metal tricycle manufacturers and under Sector AD EPA could establish additional facility-specific monitoring and reporting requirements. Regulatory burden would be greater under Sector AB.

		(except metal tricycles)	**339932**	Game, Toy, and Children's Vehicle Manufacturing	
	3949	Sporting and Athletic Goods, Not Elsewhere Classified	**339920**	Sporting and Athletic Goods Manufacturing	
	3951	Pens, Mechanical Pencils, and Parts	**339941**	Pens, Mechanical Pencil Manufacturing	
	3953	Marking Devices	**339943**	Marking Device Manufacturing	
	3955	Carbon Paper and Inked Ribbons	**339944**	Carbon Paper and Inked Ribbon Manufacturing	
	3961	Costume Jewelry and Costume Novelties, Except Precious Metal (except cuff links)	**339914**	Costume Jewelry and Novelty Manufacturing	
		(nonprecious cuff links)	**339993**	Fastener, Button, Needle, and Pin Manufacturing	
	3965	Fasteners, Buttons, Needles, and Pins	**339993**	Fastener, Button, Needle, and Pin Manufacturing	
	3991	Brooms and Brushes	**339994**	Broom, Brush, and Mop Manufacturing	
	3993	Signs and Advertising Specialties			
		(screen printing purchased advertising specialties[34])	**323113**	Commercial Screen Printing	Any facility whose primary activity is screen printing purchased advertising specialties (SIC 3993 / NAICS 323113) should be regulated under Sector X, but may continue to be regulated under Sector Y, or alternatively, under Sector AD. Sector X applies additional technology-based effluent limits comprised of good housekeeping measures for material storage areas, and additional SWPPP requirements. Sector Y does not apply additional requirements to these facilities and under Sector AD EPA could establish additional facility-specific monitoring and reporting requirements. Regulatory burden would be greater under Sector X.
		(signs)	**339950**	Sign Manufacturing	
	3995	Burial Caskets	**339995**	Burial Casket Manufacturing	
	3996	Linoleum, Asphalted-Felt-Base, and Other Hard Surface Floor Coverings, Not Elsewhere Classified	**326192**	Resilient Floor Covering Manufacturing	

	3999	Manufacturing Industries, Not Elsewhere Classified			
		(fur dressing and finishing)	**316110**	Leather and Hide Tanning and Finishing	Any facility whose primary activity is fur dressing and finishing (SIC 3999 / NAICS 316110) should be regulated under Sector Z, but may continue to be regulated under Sector Y, or alternatively, under Sector AD. Sector Z applies additional technology-based effluent limits comprised of good housekeeping measures for material storage areas and handling areas, and additional SWPPP requirements. Sector Y does not apply additional requirements to these facilities and under Sector AD EPA could establish additional facility-specific monitoring and reporting requirements. Regulatory burden would be greater under Sector Z.
		(burnt wood articles)	**321999**	All Other Miscellaneous Wood Product Manufacturing	Any facility whose primary activity is burnt wood articles (SIC 3999 / NAICS 321999) should be regulated under Sector A, but may continue to be regulated under Sector Y, or alternatively, under Sector AD. Sector A applies additional technology-based effluent limits comprised of good housekeeping measures, additional SWPPP requirements, and benchmark monitoring for COD and TSS. Sector Y does not apply additional requirements to these facilities and under Sector AD EPA could establish additional facility-specific monitoring and reporting requirements. Regulatory burden would be greater under Sector A.
		(matches and match books manufacturing)	**325998**	All Other Miscellaneous Chemical Product and Preparation Manufacturing	Any facility whose primary activity is matches and match books manufacturing (SIC 3999 / NAICS

					325998) should be regulated under Sector C, but may continue to be regulated under Sector Y, or alternatively, under Sector AD. Sectors C and Y do not require additional sector-specific requirements. EPA could establish additional facility-specific monitoring and reporting requirements under Sector AD. Regulatory burden is not expected to differ between Sectors C and Y.
		(plastics products such as combs, hair curlers, etc.)	**326199**	All Other Plastics Product Manufacturing	
		(hand operated hair clippers for humans)	**332211**	Cutlery and Flatware (except Precious) Manufacturing	Any facility whose primary activity is manufacturing hand operated hair clippers for humans (SIC 3999 / NAICS 332211) should be regulated under Sector AA, but may continue to be regulated under Sector Y, or alternatively, under Sector AD. Sector AA applies additional technology-based effluent limits comprised of good housekeeping measures, spill prevention and response procedures, and spills and leaks; additional SWPPP requirements; and additional inspection requirements. Sector Y does not require additional sector-specific requirements. EPA could establish additional facility-specific monitoring and reporting requirements under Sector AD. Regulatory burden would be greater under Sector AA.
		(tape measures)	**332212**	Hand and Edge Tool Manufacturing	Any facility whose primary activity is manufacturing tape measures (SIC 3999 / NAICS 332212) should be regulated under Sector AA, but may continue to be regulated under Sector Y, or alternatively, under Sector AD. Sector AA applies additional

					technology-based effluent limits comprised of good housekeeping measures, spill prevention and response procedures, and spills and leaks; additional SWPPP requirements; and additional inspection requirements. Sector Y does not require additional sector-specific requirements. EPA could establish additional facility-specific monitoring and reporting requirements under Sector AD. Regulatory burden would be greater under Sector AA.
		(flocking metal products for the trade)	**332812**	Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers	Any facility whose primary activity is manufacturing flocking metal products for the trade (SIC 3999 / NAICS 332812) should be regulated under Sector AA, but may continue to be regulated under Sector Y, or alternatively, under Sector AD. Sector AA applies additional technology-based effluent limits comprised of good housekeeping measures, spill prevention and response procedures, and spills and leaks; additional SWPPP requirements; and additional inspection requirements. Sector Y does not require additional sector-specific requirements. EPA could establish additional facility-specific monitoring and reporting requirements under Sector AD. Regulatory burden would be greater under Sector AA.
		(other miscellaneous metal products, such as combs, hair curlers, etc.)	**332999**	All Other Miscellaneous Fabricated Metal Product Manufacturing	Any facility whose primary activity is manufacturing other miscellaneous metal products, such as combs, hair curlers, etc. (SIC 3999 / NAICS 332999) should be regulated under Sector AA, but may continue to be regulated under Sector Y, or alternatively, under Sector AD. Sector

					AA applies additional technology-based effluent limits comprised of good housekeeping measures, spill prevention and response procedures, and spills and leaks; additional SWPPP requirements; and additional inspection requirements. Sector Y does not require additional sector-specific requirements. EPA could establish additional facility-specific monitoring and reporting requirements under Sector AD. Regulatory burden would be greater under Sector AA.
		(beauty and barber shop equipment, except chairs)	**333319**	Other Commercial and Service Industry Machinery Manufacturing	
		(lamp shades of paper or textile)	**335121**	Residential Electric Lighting Fixture Manufacturing	
		(electric hair clippers for humans)	**335211**	Electric Housewares and Household Fan Manufacturing	Any facility whose primary activity is manufacturing electric hair clippers for humans (SIC 3999 / NAICS 335211) should be regulated under Sector AC, but may continue to be regulated under Sector Y, or alternatively, under Sector AD. Sectors Y and AC do not apply sector-specific requirements to facilities manufacturing electric hair clippers for humans. EPA may establish facility-specific monitoring and reporting requirements under Sector AD. Regulatory burden is not expected to differ between Sectors Y and AC.
		(beauty and barber chairs)	**337127**	Institutional Furniture Manufacturing	Any facility whose primary activity is manufacturing beauty and barber chairs (SIC 3999 / NAICS 337127) should be regulated under Sector W, but may continue to be regulated under Sector Y, or alternatively, under Sector AD. Sector W applies additional SWPPP requirements to facilities manufacturing beauty and

					barber chairs. Sector Y applies no additional requirements and under Sector AD EPA could establish additional facility-specific monitoring and reporting requirements. Regulatory burden would be greater under Sector W.
		(embroidery kits)	**339932**	Game, Toy, and Children's Vehicle Manufacturing	
		(other miscellaneous products not specially provided for previously)	**339999**	All Other Miscellaneous Manufacturing	

Sector Z. Leather Tanning and Finishing

Sub-sector	SIC Codes		NAICS Codes		Notes
Z1	**3111**	Leather Tanning and Finishing	**316110**	Leather and Hide Tanning and Finishing	

Sector AA. Fabricated Metal Products

Sub-sector	SIC Codes		NAICS Codes		Notes
AA1	**3411**	Metal Cans	**332431**	Metal Can Manufacturing	
	3412	Metal Shipping Barrels, Drums, Kegs, and Pails	**332439**	Other Metal Container Manufacturing	
	3421	Cutlery (except hedge shears and trimmers, tinners' snips, and similar nonelectric hand tools)	**332211**	Cutlery and Flatware (except Precious) Manufacturing	
		(hedge shears and trimmers, tinners snips, and similar nonelectric hand tools)	**332212**	Hand and Edge Tool Manufacturing	
	3423	Hand and Edge Tools, Except Machine Tools and Handsaws	**332212**	Hand and Edge Tool Manufacturing	
	3425	Saw Blades and Handsaws	**332213**	Saw Blade and Handsaw Manufacturing	
	3429	Hardware, Not Elsewhere Classified (vacuum and insulated bottles, jugs, and chests)	**332439**	Other Metal Container Manufacturing	
		(except fire hose nozzles, hose couplings, vacuum and insulated bottles, jugs and chests, fireplace fixtures, time locks, turnbuckles, pulleys, tackle blocks, luggage and utility racks, sleep sofa mechanisms and chair glides, traps, handcuffs and	**332510**	Hardware Manufacturing	

		leg irons, ladder jacks, and other like metal products)			
		(turnbuckles and hose clamps)	**332722**	Bolt, Nut, Screw, Rivet, and Washer Manufacturing	
		(fire hose nozzles and hose couplings)	**332919**	Other Metal Valve and Pipe Fitting Manufacturing	
		(fireplace fixtures, traps, handcuffs and leg irons, ladder jacks, and other like metal products)	**332999**	All Other Miscellaneous Fabricated Metal Product Manufacturing	
		(pulleys, tackle blocks, block and tackle assemblies)	**333923**	Overhead Traveling Crane, Hoist, and Monorail System Manufacturing	
		(time locks)	**334518**	Watch, Clock, and Part Manufacturing	
		(luggage and utility racks)	**336399**	All Other Motor Vehicle Parts Manufacturing	
		(sleep sofa mechanisms and chair glides)	**337215**	Showcase, Partition, Shelving, and Locker Manufacturing	
	3431	Enameled Iron and Metal Sanitary Ware	**332998**	Enameled Iron and Metal Sanitary Ware Manufacturing	
	3432	Plumbing Fixture Fittings and Trim (except shower rods, lawn hose nozzles, and lawn sprinklers)	**332913**	Plumbing Fixture Fitting and Trim Manufacturing	
		(lawn hose nozzles and lawn sprinklers)	**332919**	Other Metal Valve and Pipe Fitting Manufacturing	
		(metal shower rods)	**332999**	All Other Miscellaneous Fabricated Metal Product Manufacturing	
	3443	Fabricated Plate Work (Boiler Shops) (fabricated plate work and metal weldments)	**332313**	Plate Work Manufacturing	
		(power boilers and heat exchangers)	**332410**	Power Boiler and Heat Exchanger Manufacturing	
		(heavy gauge tanks)	**332420**	Metal Tank (Heavy Gauge) Manufacturing	
		(metal cooling towers)	**333415**	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing (metal cooling towers)	
	3444	Sheet Metal Work (stamped metal skylights)	**332321**	Metal Window and Door Manufacturing	
		(except sheet metal bins and vats, skylights, and sheet metal cooling towers)	**332322**	Sheet Metal Work Manufacturing	
		(metal bins and vats)	**332439**	Other Metal Container Manufacturing	
		(cooling towers, sheet metal)	**333415**	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing	

	3446	Architectural and Ornamental Ironwork	**332323**	Ornamental and Architectural Metal Work Manufacturing	
	3448	Prefabricated Metal Buildings and Components	**332311**	Prefabricated Metal Building and Component Manufacturing	
	3449	Miscellaneous Structural Metal Work (custom roll forming)	**332114**	Custom Roll Forming	
		(fabricated bar joists and concrete reinforcing bars)	**332312**	Fabricated Structural Metal Manufacturing	
		(curtain wall and metal plaster bases and lath)	**332323**	Ornamental and Architectural Metal Work Manufacturing	
	3451	Screw Machine Products	**332721**	Precision Turned Product Manufacturing	
	3452	Bolts, Nuts, Screws, Rivets, and Washers	**332722**	Bolt, Nut, Screw, Rivet, and Washer Manufacturing	
	3462	Iron and Steel Forgings	**332111**	Iron and Steel Forging	
	3463	Nonferrous Forgings	**332112**	Nonferrous Forging	
	3465	Automotive Stampings	**336370**	Motor Vehicle Metal Stamping	
	3466	Crowns and Closures	**332115**	Crown and Closure Manufacturing	
	3469	Metal Stampings, Not Elsewhere Classified (except kitchen utensils, pots and pans for cooking, coins, and stamped metal boxes)	**332116**	Metal Stamping	
		(kitchen utensils, pots, and pans for cooking)	**332214**	Kitchen Utensil, Pot, and Pan Manufacturing	
		(stamped metal tool, cash, mail, and lunch boxes)	**332439**	Other Metal Container Manufacturing	
	3471	Electroplating, Plating, Polishing, Anodizing, and Coloring	**332813**	Electroplating, Plating, Polishing, Anodizing, and Coloring	
AA2	**3479**	Coating, Engraving, and Allied Services, Not Elsewhere Classified (except jewelry, silverware, and flatware engraving and etching)	**332812**	Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers	
		(precious metal jewelry engraving and etching)	**339911**	Jewelry (except Costume) Manufacturing	
		(silver and plated ware engraving and etching)	**339912**	Silverware and Holloware Manufacturing	
		(costume jewelry engraving and etching)	**339914**	Costume Jewelry and Novelty Manufacturing	
AA1	**3482**	Small Arms Ammunition	**332992**	Small Arms Ammunition Manufacturing	
	3483	Ammunition, Except for Small Arms	**332993**	Ammunition (except for Small Arms) Manufacturing	
	3484	Small Arms	**332994**	Small Arms Manufacturing	

	3489	Ordinance and Accessories, Not Elsewhere Classified	**332995**	Other Ordinance and Accessories Manufacturing	
	3491	Industrial Valves	**332911**	Industrial Valve Manufacturing	
	3492	Fluid Power Valves and Hose Fittings	**332912**	Fluid Power Valve and Hose Fitting Manufacturing	
	3493	Steel Springs, Except Wire	**332611**	Spring (Heavy Gauge) Manufacturing	
	3494	Valves and Pipe Fittings, Not Elsewhere Classified (except metal pipe hangers and supports)	**332919**	Other Metal Valve and Pipe Fitting Manufacturing	
		(metal pipe hangers and supports)	**332999**	All Other Miscellaneous Fabricated Metal Product Manufacturing	
	3495	Wire Springs (except watch and clock springs)	**332612**	Spring (Light Gauge) Manufacturing	
		(clock and watch springs)	**334518**	Watch, Clock, and Part Manufacturing	
	3496	Miscellaneous Fabricated Wire Products (potato mashers)	**332214**	Kitchen Utensil, Pot, and Pan Manufacturing	
		(except shopping carts and potato mashers)	**332618**	Other Fabricated Wire Product Manufacturing	
		(shopping carts made from purchased wire)	**333924**	Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturing	
	3497	Metal Foil and Leaf (laminated aluminum foil rolls and sheets for flexible packaging uses)	**322225**	Laminated Aluminum Foil Manufacturing for Flexible Packaging Uses	
		(foil and foil containers)	**332999**	All Other Miscellaneous Fabricated Metal Product Manufacturing	
	3498	Fabricated Pipe and Pipe Fittings	**332996**	Fabricated Pipe and Pipe Fitting Manufacturing	
	3499	Fabricated Metal Products, Not Elsewhere Classified (powder metallurgy)	**332117**	Powder Metallurgy Part Manufacturing	
		(metal boxes)	**332439**	Other Metal Container Manufacturing	
		(safe and vault locks)	**332510**	Hardware Manufacturing	
		(metal aerosol valves)	**332919**	Other Metal Valve and Pipe Fitting Manufacturing	
		(other metal products)	**332999**	All Other Miscellaneous Fabricated Metal Product Manufacturing	
		(metal automobile seat frames)	**336360**	Motor Vehicle Seating and Interior Trim Manufacturing	
		(metal furniture frames)	**337215**	Showcase, Partition, Shelving, and Locker Manufacturing	
	3911	Jewelry, Precious Metal	**339911**	Jewelry (except Costume) Manufacturing	

	3914	Silverware, Plated Ware, and Stainless Steel Ware (cutlery and flatware, nonprecious and precious plated)	**332211**	Cutlery and Flatware (except Precious) Manufacturing	
		(precious metal plated hollowware)	**332999**	All Other Miscellaneous Fabricated Metal Product Manufacturing	
		(except nonprecious and precious plated metal cutlery, flatware, and hollowware)	**339912**	Silverware and Holloware Manufacturing	
	3915	Jewelers Findings and Materials and Lapidary Work			
		(watch jewels)	**334518**	Watch, Clock, and Part Manufacturing	Any facility whose primary activity is manufacturing watch jewels (SIC 3915 / NAICS 334518) should be regulated under Sector AC, but may continue to be regulated under Sector AA, or alternatively, under Sector AD. Sector AA applies additional technology-based effluent limits comprising good housekeeping measures, spill prevention and response, and spills and leaks; additional SWPPP requirements; and additional inspection requirements. Sector AC does not apply additional sector-specific requirements and EPA may establish facility-specific monitoring and reporting requirements under Sector AD. Regulatory burden would be greater under Sector AA.
		(except watch jewels)	**339913**	Jewelers' Material and Lapidary Work Manufacturing	

Sector AB. Transportation Equipment, Industrial or Commercial Machinery

Sub-sector	SIC Codes		NAICS Codes		Notes
AB1	**3511**	Steam, Gas, and Hydraulic Turbines, and Turbine Generator Set Units	**333611**	Turbine and Turbine Generator Set Units Manufacturing	
	3519	Internal Combustion Engines, Not Elsewhere Classified (except stationary engine radiators)	**333618**	Other Engine Equipment Manufacturing	
		(stationary engine radiators)	**336399**	All Other Motor Vehicle Parts Manufacturing	

	3523	Farm Machinery and Equipment (hand hair clippers for animals)	**332212**	Hand and Edge Tool Manufacturing	
		(corrals, stalls, and holding gates)	**332323**	Ornamental and Architectural Metal Work Manufacturing	
		(except corrals, stalls, holding gates, hand clippers for animals, and farm conveyors/elevators)	**333111**	Farm Machinery and Equipment Manufacturing	
		(farm conveyors and elevators)	**333922**	Conveyor and Conveying Equipment Manufacturing	
	3524	Lawn and Garden Tractors and Home Lawn and Garden Equipment (nonpowered lawnmowers)	**332212**	Hand and Edge Tool Manufacturing	
		(except nonpowered lawnmowers)	**333112**	Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing	
	3531	Construction Machinery and Equipment (except railway track maintenance equipment; winches, aerial work platforms; and automotive wrecker hoists)	**333120**	Construction Machinery Manufacturing	
		(winches, aerial work platforms, automobile wrecker hoists, locomotive cranes, and ship cranes)	**333923**	Overhead Traveling Crane, Hoist, and Monorail System Manufacturing	
		(railway track maintenance equipment)	**336510**	Railroad Rolling Stock Manufacturing	
	3532	Mining Machinery and Equipment, Except Oil and Gas Field Machinery and Equipment	**333131**	Mining Machinery and Equipment Manufacturing	
	3533	Oil and Gas Field Machinery and Equipment	**333132**	Oil and Gas Field Machinery and Equipment Manufacturing	
	3534	Elevators and Moving Stairways	**333921**	Elevators and Moving Stairway Manufacturing	
	3535	Conveyors and Conveying Equipment	**333922**	Conveyors and Conveying Equipment Manufacturing	
	3536	Overhead Traveling Cranes, Hoists, and Monorail Systems	**333923**	Overhead Traveling Cranes, Hoists, and Monorail System Manufacturing	
	3537	Industrial Trucks, Tractors, Trailers, and Stackers (metal air cargo containers)	**332439**	Other Metal Container Manufacturing	
		(metal pallets)	**332999**	All Other Miscellaneous Fabricated Metal Product Manufacturing	

		(except metal pallets and metal air cargo containers)	**333924**	Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturing	
	3541	Machine Tools, Metal Cutting Types	**333512**	Machine Tool (Metal Cutting Types) Manufacturing	
	3542	Machine Tools, Metal Forming Types	**333513**	Machine Tool (Metal Forming Types) Manufacturing	
	3543	Industrial Patterns	**332997**	Industrial Pattern Manufacturing	
	3544	Special Dies and Tools, Die Sets, Jigs and Fixtures, and Industrial Molds (industrial molds)	**333511**	Industrial Mold Manufacturing	
		(except molds)	**333514**	Special Die and Tool, Die Set, Jig, and Fixture Manufacturing	
	3545	Cutting Tools, Machine Tool Accessories, and Machinist Precision Measuring Devices (precision measuring devices)	**332212**	Hand and Edge Tool Manufacturing	
		(except precision measuring devices)	**333515**	Cutting Tool and Machine Tool Accessory Manufacturing	
	3546	Power-Driven Handtools	**333991**	Power-Driven Handtool Manufacturing	
	3547	Rolling Mill Machinery and Equipment	**333516**	Rolling Mill Machinery and Equipment Manufacturing	
	3548	Electric and Gas Welding and Soldering Equipment (except transformers for arc-welding)	**333992**	Welding and Soldering Equipment Manufacturing	
		(transformers for arc-welders)	**335311**	Power, Distribution, and Specialty Transformer Manufacturing	
	3549	Metalworking Machinery, Not Elsewhere Classified	**333518**	Other Metalworking Machinery Manufacturing	
	3552	Textile Machinery	**333292**	Textile Machinery Manufacturing	
	3553	Woodworking Machinery	**333210**	Sawmill and Woodworking Machinery Manufacturing	
	3554	Paper Industries Machinery	**333291**	Paper Industry Machinery Manufacturing	
	3555	Printing Trades Machinery and Equipment	**333293**	Printing Machinery and Equipment Manufacturing	
	3556	Food Products Machinery	**333294**	Food Product Machinery Manufacturing	
	3559	Special Industry Machinery, Not Elsewhere Classified (nuclear control rod drive mechanisms)	**332410**	Power Boiler and Heat Exchanger Manufacturing	
		(cotton ginning machinery)	**333111**	Farm Machinery and Equipment Manufacturing	
		(rubber and plastics manufacturing machinery)	**333220**	Plastics and Rubber Industry Machinery Manufacturing	

		(semiconductor machinery manufacturing)	**333295**	Semiconductor Machinery Manufacturing	
		(except rubber and plastics manufacturing machinery, semiconductor manufacturing machinery, and automotive maintenance equipment)	**333298**	All Other Industrial Machinery Manufacturing	
		(automotive maintenance equipment)	**333319**	Other Commercial and Service Industry Machinery Manufacturing	
	3561	Pumps and Pumping Equipment	**333911**	Pump and Pumping Equipment Manufacturing	
	3562	Ball and Roller Bearings	**332991**	Ball and Roller Bearing Manufacturing	
	3563	Air and Gas Compressors	**333912**	Air and Gas Compressor Manufacturing	
	3564	Industrial and Commercial Fans and Blowers and Air Purification Equipment (air purification equipment)	**333411**	Air Purification Equipment Manufacturing	
		(fans and blowers)	**333412**	Industrial and Commercial Fan and Blower Manufacturing	
	3565	Packaging Machinery	**333993**	Packaging Machinery Manufacturing	
	3566	Speed Changers, Industrial High-Speed Drives, and Gears	**333612**	Speed Changer, Industrial High-Speed Drives, and Gear Manufacturing	
	3567	Industrial Process Furnaces and Ovens	**333994**	Industrial Process Furnace and Oven Manufacturing	
	3568	Mechanical Power Transmission Equipment, Not Elsewhere Classified	**333613**	Mechanical Power Transmission Equipment Manufacturing	
	3569	General Industrial Machinery and Equipment, Not Elsewhere Classified (textile fire hose)	**314999**	All Other Miscellaneous Textile Product Mills	
		(electric swimming pool heaters)	**333414**	Heating Equipment (except Warm Air Furnaces) Manufacturing	
		(except fire hoses and electric swimming pool heaters)	**333999**	All Other Miscellaneous General Purpose Machinery Manufacturing	
	3581	Automatic Vending Machines	**333311**	Automatic Vending Machine Manufacturing	
	3582	Commercial Laundry, Drycleaning, and Pressing Machines	**333312**	Commercial Laundry, Drycleaning, and Pressing Machine Manufacturing	
	3585	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment (except motor vehicle air-conditioning)	**333415**	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing	
		(motor vehicle air-conditioning)	**336391**	Motor Vehicle Air-Conditioning Manufacturing	

	3586	Measuring and Dispensing Pumps	**333913**	Measuring and Dispensing Pump Manufacturing	
	3589	Service Industry Machinery, Not Elsewhere Classified	**333319**	Other Commercial and Service Industry Machinery Manufacturing	
	3592	Carburetors, Pistons, Piston Rings, and Valves	**336311**	Carburetor, Piston, Piston Ring, and Valve Manufacturing	
	3593	Fluid Power Cylinders and Actuators	**333995**	Fluid Power Cylinder and Actuator Manufacturing	
	3594	Fluid Power Pumps and Motors	**333996**	Fluid Power Pumps and Motors Manufacturing	
	3596	Scales and Balances, Except Laboratory	**333997**	Scale and Balance (except Laboratory) Manufacturing	
	3599	Industrial and Commercial Machinery and Equipment, Not Elsewhere Classified			
		(machine shops)	**332710**	Machine Shops	
		(grinding castings for the trade)	**332813**	Electroplating, Plating, Polishing, Anodizing and Coloring	
		(flexible metal hose)	**332999**	All Other Miscellaneous Fabricated Metal Product Manufacturing	
		(carnival amusement park equipment)	**333319**	Other Commercial and Service Industry Machinery Manufacturing	
		(other industrial and commercial machinery and equipment)	**333999**	All Other Miscellaneous General Purpose Machinery Manufacturing	
		(water leak detectors)	**334519**	Other Measuring and Controlling Device Manufacturing	
		(gasoline, oil, and intake filters for internal combustion engines, except for motor vehicles)	**336399**	All Other Motor Vehicle Parts Manufacturing	
	3711	Motor Vehicles and Passenger Car Bodies			
		(automobiles)	**336111**	Automobile Manufacturing	
		(light trucks and utility vehicles)	**336112**	Light Truck and Utility Vehicle Manufacturing	
		(heavy duty trucks)	**336120**	Heavy Duty Truck Manufacturing	
		(kit car and other passenger car bodies)	**336211**	Motor Vehicle Body Manufacturing	
		(military armored vehicles)	**336992**	Military Armored Vehicle, Tank, and Tank Component Manufacturing	
	3713	Truck and Bus Bodies	**336211**	Motor Vehicle Body Manufacturing	
	3714	Motor Vehicle Parts and Accessories (dump truck lifting mechanisms and fifth wheels)	**336211**	Motor Vehicle Body Manufacturing	
		(gasoline engines and engine parts including rebuilt)	**336312**	Gasoline Engine and Engine Parts Manufacturing	

		(wiring harness sets, other than ignition; block heaters and battery heaters; instrument board assemblies; permanent defrosters; windshield washer-wiper mechanisms; cruise control mechanisms; and other electrical equipment for internal combustion engines)	**336322**	Other Motor Vehicle Electrical and Electronic Equipment Manufacturing	
		(steering and suspension parts)	**336330**	Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing	
		(brake and brake systems, including assemblies)	**336340**	Motor Vehicle Brake System Manufacturing	
		(transmissions and power train parts, including rebuilding)	**336350**	Motor Vehicle Transmission and Power Train Parts Manufacturing	
		(except truck and bus bodies, trailers, engine and engine parts, motor vehicle electrical and electronic equipment, motor vehicle steering and suspension components, motor vehicle brake systems, and motor vehicle transmission and power train parts)	**336399**	All Other Motor Vehicle Parts Manufacturing	
	3715	Truck Trailers	**336212**	Truck Trailer Manufacturing	
	3716	Motor Homes	**336213**	Motor Home Manufacturing	
	3721	Aircraft (except research and development not producing prototypes)	**336411**	Aircraft Manufacturing	
	3724	Aircraft Engines and Engine Parts (except research and development not producing prototypes)	**336412**	Aircraft Engine and Engine Parts Manufacturing	
	3728	Aircraft Parts and Auxiliary Equipment, Not Elsewhere Classified			
		(fluid power aircraft subassemblies)	**332912**	Fluid Power Valve and Hose Fitting Manufacturing	
		(target drones)	**336411**	Aircraft Manufacturing	
		(except fluid power aircraft subassemblies, target drones, and research and development not producing prototypes)	**336413**	Other Aircraft Part and Auxiliary Equipment Manufacturing	
	3743	Railroad Equipment (locomotive fuel lubricating or cooling medium pumps)	**333911**	Pump and Pumping Equipment Manufacturing	
		(except locomotive fuel lubricating or cooling medium pumps)	**336510**	Railroad Rolling Stock Manufacturing	

	3751	Motorcycles, Bicycles, and Parts	**336991**	Motorcycle, Bicycle, and Parts Manufacturing	
	3761	Guided Missiles and Space Vehicles (except research and development not producing prototypes)	**336414**	Guided Missile and Space Vehicle Manufacturing	
	3764	Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts (except research and development not producing prototypes)	**336415**	Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing	
	3769	Guided Missile and Space Vehicle Parts and Auxiliary Equipment, Not Elsewhere Classified (except research and development not producing prototypes)	**336419**	Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing	
	3792	Travel Trailers and Campers	**336214**	Travel Trailer and Camper Manufacturing	
	3795	Tanks and Tank Components	**336992**	Military Armored Vehicle, Tank, and Tank Component Manufacturing	
	3799	Transportation Equipment, Not Elsewhere Classified			
		(wheelbarrows)	**333924**	Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturing	
		(automobile, boat, utility and light truck trailers)	**336214**	Travel Trailer and Camper Manufacturing	
		(trailer hitches)	**336399**	All Other Motor Vehicle Parts Manufacturing	
		(except automobile, boat, utility light truck trailers, trailer hitches, and wheelbarrows)	**336999**	All Other Transportation Equipment Manufacturing	

Sector AC. Electronic, Electrical, Photographic and Optical Goods

Sub-sector	SIC Codes		NAICS Codes		Notes
AC1	**3571**	Electronic Computers	**334111**	Electronic Computer Manufacturing	
	3572	Computer Storage Devices	**334112**	Computer Storage Device Manufacturing	
	3575	Computer Terminals	**334113**	Computer Terminal Manufacturing	
	3577	Computer Peripheral Equipment, Not Elsewhere Classified			
		(except plotter controllers and magnetic tape head cleaners)	**334119**	Other Computer Peripheral Equipment Manufacturing	
		(plotter controllers)	**334418**	Printed Circuit Assembly (Electronic Assembly) Manufacturing	
		(magnetic tape head cleaners)	**334613**	Magnetic and Optical Recording Media Manufacturing	

	3578	Calculating and Accounting Machinery, Except Electronic Computers (change making machines)	**333311**	Automatic Vending Machine Manufacturing	
		(except point of sales terminals, change making machines and funds transfer devices)	**333313**	Office Machinery Manufacturing	
		(point of sale terminals and fund transfer devices)	**334119**	Other Computer Peripheral Equipment Manufacturing	
	3579	Office Machines, Not Elsewhere Classified (except timeclocks, time stamps, pencil sharpeners, stapling machines, etc.)	**333313**	Office Machinery Manufacturing	
		(time clocks and other time recording devices)	**334518**	Watch, Clock, and Part Manufacturing	
		(pencil sharpeners, staplers and other office equipment)	**339942**	Lead Pencil and Art Good Manufacturing	
	3612	Power, Distribution, and Specialty Transformers	**335311**	Power, Distribution, and Specialty Transformer Manufacturing	
	3613	Switchgear and Switchboard Apparatus	**335313**	Switchgear and Switchboard Apparatus Manufacturing	
	3621	Motors and Generators	**335312**	Motors and Generator Manufacturing	
	3624	Carbon and Graphite Products	**335991**	Carbon and Graphite Product Manufacturing	
	3625	Relays and Industrial Controls	**335314**	Relay and Industrial Control Manufacturing	
	3629	Electrical Industrial Apparatus, Not Elsewhere Classified	**335999**	All Other Miscellaneous Electrical Equipment and Component Manufacturing	
	3631	Household Cooking Equipment	**335221**	Household Cooking Appliance Manufacturing	
	3632	Household Refrigerators and Home and Farm Freezers	**335222**	Household Refrigerator and Home Freezer Manufacturing	
	3633	Household Laundry Equipment	**335224**	Household Laundry Equipment Manufacturing	
	3634	Electric Housewares and Fans (wall and baseboard heating units for permanent installation)	**333414**	Heating Equipment (except Warm Air Furnaces) Manufacturing	
		(except wall and baseboard heating units for permanent installation, electronic cigarette lighters, and wall mount restroom hand dryers)	**335211**	Electric Housewares and Household Fan Manufacturing	
		(electronic cigarette lighters)	**339999**	All Other Miscellaneous Manufacturing	
	3635	Household Vacuum Cleaners	**335212**	Household Vacuum Cleaner Manufacturing	
	3639	Household Appliances, Not Elsewhere Classified (household sewing machines)	**333298**	All Other Industrial Machinery Manufacturing	

		(floor waxing and floor polishing machines)	**335212**	Household Vacuum Cleaner Manufacturing	
		(except floor waxing and floor polishing machines, and household sewing machines)	**335228**	Other Major Household Appliance Manufacturing	
	3641	Electric Lamp Bulbs and Tubes	**335110**	Electric Lamp Bulbs and Part Manufacturing	
	3643	Current-Carrying Wiring Devices	**335931**	Current-Carrying Wiring Device Manufacturing	
	3644	Noncurrent-Carrying Wiring Devices			
		(fish wire, electrical wiring tool)	**332212**	Hand and Edge Tool Manufacturing	Any facility whose primary activity is manufacturing fish wire, electrical wiring tool (SIC 3644 / NAICS 332212) should be regulated under Sector AA, but may continue to be regulated under Sector AC, or alternatively, under Sector AD. Sector AA applies additional technology-based effluent limits comprising good housekeeping measures, spill prevention and response, and spills and leaks; additional SWPPP requirements; and additional inspection requirements. Sector AC does not apply additional sector-specific requirements and EPA may establish facility-specific monitoring and reporting requirements under Sector AD. Regulatory burden would be greater under Sector AA.
		(except fishwire, electrical wiring tool)	**335932**	Noncurrent-Carrying Wiring Device Manufacturing	
	3645	Residential Electric Lighting Fixtures	**335121**	Residential Electric Lighting Fixture Manufacturing	
	3646	Commercial, Industrial, and Institutional Electric Lighting Fixtures	**335122**	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing	
	3647	Vehicular Lighting Equipment	**336321**	Vehicular Lighting Equipment Manufacturing	
	3648	Lighting Equipment, Not Elsewhere Classified	**335129**	Other Lighting Equipment Manufacturing	
	3651	Household Audio and Video Equipment	**334310**	Audio and Video Equipment Manufacturing	

	3652	Phonograph Records and Prerecorded Audio Tapes and Disks (reproduction of all other media except video)	**334612**	Prerecorded Compact Disc (except Software), Tape, and Record Reproducing	
	3661	Telephone and Telegraph Apparatus (except consumer external modems)	**334210**	Telephone Apparatus Manufacturing	
		(consumer external modems)	**334418**	Printed Circuit Assembly (Electronic Assembly) Manufacturing	
	3663	Radio and Television Broadcasting and Communications Equipment	**334220**	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing	
	3669	Communications Equipment, Not Elsewhere Classified	**334290**	Other Communications Equipment Manufacturing	
	3671	Electron Tubes	**334411**	Electron Tube Manufacturing	
	3672	Printed Circuit Boards	**334412**	Bare Printed Circuit Board Manufacturing	
	3674	Semiconductors and Related Devices	**334413**	Semiconductor and Related Device Manufacturing	
	3675	Electronic Capacitors	**334414**	Electronic Capacitor Manufacturing	
	3676	Electronic Resistors	**334415**	Electronic Resistor Manufacturing	
	3677	Electronic Coils, Transformers, and Other Inductors	**334416**	Electronic Coil, Transformer, and Other Inductor Manufacturing	
	3678	Electronic Connectors	**334417**	Electronic Connector Manufacturing	
	3679	Electronic Components, Not Elsewhere Classified			
		(antennas)	**334220**	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing	
		(radio headphones)	**334310**	Audio and Video Equipment Manufacturing	
		(printed circuit/electronic assembly manufacturing)	**334418**	Printed Circuit Assembly (Electronic Assembly) Manufacturing	
		(other electronic components)	**334419**	Other Electronic Component Manufacturing	
	3691	Storage Batteries	**335911**	Storage Battery Manufacturing	
	3692	Primary Batteries, Dry and Wet	**335912**	Primary Battery Manufacturing	
	3694	Electrical Equipment for Internal Combustion Engines	**336322**	Other Motor Vehicle Electrical and Electronic Equipment Manufacturing	
	3695	Magnetic and Optical Recording Media	**334613**	Magnetic and Optical Recording Media Manufacturing	
	3699	Electrical Machinery, Equipment, and Supplies, Not Elsewhere Classified (electronic teaching machines and flight simulators)	**333319**	Other Commercial and Service Industry Machinery Manufacturing	
		(outboard electric motors)	**333618**	Other Engine Equipment Manufacturing	Any facility whose primary activity is manufacturing outboard electric

					motors (SIC 3699 / NAICS 333618) should be regulated under Sector AB, but may continue to be regulated under Sector AC, or alternatively, under Sector AD. Sector AB applies additional sector-specific SWPPP requirements. Sector AC does not apply additional sector-specific requirements and EPA may establish facility-specific monitoring and reporting requirements under Sector AD. Regulatory burden would be greater under Sector AB.
		(laser welding and soldering equipment)	**333992**	Welding and Soldering Equipment Manufacturing	
		(Christmas tree lighting sets, electric insect lamps, electric fireplace logs, and trouble lights)	**335129**	Other Lighting Equipment Manufacturing	
		(other electrical industrial apparatus)	**335999**	All Other Miscellaneous Electrical Equipment and Component Manufacturing	
	3812	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments	**334511**	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing	
	3821	Laboratory Apparatus and Furniture	**339111**	Laboratory Apparatus and Furniture Manufacturing	
	3822	Automatic Controls for Regulating Residential and Commercial Environments and Appliances	**334512**	Automatic Environmental Control Manufacturing for Residential, Commercial, and Appliance Use	
	3823	Industrial Instruments for Measurement, Display, and Control of Process Variables; and Related Products	**334513**	Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables	
	3824	Totalizing Fluid Meters and Counting Devices	**334514**	Totalizing Fluid Meter and Counting Device Manufacturing	
	3825	Instruments for Measuring and Testing of Electricity and Electrical Signals			
		(automotive ammeters and voltmeters)	**334514**	Totalizing Fluid Meter and Counting Device Manufacturing	
		(except automotive instruments)	**334515**	Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals	

	3826	Laboratory Analytical Instruments	**334516**	Analytical Laboratory Instrument Manufacturing	
	3827	Optical Instruments and Lenses	**333314**	Optical Instruments and Lens Manufacturing	
	3829	Measuring and Controlling Devices, Not Elsewhere Classified			
		(motor vehicle gauges)	**334514**	Totalizing Fluid Meter and Counting Device Manufacturing	
		(electronic chronometers)	**334518**	Watch, Clock, and Part Manufacturing	
		(except medical thermometers, electronic chronometers and motor vehicle gauges)	**334519**	Other Measuring and Controlling Device Manufacturing	
		(medical thermometers)	**339112**	Surgical and Medical Instrument Manufacturing	
	3841	Surgical and Medical Instruments and Apparatus			
		(tranquilizer guns)	**332994**	Small Arms Manufacturing	Any facility whose primary activity is manufacturing tranquilizer guns (SIC 3841 / NAICS 332994) should be regulated under Sector AA, but may continue to be regulated under Sector AC, or alternatively, under Sector AD. Sector AA applies additional technology-based effluent limits comprising good housekeeping measures, spill prevention and response, and spills and leaks; additional SWPPP requirements; and additional inspection requirements. Sector AC does not apply additional sector-specific requirements and EPA may establish facility-specific monitoring and reporting requirements under Sector AD. Regulatory burden would be greater under Sector AA.
		(operating room tables)	**339111**	Laboratory Apparatus and Furniture Manufacturing	
		(except tranquilizer guns and operating room tables)	**339112**	Surgical and Medical Instrument Manufacturing	

	3842	Orthopedic, Prosthetic, and Surgical Appliances and Supplies (incontinent pads and bed pads)	**322291**	Sanitary Paper Product Manufacturing	Any facility whose primary activity is manufacturing incontinent pads and bed pads (SIC 3842 / NAICS 322291) should be regulated under Sector B, but may continue to be regulated under Sector AC, or alternatively, under Sector AD. Sectors B and AC do not apply additional sector-specific requirements. EPA may require additional facility-specific monitoring and reporting requirement under Sector AD. Regulatory burden is not expected to differ between Sectors B and AC.
		(electronic hearing aids)	**334510**	Electromedical and Electrotherapeutic Apparatus Manufacturing	
		(except electronic hearing aids, incontinent pads, anatomical models, and bed pads)	**339113**	Surgical Appliance and Supplies Manufacturing	
		(anatomical models)	**339999**	All Other Miscellaneous Manufacturing	
	3843	Dental Equipment and Supplies	**339114**	Dental Equipment and Supplies Manufacturing	
	3844	X-Ray Apparatus and Tubes and Related Irradiation Apparatus	**334517**	Irradiation Apparatus Manufacturing	
	3845	Electromedical and Electrotherapeutic Apparatus (except CT and CAT scanners)	**334510**	Electromedical and Electrotherapeutic Apparatus Manufacturing	
		(CT and CAT Scanners)	**334517**	Irradiation Apparatus Manufacturing	
	3851	Ophthalmic Goods (intraoccular lenses, i.e., surgical implants)	**339113**	Surgical Appliance and Supplies Manufacturing	
		(except intraocular lenses)	**339115**	Ophthalmic Goods Manufacturing	
	3861	Photographic Equipment and Supplies (photographic films, paper, plates and chemicals)	**325992**	Photographic Film, Paper, Plate, and Chemical Manufacturing	
		(except photographic film, paper, plates, and chemicals)	**333315**	Photographic and Photocopying Equipment Manufacturing	
	3873	Watches, Clocks, Clockwork Operated Devices, and Parts	**334518**	Watch, Clock, and Part Manufacturing	

Sector AD. Non-Classified Facilities		
Sub-Sector	**Narrative Description**	**Notes**
AD1	Other stormwater discharges designated by the Director as needing a permit (see 40 CFR 122.26(a)(9)(i)(C) & (D)) or any facility discharging stormwater associated with industrial activity not described by any of Sectors A-AC. NOTE: Facilities may not elect to be covered under Sector AD. Only the Director may assign a facility to Sector AD.	

Appendix O - Summary of Reports Permit Submittals

Permit Section	Report/Submittal	Frequency	Due Date(s)	Where to Submit
Part 1.1.4.5	**Endangered and Threatened Species Appendix E Criterion C Eligibility Form** (Applicable only for operators seeking coverage under Part 1.1.4.5 eligibility criterion C).	Once, if applicable	At least 30 days prior to submitting the NOI for permit coverage	Email to msgpesa@epa.gov
Part 1.2	**New Discharger:** Submittal of Notice of Intent (NOI) for Permit Coverage	Once per permit term	A minimum of 30 days prior to commencing discharge	Electronically using the NPDES eReporting Tool (NeT) for MSGP
Part 1.2	**Existing Discharger:** Submittal of Notice of Intent (NOI) for Permit Coverage	Once per permit term	No later than Septemer 2, 2015. However, if you have not previously obtained coverage under an NPDES permit, you must submit your NOI immediately.	Electronically using the NPDES eReporting Tool (NeT) for MSGP
Part 1.3	**Notice of Termination**	Once, if applicable	Within 30 days after: • a new operator takes over responsibility for the facility; or • operations and stormwater discharges have ceased; or • for Sector G, H, or J facilities, the applicable termination requirements have been met; or • alternative permit coverage has been obtained	Electronically using the NPDES eReporting Tool (NeT) for MSGP
Part 1.4	**Conditional "No Exposure" Certification Form**	If eligible, once every 5 years	As necessary	Electronically using the NPDES eReporting Tool (NeT) for MSGP

Permit Section	Report/Submittal	Frequency	Due Date(s)	Where to Submit
Part 3.1.2	**Routine Inspection Documentation**	At least quarterly	By the end of the quarter.	Reports are kept with SWPPP
Part 3.2.2	**Quarterly Visual Assessment Documentation**	At least quarterly	By the end of the quarter.	Reports are kept with SWPPP
Part 4.4	**Corrective Action Documentation**	• Document existence of corrective action condition within 24 hours of becoming aware of the condition • Document corrective actions taken or to be taken within 14 days from the time of discovery of the condition	As necessary	Reports are kept with SWPPP
Part 5 Part 7.3	**Stormwater Pollution Prevention Plan (SWPPP)**	• Provide URL for SWPPP or provide SWPPP information directly on the NOI form. • Update the on-site SWPPP as site conditions indicate. At minimum, the SWPPP must be modified based on corrective actions and deadlines required under Part 4.2.	Develop initial SWPPP prior to the submittal of NOI form. Update the SWPPP information included on URL or on NOI form, at a minimum, no later than 45 days after conducting the final routine facility inspection for the year.	Electronically using the NPDES eReporting Tool (NeT) for MSGP
Part 6 Part 7.4	**Discharge Monitoring Reports (DMRs)**	• 1/quarter for benchmark monitoring • 1/year for numeric effluent limitation monitoring • 1/year for impaired waters monitoring	Within 30 days of receiving your full laboratory results for all monitored outfalls during the reporting period.	Electronically using NetDMR
Part 7.5	**Annual Report**	1/year	By January 30th	Electronically using the NPDES eReporting Tool (NeT) for MSGP
Part 7.6	**Exceedance Report for Numeric Effluent Limitations**	If applicable	30 days after lab results if 30-day follow-up monitoirng indicates exceedance	Follow-up monitoring submitted Electronically using NetDMR Exceedance eports submitted directly to the EPA Regional Office listed in Part 7.9.1 of the permit

Permit Section	Report/Submittal	Frequency	Due Date(s)	Where to Submit
Part 7.7	**Additional Reporting (Noncompliance endangering health, reportable quantity spills, etc.)**	As necessary	Varies – see Part 7.7	

Appendix P - List of Federal CERCLA Sites

Part 1.1.4.10 of the MSGP has special requirements for discharges to a federal CERCLA site.[3]

If your facility discharges to one of the federal CERCLA sites listed below, you are ineligible for coverage under this permit, unless you notify the EPA Regional Office in advance and the EPA Regional Office determines that you are eligible for permit coverage. In determining eligibility for coverage under Part 1.1.4.10, the EPA Regional Office may evaluate whether you have included appropriate controls and implementation procedures designed to ensure your discharge will not lead to recontamination of aquatic media at the CERCLA Site, such that it would cause or contribute to a water quality standard exceedance. If it is determined that your facility discharges to a CERCLA Site listed below after you have obtained coverage under this permit, you must contact your applicable EPA Regional Office to develop appropriate controls and/or implementation procedures, as necessary, to ensure that your discharges will not lead to recontamination of aquatic media at the CERCLA Site such that they would cause or contribute to a water quality standard exceedance.

EPA Region 10

The CERCLA Sites and the receiving waters associated with these sites to which the requirements of Part 1.1.4.10 apply are listed in the table below. The areas where the permit applies are enumerated in Appendix C of the permit. For maps of CERCLA sites in Region 10 identified within this table, please check the Region 10 Superfund list viewable at http://yosemite.epa.gov/R10/cleanup.nsf/sites/cleanuplist.

Operators who discharge / intend to discharge into the receiving waters listed below must first contact the EPA Regional Office before submitting an NOI. Contact information is viewable at: http://yosemite.epa.gov/r10/water.nsf/Stormwater/industrial/.

Similarly, if you have received notice from EPA that the facility to be covered under the MSGP is considered a potential source to a clean up site, you must first contact the Regional EPA office before submitting an NOI.

	Waterbody (HUC code/Watershed)	**Superfund Sites CERCLIS ID Latitude / Longitude Major Contaminants**
ID	St. Joe River; Coeur d'Alene Lake Basin	St. Maries Creosote IDSFN1002095 47.191697 / -116.343000LPAHs, HPAHs

[3] "CERCLA site" means a facility as defined in Section 101(9) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601(9), that is undergoing a remedial investigation and feasibility study, or for which a Record of Decision for remedial action has been issued in accordance with the National Contingency Plan, 40 C.F.R. Part 300.

WA	Commencement Bay, Puget Sound	Commencement Bay, Near Shore/Tide Flats WAD980726368 47.155998 / -122.245998Dioxins, furans, arsenic, copper, lead, zinc, 4-methyl-phenol, Hex-CB, HPAHs, PCBs, PCE, cadmium, mercury, LPAHs
WA	Duwamish Waterway; Elliott Bay; Puget Sound	Harbor Island (Lead) WAD980722839 47.344584 / -122.210792Lead, arsenic, copper, HPAHs, LPAHs, mercury,PCBs, zinc, TBT
WA	Clam Bay; Puget Sound	Old Navy Dump/ Manchester Lab WA8680030931 47.342798 / -122.325298 PCBs, copper, lead, zinc, silver, 2,4-dimethyl-phenol, PCBs
WA	Elliott Bay; Puget Sound	Pacific Sound Resources WAD009248287 47.345639 / -122.215998LMWPAHs, HMWPAHs, PCBs
WA	Columbia River	Upper Columbia River (T2) WASFN1002171 47.5722 / -118.5846
WA	Puget Sound	Puget Sound Naval Shipyard WA2170023418 47.333298 / -122.384999PCBs, mercury
WA	Puget Sound	Wycoff / Eagle Harbor WAD009248295 47.371798 / -122.310012Mercury, LPAHs, HPAHs,
WA	Duwamish Waterway; Elliott Bay; Puget Sound	Lower Duwamish Waterway (T2) WA0002329803 47.321608 / -122.194040PCBs, PAHs, phthalates, inorganics, mercury, semi-VOCs

United States Environmental Protection Agency
Region 10
1200 Sixth Avenue Suite 900
Seattle, Washington 98101-3140

Authorization to Discharge under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act",

Sorrento Lactalis, Inc.
4912 Franklin Road
Nampa, ID 83687

is authorized to discharge from the Sorrento Lactalis wastewater treatment facility located in Nampa, Idaho at the following location(s):

Outfall	Receiving Water	Latitude	Longitude
001	Purdam Drain	43° 36' 45" N	116° 29'35" W

in accordance with discharge point(s), effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective April 1, 2018

This permit and the authorization to discharge shall expire at midnight, March 31, 2023

The permittee shall reapply for a permit reissuance on or before September 30, 2022, 180 days before the expiration of this permit if the permittee intends to continue operations and discharges at the facility beyond the term of this permit.

Signed this 22nd day of February

Daniel D. Opalski, Director
Office of Water and Watersheds

Schedule of Submissions

The following is a summary of some of the items the permittee must complete and/or submit to EPA during the term of this permit:

Item	Due Date
Discharge Monitoring Reports (DMR)	DMRs are due monthly and must be postmarked on or before the 20th day of the month following the monitoring month.
Quality Assurance Plan (QAP)	Within 90 days after the effective date of the final permit, the permittee must provide the EPA and IDEQ with written notification that the Plan has been developed and implemented (see II.A.). The Plan must be kept on site and made available to the EPA and IDEQ upon request.
Best Management Practices (BMP) Plan	Within 90 days after the effective date of the final permit, the permittee must provide EPA and IDEQ with written notification that the Plan has been developed and implemented (see II.B.). The Plan must be kept on site and made available to EPA and IDEQ upon request.
NPDES Application Renewal	The application must be submitted at least 180 days before the expiration date of the permit (see V.B.).
Surface Water Monitoring Report	The Report must be submitted for the previous calendar year in an annual report (see I.C.7.).
Twenty-Four Hour Notice of Noncompliance Reporting	The permittee must report certain occurrences of noncompliance by telephone within 24 hours from the time the permittee becomes aware of the circumstances. (See III.G. and I.B.)

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Appendix A 27

I. Limitations and Monitoring Requirements

A. Discharge Authorization

During the effective period of this permit, the permittee is authorized to discharge pollutants from the outfalls specified herein to Purdam Drain, within the limits and subject to the conditions set forth herein. This permit authorizes the discharge of only those pollutants resulting from facility processes, waste streams, and operations that have been clearly identified in the permit application process.

B. Effluent Limitations and Monitoring

1. The permittee shall not discharge any waste streams, including spills and other unintentional or non-routine discharges of pollutants, that are not part of the normal operation of the facility as disclosed in the permit application, or any pollutants that are not ordinarily present in such waste streams.
2. The permittee shall not discharge hazardous materials in concentrations found to be of public health significance or to impair designated beneficial uses of the receiving water.
3. The permittee shall not discharge chemicals or toxic pollutants in concentrations that impair beneficial uses of the receiving water.
4. The permittee shall not discharge deleterious materials in concentrations that impair beneficial uses of the receiving water.
5. The permittee shall not discharge floating, suspended or submerged matter of any kind in concentrations causing nuisance or objectionable conditions or that may impair beneficial uses of the receiving water.
6. The permittee shall not discharge excess nutrients that can cause visible slime growths or other nuisance aquatic growths impairing designated beneficial uses of the receiving water.
7. The permittee shall limit discharges from Outfall 001 as specified in Tables 0, 1, 2, 3, and 4, below. All figures represent maximum effluent limits unless otherwise indicated. The permittee must comply with the effluent limits in the tables at all times unless otherwise indicated, regardless of the frequency of monitoring or reporting required by other provisions of this permit.

   The tables present the average monthly, average weekly, and maximum daily effluent limits based on BOD_5 tier. BOD_5 tier can be determined using the average daily BOD_5 input to the facility for the month for which reporting data are provided. This average daily BOD_5 input shall be included with the discharge monitoring data each reporting period. The limit tables shall be used as follows:

   - Table 0: applies where BOD5 input is between 401,000 and up to 528,000 lbs/day
   - Table 1: applies where BOD_5 input is between 528,000 and up to 646,000 lbs/day

- Table 2: applies where BOD_5 input is between 646,000 and up to 763,000 lbs/day
- Table 3: applies where BOD_5 input is between 763,000 and up to 881,000 lbs/day
- Table 4: applies where BOD_5 input is between 881,000 and up to 939,000 lbs/day

Should the facility anticipate or operate at a BOD_5 input level outside the above ranges, the facility shall contact EPA for a permit modification.

Table 0: Effluent Limitations for Tier 0 (BOD_5 input = 401,000 up to 528,000 lbs/day)

Parameter	Units	Average Monthly	Maximum Daily	Instantaneous Maximum
Biochemical Oxygen Demand (BOD_5)	mg/L	10	20	-
	lbs/day	58	116	-
Total Suspended Solids (TSS)	mg/L	13	25	-
	lbs/day	73	140	-
E. Coli Bacteria	#/100ml	126	-	406
pH	s.u.	6.1 to 9.0 at all times		-
Total Phosphorus as P May 1- September 30	lbs/day	1.3	2.69	
Total Phosphorus as P October 1 – April 30	lbs/day	4.4	9.10	
Floating, Suspended, or Submerged Matter	Narrative Limitation			-
Oil and Grease	No Visible Sheen			-

1. The term BOD_5 input shall mean the biochemical oxygen demand of the materials entered into process. It can be calculated by multiplying the fats, proteins and carbohydrates by factors of 0.890, 1.031 and 0.691 respectively. Organic acids (e.g., lactic acids) should be included as carbohydrates. Composition of input materials may be based on either direct analyses or generally accepted published values.

Table 1: Effluent Limitations for Tier 1 (BOD_5 input = 528,000 up to 646,000 lbs/day)

Parameter	Units	Average Monthly	Maximum Daily	Instantaneous Maximum
Biochemical Oxygen Demand (BOD_5)	mg/L	10	20	-
	lbs/day	66	131	-
Total Suspended Solids (TSS)	mg/L	13	25	-
	lbs/day	82	158	-
E. Coli Bacteria	#/100ml	126	-	406
pH	s.u.	6.1 to 9.0 at all times		-

Table 1: Effluent Limitations for Tier 1 (BOD_5 input = 528,000 up to 646,000 lbs/day)				
Total Phosphorus as P May 1- September 30	lbs/day	1.3	2.69	-
Total Phosphorus as P October 1 – April 30	lbs/day	4.4	9.10	-
Floating, Suspended, or Submerged Matter	Narrative Limitation			-
Oil and Grease	No Visible Sheen			-

1. The term BOD_5 input shall mean the biochemical oxygen demand of the materials entered into process. It can be calculated by multiplying the fats, proteins and carbohydrates by factors of 0.890, 1.031 and 0.691 respectively. Organic acids (e.g., lactic acids) should be included as carbohydrates. Composition of input materials may be based on either direct analyses or generally accepted published values.

Table 2: Effluent Limitations for Tier 2 (BOD_5 input = 646,000 up to 763,000 lbs/day)				
Parameter	**Units**	**Average Monthly**	**Maximum Daily**	**Instantaneous Maximum**
Biochemical Oxygen Demand (BOD_5)	mg/L	10	20	-
	lbs/day	70	139	-
Total Suspended Solids (TSS)	mg/L	13	25	-
	lbs/day	87	166	-
E. Coli Bacteria	#/100ml	126	-	406
pH	s.u.	6.1 to 9.0 at all times		-
Total Phosphorus as P May 1- September 30	lbs/day	1.3	2.69	-
Total Phosphorus as P October 1 – April 30	lbs/day	4.4	9.10	-
Floating, Suspended, or Submerged Matter	Narrative Limitation			-
Oil and Grease	No Visible Sheen			-

1. The term BOD_5 input shall mean the biochemical oxygen demand of the materials entered into process. It can be calculated by multiplying the fats, proteins and carbohydrates by factors of 0.890, 1.031 and 0.691 respectively. Organic acids (e.g., lactic acids) should be included as carbohydrates. Composition of input materials may be based on either direct analyses or generally accepted published values.

Table 3: Effluent Limitations for Tier 3 (BOD_5 input = 763,000 up to 881,000 lbs/day)				
Parameter	**Units**	**Average Monthly**	**Maximum Daily**	**Instantaneous Maximum**
Biochemical Oxygen	mg/L	10	20	-

Table 3: Effluent Limitations for Tier 3 (BOD_5 input = 763,000 up to 881,000 lbs/day)				
Demand (BOD_5)	lbs/day	81	167	-
Total Suspended Solids (TSS)	mg/L	13	25	-
	lbs/day	102	193	-
E. Coli Bacteria	#/100ml	126	-	406
pH	s.u.	6.1 to 9.0 at all times		-
Total Phosphorus as P[5] May 1- September 30	lbs/day	1.3	2.69	-
Total Phosphorus as P October 1 – April 30	lbs/day	4.4	9.10	-
Floating, Suspended, or Submerged Matter	Narrative Limitation			-
Oil and Grease	No Visible Sheen			-

1. The term BOD_5 input shall mean the biochemical oxygen demand of the materials entered into process. It can be calculated by multiplying the fats, proteins and carbohydrates by factors of 0.890, 1.031 and 0.691 respectively. Organic acids (e.g., lactic acids) should be included as carbohydrates. Composition of input materials may be based on either direct analyses or generally accepted published values.

Table 4: Effluent Limitations for Tier 4 (BOD_5 input = 881,000 up to 939,000 lbs/day)				
Parameter	**Units**	**Average Monthly**	**Maximum Daily**	**Instantaneous Maximum**
Biochemical Oxygen Demand (BOD_5)	mg/L	10	20	-
	lbs/day	93	190	-
Total Suspended Solids (TSS)	mg/L	13	25	-
	lbs/day	116	221	-
E. Coli Bacteria	#/100ml	126	-	406
pH	s.u.	6.1 to 9.0 at all times		-
Total Phosphorus as P May 1- September 30	lbs/day	1.3	2.69	-
Total Phosphorus as P October 1 – April 30[2]	lbs/day	4.4	9.10	-
Floating, Suspended, or Submerged Matter	Narrative Limitation			-
Oil and Grease	No Visible Sheen			-

1. The term BOD_5 input shall mean the biochemical oxygen demand of the materials entered into process. It can be calculated by multiplying the fats, proteins and carbohydrates by factors of 0.890, 1.031 and 0.691 respectively. Organic acids (e.g., lactic acids) should be included as carbohydrates. Composition of input materials may be based on either direct analyses or generally accepted published values.

Effluent Monitoring

The permittee must monitor the effluent from Outfall 001 for all parameters listed in Table 5 and abide by the following monitoring requirements:

1. The permittee must report within 24 hours any violation of the maximum daily limits for all pollutants. Violations of all other effluent limits are to be reported at the time that discharge monitoring reports are submitted (See III.B. and III.H.).
2. The permittee must collect effluent samples from the effluent stream after the last treatment unit prior to discharge into the receiving water.
3. For all effluent monitoring, the permittee must use sufficiently sensitive analytical methods which meet the following:
   a) Parameters with an effluent limit. The method must achieve a minimum level (ML) less than the effluent limitation.
   b) Parameters that do not have effluent limitations.
      (i) The permittee must use a method that detects and quantifies the level of the pollutant, or
      (ii) The permittee must use a method that can achieve a maximum ML less than or equal to those specified in Appendix A. Minimum Levels;
      (iii) For parameters that do not have an effluent limit, the permittee may request different MLs. The request must be in writing and must be approved by EPA.
      (iv) See also Part III.D Monitoring Procedures
4. For purposes of reporting on the DMR for a single sample, if a value is less than the MDL, the permittee must report "less than {numeric value of the MDL}" and if a value is less than the ML, the permittee must report "less than {numeric value of the ML}."
5. For purposes of calculating monthly averages, zero may be assigned for values less than the MDL and the numeric value of the MDL may be assigned for values between the MDL and the ML. If the average value is less than the MDL, the permittee must report "less than {numeric value of the MDL}" and if the average value is less than the ML, the permittee must report "less than {numeric value of the ML}." If a value is equal to or greater than the ML, the permittee must report and use the actual value. The resulting average value must be compared to the compliance level, the ML, in assessing compliance.

Table 5: Effluent Monitoring Requirements

Parameter	Units	Sample Location	Sample Frequency	Sample Type
Effluent flow	Mgd	Effluent	continuous	recording
Biochemical Oxygen Demand (BOD_5)	lbs/day mg/L	Input[1] & Effluent	weekly	Calculation[1] Effluent: 24-hour composite

Table 5: Effluent Monitoring Requirements				
Total Suspended Solids (TSS)	lbs/day mg/L	Effluent	weekly	24-hour composite
E. Coli Bacteria[2]	#/100ml	Effluent	5x/month	grab
pH	s.u.	Effluent	daily	grab
Dissolved Oxygen (DO)	mg/L	Effluent	monthly	grab or meter
Total Ammonia as N	mg/L lbs/day	Effluent	monthly	24-hour composite
Total Phosphorus as P	mg/L lbs/day	Effluent	monthly	24-hour composite
Floating, Suspended, or Submerged Matter	-	Effluent	monthly	visual
Alkalinity as $CaCO_3$	mg/L	Effluent	monthly	24-hour composite
Oil and Grease	-	Effluent	monthly	visual
Temperature[3]	°C	Effluent	Continuous	recording

NOTES:
1. As stated in the ELG, the term BOD_5 input shall mean the biochemical oxygen demand of the materials entered into process. It can be calculated by multiplying the fats, proteins and carbohydrates by factors of 0.890, 1.031 and 0.691 respectively. Organic acids (e.g., lactic acids) should be included as carbohydrates. Composition of input materials may be based on either direct analyses or generally accepted published values.
2. The permittee must report the monthly geometric mean *E. Coli* concentration and the instantaneous maximum concentration. Reporting is required within 24 hours of a maximum daily limit violation; see part III.G
3. Continuous temperature monitoring must begin no later than six months after the effective date of the permit. Temperature data must be recorded using a micro-recording temperature devices known as thermistors. Set the recording device to record at one-hour intervals. Report the following temperature monitoring data on the DMR: maximum daily average, highest monthly instantaneous maximum

C. Surface Water Monitoring

The permittee must conduct surface water monitoring. Surface water monitoring in Purdam Drain and Mason Creek must start within six months of the effective date of the permit and continue for the duration of the permit.

The program must meet the following requirements:

1. Monitoring Stations.

   a) A monitoring station must be established in Purdam Drain above the influence of the facility's discharge. If the permittee is unable to obtain access to establish the monitoring station, the permittee must send written notification to EPA and IDEQ. The notification must summarize the steps taken to obtain access and the reason(s) that access was denied.

   b) A monitoring station must also be established in Mason Creek above the confluence with Purdam Drain.

   c) The permittee must notify EPA in writing of the latitude and longitude of the monitoring stations in Purdam Drain and Mason Creek. The written notification must be submitted to EPA within 6 months of the effective date of the permit.

If the permittee is unable to access the receiving water to collect samples due to safety concerns on a given day, the permittee must collect the samples as soon as it is safe to do so. The permittee must note the reason for the delay in the monitoring in the DMR.

2. To the extent practicable, surface water sample collection must occur on the same day as effluent sample collection.
3. Except for temperature and dissolved oxygen all ambient samples must be grab samples.
4. The flow rate must be measured as near as practicable to the time that other ambient parameters are sampled.
5. For all surface water monitoring, the permittee must use sufficiently sensitive analytical methods which meet the following:
   a) The method must detect and quantify the level of the pollutant, or
   b) The permittee must use a method that can achieve MLs less than or equal to those listed specified in *Appendix A. Minimum Levels*. The permittee may request different MLs. The request must be in writing and must be approved by EPA.
6. Quality assurance/quality control plans for all the monitoring must be documented in the Quality Assurance Plan required under Part II.A., "Quality Assurance Plan".
7. Surface water monitoring results must be submitted for the previous calendar year in an annual report to EPA Region 10 and IDEQ. At a minimum, the report must include the following:
   a) Dates of sample collection and analyses.
   b) Results of sample analysis.
   c) Relevant quality assurance/quality control (QA/QC) information.

Table 6: Surface Water Monitoring Requirements

Parameter	Units	Sample Location	Sample Frequency	Sample Type
Flow	mgd	In Mason Creek upstream of confluence of Purdam Drain and Mason Creek, Downstream in Purdam Drain near mouth	Quarterly[1]	measure
Total Ammonia as N	mg/L	Upstream of outfall and in Mason Creek upstream of confluence of Purdam Drain and Mason Creek	Quarterly[1]	grab

Table 6: Surface Water Monitoring Requirements				
pH	s.u.	Upstream of outfall and in Mason Creek upstream of confluence of Purdam Drain and Mason Creek	Quarterly[1]	grab
Temperature	°C	Upstream of outfall in Purdam Drain	Continuous[2]	Recording
Dissolved Oxygen	mg/L	Upstream and downstream of outfall in Purdam Drain	Quarterly[1]	Grab or Meter
Alkalinity as CaCO3	mg/L	Upstream of outfall and in Mason Creek upstream of confluence of Purdam Drain and Mason Creek	Quarterly[1]	grab

NOTES:
1. Quarters are defined as January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 30
2. Continuous temperature monitoring must begin no later than six months after the effective date of the permit. Temperature data must be recorded using a micro-recording temperature devices known as thermistors. Set the recording device to record at one-hour intervals. Report the following temperature monitoring data on the DMR: maximum daily average, highest monthly instantaneous.

II. Special Conditions

A. Quality Assurance Plan (QAP)

The permittee must develop a quality assurance plan (QAP) for all monitoring required by this permit. The permittee must submit written notice to EPA and IDEQ, within 90 days of the effective date of this permit, that the Plan has been developed and implemented. Any existing QAPs may be modified for compliance with this section.

1. The QAP must be designed to assist in planning for the collection and analysis of effluent and receiving water samples in support of the permit and in explaining data anomalies when they occur.
2. Throughout all sample collection and analysis activities, the permittee must use the EPA-approved QA/QC and chain-of-custody procedures described in *EPA Requirements for Quality Assurance Project Plans* (EPA/QA/R-5) and *Guidance for Quality Assurance Project Plans* (EPA/QA/G-5). The QAP must be prepared in the format that is specified in these documents.
3. At a minimum, the QAP must include the following:
   a) Details on the number of samples, type of sample containers, preservation of samples, holding times, analytical methods, analytical detection and quantitation limits for each target compound, type and number of quality assurance field samples, precision and accuracy requirements, sample preparation requirements, sample shipping methods, and laboratory data delivery requirements.
   b) Map(s) indicating the location of each sampling point.

c) Qualification and training of personnel.

d) Name(s), address(es) and telephone number(s) of the laboratories used by or proposed to be used by the permittee.

4. The permittee must amend the QAP whenever there is a modification in sample collection, sample analysis, or other procedure addressed by the QAP.

5. Copies of the QAP must be kept on site and made available to EPA and/or IDEQ upon request.

B. Best Management Practices Plan

1. Purpose

Through implementation of the best management practices (BMP) plan the permittee must prevent or minimize the generation and the potential for the release of pollutants from the facility to the waters of the United States through normal and ancillary activities.

2. Development and Implementation Schedule

The permittee must develop and implement a BMP Plan which achieves the objectives and the specific requirements listed below. The permittee must update its BMP plan within 60 days of the effective date of the final permit and implement the updated plan within 90 days of the effective date of the final permit. The permittee must submit written notice to EPA and IDEQ, within 90 days of the effective date of the permit, that the Plan has been developed and implemented. Any existing BMP plans may be modified for compliance with this section. The permittee must implement the provisions of the plan as conditions of this permit within 90 days of the effective date of this permit.

3. Documentation

The permittee must maintain a copy of the BMP Plan at the facility and make it available to EPA, IDEQ or an authorized representative upon request.

4. Elements of the BMP Plan

a) The BMP Plan must be consistent with the objectives above and the general guidance contained *in Guidance Manual for Developing Best Management Practices* (EPA 833-B-93-004, October 1993) and *Storm Water Management For Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices* (EPA 832-R-92-006) or any subsequent revision to these guidance documents.

b) Specific Best Management Practices. The BMP Plan must establish specific BMPs or other measures to achieve the purpose of the BMP Plan under part II.C., and which ensure that the following specific requirements are met:

(i) Solids, sludges, or other pollutants removed in the course of treatment or control of water and wastewaters must be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters.

(ii) Ensure proper management of solid and hazardous waste in accordance with regulations promulgated under the Resource Conservation and Recovery Act (RCRA). Management practices required under RCRA regulations must be referenced in the BMP Plan.

5. BMP Plan Modification

a) The permittee must amend the BMP Plan whenever there is a change in the facility or in the operation of the facility which materially increases the generation of pollutants or their release or potential release to surface waters.

b) The permittee must amend the BMP Plan whenever it is found to be ineffective in achieving the general objective of preventing and minimizing the generation and the potential for the release of pollutants from the facility to the waters of the United States and/or the specific requirements above.

c) Any changes to the BMP Plan must be consistent with the objectives and specific requirements listed above.

III. General Monitoring, Recording and Reporting Requirements

A. Representative Sampling (Routine and Non-Routine Discharges)

Samples and measurements must be representative of the volume and nature of the monitored discharge.

In order to ensure that the effluent limits set forth in this permit are not violated at times other than when routine samples are taken, the permittee must collect additional samples at the appropriate outfall whenever any discharge occurs that may reasonably be expected to cause or contribute to a violation that is unlikely to be detected by a routine sample. The permittee must analyze the additional samples for those parameters limited in Part I.B of this permit that are likely to be affected by the discharge.

The permittee must collect such additional samples as soon as the spill, discharge, or bypassed effluent reaches the outfall. The samples must be analyzed in accordance with Part III.C ("Monitoring Procedures"). The permittee must report all additional monitoring in accordance with Part III.D ("Additional Monitoring by Permittee") of this permit.

B. Reporting of Monitoring Results

The permittee must submit monitoring data and other reports electronically using NetDMR.

1. Monitoring data must be submitted electronically to EPA no later than the 20th of the month following the completed reporting period. All reports required under this permit must be submitted to EPA as a legible electronic attachment to the DMR.

2. The permittee must sign and certify all DMRs, and all other reports, in accordance with the requirements of Part V.E. of this permit.

3. The permittee must submit copies of the DMRs and other reports

   US EPA Region 10
   Attn: ICIS Data Entry Team
   1200 Sixth Avenue, Suite 900
   OCE-101
   Seattle, Washington 98101-3140

   Idaho Department of Environmental Quality
   Boise Regional Office
   1445 N. Orchard Street
   Boise, ID 83706

4. The permittee may use NetDMR after requesting and receiving permission from US EPA Region 10. NetDMR is accessed from: https://netdmr.epa.gov/netdmr/public/home.htm

C. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N or O, or other test procedures have been specified in this permit or approved by EPA as an alternate test procedure under 40 CFR 136.5.

D. Additional Monitoring by Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR Part 136 or as specified in this permit, the permittee must include the results of this monitoring in the calculation and reporting of the data submitted in the DMR.

Upon request by EPA, the permittee must submit results of any other sampling, regardless of the test method used.

E. Records Contents

Records of monitoring information must include:

1. the date, exact place, and time of sampling or measurements;
2. the name(s) of the individual(s) who performed the sampling or measurements;
3. the date(s) analyses were performed;
4. the names of the individual(s) who performed the analyses;
5. the analytical techniques or methods used; and
6. the results of such analyses.

F. Retention of Records

The permittee must retain records of all monitoring information, including: all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, copies of DMRs, a copy of the NPDES permit, and records of all data used to

complete the application for this permit, for a period of at least five years from the date of the sample, measurement, report, or application. This period may be extended by request of EPA or IDEQ at any time.

G. Twenty-four Hour Notice of Noncompliance Reporting

1. The permittee must report the following occurrences of noncompliance by telephone within 24 hours from the time the permittee becomes aware of the circumstances:
   a) any noncompliance that may endanger health or the environment;
   b) any unanticipated bypass that exceeds any effluent limitation in the permit (See Part IV.F., "Bypass of Treatment Facilities");
   c) any upset that exceeds any effluent limitation in the permit (See Part IV.G., "Upset Conditions"); or
   d) any violation of a maximum daily discharge limitation for any of the pollutants identified in Table 5 of Part I.B.
2. The permittee must also provide a written submission within five days of the time that the permittee becomes aware of any event required to be reported under subpart 1 above. The written submission must contain:
   a) a description of the noncompliance and its cause;
   b) the period of noncompliance, including exact dates and times;
   c) the estimated time noncompliance is expected to continue if it has not been corrected; and
   d) steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
3. The Director of the Office of Compliance and Enforcement may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the NPDES Compliance Hotline in Seattle, Washington, by telephone, (206) 553-1846.
4. Reports must be submitted to the addresses in Part III.B ("Reporting of Monitoring Results").

H. Other Noncompliance Reporting

The permittee must report all instances of noncompliance, not required to be reported within 24 hours, at the time that monitoring reports for Part III.B ("Reporting of Monitoring Results") are submitted. The reports must contain the information listed in Part III.G.2 of this permit ("Twenty-four Hour Notice of Noncompliance Reporting").

I. Changes in Discharge of Toxic Pollutants

The permittee must notify the Director of the Office of Water and Watersheds and IDEQ as soon as it knows, or has reason to believe:

1. That any activity has occurred or will occur that would result in the discharge, on a **routine or frequent** basis, of any toxic pollutant that is not limited in the permit, if that discharge may reasonably be expected to exceed the highest of the following "notification levels":
   a) One hundred micrograms per liter (100 ug/l);
   b) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
   c) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or
   d) The level established by EPA in accordance with 40 CFR 122.44(f).
2. That any activity has occurred or will occur that would result in any discharge, on a **non-routine or infrequent** basis, of any toxic pollutant that is not limited in the permit, if that discharge may reasonably be expected to exceed the highest of the following "notification levels":
   a) Five hundred micrograms per liter (500 ug/l);
   b) One milligram per liter (1 mg/l) for antimony;
   c) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or
   d) The level established by EPA in accordance with 40 CFR 122.44(f).
3. The permittee must submit the notification to Office of Water and Watersheds at the following address:

   US EPA Region 10
   Attn: NPDES Permits Unit Manager
   1200 Sixth Avenue
   Suite 900 OWW-191
   Seattle, Washington 98101-3140

J. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than 14 days following each schedule date.

IV. Compliance Responsibilities

A. Duty to Comply

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

B. Penalties for Violations of Permit Conditions

1. Civil and Administrative Penalties. Pursuant to 40 CFR Part 19 and the Act, any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently $37,500 per day for each violation).

2. Administrative Penalties. Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Pursuant to 40 CFR 19 and the Act, administrative penalties for Class I violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(A) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently $16,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed $37,500). Pursuant to 40 CFR 19 and the Act, penalties for Class II violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(B) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently $16,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $177,500).

3. Criminal Penalties:

   a) Negligent Violations. The Act provides that any person who negligently violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of $2,500 to $25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than $50,000 per day of violation, or by imprisonment of not more than 2 years, or both.

   b) Knowing Violations. Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of $5,000 to $50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than $100,000 per day of violation, or imprisonment of not more than 6 years, or both.

c) Knowing Endangerment. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than $500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the Act, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than $1,000,000 and can be fined up to $2,000,000 for second or subsequent convictions.

d) False Statements. The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both. The Act further provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

C. Need To Halt or Reduce Activity not a Defense

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

D. Duty to Mitigate

The permittee must take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

E. Proper Operation and Maintenance

The permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee

only when the operation is necessary to achieve compliance with the conditions of the permit.

F. Bypass of Treatment Facilities

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this Part.

1. Notice.

   a) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it must submit prior written notice, if possible at least 10 days before the date of the bypass.

   b) Unanticipated bypass. The permittee must submit notice of an unanticipated bypass as required under Part III.G ("Twenty-four Hour Notice of Noncompliance Reporting").

2. Prohibition of bypass.

   a) Bypass is prohibited, and the Director of the Office of Compliance and Enforcement may take enforcement action against the permittee for a bypass, unless:

      (i) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

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

      (iii) The permittee submitted notices as required under paragraph 2 of this Part.

   b) The Director of the Office of Compliance and Enforcement may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 3.a. of this Part.

G. Upset Conditions

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the permittee meets the requirements of paragraph 2 of this Part. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. Conditions necessary for a demonstration of upset. To establish the affirmative defense of upset, the permittee must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
   a) An upset occurred and that the permittee can identify the cause(s) of the upset;
   b) The permitted facility was at the time being properly operated;
   c) The permittee submitted notice of the upset as required under Part III.G, "Twenty-four Hour Notice of Noncompliance Reporting;" and
   d) The permittee complied with any remedial measures required under Part IV.D, "Duty to Mitigate."
3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

H. Toxic Pollutants

The permittee must comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

I. Planned Changes

The permittee must give written notice to the Director of the Office of Water and Watersheds as specified in part III.I.3. and IDEQ as soon as possible of any planned physical alterations or additions to the permitted facility whenever:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b); or
2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements under Part III.I ("Changes in Discharge of Toxic Substances").

J. Anticipated Noncompliance

The permittee must give written advance notice to the Director of the Office of Compliance and Enforcement and IDEQ of any planned changes in the permitted facility or activity that may result in noncompliance with this permit.

V. General Provisions

A. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause as specified in 40 CFR 122.62, 122.64, or 124.5. The filing of a request by the permittee for a permit modification, revocation and reissuance, termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

B. Duty to Reapply

If the permittee intends to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. In accordance with 40 CFR 122.21(d), and unless permission for the application to be submitted at a later date has been granted by the Regional Administrator, the permittee must submit a new application at least 180 days before the expiration date of this permit.

C. Duty to Provide Information

The permittee must furnish to EPA and IDEQ, within the time specified in the request, any information that EPA or IDEQ may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee must also furnish to EPA or IDEQ, upon request, copies of records required to be kept by this permit.

D. Other Information

When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or that it submitted incorrect information in a permit application or any report to EPA or IDEQ, it must promptly submit the omitted facts or corrected information in writing.

E. Signatory Requirements

All applications, reports or information submitted to EPA and IDEQ must be signed and certified as follows.

1. All permit applications must be signed as follows:
   a) For a corporation: by a responsible corporate officer.
   b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.
   c) For a municipality, state, federal, Indian tribe, or other public agency: by either a principal executive officer or ranking elected official.
2. All reports required by the permit and other information requested by EPA or IDEQ must be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
   a) The authorization is made in writing by a person described above;
   b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company; and
   c) The written authorization is submitted to the Director of the Office of Compliance and Enforcement and IDEQ.

3. Changes to authorization. If an authorization under Part V.E.2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part V.E.2. must be submitted to the Director of the Office of Compliance and Enforcement and IDEQ prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. Certification. Any person signing a document under this Part must make the following certification:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

F. Availability of Reports

In accordance with 40 CFR Part 2, information submitted to EPA pursuant to this permit may be claimed as confidential by the permittee. In accordance with the Act, permit applications, permits and effluent data are not considered confidential. Any confidentiality claim must be asserted at the time of submission by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice to the permittee. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR Part 2, Subpart B (Public Information) and 41 Fed. Reg. 36902 through 36924 (September 1, 1976), as amended.

G. Inspection and Entry

The permittee must allow the Director of the Office of Compliance and Enforcement, EPA Region 10; IDEQ; or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:

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

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

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

H. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other private rights, nor any infringement of federal, tribal, state or local laws or regulations.

I. Transfers

This permit is not transferable to any person except after written notice to the Director of the Office of Water and Watersheds as specified in part III.I.3. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act. (See 40 CFR 122.61; in some cases, modification or revocation and reissuance is mandatory).

J. State Laws

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

K. Reopener

This permit may be reopened in order to incorporate any wasteload allocation granted to the facility in an approved TMDL.

VI. Definitions

1. "Act" means the Clean Water Act.
2. "Administrator" means the Administrator of the EPA, or an authorized representative.
3. "Average monthly discharge limitation" means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.
4. "Best Management Practices" (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.
5. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

6. "Composite" -- see "24-hour composite".
7. "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.
8. "Director of the Office of Compliance and Enforcement" means the Director of the Office of Compliance and Enforcement, EPA Region 10, or an authorized representative.
9. "Director of the Office of Water and Watersheds" means the Director of the Office of Water and Watersheds, EPA Region 10, or an authorized representative.
10. "DMR" means discharge monitoring report.
11. "EPA" means the United States Environmental Protection Agency.
12. "Geometric Mean" means the n^{th} root of a product of n factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.
13. "Grab" sample is an individual sample collected over a period of time not exceeding 15 minutes.
14. "IDEQ" means the Idaho Department of Environmental Quality.
15. "Maximum daily discharge limitation" means the highest allowable "daily discharge."
16. "Method Detection Limit (MDL)" means the minimum concentration of a substance (analyte) that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.
17. "Minimum Level (ML)" means the concentration at which the entire analytical system must give a recognizable signal and an acceptable calibration point. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method-specified sample weights, volumes and processing steps have been followed.
18. "NPDES" means National Pollutant Discharge Elimination System, the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits . . . under sections 307, 402, 318, and 405 of the CWA.
19. "QA/QC" means quality assurance/quality control.
20. "Regional Administrator" means the Regional Administrator of Region 10 of the EPA, or the authorized representative of the Regional Administrator.

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

22. “Upset” means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

23. “24-hour composite” sample means a combination of at least 8 discrete sample aliquots of at least 100 milliliters, collected over periodic intervals from the same location, during the operating hours of a facility over a 24 hour period. The composite must be flow proportional. The sample aliquots must be collected and stored in accordance with procedures prescribed in the most recent edition of Standard Methods for the Examination of Water and Wastewater.

Appendix A

Minimum Levels

The Table below lists the maximum Minimum Level (ML) for pollutants not subject to concentration effluent limits in the permit. The permittee may request different MLs. The request must be in writing and must be approved by EPA.

Pollutant & CAS No. (if available)	Minimum Level (ML) µg/L unless specified
Biochemical oxygen demand	2 mg/L
Chlorine, total residual	50.0
Dissolved oxygen	0.2 mg/L
Nitrate + nitrite nitrogen (as N)	100
Nitrogen, total Kjeldahl (as N)	300
Oil and grease (HEM) (hexane extractable material)	5,000
pH	N/A
Phosphorus, total (as P)	10
Soluble reactive phosphorus (as P)	10
Temperature	0.2° C
Total ammonia (as N)	50
Total dissolved solids	20 mg/L
Total suspended solids	5 mg/L

Errata

For the Industrial Stormwater General Permit Issued on November 20, 2019 and effective on January 1, 2020.

November 25, 2019

Ecology corrected S6.C.2. Footnote 6. Footnote 6 defines the Puget Sound Sediment Cleanup Sites. Ecology has added Oakland Bay/Shelton Harbor to the list.

[6] ***Puget Sound Sediment Cleanup Site*** means: Category 4B (Sediment) portions of Budd Inlet (Inner), Commencement Bay (Inner), Commencement Bay (Outer), Dalco Passage and East Passage, Duwamish Waterway (including East and West Waterway), Eagle Harbor, Elliot Bay, Hood Canal (North), Liberty Bay, Rosario Strait, Sinclair Inlet, and Thea Foss Waterway; Category 5 (Sediment) portions of the Duwamish Waterway; Category 4A (Sediment) portions of Bellingham Bay (Inner); and the Everett/Port Gardener, Oakland Bay/Shelton Harbor, and Port Angeles Harbor sediment cleanup areas, as mapped on Ecology's ISGP website. All references to Category 4A, 4B and 5 pertain to the 2012 EPA-approved Water Quality Assessment.

December 17, 2019

Ecology corrected two typos in Table 3. The changes are marked with underlined blue text and strikethrough red text. The two typos were leaving off the NAICS code 113310 in the Wood Product Manufacturing category and transposing two numbers on the Construction, Transportation, Mining, and Forestry Machinery and Equipment Rental and Leasing category.

Table 1: Additional Benchmarks and Sampling Requirements Applicable to Specific Industries (screenshot of changes in table)

Petroleum Hydrocarbons (Diesel Fraction)	mg/L	10	NWTPH-Dx	0.25	1/quarter
5. Timber Product Industry (321xxx), Paper and Allied Products (322xxx), Wood Product Manufacturing (321xxx,113310)					
COD	mg/L	120	SM5220-D	10	1/quarter
TSS	mg/L	100	SM2540-D	5	1/quarter
6. Transportation (482xxx-485xxx), Petroleum Bulk Stations and Terminals (4247xx), Transportation Equipment Manufacturing (336xxx), Construction, Transportation, Mining, and Forestry Machinery and Equipment Rental and Leasing (~~53421~~53241x)					
Petroleum Hydrocarbons (Diesel Fraction)	mg/L	10	NWTPH-Dx	0.25	1/quarter
7. Coal Mining (2121xx), Oil and Gas Extraction (2111xx), Nonmetallic Mining and Quarrying, except Fuels (2123xx), Petroleum and Coal Products Manufacturing (324xxx), Nonmetallic Mineral Product Manufacturing (327xxx), Steam Electric					

January 27, 2020

Ecology corrected additional typos in Table 3. The changes are marked with underlined blue text. The typos were leaving off NAICS codes 488210, 4883xx, and 488490 in the transportation category.

Table 2: Additional Benchmarks and Sampling Requirements Applicable to Specific Industries (screenshot of changes in table)

TSS	mg/L	100	SM2540-D	5	1/quarter
6. Transportation (482xxx-485xxx, 488210, 4883xx, 488490,), Petroleum Bulk Stations and Terminals (4247xx), Transportation Equipment Manufacturing (336xxx), Construction, Transportation, Mining, and Forestry Machinery and Equipment Rental and Leasing (53241X)					
Petroleum Hydrocarbons (Diesel Fraction)	mg/L	10	NWTPH-Dx	0.25	1/quarter
7. Coal Mining (2121xx), Oil and Gas Extraction (2111xx), Nonmetallic Mining and Quarrying, except Fuels (2123xx),					

Issuance Date:	November 20, 2019
Effective Date:	January 1, 2020
Expiration Date:	December 31, 2024

INDUSTRIAL STORMWATER GENERAL PERMIT

A National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge General Permit for Stormwater Discharges Associated With Industrial Activities

State of Washington
Department of Ecology
Olympia, Washington 98504-7600

In compliance with the provisions of
The State of Washington Water Pollution Control Law
Chapter 90.48 Revised Code of Washington
and
The Federal Water Pollution Control Act
(The Clean Water Act)
Title 33 United States Code, Section 1251 et seq.

Until this permit expires, is modified or revoked, Permittees that have properly obtained coverage under this general permit are authorized to discharge in accordance with the special and general conditions which follow.

Heather R. Bartlett
Water Quality Program Manager
Washington State Department of Ecology

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SUMMARY OF PERMIT REPORTS & SUBMITTALS

Permit Section	Submittal	Frequency	Due Date(s)
S1.F	Conditional "No Exposure" Certification (CNE) Form	As necessary	As necessary, with renewals every 5 years
S2.A	Application for Permit Coverage	As necessary	As necessary
S2.B	Request Modification of Permit Coverage	As necessary	As necessary
S2.D	Request Transfer of Coverage	As necessary	As necessary
S8.D	Level 3 Engineering Report	As necessary	May 15th, prior to Level 3 deadline[1]
S8.D	Level 3 O&M Manual	As necessary	30 days after Level 3 installation
S9.B	Discharge Monitoring Reports (DMRs)	1/quarter	February 15th May 15th August 15th November 15th
S9.C	Annual Report	1/year	May 15th
S9.D	SWPPP, if requested by Ecology	Per Ecology request	Within 14 days of request
S9.F	Noncompliance Notification	As necessary	Within 30 days of noncompliance event
G8	Duty to Reapply	1/permit cycle	July 3, 2024

The text of this permit contains words or phrases in ***bold and italics***. These words or phrases are the first usage in the permit and are defined in Appendix 2.

[1] Unless an alternate due date is specified in an order

SUMMARY OF REQUIRED ONSITE DOCUMENTATION[2]

Permit Condition(s)	Document Title
S3	Stormwater Pollution Prevention Plan (SWPPP)[3]
S9.C	Copies of Annual Reports
S9.D.1.a	Copy of Permit
S9.D.1.b	Copy of Permit Coverage Letter
S9.D.1.c	Original Sampling Records (Field Notes and Laboratory Reports)
S7.C & S9.D.1.d	Site Inspection Reports
S9.D.1.j	Copies of Discharge Monitoring Reports (DMRs)

[2] A complete list is contained in Condition S9.D. The Permittee shall make all plans, documents and records required by this permit immediately available to Ecology or the local jurisdiction upon request.

[3] With signed and completed SWPPP Certification Form(s) – see Appendix 3

SPECIAL CONDITIONS

S1. PERMIT COVERAGE

A. Facilities Required to Seek Coverage Under This General Permit

This statewide permit applies to ***facilities*** conducting ***industrial activities*** that discharge ***stormwater*** to a surface waterbody or to a ***storm sewer*** system that drains to a surface waterbody. Beginning on the effective date of this permit and lasting through its expiration date, the Permittee is authorized to discharge stormwater and conditionally approved non-stormwater ***discharges*** to ***waters of the State***. All discharges and activities authorized by this permit shall be consistent with the terms and conditions of this permit.

The permit requires coverage for private entities, state, and ***local government*** facilities, and includes ***existing facilities*** and ***new facilities***. Facilities conducting industrial activities listed in Table 1 or referenced in S1.A.3 shall apply for coverage under this permit or apply for a Conditional No Exposure exemption, if eligible (Condition S1.F). The ***Department of Ecology (Ecology)*** may also require permit coverage for any facility on a case-by-case basis in order to protect waters of the State (Condition S1.B).

1. Facilities engaged in any industrial activities in Table 1 shall apply for coverage if stormwater from the facility discharges to a surface waterbody, or to a storm sewer system that discharges to a surface waterbody. The ***North American Industry Classification System (NAICS)*** groups generally, but not always, associated with these activities are listed in Table 1.

Table 1: Activities Requiring Permit Coverage and the Associated NAICS Groups

Industrial Activities	NAICS Groups
Metal Ore Mining	2122xx
Coal Mining	2121xx
Oil and Gas Extraction	2111xx
Nonmetallic Mineral Mining and Quarrying, except Fuels (except facilities covered under the Sand and Gravel General Permit)	2123xx
Food, Beverage, and Tobacco Manufacturing	311xxx-312xxx
Textile and Textile Products Mills	313xxx-314xxx
Apparel Manufacturing	315xxx
Wood Products Manufacturing	321xxx, 113310 [a]
Furniture and Related Product Manufacturing	337xxx
Paper Manufacturing	322xxx
Printing and Related Support Activities	323xxx, 5111xx

Industrial Activities	NAICS Groups
Chemicals Manufacturing (including Compost Facilities)	325xxx
Petroleum and Coal Products Manufacturing (except facilities covered under the Sand and Gravel General Permit)	324xxx
Plastics and Rubber Products Manufacturing	326xxx
Leather and Allied Product Manufacturing	316xxx
Nonmetallic Mineral Product Manufacturing (except covered under the Sand and Gravel General Permit)	327xxx
Primary Metal Manufacturing	331xxx
Fabricated Metal Product Manufacturing	332xxx
Machinery Manufacturing	333xxx
Computer and Electronic Product Manufacturing	334xxx
Electrical Equipment, Appliance, and Component Manufacturing	335xxx
Transportation Equipment Manufacturing (except NPDES regulated boatyards)	336xxx
Miscellaneous Manufacturing	339xxx
Warehousing and Storage	493xxx, 531130
Recycling facilities involved in the recycling of materials, including but not limited to, metal scrap yards, battery reclaimers, salvage yards, auto recyclers, and automobile junkyards.	42314x and 42393x
Steam Electric Power Generation (Not covered under *40 CFR §* 423)	N/A
Waste Management and Remediation Services, including, but not limited to, landfills, transfer stations, open dumps, and land application sites, except as described in S1.C.6 or C.7.	562xxx
Hazardous waste treatment, storage, and disposal (TSD) facilities, and recycling facilities regulated under Chapter 173-303 WAC.	562211
Treatment works treating domestic sewage, or any other sewage sludge, or wastewater treatment device or system, used in the storage, recycling, and reclamation of municipal or domestic sewage (including land dedicated to the disposal of sewage sludge that are located within the confines of the facility) with the design flow capacity of 1 million gallons per day (MGD) or more, or required to have a pretreatment program under 40 CFR §403.	22132x
Transportation facilities which have ***vehicle maintenance*** activity, equipment cleaning operations, or airport deicing operations:	
• Railroad Transportation	482xxx, 488210
• Transit and Ground Passenger Transportation	485xxx, 488490, 487110
• Truck Transportation	484xxx
• Postal Service	491xxx

Industrial Activities	NAICS Groups
• Water Transportation	483xxx, 487210, 4883xx, 532411
• Air Transportation	481xxx, 487990
• Petroleum Bulk Stations and Terminals	4247xx
Construction, Transportation, Mining, and Forestry Machinery and Equipment Rental and Leasing	53241x
Marine Construction	ECY003

[a.] Facilities in this category that are rock crusing, gravel washing, log sorting, or log storage facilities operated in connection with silvicultural activitees defined in 40 CFR 122.27(b)(2)-(3) are considered industrial activity. This does not include the actual harvesting of timber.

2. Any facility that has an existing ***National Pollutant Discharge Elimination System (NPDES)*** permit which does not address all stormwater discharges associated with industrial activity [40 CFR §122.26(b)(14)] shall obtain permit coverage.
3. Any ***inactive facility*** which is listed under ***40 CFR*** §122.26(b)(14) where ***significant materials*** remain onsite and are exposed to stormwater shall obtain permit coverage.

B. Significant Contributors of Pollutants

Ecology may require a facility to obtain coverage under this permit if Ecology determines the facility:

1. Is a ***significant contributor of pollutants*** to waters of the State, including ***groundwater***;
2. May reasonably be expected to cause a violation of any ***water quality standard***; or
3. Conducts industrial activity, or has a NAICS code, with stormwater characteristics similar to any industrial activity or NAICS code listed in Table 1 in S1.A.1.

C. Facilities Not Required to Obtain Coverage

Ecology does not require the types of facilities listed below to obtain coverage under this permit, unless determined to be a significant contributor of pollutants.

1. Industrial facilities that submit an ***application*** and qualify for a Conditional "No Exposure" Exemption. (Condition S1.F)
2. Industrial facilities that discharge stormwater only to a municipal ***combined sewer*** or ***sanitary sewer***. Discharge of stormwater to sanitary or combined sewers shall only occur as authorized by the municipal sewage authority.
3. Industrial facilities that discharge stormwater only to groundwater (e.g., on-site infiltration) with no discharge to ***surface waters of the State*** under any condition, provided the facility doesn't meet the requirements of S1.B.1.
4. Office buildings and/or administrative parking lots from which stormwater does not commingle with stormwater from areas associated with industrial activity.

5. Any discharge that is in compliance with the instructions of an on-scene-coordinator pursuant to 40 CFR § 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or *33 CFR* § 153.10(e) (Pollution by Oil and Hazardous Substances), in accordance with 40 CFR § 122.3(d).
6. Any ***land application site*** used for the beneficial use of industrial or municipal wastewater for agricultural activities or when applied for landscaping purposes at agronomic rates.
7. Any farmland, domestic garden, or land used for sludge management where domestic sewage sludge (biosolids) is beneficially reused (nutrient builder or soil conditioner) and which is not physically located in the confines of domestic sewage treatment works, or areas that are in compliance with Section 405 (Disposal of Sewage Sludge) of the ***Clean Water Act (CWA)***.
8. Any inactive coal mining operation if:
    a. The performance bond issued to the facility by the appropriate Surface Mining Control and Reclamation Act (SMCRA) authority has been released from applicable state or federal reclamation requirements after December 17, 1990.
    b. The mine does not have a discharge of stormwater that comes in contact with any overburden, raw material, intermediate products, finished products, byproducts, or waste products located on the site of the facility.
9. Closed ***landfills*** that are capped and stabilized, in compliance with Chapter 173-304 WAC, and in which no significant materials or industrial ***pollutants*** remain exposed to stormwater. Permittee's with existing coverage may submit a ***Notice of Termination*** in accordance with Special Condition S13.A.1.

D. Facilities Excluded from Coverage

Ecology will not cover the following facilities or activities under this permit:

1. If any part of a facility, in the categories listed below, has a stormwater discharge subject to stormwater Effluent Limitations Guidelines, New Source Performance Standards (NSPS) Under 40 CFR subchapter N, or Toxic Pollutant Effluent Standards under 40 CFR subchapter D §129; the operator of the facility must apply for an individual NPDES permit or seek coverage under an industry-specific ***general permit*** for those stormwater discharges.

    Below is a list of categories of industries specified in 40 CFR subchapter N for which at least one subpart includes stormwater effluent limitations guidelines or NSPS. Industries included in this list should review the subchapter N guidelines to determine if they are subject to a stormwater effluent limitation guideline for activities which they perform at their site.

40 CFR 411 Cement manufacturing	40 CFR 423 Steam electric power generating
40 CFR 412 Feedlots	40 CFR 434 Coal mining
40 CFR 418 Fertilizer manufacturing	40 CFR 436 Mineral mining and processing
40 CFR 419 Petroleum refining	40 CFR 440 Ore mining and dressing
40 CFR 422 Phosphate manufacturing	40 CFR 443 Paving and roofing materials (tars & asphalt)
40 CFR 449.11(a) Airports with more than 10,000 annual jet departures	

Facilities, which are subject to effluent standards in 40 CFR subchapter D §129: Aldrin/Dieldrin; DDT; Endrin; Toxaphene; Benzidine; or Polychlorinated Biphenyls (PCBs), shall apply for an individual NPDES permit.

2. Nonpoint source silvicultural activities with natural ***runoff*** that are excluded in 40 CFR §122.27.
3. Industrial activities operated by any department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government of the United States, or another entity, such as a private contractor, performing industrial activity for any such department, agency, or instrumentality.
4. Facilities located on "Indian Country" as defined in 18 USC §1151, except portions of the Puyallup Reservation as noted below.

   Indian Country includes:

   a. All land within any Indian Reservation notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation. This includes all federal, tribal, and Indian and non-Indian privately owned land within the reservation.
   b. All off-reservation Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.
   c. All off-reservation federal trust lands held for Native American Tribes.

   Puyallup Exception: Following the "Puyallup Tribes of Indians Land Settlement Act of 1989," 25 USC §1773; the permit does apply to land within the Puyallup Reservation except for discharges to surface water on land held in trust by the federal government.
5. Any facility authorized to discharge stormwater associated with industrial activity under an existing NPDES individual or other general permit.
6. All ***construction activities***. Operators of these construction activities shall seek coverage under the Construction Stormwater General Permit or an individual NPDES permit for stormwater associated with construction activity.
7. Facilities that discharge to a waterbody with a ***control plan***, unless this general permit adequately provides the level of protection required by the control plan.
8. ***New dischargers*** to a waterbody listed pursuant to Section 303(d) of the CWA, unless the Permittee meets the requirements of Condition S6.B.
9. Hazardous waste landfills subject to 40 CFR §445, subpart A.

E. Discharges to Ground

1. For sites with a ***discharge point*** to groundwater the terms and conditions of this permit shall apply. However, permittees are not required to sample on-site discharges to ground (e.g., infiltration), unless specifically required by Ecology (Condition G12).

2. Facilities with a discharge point to groundwater through an ***Underground Injection Control well*** shall comply with any applicable requirements of the Underground Injection Control (UIC) regulations, Chapter 173-218 WAC.

F. Conditional "No Exposure" Exemption

1. A facility engaged in industrial activity may qualify for a Conditional “No Exposure” Exemption (CNE) if there is no exposure of industrial materials and activities to rain, snow, snow melt, and/or runoff.

   Industrial materials and activities include, but are not limited to, ***material handling*** equipment or activities, industrial machinery, raw materials, intermediate products, by-products, and final products, or waste products.

   Material handling activities include storage, loading and unloading, transport, or conveyance of any raw materials, intermediate product, by-product, final products, or waste products.

2. To determine if you qualify for a CNE, eleven questions must be answered and certified that none of the following materials or activities are, or will be in foreseeable future, exposed to precipitationIndustrial Stormwater General Permit webpage:

   A. Is anyone using, storing or cleaning industrial machinery or equipment in an area that is exposed to stormwater, or are there areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to stormwater?

   B. Are there materials or residuals on the ground or in stormwater inlets from spills/leaks?

   C. Are materials or products from past industrial activity exposed to precipitation?

   D. Is material handling equipment used/stored (except adequately maintained vehicles)?

   E. Are materials or products exposed to precipitation during loading/unloading or transporting activities?

   F. Are materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge of pollutants)?

   G. Are materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers?

   H. Are materials or products handled/stored on roads or railways owned or maintained by the discharger?

   I. Is waste material exposed to precipitation (except waste in covered, non-leaking containers, e.g., dumpsters)?

   J. Does the application or disposal of process wastewater occur (unless otherwise permitted)?

   K. Is there particulate matter or visible deposits of residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow?

3. To apply for an exemption, an electronic application must be submitted to Ecology's Water Quality Permitting Portal (WQWebPortal). The WQWebPortal can accessed at https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Water-quality-permits-guidance/WQWebPortal-guidance.

    a. A Permittee is automatically granted a No Exposure exemption 90 days from Ecology's receipt of a complete and accurate No Exposure Certification Form, unless Ecology informs the applicant in writing or electronically within 90 days that it has denied or approved the request.

    b. Ecology will automatically terminate permit coverage when it grants the No Exposure exemption to a permitted facility.

    c. Facilities which are granted a No Exposure exemption must submit a No Exposure Certification Form to Ecology once every five years.

    d. No Exposure exemptions are conditional. If there is a change at the facility that results in the exposure of industrial activities or materials to stormwater, the facility is required to immediately apply for and obtain a permit.

S2. APPLICATION FOR COVERAGE

A. Obtaining Permit Coverage

1. Unpermitted facilities that require coverage under this permit shall submit to Ecology, a complete and accurate ***Notice of Intent (NOI)*** using Ecology's Water Quality Permitting Portal – Permit Coverage Notice of Intent form as follows:

    a. Existing Facilities

        i. Unpermitted existing facilities that require coverage under this permit shall submit a complete and accurate permit application to Ecology.

        ii. Existing facilities are facilities in operation prior to the effective date of this permit, January 1, 2020.

    b. New Facilities

        New facilities are facilities that begin operation on or after the effective date of this permit, January 1, 2020. All unpermitted new facilities shall*:*

        i. Submit a complete and accurate permit application to Ecology at least 60 days before the commencement of stormwater discharge from the facility.

        ii. The application shall include certification that the facility has met the applicable public notice and ***State Environmental Policy Act (SEPA)*** requirements in WAC 173-226-200(f).

    c. Electronic Submittal

        Use the Water Quality Permitting Portal (WQWebPortal) to submit a complete application for coverage to Ecology.

        For more information about the WQWebPortal, visit: https://secureaccess.wa.gov/ecy/wqwebportal/.

To access the WQWebPortal, you must first register for Secure Access Washington (SAW). For additional information about SAW, visit: https://support.secureaccess.wa.gov/.

B. Modification of Permit Coverage

A Permittee anticipating a significant process change, or otherwise requesting a modification of permit coverage, shall submit a complete Modification of Coverage Form to Ecology. The Permittee shall:

1. Apply for modification of coverage at least 60 days before implementing a significant process change; or by May15th prior to a Corrective Action deadline, if requesting a Level 2 or 3 time extension or waiver request per Condition S8.B-D.
2. Complete the public notice requirements in WAC 173-226-130(5) as part of a complete application for modification of coverage.
3. Comply with SEPA as part of a complete application for modification of coverage if undergoing a significant process change.

C. Permit Coverage Timeline

1. If the applicant does not receive notification from Ecology, permit coverage automatically commences on whichever of the following dates occurs **last**:
   a. The 31st day following receipt by Ecology of a completed application for coverage.
   b. The 31st day following the end of a 30-day public comment period.
   c. The effective date of the general permit.
2. Ecology may need additional time to review the application:
   a. If the application is incomplete.
   b. If it requires additional site-specific information.
   c. If the public requests a public hearing.
   d. If members of the public file comments.
   e. When more information is necessary to determine whether coverage under the general permit is appropriate.
3. When Ecology needs additional time:
   a. Ecology will notify the applicant in writing within 30 days and identify the issues that the applicant must resolve before a decision can be reached.
   b. Ecology will submit the final decision to the applicant in writing. If Ecology approves the application for coverage, coverage begins the 31st day following approval, or the date the approval letter is issued, whichever is later.

D. Transfer of Permit Coverage

Coverage under this general permit shall automatically transfer to a new discharger, if **all** of the following conditions are met:

1. The Permittee (existing discharger) and new discharger submit to Ecology a complete, written, signed agreement (Transfer of Coverage Form) containing a specific date for transfer of permit responsibility, coverage, and liability.
2. The type of industrial activities and practices remain substantially unchanged.
3. Ecology does not notify the Permittee of the need to submit a new application for coverage under the general permit or for an individual permit pursuant to Chapters 173-216, 173-220, and 173-226 WAC.
4. Ecology does not notify the existing discharger and new discharger of its intent to revoke coverage under the general permit. The transfer is effective on the date specified in the written agreement unless Ecology gives notice of revocation.

S3. STORMWATER POLLUTION PREVENTION PLAN (SWPPP)

A. General Requirements

All Permittees and applicants for coverage under this permit shall implement a ***Stormwater Pollution Prevention Plan (SWPPP)*** developed by ***qualified personnel*** as follows:

1. The SWPPP shall specify the ***Best Management Practices (BMPs)*** necessary to:
   a. Provide ***All Known, Available, and Reasonable methods of prevention, control, and Treatment (AKART)*** of *stormwater pollution*.
   b. Ensure the discharge does not cause or contribute to a violation of the Water Quality Standards.
   c. Comply with applicable federal technology-based treatment requirements under 40 CFR § 125.3.
2. Proper selection and use of ***Stormwater Management Manuals (SWMM).***

   BMPs shall be consistent with:
   a. *2019 Stormwater Management Manual for Western Washington*, for sites west of the crest of the Cascade Mountains; **or**
   b. *2019 Stormwater Management Manual for Eastern Washington*, for sites east of the crest of the Cascade Mountains; **or**
   c. Revisions to the manuals in S3.A.3. a & b, or other stormwater management guidance documents or manuals which provide an equivalent level of ***pollution*** prevention, that are approved by Ecology and incorporated into this permit in accordance with the permit modification requirements of WAC 173-226-230. For purposes of this section, the documents listed in Appendix 10 of the August 1, *2019 Phase I Municipal Stormwater Permit* are hereby incorporated into this permit; **or**
   d. Documentation in the SWPPP that the BMPs selected are ***demonstrably equivalent*** to practices contained in stormwater technical manuals approved by Ecology, including the proper selection, implementation, and maintenance of all applicable and appropriate best management practices for on-site pollution control.

3. Update of the SWPPP

    a. The Permittee shall modify the SWPPP if the owner/operator or the applicable local or state regulatory authority determines during inspections or investigations that the SWPPP is, or would be, ineffective in eliminating or significantly minimizing pollutants in stormwater discharges from the site. The Permittee shall modify the SWPPP:

        i. As necessary to include additional or modified BMPs designed to correct problems identified.

        ii. To correct the deficiencies identified in writing from Ecology within 30 days of notice.

    b. The Permittee shall modify the SWPPP whenever there is a change in design, construction, operation, or maintenance at the facility that significantly changes the nature of pollutants discharged in stormwater from the facility, or significantly increases the quantity of pollutants discharged.

    c. If a Permittee covered under the 2015 ISGP needs to update their SWPPP to be consistent with the 2020 ISGP, the update shall be completed by January 30, 2020.

4. Other Pollution Control Plans

    The Permittee may incorporate by reference applicable portions of plans prepared for other purposes at their facility. Plans or portions of plans incorporated by reference into a SWPPP become enforceable requirements of this permit and must be available along with the SWPPP, as required in S9.F. A Pollution Prevention Plan prepared under the Hazardous Waste Reduction Act, Chapter 70.95C RCW, is an example of such a plan.

5. Signatory Requirements

    The Permittee shall sign and certify all SWPPPs in accordance with General Condition G2, each time they revise or modify a SWPPP to comply with Conditions S3.A.4 (Update of the SWPPP), S7 (Inspections) or S8 (Corrective Actions). The SWPPP Certification Form is contained in Appendix 3 of this permit and on Ecology's industrial stormwater website.

B. Specific SWPPP Requirements

The SWPPP shall contain a site map, a detailed assessment of the facility, a detailed description of the BMPs, Spill Prevention and Emergency Cleanup Plan, and a sampling plan. The Permittee shall identify any parts of the SWPPP which the facility wants to claim as confidential business information.

1. The site map shall identify(site map may be multiple pages if needed):

    a. The scale or include relative distances between significant structures and drainage systems.

    b. The size of the property in acres.

    c. The location and extent of all buildings, structures and all impervious surfaces.

    d. Direction of stormwater flow (use arrows).

    e. Locations of all structural source control BMPs.

    f. Locations of all receiving water (including wetlands and drainage ditches) in the immediate vicinity of the facility.

g. Conditionally approved non-stormwater discharges.

h. Areas of existing and potential soil ***erosion*** that could result in the discharge of a ***significant amount*** of turbidity, sediment, or other pollutants.

i. Locations of all stormwater conveyances including ditches, pipes, catch basins, vaults, ponds, swales, etc.

j. Locations of actual and potential pollutant sources.

k. Locations of all stormwater monitoring points.

l. The stormwater drainage areas for each stormwater discharge point off site (including discharges to groundwater).

m. Locations of stormwater inlets and outfalls with a unique identification number for each sampling point and discharge point, indicating any that are identified as substantially identical, and identify, by name, any other party other than the Permittee that owns any stormwater drainage or discharge structures.

n. Combined sewers or MS4s and where stormwater discharges to them.

o. Locations of fueling and ***vehicle*** maintenance areas.

p. Locations and sources of run-on to your site from adjacent properties that may contain pollutants.

2. The facility assessment shall include a description of the facility; an inventory of facility activities and equipment that contribute to or have the potential to contribute any pollutants to stormwater; and, an inventory of materials that contribute to or have the potential to contribute pollutants to stormwater.

   a. The facility description shall describe:

      i. The industrial activities conducted at the site.

      ii. Regular business hours and seasonal variations in business hours or industrial activities.

      iii. The general layout of the facility including buildings and storage of raw materials, and the flow of goods and materials through the facility.

   b. The inventory of industrial activities shall identify all areas associated with industrial activities (see Table 1) that have been or may potentially be sources of pollutants, including, but not limited to, the following:

      i. Loading and unloading of dry bulk materials or liquids.

      ii. Outdoor storage of materials or products.

      iii. Outdoor manufacturing and processing.

      iv. On-site dust or particulate generating processes.

      v. On-site waste treatment, storage, or disposal.

      vi. Vehicle and equipment fueling, maintenance, and/or cleaning (includes washing).

      vii. Roofs or other surfaces exposed to ***air emissions*** from a manufacturing building or a process area.

viii. Roofs or other surfaces composed of materials that may be mobilized by stormwater (e.g., galvanized roofs, galvanized fences).

c. The inventory of materials shall list:

i. The types of materials handled at the site that potentially may be exposed to precipitation or runoff and could result in stormwater pollution.

ii. A short narrative for each material describing the potential of the pollutant to be present in stormwater discharges. The Permittee shall update this narrative when data become available to verify the presence or absence of these pollutants.

iii. A narrative description of any potential sources of pollutants from past activities, materials and spills that were previously handled, treated, stored, or disposed of in a manner to allow ongoing exposure to stormwater. Include the method and location of on-site storage or disposal. List significant spills and significant leaks of toxic or hazardous pollutants.

3. The SWPPP shall identify specific individuals by name or by title within the organization (pollution prevention team) whose responsibilities include: SWPPP development, implementation, maintenance, and modification.

4. Best Management Practices (BMPs)

a. General BMP Requirements

The Permittee shall describe each BMP selected to eliminate or reduce the potential to contaminate stormwater and prevent violations of water quality standards. The SWPPP must explain in detail how and where the selected BMPs will be implemented.

b. The Permittee shall include each of the following mandatory BMPs in the SWPPP and implement the BMPs. The Permittee may omit individual BMPs if site conditions render the BMP unnecessary or infeasible and the Permittee provides alternative and equally effective BMPs. The Permittee must justify each BMP omission in the SWPPP.

i. ***Operational Source Control BMPs***

1) The SWPPP shall include the Operational ***Source Control BMPs*** listed as "applicable" in Ecology's SWMMs, or other guidance documents or manuals approved in accordance with S3.A.3.c.

2) **Good Housekeeping:** The SWPPP shall include BMPs that define ongoing maintenance and cleanup, as appropriate, of areas which may contribute pollutants to stormwater discharges. The SWPPP shall include the schedule/frequency for completing each housekeeping task, based upon industrial activity, sampling results and observations made during inspections. The Permittee shall:

a) Vacuum paved surfaces with a vacuum sweeper (or a sweeper with a vacuum attachment) to remove accumulated pollutants a minimum of once per quarter.

b) Identify and control all on-site sources of dust to minimize stormwater contamination from the deposition of dust on areas exposed to precipitation.

c) Inspect and maintain bag houses monthly to prevent the escape of dust from the system. Immediately remove any accumulated dust at the base of exterior bag houses.

d) Keep all dumpsters under cover or fit with a storm resistant lid that must remain closed when not in use. (Tarps are not considered storm resistant.)

3) **Preventive Maintenance:** The SWPPP shall include BMPs to inspect and maintain the stormwater drainage, source controls, treatment systems (if any), and plant equipment and systems that could fail and result in contamination of stormwater. The SWPPP shall include the schedule/frequency for completing each maintenance task. The Permittee must:

a) Clean catch basins when the depth of debris reaches 60% of the sump depth. In addition, the Permittee must keep the debris surface at least 6 inches below the outlet pipe.

b) Maintain ponds, tanks/vaults, catch basins, swales, filters, oil/water separators, drains, and other stormwater drainage/treatment facilities in accordance with the maintenance standards set forth in the applicable Stormwater Management Manual, other guidance documents or manuals approved in accordance with S3.A.3.c, demonstrably ***equivalent BMPs*** per S3.A.3.d, or an O&M Manual submitted to Ecology in accordance with S8.D.

c) Inspect all equipment and vehicles during monthly site inspections for leaking fluids such as oil, antifreeze, etc. Take leaking equipment and vehicles out of service or prevent leaks from spilling on the ground until repaired.

d) Clean up spills and leaks immediately (e.g., using absorbents, vacuuming, etc.) to prevent the discharge of pollutants.

4) **Spill Prevention and Emergency Cleanup Plan (SPECP):** The SWPPP shall include a SPECP that includes BMPs to prevent spills that can contaminate stormwater. The SPECP shall specify BMPs for material handling procedures, storage requirements, cleanup equipment and procedures, and spill logs, as appropriate. The Permittee shall:

a) Store all hazardous substances, petroleum/oil liquids, and other chemical solid or liquid materials that have potential to contaminate stormwater on an impervious surface that is surrounded with a containment berm or dike that is capable of containing 10% of the total enclosed tank volume or 110% of the volume contained in the largest tank, whichever is greater, or use double-walled tanks.

b) Prevent precipitation from accumulating in containment areas with a roof or equivalent structure or include a plan on how it will manage and dispose of accumulated water if a containment area cover is not practical.

c) Locate spill kits within 25 feet of all stationary fueling stations, fuel transfer stations, mobile fueling units, and used oil storage/transfer stations. At a minimum, spill kits shall include:

   i) Oil absorbents capable of absorbing 15 gallons of fuel. Facilities with a Spill Prevention, Control, and Countermeasures Plan (SPCCP) must have enough oil absorbents capable of absorbing the minimum anticipated spill amount or potential discharge volume identified in that plan if more than 15 gallons.

   ii) A storm drain plug or cover kit.

   iii) A non-water containment boom, a minimum of 10 feet in length with a 12-gallon absorbent capacity.

   iv) A non-metallic shovel.

   v) Two 5-gallon buckets with lids.

d) Not lock shut-off fueling nozzles in the open position. Do not "top-off" tanks being refueled.

e) Block, plug or cover storm drains that receive runoff from areas where fueling, during fueling.

f) Use drip pans or equivalent containment measures during all petroleum transfer operations.

g) Locate materials, equipment, and activities so that leaks are contained in existing containment and diversion systems (confine the storage of leaky or leak-prone vehicles and equipment awaiting maintenance to protected areas).

h) Use drip pans and absorbents under or around leaky vehicles and equipment or store indoors where feasible. Drain fluids from equipment and vehicles prior to on-site storage or disposal.

i) Maintain a spill log that includes the following information for chemical and petroleum spills: date, time, amount, location, and reason for spill; date/time cleanup completed, notifications made and staff involved.

5) **Employee Training:** The SWPPP shall include BMPs to provide SWPPP training for employees who have duties in areas of industrial activities subject to this permit. At a minimum, the training plan shall include:

   a) The content of the training.

      i) An overview of what is in the SWPPP.

      ii) How employees make a difference in complying with the SWPPP and preventing contamination of stormwater.

      iii) Spill response procedures, good housekeeping, maintenance requirements, and material management practices.

b) How the Permittee will conduct training.

c) The frequency/schedule of training. The Permittee shall train employees annually, at a minimum.

d) A log of the dates on which specific employees received training.

6) **Inspections and Recordkeeping:** The SWPPP shall include documentation of procedures to ensure compliance with permit requirements for inspections and recordkeeping. At a minimum, the SWPPP shall:

a) Identify facility personnel who will inspect designated equipment and facility areas as required in Condition S7.

b) Contain a visual inspection report or check list that includes all items required by Condition S7.C.

c) Provide a tracking or follow-up procedure to ensure that a report is prepared and any appropriate action taken in response to visual inspections.

d) Define how the Permittee will comply with signature requirements and records retention identified in Special Condition S9, Reporting and Recordkeeping Requirements.

e) Include a certification of compliance with the SWPPP and permit for each inspection using the language in S7.C.1.c.

f) Include all inspection reports completed by the Permittee (S7.C).

7) ***Illicit Discharges***: The SWPPP shall include measures to identify and eliminate the discharge of ***process wastewater***, ***domestic wastewater***, ***noncontact cooling water***, and other illicit discharges, to stormwater sewers, or to surface waters and groundwaters of the State. The Permittee can find BMPs to identify and eliminate illicit discharges in Volume IV of Ecology's SWMM for Western Washington and Chapter 8 of the SWMM for Eastern Washington.

Water from washing vehicles or equipment, buildings, pavement, steam cleaning and/or pressure washing is considered process wastewater. The Permittee must not allow this process wastewater to comingle with stormwater or enter storm drains; and must collect in a tank for off-site disposal, or discharge it to a sanitary sewer, with written approval from the local sewage authority.

ii. ***Structural Source Control BMPs***

1) The SWPPP shall include the structural source control BMPs listed as "applicable" in Ecology's SWMMs, or other guidance documents or manuals approved in accordance with S3.A.3.c.

2) The SWPPP shall include BMPs to minimize the exposure of manufacturing, processing, and material storage areas (including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations) to rain, snow,

snowmelt, and *runoff* by either locating these industrial materials and activities inside or protecting them with storm resistant coverings.

Permittees shall:

a) Use grading, berming, or curbing to prevent runoff of contaminated flows and divert run-on away from these areas.

b) Perform all cleaning operations indoors, under cover, or in bermed areas that prevent stormwater runoff and run-on, also that capture any overspray.

c) Ensure that all washwater drains to a collection system that directs the washwater to further treatment or storage and not to the ***stormwater drainage system***.

iii. ***Treatment BMPs***

The Permittee shall:

1) Use treatment BMPs consistent with the applicable documents referenced in Condition S3.A.3.

2) Employ oil/water separators, booms, skimmers or other methods to eliminate or minimize oil and grease contamination of stormwater discharges.

3) Obtain Ecology approval before beginning construction/installation of all treatment BMPs that include the addition of chemicals to provide treatment.

iv. Stormwater Peak Runoff Rate and Volume Control BMPs

Facilities with ***new development*** or redevelopment shall evaluate whether flow control BMPs are necessary to satisfy the state's AKART requirements, and prevent violations of water quality standards. If flow control BMPs are required, they shall be selected according to S3.A.3.

v. ***Erosion and Sediment Control BMPs***

The SWPPP shall include BMPs necessary to prevent the erosion of soils and other earthen materials (crushed rock/gravel, etc.), control off-site sedimentation, and prevent violations of water quality standards. The Permittee shall implement and maintain:

1) Sediment control BMPs such as ***detention*** or retention ponds or traps, vegetated filter strips, bioswales, or other permanent sediment control BMPs to minimize ***sediment*** loads in stormwater discharges.

2) Filtration BMPs to remove solids from catch basins, sumps or other stormwater collection and conveyance system components (catch basin filter inserts, filter socks, modular canisters, sand filtration, centrifugal separators, etc.).

5. Sampling Plan

   The SWPPP shall include a sampling plan. The plan shall:

   a. Identify points of discharge to surface water, storm sewers, or discrete groundwater infiltration locations, such as dry wells or detention ponds.

   b. Include documentation of why applicable parameters are not sampled at each discharge point per S4.B.3 (if applicable). The required documentation includes:

      i. Location of which discharge points the Permittee does not sample applicable parameters because the pollutant concentrations are substantially identical to a discharge point being sampled.

      ii. General industrial activities conducted in the drainage area of each discharge point.

      iii. Best Management Practices conducted in the drainage area of each discharge point.

      iv. Exposed materials located in the drainage area of each discharge point that are likely to be significant contributors of pollutants to stormwater discharges.

      v. Impervious surfaces in the drainage area that could affect the percolation of stormwater runoff into the ground (e.g., asphalt, crushed rock, grass).

      vi. Reasons why the Permittee expects the discharge points to discharge substantially identical effluents.

   c. Identify each sampling location by its unique identifying number such as A1, A2.

   d. Identify staff responsible for conducting stormwater sampling.

   e. Specify procedures for sample collection and handling.

   f. Specify procedures for sending samples to a laboratory.

   g. Identify parameters for analysis, holding times and preservatives, laboratory ***quantitation levels***, and analytical methods.

   h. Specify the procedure for submitting results to Ecology.

S4. GENERAL SAMPLING REQUIREMENTS

A. General Requirements

The Permittee shall conduct sampling of stormwater in accordance with this permit and the SWPPP.

B. Sampling Requirements

1. Sample Timing and Frequency

   a. The Permittee shall sample the discharge from each designated location at least once per quarter:

      1st Quarter = January, February, and March

      2nd Quarter = April, May, and June

3rd Quarter = July, August, and September

4th Quarter = October, November, and December

b. Permittees shall sample the stormwater discharge from the ***first fall storm event*** each year. First fall storm event means the first time on or after September 1st of each year that precipitation occurs and results in a stormwater discharge from a facility.

c. Permittees shall collect samples within the first 12 hours of stormwater discharge events. If it is not possible to collect a sample within the first 12 hours of a stormwater discharge event, the Permittee must collect the sample as soon as practicable after the first 12 hours, and keep documentation with the sampling records (Condition S4.B.3) explaining why they could not collect samples within the first 12 hours; or if it is unknown (e.g., discharge was occurring during start of regular business hours).

d. The Permittee shall obtain ***representative samples***, which may be a single grab sample, a time-proportional sample, or a flow-proportional sample.

e. Permittees need not sample outside of ***regular business hours***, during ***unsafe conditions***, or during quarters where there is no discharge, but shall submit a Discharge Monitoring Report each reporting period (Condition S9.A).

f. Permittees monitoring more than once per quarter shall ***average*** all of the monitoring results for each parameter (except pH and visible oil sheen) and compare the average value to the ***benchmark*** value. However, if Permittees collect more than one sample during a 24-hour period, they must first calculate the ***daily average*** of the individual grab sample results collected during that 24-hour period; then use the daily average to calculate a quarterly average.

2. Sample Location(s)

a. The Permittee shall designate sampling location(s) at the point(s) where it discharges stormwater associated with industrial activity off-site.

b. The Permittee is not required to sample on-site discharges to ground (e.g., infiltration) or sanitary sewer discharges, unless specifically required by Ecology (Condition G12).

c. Ecology may require sampling points located in areas where unsafe conditions prevent regular sampling be moved to areas where regular sampling can occur.

d. The Permittee shall notify Ecology of any changes or updates to sample locations, discharge points, and/or outfalls by submitting an "Industrial Stormwater General Permit Discharge/Sample Point Update Form" to Ecology. The Permittee may be required to provide additional information to Ecology prior to changing sampling locations.

3. Substantially Identical Discharge Points

a. The Permittee shall sample each distinct point of discharge off-site except as otherwise exempt from monitoring as a ***substantially identical discharge point*** per S3.B.5.b. If applicable, the Permittee is only required to monitor applicable parameters at one of the substantially identical discharge points.

The Permittee shall notify Ecology of any changes or updates to sample locations, discharge points, and/or outfalls by submitting an "Industrial Stormwater General Permit Discharge/Sample Point Update Form" to Ecology.

4. Sample Documentation

   For each stormwater sample taken, the Permittee shall record the following information and retain it on-site for Ecology review:

   a. Sample date

   b. Sample time

   c. A notation describing if the Permittee collected the sample within the first 12 hours of stormwater discharge events; or, if it is unknown (e.g., discharge was occurring during start of regular business hours).

   d. An explanation of why the permittee could not collect a sample within the first 12 hours of a stormwater discharge event, if it was not possible. Or, if it is unknown, an explanation of why it is unknown if a sample was collected within or outside the first 12 hours of stormwater discharge.

   e. Sample location (using SWPPP identifying number)

   f. Method of sampling, and method of sample preservation, if applicable.

   g. Individual who performed the sampling

5. Laboratory Documentation

   The Permittee shall retain laboratory reports on-site for Ecology review and shall ensure that all laboratory reports providing data for all parameters include the following information:

   a. Date of analysis

   b. Parameter name

   c. CAS number, if applicable

   d. Analytical method(s)

   e. Individual who performed the analysis

   f. Method detection limit (MDL)

   g. Laboratory quantitation level (QL) achieved by the laboratory

   h. Reporting units

   i. Sample result

   j. Quality assurance/quality control data

6. The Permittee shall maintain the original records onsite and make them available to Ecology upon request.

7. The Permittee can reduce monitoring to once a year for a period of three years (12 quarters) based on consistent attainment of benchmark values when:

   a. Eight consecutive quarterly samples demonstrate a reported value equal to or less than the benchmark value; or for pH, within the range of 5.0 – 9.0.

b. For purposes of tallying consecutive quarterly samples:

i. Do not include any quarters in which the Permittee did not collect a sample, but should have (e.g., discharge(s) occurred during normal working hours, and during safe conditions; but no sample was collected during the entire quarter). If this occurs, the tally of consecutive quarterly samples is reset to zero.

ii. Do not include any quarters in which the Permittee did not collect a sample because there was no discharge during the quarter (or the discharges during the quarter occurred outside normal working hours or during unsafe conditions). These quarters are not included in the calculation of eight consecutive quarters, but do not cause the tally to be reset; i.e., they are skipped over.

c. The annual sample must be taken during the 4th quarter. A facility may average the annual sample with any other samples taken over the course of the 4th quarter. The annual sample does not include the first fall storm event.

d. A Permittee whose annual sample exceeds the benchmark during consistent attainment is no longer allowed to claim consistent attainment. The Permittee must begin sampling in accordance with S4.B.

8. A Permittee who has a ***significant process change*** shall not use previous sampling results to demonstrate consistent attainment.

9. Suspension of sampling based on consistent attainment does not apply to pollutant parameters subject to "report only" requirements, oil sheen, or numeric effluent limits based on federal Effluent Limitation Guidelines (Condition S5) or Section 303(d) of the Clean Water Act (Condition S6).

C. Analytical Procedures for Sampling Requirements

The Permittee shall ensure that analytical methods used to meet the sampling requirements in this permit conform to the latest revision of the Guidelines Establishing Test Procedures for the Analysis of Pollutants contained in 40 CFR § 136, unless specified otherwise in this permit.

D. Laboratory Accreditation

1. The Permittee shall ensure that all analytical data required by Ecology is prepared by a laboratory registered or accredited under the provisions of, Accreditation of Environmental Laboratories, Chapter 173-50 WAC.

2. ***Turbidity*** and pH are exempt from this requirement, unless the laboratory must be registered or accredited for any other parameter.

S5. BENCHMARKS, EFFLUENT LIMITATIONS AND SPECIFIC SAMPLING REQUIREMENTS

A. Benchmarks and Sampling Requirements

1. Permittees shall sample their stormwater discharges as specified in Condition S4 and as specified in Table 2.

2. Additional requirements apply to specific industrial categories (S5.B), facilities subject to effluent limitation guidelines (S5.C), and certain discharges to impaired waterbodies (S6).

   If a Permittee's discharge exceeds a benchmark listed in Table 2, the Permittee shall take the actions specified in Condition S8.

Table 2: Benchmarks and Sampling Requirements Applicable to All Facilities

Parameter	Units	Benchmark Value	Analytical Method	Laboratory Quantitation Level [a]	Minimum Sampling Frequency [b]
Turbidity	NTU	25	EPA 180.1 Meter	0.5	1/quarter
pH	Standard Units	Between 5.0 and 9.0	Meter/Paper [c]	±0.5	1/quarter
Oil Sheen	Yes/No	No Visible Oil Sheen	N/A	N/A	1/quarter
Copper, Total	µg/L	Western WA: 14 Eastern WA: 32	EPA 200.8	2.0	1/quarter
Zinc, Total	µg/L	117	EPA 200.8	2.5	1/quarter

[a] The Permittee shall ensure laboratory results comply with the quantitation level (QL) specified in the table. However, if an alternate method from 40 CFR Part 136 is sufficient to produce measurable results in the sample, the Permittee may use that method for analysis. If the Permittee uses an alternative method it must report the test method and QL on the discharge monitoring report. The permittee must also upload the QA/QC documentation from the lab on the QL development.

[b] 1/quarter means at least one sample taken each quarter, year-round.

[c] Permittees shall use either a calibrated pH meter or narrow-range pH indicator paper with a resolution of ± 0.5 SU or better.

B. Additional Sampling Requirements for Specific Industrial Groups

1. In addition to the requirements in Table 2, all Permittees identified by an industrial activity in Table 3 shall sample stormwater discharges as specified in Condition S4 and in Table 3.
2. If a discharge exceeds a benchmark listed in Table 3, the Permittee shall take the actions specified in Condition S8.

Table 3: Additional Benchmarks and Sampling Requirements Applicable to Specific Industries

Parameter	Units	Benchmark Value	Analytical Method	Laboratory Quantitation Level [a]	Minimum Sampling Frequency [b]
1. Chemical and Allied Products (325xxx), Food and Kindred Products (311xxx-312xxx)					
BOD_5	mg/L	30	SM 5210B	2	1/quarter
Nitrate + Nitrite Nitrogen, as N	mg/L	0.68	SM4500 NO3-E/F/H	0.10	1/quarter
Phosphorus, Total	mg/L	2.0	EPA 365.1	0.01	1/quarter
2. Primary Metals(331xxx), Metals Mining (2122xx), Automobile Salvage and Scrap Recycling (42314x and 42393x), Metals Fabricating (332xxx), Machinery Manufacturing (333xxx)					
Lead, Total	µg/L	64.6	EPA 200.8	0.5	1/quarter
Petroleum Hydrocarbons (Diesel Fraction)	mg/L	10	NWTPH-Dx	0.25	1/quarter
3. Hazardous Waste Treatment, Storage and Disposal Facilities and Dangerous Waste Recyclers subject to the provisions of Resource Conservation and Recovery Act (RCRA) Subtitle C					
Chemical Oxygen Demand (COD)	mg/L	120	SM5220-D	10	1/quarter
Total Ammonia (as N)	mg/L	2.1	SM4500-NH3- GH	0.02	1/quarter
TSS	mg/L	100	SM2540-D	5	1/quarter
Arsenic, Total	µg/L	150	EPA 200.8	0.5	1/quarter
Cadmium, Total	µg/L	2.1	EPA 200.8	0.25	1/quarter
Cyanide, Total	µg/L	22	EPA 335.4	10	1/quarter
Lead, Total	µg/L	64.6	EPA 200.8	0.5	1/quarter
Mercury, Total	µg/L	1.4	EPA 1631E	0.0005	1/quarter
Selenium, Total	µg/L	5.0	EPA 200.8	1.0	1/quarter
Silver, Total	µg/L	3.4	EPA 200.8	0.2	1/quarter
Petroleum Hydrocarbons (Diesel Fraction)	mg/L	10	NWTPH-Dx	0.25	1/quarter
4. Air Transportation[c] (481xxx)					
Total Ammonia (as N)	mg/L	2.1	SM4500-NH3- GH	0.02	1/quarter
BOD_5	mg/L	30	SM 5210B	2	1/quarter
COD	mg/L	120	SM5220-D	10	1/quarter

Parameter	Units	Benchmark Value	Analytical Method	Laboratory Quantitation Level [a]	Minimum Sampling Frequency [b]
Nitrate + Nitrite Nitrogen, as N	mg/L	0.68	SM 4500-NO3-E/F/H	0.10	1/quarter
Petroleum Hydrocarbons (Diesel Fraction)	mg/L	10	NWTPH-Dx	0.25	1/quarter
5. Timber Product Industry (321xxx), Paper and Allied Products (322xxx), Wood Product Manufacturing (321xxx)					
COD	mg/L	120	SM5220-D	10	1/quarter
TSS	mg/L	100	SM2540-D	5	1/quarter
6. Transportation (482xxx-485xxx), Petroleum Bulk Stations and Terminals (4247xx), Transportation Equipment Manufacturing (336xxx), Construction, Transportation, Mining, and Forestry Machinery and Equipment Rental and Leasing (53421)					
Petroleum Hydrocarbons (Diesel Fraction)	mg/L	10	NWTPH-Dx	0.25	1/quarter
7. Coal Mining (2121xx), Oil and Gas Extraction (2111xx), Nonmetallic Mining and Quarrying, except Fuels (2123xx), Petroleum and Coal Products Manufacturing (324xxx), Nonmetallic Mineral Product Manufacturing (327xxx), Steam Electric Power Generation					
TSS	mg/L	100	SM2540-D	5	1/quarter
Petroleum Hydrocarbons (Diesel Fraction)	mg/L	10	NWTPH-Dx	0.25	1/quarter
8. Marine Industrial Construction (ECY003)					
Arsenic	µg/L	Report Only[d]	EPA 200.8	0.5	1/quarter
PAH compounds[e]	µg/L	Report Only[d]	EPA 610	10	1/quarter
p-cresol	µg/L	Report Only[d]	EPA 8270D	10	1/quarter
Phenol	µg/L	Report Only[d]	EPA 625.1	4.5	1/quarter
TSS	mg/L	100	SM2540-D	5	1/quarter
Petroleum Hydrocarbons (Diesel Fraction)	mg/L	10	NWTPH-Dx	0.25	1/quarter

[a] The Permittee shall ensure laboratory results comply with the quantitation level (QL) specified in the table. However, if an alternate method from 40 CFR Part 136 is sufficient to produce measurable results in the sample, the Permittee may use that method for analysis. If the Permittee uses an alternative method it must report the test method and QL on the discharge monitoring report. If the Permittee is unable to obtain the required QL due to matrix effects, the Permittee must report the matrix-specific method detection level (MDL) and QL on the DMR. The permittee must also upload the QA/QC documentation from the lab on the QL development.

[b.] 1/quarter means at least one sample taken each quarter, year-round.

[c.] For airports where a single Permittee, or a combination of permitted facilities use more than 100,000 gallons of glycol-based deicing chemicals and/or 100 tons or more of urea on an average annual basis, monitor these additional five parameters in those discharge points that collect runoff from areas where deicing activities occur.

[d] A benchmark does not apply, but permittees must report the sampling result. "Report only" reporting may not be applied to consistent attainment. Ecology will use the data collected during this permit term to determine if the pollutants listed will need to be included in the next permit, and if so, develop benchmarks based on the data received and water quality criteria.

[e] PAH Comounds include: acenaphthene, acenaphthylene, anthracene, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(ghi)perylene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)anthracene, fluoranthene, fluorene, indeno(1,2,3-cd)pyrene, naphthalene, phenanthrene, and pyrene.

C. Landfills and Airports Subject to Effluent Limitation Guidelines

1. Permittees with discharges from the following activities shall comply with the effluent limits and monitor as specified in Condition S4 and Tables 4 and 5.
2. The discharge of the pollutants at a level more than that identified and authorized by this permit for these activities shall constitute a violation of the terms and conditions of this permit.
3. Permittees operating non-hazardous waste landfills subject to the provisions of 40 CFR §445 Subpart B shall not exceed the effluent limits[4] listed in Table 4.

[4] As set forth in 40 CFR §445 Subpart B, these numeric effluent limits apply to contaminated stormwater discharges from Municipal Solid Waste Landfills that have not been closed in accordance with 40 CFR §258.60, and to contaminated stormwater discharges from those landfills that are subject to the provisions of 40 CFR §257 except for discharges from any of the following facilities: (a) landfills operated in conjunction with other industrial or commercial operations, when the landfill receives only wastes generated by the industrial or commercial operation directly associated with the landfill; (b) landfills operated in conjunction with other industrial or commercial operations, when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes, provided that the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N as the industrial or commercial operation, or that the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation; (c) landfills operated in conjunction with CWT facilities subject to 40 CFR §437, so long as the CWT facility commingles the landfill wastewater with other non-landfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills; or (d) landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities, so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

Table 4: Effluent Limits Applicable to Non-Hazardous Waste Landfills Subject to 40 CFR Part 445 Subpart B

Parameter	Units	Average Monthly [a]	Maximum Daily [b]	Analytical Method [c]	Laboratory Quantitation Level [d]	Minimum Sampling Frequency [e]
BOD_5	mg/L	37	140	EPA 405.1 or SM 5210B	2	1/quarter
TSS	mg/L	27	88	SM2540-D	5	1/quarter
Total Ammonia (as N)	mg/L	4.9	10	SM4500-NH3-GH	0.02	1/quarter
Alpha Terpineol	µg/L	16	33	EPA 625.1	N/A [f]	1/quarter
Benzoic Acid	µg/L	71	120	EPA 625.1	N/A [f]	1/quarter
p-Cresol (4-methylphenol)	µg/L	14	25	EPA 8270D	10	1/quarter
Phenol	µg/L	15	26	EPA 625.1	4.5	1/quarter
Zinc, Total	µg/L	110	200	EPA 200.8	2.5	1/quarter
pH	SU	Between 6.0 and 9.0		Meter	±0.1	1/quarter

a. Average monthly effluent limit means the highest allowable average of daily discharges over a calendar month. To calculate the discharge value to compare to the limit, you add the value of each daily discharge measured during a calendar month and divide this sum by the total number of daily discharges measured. If only one sample is taken during the calendar month, the average monthly effluent limitation applies to that sample. If only one sample is taken during the reporting period, the average monthly effluent limitation applies to that sample.

b. Maximum daily effluent limit means the highest allowable daily discharge. The daily discharge means the discharge of a pollutant measured during a calendar day. The daily discharge is the average measurement of the pollutant over the day; this does not apply to pH.

c. Or other equivalent EPA-approved method with the same or lower quantitation level.

d. The Permittee shall ensure laboratory results comply with the quantitation level (QL) specified in the table. However, if an alternate method from 40 CFR §136 is sufficient to produce measurable results in the sample, the Permittee may use that method for analysis. If the Permittee uses an alternative method it must report the test method and QL on the discharge monitoring report. The permittee must also upload the QA/QC documentation from the lab on the QL development.

e 1/quarter means at least one sample taken each quarter, year-round.

f EPA method 625.1 does not list quantitation levels for this pollutant. Reporting limits will be performance based and laboratory reporting levels must be included on the DMR.

4. Permittees operating airlines and airports subject to provisions of 40 CFR §449 shall comply with the following:

   a. ***Airfield Pavement*** Deicing. Existing and new primary airports with 1,000 or more annual jet departures (***annual non-propeller aircraft departures***) that discharge wastewater associated with airfield pavement ***deicing*** commingled with stormwater must either use non-urea-containing deicers[5], or meet the effluent limit in Table 5 at every discharge point, prior to any dilution or any commingling with any non-deicing discharge.

Table 5: Effluent Limit Applicable to Airports Subject to 40 CFR Part 449

Parameter	Units	Maximum Daily [a]	Analytical Method [b]	Laboratory Quantitation Level [c]	Minimum Sampling Frequency [d]
Total Ammonia (as N)	mg/L	14.7	SM4500-NH3-GH	0.02	1/quarter

a. Maximum daily effluent limit means the highest allowable daily discharge. The daily discharge means the discharge of a pollutant measured during a calendar day. The daily discharge is the average measurement of the pollutant over the day.

b. Or other equivalent *EPA*-approved method with the same or lower quantitation level.

c. The Permittee shall ensure laboratory results comply with the quantitation level (QL) specified in the table. However, if an alternate method from 40 CFR Part 136 is sufficient to produce measurable results in the sample, the Permittee may use that method for analysis. If the Permittee uses an alternative method it must report the test method and QL on the discharge monitoring report. If the Permittee is unable to obtain the required QL due to matrix effects, the Permittee must report the matrix-specific method detection level (MDL) and QL on the DMR. The permittee must also upload the QA/QC documentation from the lab on the QL development.

d. 1/quarter means at least one sample taken each quarter, year-round.

D. Conditionally Authorized Non-Stormwater Discharges

1. The categories and sources of non-stormwater discharges identified in Condition S5.D.2, below, are conditionally authorized, provided:

   a. The discharge is otherwise consistent with the terms and conditions of this permit, including Condition S5, S6, and S10.

   b. The Permittee conducts the following assessment for each non-stormwater discharge (except for S5.D.2.a & f) and documents the assessment in the SWPPP, consistent with Condition S3.B.2. The Permittee shall:

      i. Identify each source.

      ii. Identify the location of the discharge into the stormwater collection system.

      iii. Characterize the discharge including estimated flows or flow volume, and likely pollutants which may be present.

[5] Affected Permittees must certify in its annual report that it does not use airfield deicing products that contain urea, or meet the numeric limit in Table 5 (Condition S9.B.4).

iv. Evaluate and implement available and reasonable source control BMPs to reduce or eliminate the discharge.

v. Evaluate compliance of the discharge with the state water quality standards.

vi. Identify appropriate BMPs for each discharge to control pollutants and or flow volumes.

2. Conditionally authorized non-stormwater discharges include:

   a. Discharges from emergency firefighting activities.

   b. Fire protection system flushing, testing, and maintenance.

   c. Discharges of potable water including water line flushing, provided that water line flushing must be de-chlorinated prior to discharge.

   d. Uncontaminated air conditioning or compressor condensate.

   e. Landscape watering and irrigation drainage.

   f. Uncontaminated groundwater or spring water.

   g. Discharges associated with dewatering of foundations, footing drains, or utility vaults where flows are not contaminated with process materials such as solvents.

   h. Incidental windblown mist from cooling towers that collects on rooftops or areas adjacent to the cooling tower. This does not include intentional discharges from cooling towers such as piped cooling tower blow down or drains.

E. Prohibited Discharges

Unless authorized by a separate NPDES or state waste discharge permit, the following discharges are prohibited:

1. The discharge of process wastewater is not authorized. Stormwater that commingles with process wastewater is considered process wastewater.

2. Illicit discharges are not authorized by this permit. Conditionally authorized non-stormwater discharges in compliance with Condition S5.D are not illicit discharges.

F. General Prohibitions

Permittees shall manage stormwater to prevent the discharge of:

1. Synthetic, natural, or processed oil or oil-containing products as identified by an oil sheen, and

2. Trash and floating debris.

S6. DISCHARGES TO IMPAIRED WATERS

A. General Requirements for Discharges to Impaired Waters

Permittees that discharge to an impaired waterbody, either directly or indirectly through a stormwater drainage system, shall conduct sampling and inspections in accordance with Conditions S4, S5, S6, and S7.

B. Eligibility for Coverage of New Discharges to Impaired Waters

Facilities that meet the definition of new discharger and discharge to a ***303(d)-listed waterbody*** (Category 5), or an impaired waterbody with an ***applicable TMDL*** (Category 4A), or a pollution control program for sediment cleanup (i.e., a Category 4B sediment-impaired waterbody) are not eligible for coverage under this permit unless the facility:

1. Prevents all exposure to stormwater of the pollutant(s) for which the waterbody is impaired, and retains documentation of procedures taken to prevent exposure onsite with its SWPPP; **or**
2. Documents that the pollutant(s) for which the waterbody is impaired is not present at the facility, and retains documentation of this finding with the SWPPP; **or**
3. Provides Ecology with data showing that the discharge is not expected to cause or contribute to an exceedance of a water quality standard, and retain such data onsite with its SWPPP. The facility must provide data and other technical information to Ecology sufficient to demonstrate:
    a. For discharges to waters without an EPA approved or established TMDL, that the discharge of the pollutant for which the water is impaired will meet instream water quality criteria at the point of discharge to the waterbody; or
    b. For discharges to waters with an EPA approved or established TMDL, that there are sufficient remaining ***wasteload allocations*** in an EPA approved or established TMDL to allow industrial stormwater discharge and that existing dischargers to the waterbody are subject to compliance schedules designed to bring the waterbody into attainment with water quality standards.

Facilities are eligible for coverage under this permit if Ecology issues permit coverage based upon an affirmative determination that the discharge will not cause or contribute to the existing impairment.

C. Additional Sampling Requirements and Effluent Limits for Discharges to Certain Impaired Waters and Puget Sound Sediment Cleanup Sites

1. Permittees discharging to a 303(d)-listed waterbody (Category 5), either directly or indirectly through a stormwater drainage system, shall comply with the applicable sampling requirements and numeric effluent limits in Table 6. If a discharge point is subject to an impaired waterbody effluent limit (Condition S6.C) for a parameter that also has a benchmark, the effluent limit supersedes the benchmark. Permittees discharging to a 303(d) – listed waterbody (Category 5) that was not 303(d)-listed at the time of 2015 permit coverage shall comply with the applicable sampling requirements and numeric effluent limits in Table 6 as soon as possible, but no later than January 1, 2022.

a. Facilities subject to these limits include, but may not be limited to, facilities listed in Appendix 4.

b. For purposes of this condition, "applicable sampling requirements and effluent limits" means the sampling and effluent limits in Table 6 that correspond to the specific parameter(s) the receiving water is 303(d)-listed for at the time of permit coverage, or total suspended solids (TSS) if the waterbody is 303(d)-listed (Category 5) for sediment quality at the time of permit coverage.

Table 6: Sampling and Effluent Limits Applicable to Discharges to 303(d)-listed Waters

Parameter	Units	Maximum Daily[a]		Analytical Method [b]	Laboratory Quantitation Level [c]	Sampling Frequency[d]
		Freshwater	Marine			
Turbidity	NTUs	25	25	EPA 180.1 Meter	0.5	1/quarter
pH	SU	[i]	Between 7.0 and 8.5	Meter	±0.1	1/quarter
Fecal Coliform Bacteria	# colonies/ 100 mL	Report Only[h]	Report Only[h]	SM 9222D	20 CFU/ 100 mL	1/quarter
E. coli	# colonies/ 100 mL	Report Only[h]	N/A	EPA 1603	20 CFU/ 100 mL	1/quarter
Enterococci	# colonies/ 100 mL	N/A	Report Only[h]	EPA 1600	20 CFU/ 100 mL	1/quarter
TSS [f]	mg/L	30	30	SM2540-D	5	1/quarter
Phosphorus, Total	mg/L	[g]	[g]	EPA 365.1	0.01	1/quarter
Total Ammonia (as N)	mg/L	[g]	[g]	SM 4500 NH_3-GH	0.02	1/quarter
Copper, Total	µg/L	[g]	[g]	EPA 200.8	2.0	1/quarter
Lead, Total	µg/L	[g]	[g]	EPA 200.8	0.5	1/quarter
Mercury, Total	µg/L	2.1	1.8	EPA1631E	0.0005	1/quarter
Zinc, Total	µg/L	[g]	[g]	EPA 200.8	2.5	1/quarter
Pentachlorophenol	µg/L	[g]	[g]	EPA 625.1	10.8	1/quarter

[a] Maximum daily effluent limit means the highest allowable daily discharge. The daily discharge means the discharge of a pollutant measured during a calendar day. The daily discharge is the average measurement of the pollutant over the day; this does not apply to pH.

[b.] Or other equivalent method with the same reporting level.

[c] The Permittee shall ensure laboratory results comply with the quantitation level (QL) specified in the table. However, if an alternate method from 40 CFR Part 136 is sufficient to produce measurable results in the sample, the Permittee may use that method for analysis. If the Permittee uses an alternative method it must report the test method and QL on the discharge monitoring report. If the Permittee is unable to obtain the required QL due to matrix effects, the Permittee must report the matrix-specific method detection level (MDL) and QL on the DMR. The permittee must also upload the QA/QC documentation from the lab on the QL development.

[d.] 1/quarter means at least one sample taken each quarter, e.g., Q1 = Jan 1 – March 31st, Q2 = April 1 – June 30th

e Permittees shall use either a calibrated pH meter consistent with EPA 9040 or an approved state method.

f. Permittees who discharge to a 303(d)-listed waterbody (Category 5) for sediment quality shall sample discharge for TSS.

g. Site-specific effluent limitation will be assigned at the time of permit coverage.

h. A numeric effluent limit does not apply, but Permittees must sample according to Table 6. In addition, the following mandatory BMPs shall be incorporated into the SWPPP and implemented; the Permittee must:

1) Use all known, available and reasonable methods to prevent rodents, birds, and other animals from feeding/nesting/roosting at the facility. Nothing in this section shall be construed as allowing violations of any applicable federal, state or local statutes, ordinances, or regulations including the Migratory Bird Treaty Act.

2) Perform at least one annual dry weather inspection of the stormwater system to identify and eliminate sanitary sewer cross-connections;

3) Install structural source control BMPs to address on-site activities and sources that could cause bacterial contamination (e.g., dumpsters, compost piles, food waste, animal products):

4) Implement operational source control BMPs to prevent bacterial contamination from any known sources of fecal coliform bacteria (e.g., animal waste);

5) Conduct additional bacteria-related sampling and/or BMPs, if ordered by Ecology on a case-by-case basis.

i The effluent limit for a Permittee who discharges to a freshwater body 303(d)-listed for pH is: Between 6.0 and 8.5, if the 303(d)-listing is for high pH only; Between 6.5 and 9.0, if the 303(d)-listing is for low pH only; and Between 6.5 and 8.5 if the 303(d)-listing is for both low and high pH. All pH effluent limits are applied end-of-pipe.

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2. Permittees discharging to a ***Puget Sound Sediment Cleanup Site***[6] ,either directly or indirectly through a stormwater drainage system, shall comply with this section:

   a. Permittees shall sample the discharge for total suspended solids (TSS) in accordance with Table 7.

   b. If the waterbody is listed within Category 5 (sediment medium) where the ***outfall*** discharges to the waterbody, the discharge is subject to the TSS numeric effluent limit in Table 6.

   c. If the waterbody is not listed within Category 5 (sediment medium) where the outfall discharges to the waterbody, the discharge is subject to the TSS benchmark in Table 7. If a discharge exceeds the TSS benchmark, the Permittee shall comply with Condition S8.

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[6] *Puget Sound Sediment Cleanup Site* means: Category 4B (Sediment) portions of Budd Inlet (Inner), Commencement Bay (Inner), Commencement Bay (Outer), Dalco Passage and East Passage, Duwamish Waterway (including East and West Waterway), Eagle Harbor, Elliot Bay, Hood Canal (North), Liberty Bay, Rosario Strait, Sinclair Inlet, and Thea Foss Waterway; Category 5 (Sediment) portions of the Duwamish Waterway; Category 4A (Sediment) portions of Bellingham Bay (Inner); and the Everett/Port Gardener, Oakland Bay/Shelton Harbor, and Port Angeles Harbor sediment cleanup areas, as mapped on Ecology's ISGP website. All references to Category 4A, 4B and 5 pertain to the 2012 EPA-approved Water Quality Assessment.

Table 7: Benchmarks and Sampling Requirements Applicable to Discharges to Puget Sound Sediment Cleanup Sites that are not Category 5 for Sediment Quality

Parameter	Units	Benchmark Value [a]	Analytical Method	Laboratory Quantitation Level [b]	Minimum Sampling Frequency [c]
TSS	mg/L	30	SM2540-D	5	1/quarter

[a] Permittees sampling more than once per quarter shall average the sample results and compare the average value to the benchmark to determine if it the discharge has exceeded the benchmark value. However, if Permittees collect more than one sample during a 24-hour period, they must first calculate the daily average of the individual grab sample results collected during that 24-hour period; then use the daily average to calculate a quarterly average.

[b] The Permittee shall ensure laboratory results comply with the quantitation level (QL) specified in the table. However, if an alternate method from 40 CFR Part 136 is sufficient to produce measurable results in the sample, the Permittee may use that method for analysis. If the Permittee uses an alternative method it must report the test method and QL on the discharge monitoring report. The permittee must also upload the QA/QC documentation from the lab on the QL development.

[c.] 1/quarter means at least one sample taken each quarter, year-round.

d. Permittees shall remove accumulated solids from storm drain lines (including inlets, catch basins, sumps, conveyances lines, and oil/water separators) on or beneath your facility at least once in the term of the permit.

   Permittees shall conduct line cleaning operations (e.g., jetting, vacuuming, removal, loading, storage, and/or transport) using BMPs to prevent discharges of storm drain solids to surface waters of the State.

   Removed storm drain solids and liquids shall be disposed of in accordance with applicable laws and regulations and documented in the SWPPP.

   i. If a Permittee can demonstrate, based on video inspection, in-line storm drain solids sampling, or other documentation, that storm drain line cleaning is not necessary to prevent downstream sediment contamination or recontamination, Ecology may waive this requirement by approving a modification of permit coverage.

   ii. Requests for line cleaning waivers must be accompanied by a modification of coverage form, and a detailed technical basis to support the request. The due date for line cleaning waiver requests is May 15, 2024.

e. Permittees shall sample and analyze storm drain solids in accordance with Table 8 at least once in the term of the permit. Storm drain solids must be collected/sampled from a representative catch basin, sump, pipe or other feature within the storm drain system that corresponds to the discharge point where total suspended solids samples are collected per Condition S6.C. Samples may be either a single grab sample or a composite sample. Samples must be representative of the storm drain solids generated and accumulated in the facility's drainage system. To the extent possible, sample locations must exclude portions of the drainage system affected by water from off-site sources (e.g., run-on from off-site properties, tidal influence, backflow, etc.).

   i. If a Permittee can demonstrate that storm drain solids sampling and analysis is not feasible or not necessary, Ecology may waive this requirement by approving a modification of permit coverage.

ii. Requests for storm drain solids sampling and analysis waivers must be accompanied by a modification of coverage form, and a detailed technical basis to support the request. The due date for solids sampling and analysis waiver requests is May 15, 2021.

f. All storm drain solids sampling data shall be reported to Ecology on a Solids Monitoring Report (SMR) no later than the DMR due date for the reporting period in which the solids were sampled, in accordance with Condition S9.A. A copy of the lab report shall be submitted to Ecology with the SMR.

Table 8: Sampling and Analytical Procedures for Storm Drain Solids

Analyte	Method in Sediment	Quantitation Level [a]
Conventional Parameters		
Percent total solids	SM 2540G, or ASTM Method D 2216	NA
Total organic carbon	Puget Sound Estuary Protocols (PSEP 1997), or EPA 9060	0.1%
Grain size	Ecology Method Sieve and Pipette (ASTM 1997), ASTMD422, or PSEP 1986/2003	NA
Metals		
Antimony, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.2 mg/kg dw [b]
Arsenic, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.1 mg/kg dw
Beryllium, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.2 mg/kg dw
Cadmium, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.2 mg/kg dw
Chromium, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.5 mg/kg dw
Copper, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.2 mg/kg dw
Lead, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.2 mg/kg dw
Mercury, Total	EPA Method 1631E, or EPA Method 7471B	0.005 mg/kg dw
Nickel, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.1 mg/kg dw
Selenium, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.5 mg/kg dw
Silver, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.1 mg/kg dw
Thallium, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.2 mg/kg dw
Zinc, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	5.0 mg/kg dw

Analyte	Method in Sediment	Quantitation Level [a]
Organics		
PAH compounds [c]	EPA Method 8270 D	70 µg/kg dw
PCBs (aroclors), Total [d]	EPA Method 8082A	10 µg/kg dw
Petroleum Hydrocarbons		
NWTPH-Dx	NWTPH-Dx	25.0-100.0 mg/ kg dw

[a] The Permittee shall ensure laboratory results comply with the quantitation level (QL) specified in the table. However, if an alternate method is sufficient to produce measurable results in the sample, the Permittee may use that method for analysis. If the Permittee uses an alternative method it must report the test method and QL on the sediment monitoring report. The permittee must also upload the QA/QC documentation from the lab on the QL development. All results shall be reported. For values below the QL, or where a QL is not specified, report results at the method detection limit from the lab and the qualifier of "U" for undetected at that concentration. All results shall be reported. For values below the reporting limit, report results at the method detection limit from the lab and the qualifier of "U" for undetected at that concentration.

[b] dw = dry weight

[c] PAH compounds include: 1-methylnaphthalene, 2-methylnaphthalene, 2-chloronaphthalene, acenaphthylene, acenaphthene anthracene, benzo(a)anthracene, benzo(a)pyrene, benzo(b, k)fluoranthene, benzo(ghi)perylene, dibenzo(a,h)anthracene, dibenzofuran, carbazole, chrysene, fluoranthene, fluorene, indeno(1,2,3-cd)pyrene, naphthalene, phenanthrene, and pyrene.

[d] Total = sum of PCB aroclors 1016+1221+1232+1242+1248+1254+1260

D. Requirements for Discharges to Waters with Applicable TMDLs

1. The Permittee shall comply with applicable TMDL determinations. Applicable TMDLs or TMDL determinations are TMDLs which have been completed by the issuance date of this permit, or which have been completed prior to the date that the Permittee's application is received by Ecology, whichever is later. Ecology will list the Permittee's requirements to comply with this condition on the letter of permit coverage.
2. TMDL requirements associated with TMDLs completed after the issuance date of this permit only become effective if they are imposed through an administrative order issued by Ecology.
3. Where Ecology has established a TMDL wasteload allocation and sampling requirements for the Permittee's discharge, the Permittee shall comply with all requirements of the TMDL as listed in Appendix 5.
    a. If a discharge point is subject to a TMDL-related effluent limit (Condition S6.D) for a parameter that also has a benchmark (Condition S5), the effluent limit supersedes the benchmark.
4. Where Ecology has established a TMDL general wasteload allocation for industrial stormwater discharges for a parameter present in the Permittee's discharge, but has not identified specific requirements, Ecology will assume the Permittee's compliance with the terms and conditions of the permit complies with the approved TMDL.
5. Where Ecology has not established a TMDL wasteload allocation for industrial stormwater discharges for a parameter present in the Permittee's discharge, but has not excluded these discharges, Ecology will assume the Permittee's compliance with the terms and conditions of this permit complies with the approved TMDL.

6. Where a TMDL for a parameter present in the Permittee's discharge specifically precludes or prohibits discharges of stormwater associated with industrial activity, the Permittee is not eligible for coverage under this permit.

S7. INSPECTIONS

A. Inspection Frequency and Personnel

1. The Permittee shall conduct and document visual inspections of the site each month.
2. The Permittee shall ensure that inspections are conducted by qualified personnel.

B. Inspection Components

Each inspection shall include:

1. Observations made at stormwater sampling locations and areas where stormwater associated with industrial activity is discharged off-site; or discharged to waters of the State, or to a storm sewer system that drains to waters of the State.
2. Observations for the presence of floating materials, visible oil sheen, discoloration, turbidity, odor, etc. in the stormwater discharge(s).
3. Observations for the presence of illicit discharges such as domestic wastewater, noncontact cooling water, or process wastewater (including leachate).
    a. If an illicit discharge is discovered, the Permittee shall notify Ecology within seven days.
    b. The Permittee shall eliminate the illicit discharge within 30 days.
4. A verification that the descriptions of potential pollutant sources required under this permit are accurate.
5. A verification that the site map in the SWPPP reflects current conditions.
6. An assessment of all BMPs that have been implemented, noting all of the following:
    a. Effectiveness of BMPs inspected.
    b. Locations of BMPs that need maintenance.
    c. Reason maintenance is needed and a schedule for maintenance.
    d. Locations where additional or different BMPs are needed and the rationale for the additional or different BMPs.

C. Inspection Results

1. The Permittee shall record the results of each inspection in an inspection report or checklist and keep the records on-site, as part of the SWPPP, for Ecology review.
   The Permittee shall ensure each inspection report documents the observations, verifications and assessments required in S7.B and includes:
    a. Time and date of the inspection
    b. Locations inspected

c. Statements that, in the judgment of 1) the person conducting the site inspection, and 2) the person described in Condition G2, the site is either in compliance or out of compliance with the terms and conditions of the SWPPP and this permit.

d. A summary report and a schedule of implementation of the remedial actions that the Permittee plans to take if the site inspection indicates that the site is out of compliance. The remedial actions taken must meet the requirements of the SWPPP and the permit.

e. Name, title, and signature of the person conducting site inspection; and the following statement: "I certify that this report is true, accurate, and complete, to the best of my knowledge and belief."

f. Certification and signature of the person described in Condition G2.A, or a duly authorized representative of the facility, in accordance with Condition G2.B and D.

D. Reports of Non-Compliance

The Permittee shall prepare reports of non-compliance identified during an inspection in accordance with the requirements of Condition S9.E.

S8. CORRECTIVE ACTIONS

A. Implementation of Source Control and Treatment BMPs from Previous Permit

In addition to the Corrective Action Requirements of S8.B-D, Permittees shall implement any applicable Level 1, 2 or 3 Responses required by the previous Industrial Stormwater General Permit(s). Permittees shall continue to operate and/or maintain any source control or treatment BMPs related to Level 1, 2 or 3 Responses implemented prior to the effective date of this permit.

B. Level One Corrective Actions – Operational Source Control BMPs

Permittees that exceed any applicable benchmark value(s) in Table 2, Table 3, and/or Table 7 for any quarter during a calendar year shall complete a Level 1 Corrective Action for each parameter exceeded in accordance with the following:

1. Within 14 days of receipt of sampling results that indicate a benchmark exceedance during a given quarter[7]; or, for parameters other than pH or visible oil sheen, the end of the quarter, whichever is later:

   a. Conduct an inspection to investigate the cause.

   b. Review the SWPPP and ensure that it fully complies with Permit Condition S3, and contains the applicable BMPs from the appropriate Stormwater Management Manual.

[7] Based on quarterly average per Condition S5.A.3, S5.B.2 and/or S6.C.2.c. For pH, and visible oil sheen, quarterly averaging is not allowed, so the 14 days begin upon receipt of a single benchmark exceedance.

c. Make appropriate revisions to the SWPPP to include additional operational source control BMPs with the goal of achieving the applicable benchmark value(s) in future discharges.

2. Summarize the Level 1 Corrective Actions in the Annual Report (Condition S9.B)

3. Level One Deadline: The Permittee shall sign/certify and fully implement the revised SWPPP according to Permit Condition S3 and the applicable Stormwater Management Manual as soon as possible, but no later than the DMR due date for the quarter the benchmark was exceeded.

C. Level Two Corrective Actions – Structural Source Control BMPs

Permittees that exceed an applicable benchmark value in Table 2, Table 3 and/or Table 7 (for a single parameter) for any two quarters during a calendar year shall complete a Level 2 Corrective Action in accordance with S8.C. Alternatively, the Permittee may skip Level 2 and complete a Level 3 Corrective Action in accordance with Condition S8.D.

1. Review the SWPPP and ensure that it fully complies with Permit Condition S3.

2. Make appropriate revisions to the SWPPP to include additional structural source control BMPs with the goal of achieving the applicable benchmark value(s) in future discharges.

3. Summarize the Level 2 Corrective Actions (planned or taken) in the Annual Report (Condition S9.B).

4. **Level 2 Deadline:** The Permittee shall sign/certify the SWPPP using the SWPPP Certification Form found on page 63 of this permit, and fully implement the revised SWPPP according to Permit Condition S3 and the applicable Stormwater Management Manual as soon as possible, but no later than August 31st of the following year.

   a. If installation of necessary structural source control BMPs is not feasible by August 31st of the following year, Ecology may approve additional time, by approving a Modification of Permit Coverage.

   b. If installation of structural source control BMPs is not feasible or not necessary to prevent discharges that may cause or contribute to a violation of a water quality standard, Ecology may waive the requirement for additional structural source control BMPs by approving a Modification of Permit Coverage.

   c. To request a time extension or waiver, a Permittee shall submit a detailed explanation of why it is making the request (technical basis), and a Modification of Coverage form to Ecology in accordance with Condition S2.B, by May 15th prior to Level 2 Deadline. Ecology will approve or deny the request within 60 days of receipt of a complete Modification of Coverage request.

   d. While a time extension is in effect, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

   e. For the year following the calendar year the Permittee triggered a Level 2 corrective action, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

D. Level Three Corrective Actions – Treatment BMPs

Permittees that exceed an applicable benchmark value in Table 2, Table 3, and/or Table 7 (for a single parameter) for any three quarters during a calendar year shall complete a Level 3 Corrective Action in accordance with S8.D. A Level 2 Corrective Action is not required.

1. Review the SWPPP and ensure that it fully complies with Permit Condition S3.
2. Make appropriate revisions to the SWPPP to include additional treatment BMPs with the goal of achieving the applicable benchmark value(s) in future discharges. Revisions shall include additional operational and/or structural source control BMPs if necessary for proper performance and maintenance of treatment BMPs.

   A ***qualified industrial stormwater professional*** shall review the revised SWPPP, sign the SWPPP Certification Form, and certify that it is reasonably expected to meet the ISGP benchmarks upon implementation. Upon written request Ecology may, one time during the permit cycle, waive this requirement on a case-by-case basis if a Permittee demonstrates to Ecology's satisfaction that the proposed Level 3 treatment BMPs are reasonably expected to meet ISGP benchmarks upon implementation.
3. Before installing treatment BMPs that require the site-specific design or sizing of structures, equipment, or processes to collect, convey, treat, reclaim, or dispose of industrial stormwater, the Permittee shall submit an engineering report to Ecology for review.

   a. The engineering report must include:

      i. Brief summary of the treatment alternatives considered and why the proposed option was selected. Include cost estimates of ongoing operation and maintenance, including disposal of any spent media;

      ii. The basic design data, including characterization of stormwater influent, and sizing calculations of the treatment units;

      iii. A description of the treatment process and operation, including a flow diagram;

      iv. The amount and kind of chemicals used in the treatment process, if any. **Note:** Use of stormwater treatment chemicals requires submittal of Request for Chemical Treatment Form;

      v. Results to be expected from the treatment process including the predicted stormwater discharge characteristics;

      vi. A statement, expressing sound engineering justification through the use of pilot plant data, results from similar installations, and/or scientific evidence that the proposed treatment is reasonably expected to meet the permit benchmarks; **and**

      vii. Certification by a licensed professional engineer.

   b. The engineering report shall be submitted no later than the May 15th prior to the Level 3 deadline, unless an alternate due date is specified in an order.

   c. An Operation and Maintenance Manual (O&M Manual) shall be submitted to Ecology no later than 30 days after construction/installation is complete; unless an alternate due date is specified in an order.

4. Summarize the Level 3 Corrective Actions (planned or taken) in the Annual Report (Condition S9.B). Include information on how monitoring, assessment or evaluation information was (or will be) used to determine whether existing treatment BMPs will be modified/enhanced, or if new/additional treatment BMPs will be installed.
5. **Level 3 Deadline:** The Permittee shall sign/certify and fully implement the revised SWPPP according to Permit Condition S3 and the applicable Stormwater Management Manual as soon as possible, but no later than September 30th of the following year.
    a. If installation of necessary treatment BMPs is not feasible by the Level 3 Deadline; Ecology may approve additional time by approving a Modification of Permit Coverage.
    b. If installation of treatment BMPs is not feasible or not necessary to prevent discharges that may cause or contribute to violation of a water quality standard, Ecology may waive the requirement for treatment BMPs by approving a Modification of Permit Coverage.
    c. To request a time extension or waiver, a Permittee shall submit a detailed explanation of why it is making the request (technical basis), and a Modification of Coverage form to Ecology in accordance with Condition S2.B, by May 15th prior to the Level 3 Deadline. Ecology will approve or deny the request within 60 days of receipt of a complete Modification of Coverage request.
    d. While a time extension is in effect, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.
    e. For the year following the calendar year the Permittee triggered a Level 3 corrective action, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

S9. REPORTING AND RECORDKEEPING

A. Electronic Reporting Requirements

The Permittee shall submit all NOIs, NOTs, Noncompliance Reports, Annual Reports, DMRs, and other reporting information as required electronically, unless you have a received a waiver from Ecology. All information required to be submitted shall be submitted through Ecology's Water Quality Permitting Portal.

If you are unable to submit electronically (for example, you do **not** have access to the internet), you must contact Ecology to request an Electronic Reporting Waiver form and submit the completed form to Ecology.

B. Discharge Monitoring Reports

1. The Permittee shall submit sampling data obtained during each reporting period on a Discharge Monitoring Report (DMR) or a Solids Monitoring Form (SMR)[8] form provided, or otherwise approved, by Ecology.
2. Upon permit coverage, the Permittee shall ensure that DMRs are submitted to Ecology by the DMR due dates below:

Table 9: Reporting Dates and DMR Due Dates

Reporting Period	Months	DMR Due Date
1st	January-March	May 15
2nd	April-June	August 15
3rd	July-Sept	November 15
4th	October-December	February 15

3. DMRs and SMRs shall be submitted electronically using Ecology's Water Quality Permitting Portal – Discharge Monitoring Report (DMR) application, unless a waiver from electronic reporting has been granted (e.g., if a Permittee does not have broadband internet access). SMR forms, identified as a single sample DMR type, are included with the quarterly DMR forms on the Portal. If a waiver has been granted, reports must be postmarked or delivered to the following address by the due date:

   Department of Ecology
   Water Quality Program – Industrial Stormwater
   PO Box 47696
   Olympia, Washington 98504-7696

4. The first full quarter following permit coverage, the Permittee shall submit a DMR each reporting period, whether or not the facility discharged stormwater from the site.
   a. If no stormwater sample was obtained from the site during a given reporting period, the Permittee shall submit the DMR form indicating "no sample obtained," or "no discharge during the quarter," with a written explanation as to why there was no sample taken or no discharge.
   b. If a Permittee has suspended sampling for a parameter due to consistent attainment, the Permittee shall submit a DMR and indicate that it has achieved consistent attainment for that parameter(s).
5. The Permittee must use the Water Quality Permitting Portal – Permit Submittals application (unless otherwise specified in the permit) to submit all other written permit-required reports by the date specified in the permit unless a waiver has been granted under S9.B. If a

[8] SMR required if Condition S6.C.2 applies.

waiver has been granted, DMRs must be postmarked or delivered to the address listed in S9.B.3 by the due date.

C. Annual Reports

1. The Permittee shall submit a complete and accurate Annual Report to the Department of Ecology no later than May 15th of each year using Ecology's Water Quality Permitting Portal – Permit Submittals application, unless a waiver from electronic reporting has been granted according to S9.B.3. Annual Reports are not required if the Permittee didn't have permit coverage during the previous calendar year.
2. The annual report shall include corrective action documentation as required in S8.B-D. If corrective action is not yet completed at the time of submission of this annual report, the Permittee must describe the status of any outstanding corrective action(s).
3. Permittees shall include the following information with each annual report. The Permittee shall:
    a. Identify the condition triggering the need for corrective action review.
    b. Describe the problem(s) and identify the dates they were discovered.
    c. Summarize any Level 1, 2 or 3 corrective actions completed during the previous calendar year and include the dates it completed the corrective actions.
    d. Describe the status of any Level 2 or 3 corrective actions triggered during the previous calendar year, and identify the date it expects to complete corrective actions.
    e. Primary airport Permittees with at least 1,000 annual jet departures shall include a certification statement in each annual report that it does not use airfield deicing products that contain urea. Alternatively, Permittees shall meet the numeric effluent limit for ammonia in Condition S5.C, Table 5.
4. Permittees shall retain a copy of all annual reports onsite for Ecology review.

D. Records Retention

1. The Permittee shall retain the following documents onsite for a minimum of five years:
    a. A copy of this permit.
    b. A copy of the permit coverage letter.
    c. Records of all sampling information specified in Condition S4.B.3.
    d. Inspection reports including documentation specified in Condition S7.
    e. Any other documentation of compliance with permit requirements.
    f. All equipment calibration records.
    g. All BMP maintenance records.
    h. All original recordings for continuous sampling instrumentation.
    i. Copies of all laboratory reports as described in Condition S3.B.4.
    j. Copies of all reports required by this permit.

k. Records of all data used to complete the application for this permit.

2. The Permittee shall extend the period of records retention during the course of any unresolved litigation regarding the discharge of pollutants by the Permittee, or when requested by Ecology.

3. The Permittee shall make all plans, documents, and records required by this permit immediately available to Ecology or the local jurisdiction upon request; or within 14 days of a written request from Ecology.

E. Additional Sampling by the Permittee

If the Permittee samples any pollutant at a designated sampling point more frequently than required by this permit, then the Permittee shall include the results in the calculation and reporting of the data submitted in the Permittee's DMR.

If Permittees collect more than one sample during a 24-hour period, they must first calculate the daily average of the individual grab sample results collected during that 24-hour period; then use the daily average to calculate a quarterly average.

F. Reporting Permit Violations

1. In the event the Permittee is unable to comply with any of the terms and conditions of this permit which may endanger human health or the environment, or exceed any numeric effluent limitation in the permit, the Permittee shall, upon becoming aware of the circumstances:

   a. Immediately take action to minimize potential pollution or otherwise stop the noncompliance and correct the problem.

   b. Immediately notify the local jurisdiction and appropriate Ecology regional office of the failure to comply:

      • **Central Region** at (509) 575-2490 for Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, or Yakima County

      • **Eastern Region** at (509) 329-3400 for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, or Whitman County

      • **Northwest Region** at (425) 649-7000 for Island, King, Kitsap, San Juan, Skagit, Snohomish, or Whatcom County

      • **Southwest Region** at (360) 407-6300 for Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, or Wahkiakum County

   c. Submit a detailed written report to Ecology within 5 days of the time the Permittee becomes aware of the circumstances, unless Ecology requests an earlier submission. The report shall be submitted using Ecology's Water Quality Permitting Portal – Permit Submittals application, unless a waiver from electronic reporting has been granted according to S9.B.3. The Permittee's report shall contain:

      i. A description of the noncompliance, including exact dates and times.

ii. Whether the noncompliance has been corrected and, if not, when the noncompliance will be corrected.

iii. The steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

d. Upon request of the Permittee, Ecology may waive the requirements for a written report on a case-by-case basis, if the immediate notification (S9.F.1.b) is received by Ecology within 24 hours.

2. Compliance with the requirements of this section does not relieve the Permittee from responsibility to maintain continuous compliance with the terms and conditions of this permit or the resulting liability for failure to comply.

G. Public Access to SWPPP

The Permittee shall provide access to, or a copy of, the SWPPP to the public when requested in writing. Upon receiving a written request from the public for the SWPPP, the Permittee shall:

1. Provide a copy of the SWPPP to the requestor within 14 days of receipt of the written request; ***or***
2. Notify the requestor within ten days of receipt of the written request of the location and times within normal business hours when the requestor may view the SWPPP, and provide access to the SWPPP within 14 days of receipt of the written request; ***or***
3. If you provide a URL in your NOI where your SWPPP can be found, and maintain your current SWPPP at this URL, you will have complied with the public availability requirements for the SWPPP. To remain current, you must post any SWPPP modifications, records, and other reporting elements required for the permit term at the same URL as the main body of the SWPPP.

S10. COMPLIANCE WITH STANDARDS

A. Discharges shall not cause or contribute to a violation of Surface Water Quality Standards (Chapter 173-201A WAC), Groundwater Quality Standards (Chapter 173-200 WAC), Sediment Management Standards (Chapter 173-204 WAC), and federal human health-based criteria for Washington (40 CFR 131.45). Discharges that are not in compliance with these standards are prohibited.

B. Ecology will presume compliance with water quality standards, unless discharge monitoring data or other site specific information demonstrates that a discharge causes or contributes to violation of water quality standards, when the Permittee is:

1. In full compliance with all permit conditions, including planning, sampling, monitoring, reporting, and recordkeeping conditions.
2. Fully implementing stormwater best management practices contained in stormwater technical manuals approved by the department, or practices that are demonstrably equivalent to practices contained in stormwater technical manuals approved by Ecology,

including the proper selection, implementation, and maintenance of all applicable and appropriate best management practices for on-site pollution control.

C. Prior to the discharge of stormwater and non-stormwater to waters of the State, the Permittee shall apply all known and reasonable methods of prevention, control, and treatment (AKART). To comply with this condition, the Permittee shall prepare and implement an adequate SWPPP, with all applicable and appropriate BMPs, including the BMPs necessary to meet the standards identified in Condition S10.A, and shall install and maintain the BMPs in accordance with the SWPPP, applicable SWMMs, and the terms and conditions of this permit.

S11. PERMIT FEES

A. The Permittee shall pay permit fees assessed by Ecology and established in Chapter 173-224 WAC.

B. Ecology will continue to assess permit fees until it terminates a permit in accordance with Special Condition S13 or revoked in accordance with General Condition G5.

S12. SOLID AND LIQUID WASTE MANAGEMENT

The Permittee shall not allow solid waste material or ***leachate*** to cause violations of the State Surface Water Quality Standards (Chapter 173-201A WAC), the Groundwater Quality Standards (Chapter 173-200 WAC) or the Sediment Management Standards (Chapter 173-204 WAC).

S13. NOTICE OF TERMINATION (NOT)

A. Conditions for a NOT

Ecology may approve a Notice of Termination (NOT) request when the Permittee meets one or more of the following conditions and Ecology determines that the discharges from the facility are no longer required to be covered under this permit:

1. All permitted stormwater discharges associated with industrial activity that are authorized by this permit cease because the industrial activity has ceased, and no significant materials or industrial pollutants remain exposed to stormwater.
2. The party that is responsible for permit coverage (signatory to application) sells or otherwise legally transfers responsibility for the industrial activity.
3. All stormwater discharges associated with industrial activity are prevented because the stormwater is redirected to a sanitary sewer, or discharged to ground (e.g., infiltration).

B. Procedure for Obtaining Termination

1. The Permittee shall apply for a NOT on a form specified by Ecology (NOT Form).
2. The Permittee seeking permit coverage termination shall sign the NOT in accordance with Condition G2 of this permit.
3. The Permittee shall submit the completed NOT form to Ecology through the WQWebPortal.

GENERAL CONDITIONS

G1. DISCHARGE VIOLATIONS

All discharges and activities authorized by this general permit shall be consistent with the terms and conditions of this general permit. Any discharge of any pollutant more frequently than, or at a level in excess of that identified and authorized by the general permit, shall constitute a violation of the terms and conditions of this permit.

G2. SIGNATORY REQUIREMENTS

A. All permit applications shall be signed:

1. In the case of corporations, by a ***responsible corporate officer***.
2. In the case of a partnership, by a general partner of a partnership.
3. In the case of sole proprietorship, by the proprietor.
4. In the case of a municipal, state, or other public facility, by either a principal executive officer or ranking elected official.

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

1. The authorization is made in writing by a person described above and submitted to the Ecology.
2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters.

C. Changes to authorization. If an authorization under paragraph G2.B.2 above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph G2.B.2 above shall be submitted to Ecology prior to, or together with, any reports, information, or applications to be signed by an authorized representative.

D. Certification. Any person signing a document under this section shall make the following certification:

> "I certify under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

G3. RIGHT OF INSPECTION AND ENTRY

The Permittee shall allow an authorized representative of Ecology, upon the presentation of credentials and such other documents as may be required by law:

A. To enter upon the premises where a discharge is located or where any records shall be kept under the terms and conditions of this permit.

B. To have access to and copy, at reasonable times and at reasonable cost, any records required to be kept under the terms and conditions of this permit.

C. To inspect, at reasonable times, any facilities, equipment (including sampling and control equipment), practices, methods, or operations regulated or required under this permit.

D. To sample or monitor, at reasonable times, any substances or parameters at any location for purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act.

G4. GENERAL PERMIT MODIFICATION AND REVOCATION

This permit may be modified, revoked and reissued, or terminated in accordance with the provisions of Chapter 173-226 WAC. Grounds for modification, revocation and reissuance, or termination include, but are not limited to, the following:

A. When a change which occurs in the technology or practices for control or abatement of pollutants applicable to the category of dischargers covered under this permit.

B. When effluent limitation guidelines or standards are promulgated pursuant to the CWA or Chapter 90.48 RCW, for the category of dischargers covered under this permit.

C. When a water quality management plan containing requirements applicable to the category of dischargers covered under this permit is approved.

D. When information is obtained which indicates that cumulative effects on the environment from dischargers covered under this permit are unacceptable.

G5. REVOCATION OF COVERAGE UNDER THE PERMIT

A. Pursuant with Chapter 43.21B RCW and Chapter 173-226 WAC, Ecology may terminate coverage for any discharger under this permit for cause. Cases where coverage may be terminated include, but are not limited to, the following:

1. Violation of any term or condition of this permit.

2. Obtaining coverage under this permit by misrepresentation or failure to disclose fully all relevant facts.

3. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

4. Failure or refusal of the Permittee to allow entry as required in RCW 90.48.090.

5. A determination that the permitted activity endangers human health or the environment, or contributes to water quality standards violations.

6. Nonpayment of permit fees or penalties assessed pursuant to RCW 90.48.465 and Chapter 173-224 WAC.

7. Failure of the Permittee to satisfy the public notice requirements of WAC 173-226-130(5), when applicable.

B. Ecology may require any discharger under this permit to apply for and obtain coverage under an individual permit or another more specific general permit.

C. Permittees who have their coverage revoked for cause according to WAC 173-226-240 may request temporary coverage under this permit during the time an individual permit is being developed, provided the request is made within 90 days from the time of revocation and is submitted along with a complete individual permit application form.

G6. REPORTING A CAUSE FOR MODIFICATION

The Permittee shall submit a new application, or a supplement to the previous application, whenever a material change to the industrial activity or in the quantity or type of discharge is anticipated which is not specifically authorized by this permit. This application shall be submitted at least 60 days prior to any proposed changes. The filing of a request by the Permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not relieve the Permittee of the duty to comply with the existing permit until it is modified or reissued.

G7. COMPLIANCE WITH OTHER LAWS AND STATUTES

Nothing in this permit shall be construed as excusing the Permittee from compliance with any applicable federal, state, or local statutes, ordinances, or regulations.

G8. DUTY TO REAPPLY

The Permittee shall apply for permit renewal at least 180 days prior to the expiration date of this permit.

G9. REMOVED SUBSTANCES

Collected screenings, grit, solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of stormwater shall not be resuspended or reintroduced to the final effluent stream for discharge to state waters.

G10. DUTY TO PROVIDE INFORMATION

The Permittee shall submit to Ecology, within a reasonable time, all information which Ecology may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The Permittee shall also submit to Ecology, upon request, copies of records required to be kept by this permit [40 CFR 122.41(h)].

G11. OTHER REQUIREMENTS OF 40 CFR

All other requirements of 40 CFR 122.41 and 122.42 are incorporated in this permit by reference.

G12. ADDITIONAL SAMPLING

Ecology may establish specific sampling requirements in addition to those contained in this permit by administrative order or permit modification.

G13. PENALTIES FOR VIOLATING PERMIT CONDITIONS

Any person who is found guilty of willfully violating the terms and conditions of this permit shall be deemed guilty of a crime, and upon conviction thereof shall be punished by a fine of up to $10,000 and costs of prosecution, or by imprisonment at the discretion of the court. Each day upon which a willful violation occurs may be deemed a separate and additional violation.

Any person who violates the terms and conditions of this permit shall incur, in addition to any other penalty as provided by law, a civil penalty in the amount of up to $10,000 for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be deemed to be a separate and distinct violation.

G14. UPSET

Definition – "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the Permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of the following paragraph are met.

A Permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that: 1) an upset occurred and that the Permittee can identify the cause(s) of the upset; 2) the permitted facility was being properly operated at the time of the upset; 3) the Permittee submitted notice of the upset as required in condition S9.E; **and** 4) the Permittee complied with any remedial measures required under this permit.

In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof.

G15. PROPERTY RIGHTS

This permit does not convey any property rights of any sort, or any exclusive privilege.

G16. DUTY TO COMPLY

The Permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

G17. TOXIC POLLUTANTS

The Permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if this permit has not yet been modified to incorporate the requirement.

G18. PENALTIES FOR TAMPERING

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

G19. REPORTING PLANNED CHANGES

The Permittee shall, as soon as possible, give notice to Ecology of planned physical alterations, modifications, or additions to the permitted industrial activity, which will result in:

A. The permitted facility being determined to be a new source pursuant to 40 CFR 122.29(b).

B. A significant process change, as defined in the glossary of this permit.

C. A change in the location of industrial activity that affects the Permittee's sampling requirements in Conditions S3, S4, S5, and S6.

Following such notice, permit coverage may be modified, or revoked and reissued pursuant to 40 CFR 122.62(a) to specify and limit any pollutants not previously limited. Until such modification is effective, any new or increased discharge in excess of permit limits or not specifically authorized by this permit constitutes a violation.

G20. REPORTING OTHER INFORMATION

Where the Permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to Ecology, it shall promptly submit such facts or information.

G21. REPORTING ANTICIPATED NON-COMPLIANCE

The Permittee shall give advance notice to Ecology by submission of a new application, or supplement to the existing application, at least 45 days prior to commencement of such discharges, of any facility expansions, production increases, or other planned changes, such as process modifications, in the permitted facility or activity which may result in noncompliance with permit limits or conditions. Any maintenance of facilities, which might necessitate unavoidable interruption of operation and degradation of effluent quality, shall be scheduled during non-critical water quality periods and carried out in a manner approved by Ecology.

G22. REQUESTS TO BE EXCLUDED FROM COVERAGE UNDER THE PERMIT

A. Any discharger authorized by this permit may request to be excluded from coverage under the general permit by applying for an individual permit.

B. The discharger shall submit to Ecology an application as described in WAC 173-220-040 or WAC 173-216-070, whichever is applicable, with reasons supporting the request. These reasons shall fully document how an individual permit will apply to the applicant in a way that the general permit cannot.

C. Ecology may make specific requests for information to support the request. Ecology shall either issue an individual permit or deny the request with a statement explaining the reason for the denial.

D. When an individual permit is issued to a discharger otherwise subject to the industrial stormwater general permit, the applicability of the industrial stormwater general permit to that Permittee is automatically terminated on the effective date of the individual permit.

G23. APPEALS

A. The terms and conditions of this general permit, as they apply to the appropriate class of dischargers, are subject to appeal by any person within 30 days of issuance of this general permit, in accordance with Chapter 43.21B RCW and Chapter 173-226 WAC.

B. The terms and conditions of this general permit, as they apply to an individual discharger, are appealable in accordance with Chapter 43.21B RCW within 30 days of the effective date of coverage of that discharger. Consideration of an appeal of general permit coverage of an individual discharger is limited to the general permit's applicability or nonapplicability to that individual discharger.

C. The appeal of general permit coverage of an individual discharger does not affect any other dischargers covered under this general permit. If the terms and conditions of this general permit are found to be inapplicable to any individual discharger(s), the matter shall be remanded to Ecology for consideration of issuance of an individual permit or permits.

G24. SEVERABILITY

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

G25. BYPASS PROHIBITED

Bypass, which is the intentional diversion of waste streams from any portion of a treatment facility, is prohibited, and Ecology may take enforcement action against a Permittee for bypass unless one of the following circumstances (A, B, or C) is applicable.

A. Bypass for Essential Maintenance without the Potential to Cause Violation of Permit Limits or Conditions

Bypass is authorized if it is for essential maintenance and does not have the potential to cause violations of limitations or other conditions of this permit, or adversely impact public health as determined by Ecology prior to the bypass. The Permittee must submit prior notice, if possible, at least ten days before the date of the bypass.

B. Bypass Which is Unavoidable, Unanticipated, and Results in Noncompliance of this Permit

This bypass is permitted only if:

1. Bypass is unavoidable to prevent loss of life, personal injury, or ***severe property damage***. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass.

2. There are no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, stopping production, maintenance during normal periods of equipment downtime (but not if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance), or transport of untreated wastes to another treatment facility.
3. Ecology is properly notified of the bypass as required in condition S9E of this permit.

C. Bypass which is anticipated and has the Potential to Result in Noncompliance of this Permit

The Permittee must notify Ecology at least thirty days before the planned date of bypass. The notice must contain (1) a description of the bypass and its cause; (2) an analysis of all known alternatives which would eliminate, reduce, or mitigate the need for bypassing; (3) a cost-effectiveness analysis of alternatives including comparative resource damage assessment; (4) the minimum and maximum duration of bypass under each alternative; (5) a recommendation as to the preferred alternative for conducting the bypass; (6) the projected date of bypass initiation; (7) a statement of compliance with SEPA; (8) a request for modification of water quality standards as provided for in WAC 173-201A-410, if an exceedance of any water quality standard is anticipated; and (9) steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass.

For probable construction bypasses, the need to bypass is to be identified as early in the planning process as possible. The analysis required above must be considered during preparation of the engineering report or facilities plan and plans and specifications and must be included to the extent practical. In cases where the probable need to bypass is determined early, continued analysis is necessary up to and including the construction period in an effort to minimize or eliminate the bypass.

Ecology will consider the following prior to issuing an administrative order for this type bypass:

1. If the bypass is necessary to perform construction or maintenance-related activities essential to meet the requirements of this permit.
2. If there are feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, stopping production, maintenance during normal periods of equipment down time, or transport of untreated wastes to another treatment facility.
3. If the bypass is planned and scheduled to minimize adverse effects on the public and the environment.

After consideration of the above and the adverse effects of the proposed bypass and any other relevant factors, Ecology will approve or deny the request. The public must be notified and given an opportunity to comment on bypass incidents of significant duration, to the extent feasible. Approval of a request to bypass will be by administrative order issued by Ecology under RCW 90.48.120.

APPENDIX 1 – ACRONYMS

AKART	All Known, Available and Reasonable methods of prevention, control and Treatment
BMP	Best Management Practice
CAS	Chemical Abstract Service
CERCLA	Comprehensive Environmental Response Compensation & Liability Act
CFR	Code of Federal Regulations
CWA	Clean Water Act
CWT	Centralized Waste Treatment
EPA	Environmental Protection Agency
ESC	Erosion and Sediment Control
FAA	Federal Aviation Administration
FWPCA	Federal Water Pollution Control Act
NAICS	North American Industry Classification System
NOI	Notice of Intent
NOT	Notice of Termination
NPDES	National Pollutant Discharge Elimination System
RCRA	Resource Conservation and Recovery Act
RCW	Revised Code of Washington
SARA	Superfund Amendment and Reauthorization Act
SEPA	State Environmental Policy Act
SIC	Standard Industrial Classification
SMCRA	Surface Mining Control and Reclamation Act
SWMM	Stormwater Management Manual
SWPPP	Stormwater Pollution Prevention Plan

TMDL Total Maximum Daily Load

TSS Total Suspended Solids

USC United States Code

WAC Washington Administrative Code

WQ Water Quality

APPENDIX 2 – DEFINITIONS

40 CFR means Title 40 of the Code of Federal Regulations, which is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government.

303(d)-Listed water body means waterbodies as listed as Category 5 on Washington State's Water Quality Assessment.

Air Emission means a release of air contaminants into the ambient air.

Airfield Pavement means all paved surfaces on the airside of an airport.

AKART is an acronym for "all known, available, and reasonable methods of prevention, control, and treatment." AKART represents the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants and controlling pollution associated with a discharge.

Annual Non-Propeller Aircraft Departures means the average number of commercial turbine-engine aircraft that are propelled by jet, i.e., turbojet or turbofan, that take off from an airport on an annual basis, as tabulated by the Federal Aviation Administration (FAA).

Applicable TMDL means a TMDL which has been completed either before the issuance date of this permit or the date the Permittee first obtains coverage under this permit, whichever is later.

Application means a request for coverage under this general permit pursuant to WAC 173-226-200. Also called a Notice of Intent (NOI).

Average means arithmetic mean, which is equal to the sum of the measurements divided by the number of measurements.

Benchmark means a pollutant concentration used as a permit threshold, below which a pollutant is considered unlikely to cause a water quality violation, and above which it may. When pollutant concentrations exceed benchmarks, corrective action requirements take effect. Benchmark values are not water quality standards and are not numeric effluent limitations; they are indicator values.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other physical, structural and/or managerial practices to prevent or reduce the pollution of waters of the State. BMPs include treatment systems, operating procedures, and practices to control: plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. In this permit BMPs are further categorized as operational source control, structural source control, erosion and sediment control, and treatment BMPs.

Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

Clean Water Act (CWA) means the Federal Water Pollution Control Act enacted by Public Law 92-500, as amended by Public Laws 95-217, 95-576, 96-483, and 97-117; USC 1251 et seq.

Combined Sewer means a sewer which has been designed to serve as a sanitary sewer and a storm sewer, and into which inflow is allowed by local ordinance.

Construction Activity means clearing, grading, excavation and any other activity which disturbs the surface of the land. Such activities may include road building, construction of residential houses, office buildings, industrial buildings, and demolition activity.

Control Plan means a total maximum daily load (TMDL) determination, restrictions for the protection of state or federal threatened or endangered species, a groundwater management plan, or other limitations that regulate or set limits on discharges to a specific waterbody or ground water recharge area.

Daily Average means the average measurement of the pollutant throughout a period of 24 consecutive hours starting at 12:01 A.M. and ending at the following 12:00 P.M. (midnight).

Deicing means procedures and practices to remove or prevent any accumulation of snow or ice on: 1) an aircraft; or 2) airfield pavement.

Demonstrably Equivalent means that the technical basis for the selection of all stormwater best management practices are documented within a stormwater pollution prevention plan. The stormwater pollution prevention plan must document: 1) The method and reasons for choosing the stormwater best management practices selected; 2) The pollutant removal performance expected from the practices selected; 3) The technical basis supporting the performance claims for the practices selected, including any available existing data concerning field performance of the practices selected; 4) An assessment of how the selected practices will comply with state water quality standards; and 5) An assessment of how the selected practices will satisfy both applicable federal technology-based treatment requirements and state requirements to use all known, available, and reasonable methods of prevention, control, and treatment.

Detention means the temporary storage of stormwater to improve quality and/or to reduce the mass flow rate of discharge.

Discharge [of a pollutant] means any addition of any pollutant or combination of pollutants to surface waters of the State of Washington from any point source. This definition includes additions of pollutants into surface waters of the State of Washington from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.

Discharge Point means the location where a discharge leaves the Permittee's facility. Discharge point also includes the location where a discharge enters the ground on-site (e.g., infiltration BMP).

Discharger means an owner or operator of any facility or activity subject to regulation under Chapter 90.48 RCW or the Federal Clean Water Act.

Domestic Wastewater means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments, or other places, together with such groundwater infiltration or surface waters as may be present.

Ecology means the Washington State Department of Ecology.

EPA means the United States Environmental Protection Agency.

Equivalent BMPs means operational, source control, treatment, or innovative BMPs which result in equal or better quality of stormwater discharge to surface water or to groundwater than BMPs selected from the SWMM.

Erosion means the wearing away of the land surface by running water, wind, ice, or other geological agents, including such processes as gravitational creep.

Erosion and Sediment Control BMPs means BMPs that are intended to prevent erosion and sedimentation, such as preserving natural vegetation, seeding, mulching and matting, plastic covering, filter fences, and sediment traps and ponds.

Existing Facility means a facility that was in operation prior to the effective date of this permit. It also includes any facility that is not categorically included for coverage but is in operation when identified by Ecology as a significant contributor of pollutants.

Facility means any establishment (including land or appurtenances thereto) that is subject to regulation under this permit. See Special Condition S1.

First Fall Storm Event means the first time on or after September 1st of each year that precipitation occurs and results in a stormwater discharge from a facility. This storm event tends to wash off and discharge pollutants that accumulate during the preceding dry months.

General Permit means a permit which covers multiple dischargers of a point source category within a designated geographical area, in lieu of individual permits being issued to each discharger.

Groundwater means water in a saturated zone or stratum beneath the land surface or a surface waterbody.

Hazardous Substance means any liquid, solid, gas, or sludge, including any material, substanct, product, commodigy, or waste, regardless of quantity, that exhibits any of the physical, chemical, or biological properties described in WAC 173-303-090 or 173-303-100.

Illicit Discharge means any discharge that is not composed entirely of stormwater except (1) discharges authorized pursuant to a separate NPDES permit, or (2) conditionally authorized non-stormwater discharges identified in Condition S5.D.

Inactive Facility means a facility that no longer engages in business, production, providing services, or any auxiliary operation.

Industrial Activity means (1) the 11 categories of industrial activities identified in 40 CFR 122.26(b)(14)(i-xi) that must apply for either coverage under this permit or no exposure certification, (2) any facility conducting any activities described in Table 1, and (3) the activities occurring at any facility identified by Ecology as a significant contributor of pollutants. Table 1 lists the 11 categories of industrial activities identified in 40 CFR 122.26(b)(14)(i-xi) in a different format.

Land Application Site means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for treatment or disposal.

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and which is not a land application site, surface impoundment, injection well, or waste pile.

Leachate means water or other liquid that has percolated through raw material, product or waste and contains substances in solution or suspension as a result of the contact with these materials.

Local Government means any county, city, or town having its own government for local affairs.

Material Handling means storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product.

Municipality means a political unit such as a city, town or county; incorporated for local self-government.

National Pollutant Discharge Elimination System (NPDES) means the national program for issuing, modifying, revoking, and reissuing, terminating, and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the Federal Clean Water Act, for the discharge of pollutants to surface waters of the State from point sources. These permits are referred to as NPDES permits and, in Washington State, are administered by the Washington Department of Ecology.

New Development means land disturbing activities, including Class IV -general forest practices that are conversions from timber land to other uses; structural development, including construction or installation of a building or other structure; creation of impervious surfaces; and subdivision, short subdivision and binding site plans, as defined and applied in Chapter 58.17 RCW. Projects meeting the definition of redevelopment shall not be considered new development.

New Discharge(r) means a facility from which there is a discharge, that did not commence the discharge at a particular site prior to August 13, 1979, which is not a new source, and which has never received a finally effective NPDES permit for discharges at that site. See 40 CFR 122.2.

New Facility means a facility that begins activities that result in a discharge or a potential discharge to waters of the State on or after the effective date of this general permit.

Noncontact Cooling Water means water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

North American Industry Classification System (NAICS) means the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. NAICS was developed under the auspices of the Office of Management and Budget (OMB), and adopted in 1997 to replace the Standard Industrial Classification (SIC) system. It was developed jointly by the U.S. Economic Classification Policy Committee (ECPC), Statistics Canada, and Mexico's Instituto Nacional de Estadistica y Geografia to allow for a high level of comparability in business statistics among the North American countries.

Notice of Intent (NOI) – *See "*Application*"*

Notice of Termination (NOT) means a request for termination of coverage under this general permit as specified by Special Condition S13 of this permit.

Operational Source Control BMPs means schedule of activities, prohibition of practices, maintenance procedures, employee training, good housekeeping, and other managerial practices to prevent or reduce the pollution of waters of the State. Not included are BMPs that require construction of pollution control devices.

Operator means any entity with a stormwater discharge associated with industrial activity.

Outfall means the point where a discharge from a facility enters a receiving waterbody or receiving waters.

Pollutant means the discharge of any of the following to waters of the State: dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, domestic sewage sludge (biosolids), munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste. This term does not include sewage from vessels within the meaning of section 312 of the FWPCA nor does it include dredged or fill material discharged in accordance with a permit issued under section 404 of the FWPCA.

Pollution means contamination or other alteration of the physical, chemical, or biological properties of waters of the State; including change in temperature, taste, color, turbidity, or odor of the waters; or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the State as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare; or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; or to livestock, wild animals, birds, fish, or other aquatic life.

Process Wastewater means any non-stormwater which, during manufacturing or processing, comes into direct contact or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. If stormwater commingles with process wastewater, the commingled water is considered process wastewater.

Puget Sound Sediment Cleanup Site means Category 4B (Sediment) portions of Budd Inlet (Inner), Commencement Bay (Inner), Commencement Bay (Outer), Dalco Passage and East Passage, Duwamish Waterway (including East and West Waterway), Eagle Harbor, Elliot Bay, Hood Canal (North), Liberty Bay, Rosario Strait, Sinclair Inlet, and Thea Foss Waterway; Category 5 (Sediment) portions of the Duwamish Waterway; Category 4A (Sediment) portions of Bellingham Bay (Inner); and the Everett/Port Gardener and Port Angeles Harbor sediment cleanup areas, as mapped on Ecology's ISGP website. All references to Category 4A, 4B and 5 pertain to the 2012 EPA-approved Water Quality Assessment.

Qualified Industrial Stormwater Professional means a licensed professional engineer, geologist, hydrogeologist; Certified Professional in Stormwater Quality, Certified Professional in Erosion and Sediment Control; or qualified environmental professional with education and experience in stormwater management and licensed to do business in the State of Washington.

Qualified Personnel means those who (1) possesses the knowledge and skills to assess conditions and activities at the facility that could impact stormwater quality; (2) can evaluate the effectiveness of best management practices required by this permit for this specific facility and its unique operations

and; (3) is familiar with site operations and practices with sufficient authority to commit the organization to the BMPs and actions detailed in the SWPPP..

Quantitation Level (QL) *also known as Minimum Level of Quantitation (ML)* means the lowest level at which the entire analytical system must give a recognizable signal and acceptable calibration point for the analyte. It is equivalent to the concentration of the lowest calibration standard, assuming that all method-specified sample weights, volumes, and cleanup procedures have been employed.

Reasonable Potential means the likely probability for pollutants in the discharge to exceed the applicable water quality criteria in the receiving waterbody.

Redevelopment means on a site that is already substantially developed (i.e., has 35% or more of existing impervious surface coverage), the creation or addition of impervious surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation or expansion of a building or other structure; replacement of impervious surface that is not part of a routine maintenance activity; and land disturbing activities.

Regular Business Hours means those time frames when the facility is engaged in its primary production process, but does not include additional shifts or weekends when partial staffing is at the site primarily for maintenance and incidental production activities. Regular business hours do not include periods of time that the facility is inactive and unstaffed.

Representative [sample] means a sample of the discharge that accurately characterizes stormwater runoff generated in the designated drainage area of the facility.

Responsible Corporate Officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures (40 CFR 122.22).

Runoff means that portion of rainfall or snowmelt water not absorbed into the ground that becomes surface flow.

Sanitary Sewer means a sewer which is designed to convey domestic wastewater.

Sediment means the fragmented material that originates from the weathering and erosion of rocks, unconsolidated deposits, or unpaved yards, and is transported by, suspended in, or deposited by water.

Severe Property Damage means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

Significant Amount means an amount of a pollutant in a discharge that is amenable to available and reasonable methods of prevention, control, or treatment; or an amount of a pollutant that has a reasonable potential to cause a violation of surface or ground water quality standards or sediment management standards.

Significant Contributor of Pollutant(s) means a facility determined by Ecology to be a contributor of a significant amount(s) of a pollutant(s) to waters of the State.

Significant Materials includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with stormwater discharges.

Significant Process Change means any modification of the facility that would result in any of the following:

1. Add different pollutants in a significant amount to the discharge.
2. Increase the pollutants in the stormwater discharge by a significant amount.
3. Add a new industrial activity (SIC) that was not previously covered.
4. Add additional impervious surface or acreage such that stormwater discharge would be increased by 25% or more.

Source Control BMPs means structures or operations that are intended to prevent pollutants from coming into contact with stormwater through physical separation of areas or careful management of activities that are sources of pollutants. This permit separates source control into two types: structural source control BMPs and operational source control BMPs.

Standard Industrial Classification (SIC) is the statistical classification standard underlying all establishment-based federal economic statistics classified by industry as reported in the 1987 SIC Manual by the Office of Management and Budget.

State Environmental Policy Act (SEPA) means the Washington State Law, RCW 43.21C.020, intended to prevent or eliminate damage to the environment.

Storm Sewer means a sewer that is specifically designed to carry stormwater. Also called a storm drain.

Stormwater means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes, and other features of a stormwater drainage system into a defined surface waterbody, or a constructed infiltration facility.

Stormwater Drainage System means constructed and natural features which function together as a system to collect, convey, channel, hold, inhibit, retain, detain, infiltrate or divert stormwater.

Stormwater Management Manual (SWMM) or ***Manual*** means the technical manuals prepared by Ecology for stormwater management in western and eastern Washington.

Stormwater Pollution Prevention Plan (SWPPP) means a documented plan to implement measures to identify, prevent, and control the contamination of point source discharges of stormwater.

Structural Source Control BMPs means physical, structural, or mechanical devices or facilities that are intended to prevent pollutants from entering stormwater.

Substantially Identical Discharge Point means a discharge point that shares the following characteristics with another discharge point: 1) the same general industrial activities conducted in the drainage area of the discharge point, 2) the same Best Management Practices conducted in the drainage area of the discharge point, 3) the same type of exposed materials located in the drainage area of the discharge point that are likely to be significant contributors of pollutants to stormwater discharges, and 4) the same type of impervious surfaces in the drainage area that could affect the percolation of stormwater runoff into the ground (e.g., asphalt, crushed rock, grass).

Surface Waters of the State includes lakes, rivers, ponds, streams, inland waters, salt waters, and all other surface waters and water courses within the jurisdiction of the state.

Total Maximum Daily Load (TMDL) means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet state water quality standards. Percentages of the total maximum daily load are allocated to the various pollutant sources. A TMDL is the sum of the allowable loads of a single pollutant from all contributing point and nonpoint sources. The TMDL calculations include a "margin of safety" to ensure that the waterbody can be protected in case there are unforeseen events or unknown sources of the pollutant. The calculation also accounts for seasonable variation in water quality.

Treatment BMPs means BMPs that are intended to remove pollutants from stormwater.

Turbidity means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.

Underground Injection Control Well means a well that is used to discharge fluids into the subsurface. An underground injection control well is one of the following:

1. A bored, drilled, or driven shaft,
2. An improved sinkhole, or
3. A subsurface fluid distribution system. (WAC 173-218-030)

Unsafe Conditions means those that are dangerous or create inaccessibility for personnel, such as local flooding, high winds, or electrical storms, or situations that otherwise make sampling impractical, such as drought or extended frozen conditions.

Unstaffed means the facility has no assigned staff. A site may be “unstaffed” even when security personnel are present, provided that pollutant generating activities are not included in their duties.

Vehicle means a motor-driven conveyance that transports people or freight, such as an automobile, truck, train, or airplane.

Vehicle Maintenance means the rehabilitation, mechanical repairing, painting, fueling, and/or lubricating of a motor-driven conveyance that transports people or freight, such as an automobile, truck, train, or airplane.

Wasteload Allocation (WLA) means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality based effluent limitation (40 CFR 130.2(h)).

Water Quality Standards means the Water Quality Standards for Surface Waters of the State of Washington, Chapter 173-201A WAC, Ground Water Quality Standards (Chapter 173-200 WAC), Sediment Management Standards (Chapter 173-204 WAC), and the federal human health-based criteria for Washington (40 CFR 131.45).

Waters of the State includes those waters defined as "waters of the United States" in 40 CFR Subpart 122.2 within the geographic boundaries of Washington State. State statute defines "waters of the State" to include lakes, rivers, ponds, streams, wetlands, inland waters, underground waters, salt waters, and all other surface waters and water courses within the jurisdiction of the state of Washington (Chapter 90.48 RCW).

APPENDIX 3 - SWPPP CERTIFICATION FORM

The Permittee shall use this form to sign and certify that the Stormwater Pollution Prevention Plan (SWPPP) is complete, accurate and in compliance with Conditions S3 and S8 of the Industrial Stormwater General Permit.

- A SWPPP certification form needs to be completed and attached to all SWPPPs.
- Each time a Level 1, 2 or 3 Corrective Action is required, this form needs to be re-signed and re-certified by the Permittee, and attached to the SWPPP.

Is this SWPPP certification in response to a Level 1, 2 or 3 Corrective Action? ☐Yes ☐No

If Yes, Type of Corrective Action: ☐Level 1 ☐Level 2 ☐Level 3*****

Date SWPPP update/revision completed:

Briefly describe SWPPP Update (use back side, if necessary):

***Note:** For Level 3 Corrective Actions, a qualified industrial stormwater professional must review the revised SWPPP, and sign and certify below, in accordance with Condition S8.D.2:

"The Permittee has made appropriate revisions to the SWPPP to include additional Treatment BMPs with the goal of achieving the applicable benchmark value(s) in future discharges. Based on my review of the SWPPP, discharges from the facility are reasonably expected to meet the ISGP benchmarks upon implementation."

Qualified Industrial Stormwater Professional's Printed Name	Title
Qualified Industrial Stormwater Professional's Signature	Date

(cont'd next page)

"I certify under penalty of law that this SWPPP and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate information to determine compliance with the Industrial Stormwater General Permit. Based on my inquiry of the person or persons who are responsible for stormwater management at my facility, this SWPPP is, to the best of my knowledge and belief, true, accurate, and complete, and in full compliance with Permit Conditions S3 and S8, including the correct Best Management Practices from the applicable Stormwater Management Manual. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Operator's Printed Name *****	Title
Operator's Signature *****	Date

***** Federal regulations require this document to be signed in accordance with Condition G2.

APPENDIX 4 - EXISTING DISCHARGERS TO IMPAIRED WATER BODIES

This appendix has a link below to a website list of existing Permittees that discharge pollutants of concern, either directly or indirectly through a stormwater drainage system, to impaired water bodies based on the 2012 EPA-approved water quality assessment and to Puget Sound Sediment Cleanup Sites. https://apps.ecology.wa.gov/paris/ImpairedWaterBodyLimits.aspxh.

Appendix 4 was originally published on Ecology's website on 11/19/2014, and is linked to Ecology's PARIS database. As such, it is subject to revision based upon new information including but not limited to: new facilities, discharge points, and/or outfalls; updates or corrections to ISGP facility locations, stormwater sample points, discharge points, and/or outfall locations.

Appendix 4 is a technical assistance tool intended to support ISGP facilities with permit compliance. Appendix 4 may contain errors or omissions for various reasons, but this does not relieve ISGP facilities of applicable permit requirements If an inconsistency exists between Appendix 4 and ISGP Condition S6, the ISGP takes precedence. Permittees aware of errors or omissions with the information contained in Appendix 4 shall contact Ecology so that an update/correction can be made. If changes or updates are made, based on new or more accurate information, Ecology will notify the affected Permittees directly. Such changes or updates will not become effective until 30 days after the affected dischargers are notified.

APPENDIX 5 - DISCHARGERS SUBJECT TO TMDL REQUIREMENTS

The list of dischargers identified as discharging to water bodies which have completed water quality cleanup plans or TMDLs and associated monitoring requirements can be viewed on Ecology's website at:

https://ecology.wa.gov/DOE/files/14/14a209fd-4090-4d4a-9d5a-debfc3628fa9.pdf.

The most current list can also be obtained by contacting Ecology at:

Industrial Stormwater General Permit
Washington State Department of Ecology
PO Box 47696
Olympia, WA 98504-7696

This list is based on the best information available to Ecology. There will be changes and updates to this list based on new, more accurate information. If changes or updates are made, Ecology will notify the affected Permittees directly. Such changes or updates will not become effective until 30 days after the affected dischargers are notified.