

General Permit
for
Storm Water Discharges Associated with Construction Activity
MPDES Permit Number MTR100000
Response to Public Comment

The Montana Department of Environmental Quality (DEQ) issued Public Notice MT-17-09 on April 28, 2017. The Public Notice provided the tentative determination to issue a state-wide wastewater discharge permit renewal for the General Permit for Storm Water Discharges Associated with Construction Activity, under the Montana Pollutant Discharge Elimination System (MPDES) permit MTR100000. The notice included the draft Permit, Fact Sheet, draft Environmental Assessment (EA), and associated draft Permit forms.

The public notice required that all written comments be received or postmarked by June 2, 2017, in order to be considered in formulation of the final determination and issuance of the permit. DEQ held a public hearing on May 31, 2017, at the Metcalf Building in Helena, Montana. DEQ received the following sets of comments:

Name	Comment Source(s)
EPA Region 8 (Colleen Rathbone)	Letter
Upper Missouri Waterkeeper (Guy Alsentzer, Executive Director)	Email and Verbal
Department of Defense (Mark Mahoney, Regional Environmental Coordinator)	Email and Letter
BNSF Railway (Matthew Jones, Executive Director of State Government Affairs)	Letter
Copper Ridge Development Corp. (Landy Leep, VP)	Letter
Summit Gas Resources, Inc. (Bob Irwin, Regulatory Specialist/Geologist)	Verbal

DEQ has considered these comments in preparation of the final permit and decision. A copy of the unabridged comments is available from DEQ upon request. A synopsis of the significant comments and DEQ's responses are included below. This Response to Comments is an addendum to and supersedes the Fact Sheet to the extent specific changes or clarifications are discussed herein.

EPA Region 8 - Colleen Rathbone

EPA provided 5 comments below.

Comment #1: Part 1.2.3 – Consider also requiring the permittee to post contact information (phone number or email address) for the MDEQ Water Protection Bureau.

Response #1: DEQ agrees that posting specific contact information should be a requirement and this Part has been updated.

Comment #2: Part 2.1.1.b.ii – To ensure offsite receiving inlets are protected, consider expanding inlet protection requirements to “Protect storm drain inlets which receive and carry stormwater flow from your site to a state surface water, provided you have the authority to access the storm drain inlet.”

Response #2: DEQ generally agrees and Part 2.1.1.b.ii has been updated as follows:

Protect all storm drain inlets (to include offsite inlets which receive and carry storm water flow from your site to a state surface water, provided you have the authority to access the storm drain inlet).

Comment #3: Part 1.1.3, Part 2.1.3, Part 3.6 and Part 5 (Dewatering) – Consider clarifying the definition of discharges subject to dewatering requirements to include “groundwater or accumulated stormwater that is removed from excavations, trenches, foundations, vaults, or other similar points of accumulation.”

Response #3: DEQ agrees and further clarification has been added in Part 1.1.4, Part 2.1.3, Part 3.6, and Part 5.

Comment #4: Part 2.3.4 – Consider expanding upon the identification of storm events of 0.25 inches or greater, including language such as, “To determine if a storm event of 0.25 inches or greater, has occurred on your site, you keep either a properly maintained rain gage on your site or obtain the storm event information from a weather state representative of your location. For any day of rainfall 0.25 inches or greater, record the total rainfall measured that day.” Consider expanding the 24 hour snowmelt inspection requirement to include “any measurable” snowmelt runoff since it can be difficult to determine when to inspect due to snowmelt runoff event.

Response #4: DEQ agrees with clarification to the “storm events of 0.25 inches or greater” and further clarification has been added in Part 2.3.4, the SWPPP form, and Attachment B. DEQ agrees with clarification of snowmelt runoff and further clarification has been added in Part 2.3.4.

Comment #5: Part 2.3.8 and Part 3 – Consider requiring a more stringent timeframe for the implementation of BMP maintenance and corrective actions following inspections. *EPA provides example language from Part 5.2 of the Federal CGP.*

Response #5: In response to this comment, DEQ has updated the timeframes in Part 2.3.8 as follows:

Regarding maintenance - If inspections identify BMPs that are not in effective operating condition, maintenance must be documented and performed by the close of the next business day. If this timeframe is infeasible, document rationale and provide a schedule of events with a maintenance timeframe making BMPs operational within seven (7) calendar days.

Regarding new or replacement BMPs - ... these additional measures must be implemented or installed by no later than seven (7) calendar days from the time of discovery. If this timeframe is infeasible, document rationale and provide a schedule of events with a timeframe making BMPs operational as soon as feasible after the 7-day timeframe.

In Part 2.1.4 Pollution Prevention Measures, DEQ already requires “immediate” clean up of spills and leaks, and the permittee must report appropriate spill and leak quantities in accordance with Part 4 Standard Conditions of the permit. DEQ has clarified relevant language in Part 2.4.

Upper Missouri Waterkeeper - Guy Alsentzer, Executive Director

Upper Missouri Waterkeeper provided collectively 20 comments below.

Comment #1: Waterkeeper believes that numeric effluent limits, both demonstrate compliance with the technology based requirements of the Clean Water Act, and to demonstrate compliance with Water Quality Standards, can be developed by State Board staff, and included in the General Permit...Imposing a numeric turbidity limit is feasible, effective, and would provide permittees and regulators with a clear measure of compliance.

Response #1: On March 6, 2014, the Construction and Development Rule was amended to withdraw numeric turbidity limitations and monitoring requirements, and EPA provided clarification regarding other requirements under the rule (40 CFR 450.21). Effluent limits contained in the 2018 General Permit for Storm Water Discharges Associated with Construction Activity are consistent with the Construction and Development Rule and the amendments. These effluent limits constitute the level of controls to reduce the discharge of pollutants from regulated construction activities to protect water quality, and to satisfy the appropriate water quality requirements of the federal Clean Water Act. No changes were made to the permit in response to this comment.

Comment #2: We encourage DEQ to consider the lessons learned from use of “benchmark levels” in the federal Multi-Sector Permit as “indicators” of compliance...To the extent DEQ feels it lacks resources to develop effluent limitation for the technology based requirements of the Permit, we encourage DEQ to start small with the very manageable task of setting benchmarks for turbidity, examples of which can be imported directly into the Permit from EPA MultiSector GPs as well-established, defensible measures of compliance.

Response #2: EPA amended the Construction and Development Rule to withdraw numeric turbidity limitations. Effluent limits contained in the 2018 General Permit for Storm Water Discharges Associated with Construction Activity are consistent with the Construction and Development Rule and the amendments. Also, please see DEQ Response to Waterkeeper Comment #8. No changes were made to the permit in response to this comment.

Comment #3: Utilization of numeric effluent limitations for determinations of permit compliance will allow the elimination of much of the permit requirements. For example, the concept of minimum BMP requirement of the draft General Permit could be eliminated and moved to a Guidance Document describing BMPs that may help the discharger achieve the numeric limits. Similarly, the requirements relating to the SWPPP could be eliminated from the Permit, and put into Guidance Documents. The vast majority of the Inspections section could be eliminated while adding...monitoring requirements congruent with sampling for POCs (i.e., description of sampling methods, analytic methods and reporting requirements). Oversight of this general compliance program and sampling could be tremendously simplified by requiring electronic submission of the data in a standardized form.

Response #3: The core requirement of regulating storm water discharges through this General Permit is for permittees to develop, submit, implement, and maintain a Storm Water Pollution Prevention Plan (SWPPP). SWPPPs are intended to be updated to reflect current site conditions and activities. In coordination with the developed SWPPP, the General Permit requires (1) periodic site inspections, and (2) necessary maintenance or improvement of implemented storm water controls based on evaluations of continued appropriateness and adequacy of the control for current site conditions. Through this iterative and adaptive management approach for storm water permitting associated with construction activities, the permittees consistently improves storm water quality utilizing the SWPPP; and, consequently, the overall benefit of maintaining the SWPPP is the improved quality of receiving waterbodies statewide. The proposed reissuance is the sixth generation of MTR100000 and DEQ reaffirms that the General Permit, with effluent limits, is an effective and efficient permitting mechanism for storm water discharges associated with construction activities. Please see DEQ Response to Waterkeeper Comment #1 and #8. Also, DEQ has updated the effluent limits language to maintain consistency with the Construction and Development Rule, and further outlined clear and specific controls and practices to achieve these limits. These updates include (1) better permitting and compliance direction on specific requirements; (2) outlining of the requirements for specific BMP selection; and (3) more prescription on other specific requirements based on stakeholder feedback. No changes were made to the permit in response to this comment.

Comment #4: Focusing the General Permit on compliance with numeric effluent limits...would...simplify the process compliance for both DEQ and permittees tremendously. DEQ staff time (FTE hours) could be put to use reducing pollutant discharges from other sources, and dollars saved by regulated entities could be used for measurable, meaningful actions that reduce pollutants in stormwater rather than generating documents.

Response #4: DEQ reiterates that the 2018 General Permit for Storm Water Discharges Associated with Construction Activity is an effective and efficient permitting mechanism based on a cooperative stakeholder process that: (1) engaged, solicited, and incorporated feedback on the 2013 General Permit and industry needs; (2) ensured protection of water quality; and (3) met regulatory requirements. Allocation of permitting resources is beyond the scope of this permitting action. No changes were made to the permit in response to this comment.

Comment #5: By continuing with a BMP based permit scheme, the draft General Permit is obligated to provide dozens of pages of Fact Sheet, Findings, permit requirements, and attachments, to set forth the documents, internal reviews, and vague criteria the dischargers must apply to evaluate compliance. Both because the scheme itself is contrary to the requirements of the Clean Water Act, and because a “judgement” based permit will inevitably be complicated, the draft General Permit is internally inconsistent and violates the requirements of federal law.

Response #5: The 2018 General Permit for Storm Water Discharges Associated with Construction Activity is consistent with the Construction and Development Rule and satisfies the appropriate water quality requirements of the federal Clean Water Act. Please see DEQ Response to Waterkeeper Comment #3. No changes were made to the permit in response to this comment.

Comment #6: The General Permit has not conducted a Reasonable Potential Analysis for the pollutants identified as discharged by the permittees.

Response #6: DEQ conducted a qualitative analysis to determine whether additional construction project-specific WQBELs would be needed. In summary, the primary pollutant - generated from construction activities - is sediment including, total suspended solids and turbidity. Pollutant concentrations may vary considerably from, and not limited to, factors such as: the overall scope of the construction project; the intensity, duration, and frequency of a storm event impacting a site; the particular phase of construction at which a storm event occurs; and the soil characteristics of the site location. When left uncontrolled, storm water discharges associated with construction activities can potentially result in the acceleration of sedimentation in waterways, and degrade aquatic habitat and water quality. DEQ finds that each owner/operator is required to control its discharge as necessary to meet applicable water quality standards as an effluent limit in the 2018 General Permit for Storm Water Discharges Associated with Construction Activity. DEQ determined that compliance with the other permit requirements and conditions, collectively, does not result in a reasonable potential to cause or contribute to an exceedance of applicable water quality standards. To the extent of non-storm water discharges that may occur from construction activities, these discharges include (and not limited to) wastewater from washout of concrete, stucco, paint, form release oils, curing compounds and other construction materials; fuels, oils, or other potential pollutants used in vehicle and equipment operation and maintenance, and soaps or solvents used in vehicle and equipment washing or external building washdown. Such discharges are not covered under this General Permit.

In situations where an owner/operator is requesting coverage for a discharge that does not coincide with coverage requirements of the General Permit, the NOI-SWC Package will be denied and the applicant will be required to modify their requested activity or apply for individual permit coverage. No changes were made to the permit in response to this comment.

Comment #7: The Permit provides no method for determining compliance with Water Quality Standards.

Response #7: DEQ disagrees. The storm water pollution prevention plan (SWPPP) includes development and implementation of controls that will reduce the potential for pollutants from construction sites to impact waterbodies through storm water runoff. Implementation of temporary and permanent BMPs outlined in the SWPPP mitigates potential significant impacts because these

controls focus on minimizing erosion, limiting areas of disturbance, preserving topsoil, maintaining natural buffers near waterbodies, and stabilization of steep slopes and disturbed areas. Also, the self-inspections (General Permit, Part 2.3) are a critical tool in evaluating BMP effectiveness, compliance with permit requirements, and triggering corrective actions (General Permit, Part 2.4) to ensure protection of water quality from storm water discharges from the regulated construction activities. No changes were made to the permit in response to this comment.

Comment #8: We commend DEQ on the inspection section of the General Permit regarding required inspections and their frequencies... However... we strongly urge DEQ to require monitoring, in addition to or in lieu of many inspection requirements, as doing so will provide clear, unambiguous directives of necessary pollution controls and will provide clarity regarding compliance.

Response #8: DEQ disagrees that sampling will provide clear directives of necessary pollution controls. Construction activity is temporary in nature and areas of exposed soils are constantly changing. Discharge frequencies are sporadic because storm events are sporadic and best management practices (BMPs) are designed to infiltrate and retain precipitation. Where there is runoff, construction site BMPs are designed to disperse runoff making it nearly impossible to predictably place sampling equipment, not disturb soil in the process, and obtain a representative sample.

The Storm Water Pollution Prevention Plan (SWPPP) is a key document developed prior to any ground disturbance that outlines functional, site-specific BMPs and strategies for BMP installation and maintenance. When these BMPs are designed, implemented, and maintained properly, storm water pollutant loading is greatly reduced and even eliminated. Because of the constantly changing nature of a construction site, the development of the SWPPP provides the most critical opportunity to avoid negative water quality impacts from all phases of the project because the permittee is selecting appropriate BMPs based on site-specific conditions (soils, slopes, geology, etc.), the environmental setting (rural, urban, impaired waterbodies, etc.), climatic conditions (seasonal variations, annual precipitation, etc.), and management of BMPs throughout the project (cost, inspection, maintenance, etc.). Proper planning is a preventative measure focused specifically on benefiting the water quality of potential storm water discharges from a construction site. The developed SWPPPs are updated to reflect current site conditions and activities. Self-inspections, during the lifetime of a construction project, are (1) a valuable preventative measure along with SWPPP development and (2) a form of monitoring required by the General Permit that examines the condition and effectiveness of the physical status of implemented BMPs and the integrity of procedural BMPs.

Self-inspections are both preventative and reactive because they can trigger corrective actions (General Permit, Part 2.4) to ensure protection of water quality from storm water discharges from the regulated construction activities. Self-inspections are a form of visual monitoring that requires permittees to be aware and take ownership of their site conditions, and these inspections foster the adaptive management approach needed to strategically manage the variability in storm water permitting. The SWPPPs and the self-inspections are the appropriate level of storm water pollution control requirements for discharges from construction activities. No changes were made to the permit in response to this comment.

Comment #9: The Draft Permit prohibits violation of WQS, which is an important and common sense improvement from previous General Permits. However, DEQ should also explicitly require that all discharges comply with any applicable WLAs from all applicable TMDLs...the final permit must require *achievement* of applicable WLAs, The Draft Permit currently makes no mention of how TMDL WLAs will be achieved. DEQ must therefore revise the Permit to ensure that WLAs are attained and to fully comport with minimum legal requirements.

Response #9: In the 2018 General Permit, DEQ has ensured that the Water Quality-Based Effluent Limit permit section requires the permittee to identify if potential storm water discharges from their construction activity will discharge to impaired waterbodies and the SWPPP must include a section that describes BMPs that target and reduce discharges of the identified pollutants of impairment to impaired waterbodies without an approved TMDL or with approved TMDLs and assigned WLAs. DEQ clarified specific requirements for permittees to address various situations of potential discharges to impaired waterbodies. DEQ further clarified that discharges of the pollutants of concern to impaired waterbodies are eligible for coverage under the General Permit if they are consistent with approved TMDLs and assigned WLAs, or the discharges do not cause or contribute to a violation of the corresponding water quality criteria. Permittees will be informed if any additional controls are necessary for discharges to protect beneficial uses or to be consistent that the assumptions of any available TMDL wasteload allocation. In certain cases DEQ may find coverage under an MPDES individual permit necessary. Please reference the following Parts of the 2018 General Permit: Part 1.1.2 Allowable Storm Water Discharges, Part 1.1.4 Limitations on Coverage, Part 2.2.1 Water Quality Standards, and Part 2.2.2 Storm Water Discharges to Impaired Waterbodies. No changes were made to the permit in response to this comment.

Comment #10: If DEQ intends that the some percentage of restoration will serve as a surrogate effluent limit for meeting TMDL WLAs, the final permit must ensure that such surrogate limits have a clear mandatory link to the underlying WLAs. If using a restoration surrogate, the final permit should then require “TMDL implementation plans,” that are designed at the outset to achieve TMDL WLAs, rather than an open-ended “restoration plan.” This is not a matter of mere semantics; the Draft Permit’s requirement of “restoration” is ambiguous and creates enforcement uncertainty, by obscuring the mandatory nature of the legal requirement to *achieve* TMDL WLAs.

Response # 10: The 2018 Draft Permit does not contain the above-referenced language for the requirements of “restoration” or “restoration plan.” According to federal regulation, where a TMDL has been approved, NPDES permits must contain effluent limits and conditions consistent with the requirements and assumptions of the wasteload allocations (WLAs) in the TMDL (see 40 CFR § 122.44(d)(1)(vii)(B)). For the renewed 2018 General Permit, DEQ ensured that the permittee identifies if potential storm water discharges from their construction activity will discharge to impaired waterbodies and their SWPPP includes a section outlining BMPs that target and reduce discharges of the identified pollutants of impairment to impaired waterbodies without an approved TMDL or with approved TMDLs and assigned WLAs. Please see DEQ Response to Waterkeeper Comment #9. No changes were made to the permit in response to this comment.

Comment #11: Furthermore, DEQ should strengthen the language of the Draft Permit relating to the water quality based effluent limits (WQBELs) in order to require dischargers to identify and correct violations through the non-numeric WQBELs. For instance, the requirements to take, document, and report corrective action should be triggered by a discharge that causes or contributes to an exceedance of the applicable WQS, and not by either the permittees becom[ing] aware of that exceedance or DEQ's determination that an exceedance has occurred. The burden of monitoring compliance with the WQS should be placed on the permittee and not on DEQ or another party to inform the permittee that discharges are causing or contributing to an exceedance of WQS.

Response #11: The 2018 General Permit includes adequate language for any applicable water quality standard within Part 2.4 Corrective Actions that addresses this concern:

Corrective actions are actions a SWPPP Administrator takes to:

- *Repair, modify, or replace any BMP used at the site;*
- *Install new or additional BMPs;*
- *Immediately clean up, dispose of, and, under Part 4, report spills, releases, and other deposits; and*
- *Remedy a permit violation or noncompliance.*

If any of the following conditions occur, a SWPPP Administrator must review and revise the selection, design, installation, implementation, and maintenance of BMPs to ensure the condition is eliminated and will not be repeated in the future:

- *An unauthorized release or discharge (e.g., spill, leak, or discharge of non-storm water not authorized by this or another MPDES permit) occurs at the site;*
- *A SWPPP Administrator or the Department determines that the BMPs are not adequate enough for the discharge as it causes or contributes to an exceedance of applicable water quality standards;*
- *A SWPPP Administrator or the Department determines that modifications to the BMPs are necessary to meet the requirements in Part 2. of this permit;*
- *A SWPPP Administrator or the Department determines that the BMPs are not properly selected, designed, installed, operated, and/or maintained; or*
- *A failure of erosion or sediment controls resulting in sediment, solids, or other wastes being discharged from the site. Upon identification of sediment, solids, or other wastes lost or discharged from the site, the material must be cleaned up and placed back on site, or otherwise disposed of in an acceptable manner.*

A SWPPP Administrator must document the completed corrective actions in the corresponding inspection report, and complete any updates to the site map(s). In addition, these changes can be updated in the SWPPP for the permittee to maintain consistency with their internal records.

No changes were made to the permit in response to this comment.

Comment #12: We strongly encourage DEQ to require monitoring for all projects, not on a discretionary basis as provided in Section 4.12. Required monitoring would inform the use of "benchmarks" as described supra, as well as dramatically increase the ease of compliance

determinations and, in turn, the legality of the Permit under the Clean Water Act. Please also reference the monitoring discussion contained in our previous comments submitted to DEQ dated March 3, 2017 attached as Exhibit A.

Response #12: For clarification, Part 4.12 is a Standard Condition pertaining to all MPDES permits, including General Permits, which expresses DEQ's authority to require a permittee to monitor in addition to any conditions in this permit, on a case-by-case basis. DEQ disagrees that monitoring should be required for all projects. The General Permit requires visual monitoring through self-inspections and corrective actions to ensure protection of water quality from storm water discharges from the regulated construction activities. Please see DEQ Response to Waterkeeper Comment #8. Regarding benchmarks and monitoring, see DEQ Responses to Waterkeeper Comments #2, #3, and #4. Waterkeeper uses a reference to "the monitoring discussion" contained in a March 3, 2017 informal comment letter submitted to DEQ on a stakeholder concept draft. The referenced March 3, 2017 informal comment letter does not contain a clearly labeled monitoring discussion. No changes were made to the permit in response to this comment.

Comment #13: DEQ should encourage public participation by improving public access to self-inspection reports...Public scrutiny encourages permittees to properly implement and maintain SWPPP controls. DEQ should revise the Draft Permit to require site operators to regularly submit self-inspection reports to DEQ...Ideally, operators would transmit these reports electronically through an online system, where the public could easily access the reports.

Response #13: Please see the 2018 General Permit, Part 2.5 Record Keeping for a complete list of documents that are required to be retained and made available. Also, see DEQ Response #3 and #8 to Waterkeeper Comment #3 and #8 above. The 2018 General Permit requires the permittee, upon authorization, to post a sign or other form of notice to publically display confirmation of coverage under this General Permit. The sign requirement increases public awareness of regulated construction activities, public availability of information of the site or project, and public feedback opportunities. Please see 2018 General Permit Part 1.2.3 Public Sign or Other Notice Requirements and Part 4.11 Availability of Reports. DEQ reiterates that an owner or operator of a storm water discharge associated with construction activity is required to obtain authorization under an MPDES permit; and through submittal of a NOI-SWC Package, the owner or operator agrees to comply with effluent limits and conditions of the 2018 General Permit to include proper implementation and maintenance of SWPPP controls. No changes were made to the permit in response to this comment.

Comment #14: We also encourage DEQ to consider allocating funds to create an annual Enforcement and Compliance Report that assesses all permits and compliance thereunder...optimally, providing those reports and summaries for public review.

Response #14: Allocation of DEQ resources is beyond the scope of this permitting action.

Comment #15: DEQ should update its BMP requirements to account for the impact of global climate change on Montana storm frequency.

Response #15: General Permits are renewed every five years. Changes in storm frequency will be addressed as needed. No changes were made in response to this comment.

Comment #16: Since the Draft Permit relies on permittees' SWPPPs to impose BMP effluent limitations, DEQ cannot approve coverage under the previous General permit until holders of the outdated plans develop and obtain approval of updated plans that meet current regulations.

Response #16: Please see the 2018 General Permit, Part 1.2.2 Continuing Authorizations Under the 2013 General Permit. The language is adequate for permittees requiring continued authorization beyond the December 31, 2017, expiration date to submit a separate SWPPP that has been completed in accordance with the requirements identified in Part 3 of the 2018 General Permit. No changes were made in response to this comment.

Comment #17: First, I just want to really congratulate DEQ for taking the steps to do a long overdue improvement on the existing permit.

Response #17: DEQ appreciates the commenter's support of the 2018 General Permit.

Comment #18: We strongly encourage DEQ to consider including numeric effluent limits for certain pollutants of concern, because in so doing you will provide a streamlined, fair, enforceable standard that can be readily developed and included within this current permit iteration.

Response #18: Please see DEQ Responses to Waterkeeper Comment #1 and #3 above. No changes were made to the permit in response to this comment.

Comment #19: We strongly recommend that the final permit is adapted to explicitly state the means and availability of public comment on applications under a general permit. There needs to be essentially adequate time for meaningful input as required by the Federal Clean Water Act. Just as with a typical MPDES permit issued for a point source discharge, so too must applications for coverage underneath a construction storm water general permit be subject to public notice and comment...DEQ should take steps to assist the public in accessing applications for coverage and associated plans. DEQ should require permittees to submit those plans electronically to DEQ before the public comment period begins, and it should post those plans on its website so that the public can easily access them...DEQ can encourage the public to actively participate in the permitting process.

Response #19: Federal and state rules allow general permits to be written to cover categories of point sources having common elements. In Montana, DEQ develops and issues the state's general permits, and Montana's rules allow dischargers to obtain activity-specific coverage under the general permits. These general permits, including the storm water discharges associated with construction activity, contain effluent limits, monitoring, and reporting requirements and are subject to public comment prior to issuance. The public notice for the 2018 General Permit for Storm Water Discharges Associated with Construction Activity, including a public hearing and a public comment period, was conducted in conformance with ARM 17.30.1341(3). DEQ may deny or revoke coverage for any construction activities not meeting the eligibility requirements within the public noticed 2018 General Permit. Any authorizations under the 2018 General Permit (and the current iteration) through submission of a NOI [ARM 17.30.1341(4)] are available for public review. Also, the 2018 General Permit requires the permittee, upon authorization, to post a sign or other form of notice to publically display confirmation of coverage under this General Permit. Interested persons can request a copy of the SWPPP from DEQ. Please see 2018 General Permit Part 1.2.3 Public Sign

or Other Notice Requirements and Part 4.11 Availability of Reports. No changes were made to the permit in response to this comment.

Comment #20: ...We remind DEQ that the Clean Water Act requires every application for coverage in associated plans to, in fact, assure that applicants; proposed BMPs will prevent water quality standards excursions and comply, in fact, with applicable waste load allocations from TMDLs. Since each applicant's SWPPP specifies BMP effluent limitations for its particular construction site, it is critical that DEQ thoroughly reviews those plans to fulfill its clean water obligations...DEQ cannot issue coverage under the CSGP without conducting a similarly vigorous review of applicant's SWPPPs (reference to MS4 General Permit).

Comment #20: Please see DEQ Responses to Waterkeeper Comments #1, #3, #5, #7 and #10 above. No changes were made to the permit in response to this comment.

Department of Defense – Mark Mahoney, Regional Environmental Coordinator

Department of Defense provided 1 comment below.

Comment #1: "I am writing to express concern regarding the significant proposed change to the existing 2013 General Permit that would require consultation with the Montana Sage Grouse Habitat Conservation Program. The consultation requirement directly conflicts with the federal government's sovereign immunity waiver under section 313 of the Clean Water Act. The waiver at section 313 addresses activities that affect water pollution rather than the protection of particular species. ...Attempts to protect the sage grouse through the State's Water Quality Act will create a conflict of laws problematic for our military installations and therefore we object to the inclusion of a sage grouse consultation requirement as a condition of a water quality permit...I respectfully request an exclusion for military installations from the sage grouse consultation requirements contained in the reissuance of MTR100000."

Response #1: DEQ recognizes the commenter's concerns with the proposed changes regarding the Montana Sage Grouse Conservation Program (Program) consultation. The role of the Sage Grouse Habitat Conservation Program is to facilitate implementation of Executive Order 12-2015 (Order) across state government and with federal agency partners. The Order requires the Program to review all proposed activities in sage grouse habitats designated as a core area, general habitat, or a connectivity area. If the proposed activity will take place outside of these designated areas, Program review is not required. The Order applies to all programs and activities of state government, including permitting (DEQ's MPDES program and the issuance of the 2018 General Permit for Storm Water Discharges Associated with Construction Activity), grant programs, and technical assistance. DEQ's MPDES permits are administered under the Montana Water Quality Act and subject to the Order. Please contact MSGOT if you would like to further discuss how military installations fall within the sage grouse consultation requirements. No changes were made to the permit in response to this comment.

BNSF Railway – Matthew Jones, Executive Director of State Government Affairs

BNSF Railway provided 3 comments below.

Comment #1: Section 1.2.2: For an existing project authorized under the 2013 General Permit, that has completed all construction activities and is pending final stabilization, will the DEQ require the submittal of a complete NOI-SWC package in order to continue coverage under the reissued 2018-2022 General Permit? The existing draft language suggests such an intent even for projects previously authorized that have not yet achieved final stabilization criteria.

Response #1: An existing project authorized under the 2013 General Permit that has not achieved final stabilization prior to the 2013 General Permit expiration of midnight, December 31, 2017, will require continued permit coverage for their project. The 2013 General Permit Preamble explicitly states that “the permit requires that the site reach ‘final stabilization’ before permit coverage may be terminated.” Therefore, an existing project authorized under the 2013 General Permit that has not achieved final stabilization, prior to their current authorization expiration, will need to submit a complete NOI-SWC Package to continue coverage under the reissued 2018-2022 General Permit.

Comment #2: Section 1.2.2: This Section does not identify a deadline for the submittal of a complete NOI-SWC package or a date by which a complete NOI-SWC package must be submitted in advance of December 31, 2017 to permit continued authorization.

Response #2: No deadline was established prior to the expiration of the 2013 General Permit. Due to the anticipated influx of NOI-SWC Packages (new and renewal) for the 2018 General Permit, DEQ recommends that a permittee submit a complete renewal NOI-SWC Package **at least** 30 days prior to midnight, December 31, 2017. Please take into consideration additional time needed for potential sage grouse consultation, SWPPP updates, and DEQ processing. If the NOI-SWC Package is incomplete, DEQ provides notification as to what the deficiencies are, and permit authorization does not become effective under this permit until the deficiencies are addressed and DEQ subsequently receives the complete NOI-SWC Package.

Comment #3: Section 3.2.3: This Section requires a SWPPP Preparer and Administrator to “maintain a valid certification demonstrating [listed] concepts.” What existing certifications does DEQ consider valid? Is there a particular certification recognized by the DEQ?

Response #3: Based on stakeholder feedback and violations associated with compliance evaluation inspections, DEQ has identified the role of a SWPPP Preparer in the 2018 General Permit as someone who is responsible for the planning and development of the SWPPP prior to submission of the NOI-SWC. DEQ has outlined the minimum same requirements for both the SWPPP Preparer and SWPPP Administrator in General Permit Part 3.2.3. A list of training providers that can be contacted to complete training for certification of these roles are as follows, and subject to change:

- Altitude Training Associates - <http://altitudeta.com/>
- Montana Contractors’ Association - <http://www.mtagc.org/>
- Storm Water One - <https://stormwaterone.com/>
- Northwest Environmental Training Center - <https://www.nwetc.org/>

- International Erosion Control Association - <http://ieca.org/>

Alternatively, a permittee can provide DEQ with course/certification information to verify, on a case-by-case basis, if the course/certification meets the minimum requirements outlined in the 2018 General Permit.

Copper Ridge Development Corp. – Landy Leep, VP

Copper Ridge Development Corp. provided 10 comments below.

Comment #1: Page 3 of the Fact Sheet refers to Larger Common Plan of Development of Sale (residential subdivisions and development)...The proposed “clarification: states that individual residential lots that are part of a larger common plan of development of sale are not required to maintain active permit coverage once certain conditions are met-however the conditions are unrelated to the statutory and regulatory requirements that govern liability for discharges. An owner or operator of an individual lot that completes a construction project and brings the point source back to final stabilization should not be required to maintain permit coverage merely because one of the conditions listed on Page 3 of the Fact Sheet are not met. An Owner or Operator’s responsibility to maintain permit coverage should not be tied to the activities of other Owner or Operators within the Larger Common Plan of Development or sale. The proposed change to the Permit may permanently restrict the authority of an owner or operator of an individual lot to terminate the permit.

Response #1: The Fact Sheet, as referenced in the comment, outlines the reasoning and rationale for the 2018 General Permit in accordance with ARM 17.30.1371. The Fact Sheet sets forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. Authorizations for storm water discharges associated with construction activity will be issued under the limits, requirements, and conditions set forth within the 2018 General Permit.

"Larger common plan of development or sale" is referenced in the definition of “storm water discharge associated with construction activity” at ARM 17.30.1102(28) and includes construction activities that disturb less than one acre when the smaller activities are part of a larger common plan of development or sale that will ultimately disturb one acre or more. The smaller disturbances may occur at different times or on different schedules, but are part of one development plan. These separate and distinct, smaller construction activities may have areas of disturbance that are not physically connected. All smaller construction activities that collectively disturb one or more acres and are part of a larger common plan of development or sale are subject to permit coverage. An “owner or operator” of a storm water discharge associated with construction activity, including an activity that is part of a larger common plan of development or sale, is required to obtain and maintain authorization under an MPDES permit for all phases of construction (including, and not limited to, phased projects, projects with multiple filings, and projects involving multiple lots). The statement that is the subject of the above comment is intended to clarify when permit coverage for the smaller construction activities that are part of a larger common plan of development or sale may be terminated. The statement does not change or expand applicable requirements set forth in statute, rule, or under the Permit.

Comment #2 (DEQ has provided this comment verbatim. It appears part of the comment is missing.): Page 3 of the Fact Sheet addresses when active permit coverage may be terminated for individual lots within a residential subdivision. The fifth condition presupposes that there is a “permittee for the larger development.” There is no statutory or regulatory . . .

Response #2: DEQ assumes that the commenter is referring to the fifth sub-bullet point listed under “Larger Common Plan of Development or sale (residential subdivisions and development).” Smaller construction activities under a “larger common plan of development or sale” that ultimately disturb one or more acres of land are required to maintain permit coverage until all the listed conditions are met. The condition that appears to be the subject of Comment #2 above is the fifth condition; the SWPPP must be updated to indicate that the individual lots, within the larger common plan, have reached final stabilization. Based on the incomplete comment provided, DEQ has no further response to this comment.

Comment #3: Page 3 of the Fact Sheet refers to the term “Developer,” which is not a term defined in the Montana Water Quality Act or the Department’s regulations. Use of the term “Developer” will add confusion to the statutory and regulatory landscape.

Response #3: The term “Developer” is commonplace within the construction industry. Page 3 of the Fact Sheet use the term “developer” to clarify the requirements applicable to the “owner or operator” under the 2018 General Permit as stated. This clarification is consistent with U.S. EPA Guidance, which requires the person responsible for construction plans and specifications, including any modifications to construction plans and specifications (such as the developer) to have General Permit coverage for storm water discharges associated with construction activity. See EPA’s 2017 Construction General Permit (CGP) and related Documents including Appendix A (Definitions and Acronyms) at: <https://www.epa.gov/npdes/stormwater-discharges-construction-activities>.

Comment #4: Page 3 of the Fact Sheet conflates the terms “Owner” and “Developer.” Persons or entities engaged in the business of developing residential subdivisions do not necessarily qualify as an “Owner” as the term is defined in the Montana Water Quality Act or the Department’s regulations. To the extent the proposed Permit intends the term “Developer” to have the same meaning as the term “Owner,” then there is no reason to use the term “Developer.” Use of the term “Developer” will cause confusion.

Response #4: See DEQ Response to Copper Ridge Comment #3. DEQ disagrees that the terms “Owner” and “Developer” are conflated within the Fact Sheet. The Montana Water Quality Act clearly defines “owner or operator” as a person who owns, leases, operates, controls, or supervises a point source. The Fact Sheet identifies a developer as an example of a person *who may* be an “owner or operator.”

Comment #5: Page 3 of the Fact Sheet repeatedly refers to “Owner and Operator,” when the Montana Water Quality Act and the Department’s regulations use the term “Owner or Operator.” The inconsistency will lead to confusion.

Response #5: The Fact Sheet is intended to outline the reasoning and rationale for the 2018 General Permit in accordance with ARM 17.30.1371. The bulleted heading uses “Owner and Operator” lists

possible scenarios under which a person may be an “owner or operator” of the construction activity under 75-5-103, MCA. DEQ agrees the term “owner or operator” is used in the WQA and in the Permit. The Fact Sheet does not alter the statutory definition of “owner or operator,” or change the responsibility of an owner or operator to obtain and maintain MPDES permit coverage and comply with the WQA.

Comment #6: Page 3 of the Fact Sheet proposes a definition of “Owner or Operator” that differs from the definition in the Montana Water Quality Act and the Department’s regulations...the Fact Sheet ties the definition to construction plans and specifications. Engineers, architects, or other persons or entities that have operations control over construction plans and specifications would not ordinarily meet the statutory and regulatory definition of “Owner or Operator” unless the person or entity owned, leased, operated, controlled, or supervised a point source...the Fact Sheet also proposes a circular definition in that it ties the definition to a person or entity with “control over project activities required for compliance with this General Permit.” The proposed definition will lead to confusion...Additionally...the proposed definition may be used to hold persons or entities responsible for permit coverage and compliance when the persons or entities have no actual control over construction activities.

Response #6: The Fact Sheet does not propose a different definition of “Owner or Operator.” The term is defined at 75-5-103, MCA. The Fact Sheet is intended to provide clarification of the type of control over construction projects/activities and potential persons or entities that may meet the definition of “owner or operator.” DEQ recognizes that multiple persons or entities may be an owner or operator of construction activities throughout the lifetime of a construction project.

Comment #7: Proposed changes to the meaning of the term “Owner or Operator” create a risk that individuals will be assigned responsibility under a permit for controlling storm water discharges and sediment when the individual does not have control over construction activity at a point source. Persons who have actual control over construction activity at a point source have no incentive to control storm water discharges and sediment if the responsibility is assigned to some other individual; this scenario creates a significant risk to the environment, which had not been adequately examined.

Response #7: DEQ is not proposing a change to the meaning of the term “Owner or Operator.” Please see DEQ Responses to Copper Ridge Comments #1, #3, #4, and #6. The draft Environmental Assessment prepared as part of Public Notice MT-17-09 is the appropriate scope and level of evaluation of environmental impacts related to this permitting action. No further environmental analysis is required based on this comment.

Comment #8: The Department did not take a hard look at significant impacts that changes in the definition and scope of the term “Owner or Operator” will have on the local and state tax base and tax revenue...The proposed changes will have an impact on what persons or entities will be willing to take part in construction related to residential subdivisions, which will ultimately impact local and state tax base and tax revenues. The Environmental Assessment makes a conclusory claim, regarding local and state tax base and tax revenues; it appears that no study or analysis was completed on the issue. Considering the significant impact, the Environmental Assessment is not the appropriate level of evaluation.

Response #8: This state action (reissuance of the MTR100000) does not change to the meaning of the term “Owner or Operator.” Please see DEQ Responses to Copper Ridge Comments #1, #3, #4, and #6. The draft Environmental Assessment assesses direct, secondary, and cumulative environmental impacts of reissuance of the General Permit for Storm Water Discharges Associated with Construction Activity, MTR100000 and subsequent authorizations under that permit. No significant impacts to local and state tax base and tax revenue related to reissuance of MTR100000 are expected to occur. No further environmental analysis is required based on this comment.

Comment #9: The Department did not take a hard look at significant impacts that changes in the definition and scope of the term “Owner or Operator” will have on the distribution and density of population and housing...The proposed changes will have an impact on what persons or entities will be willing to take part in construction related to residential subdivisions, which will ultimately impact distribution and density of population and housing. The Environmental Assessment makes a conclusory claim, regarding the issue; it appears that no study or analysis was completed on the issue. Considering the significant impact, the Environmental Assessment is not the appropriate level of evaluation.

Response #9: This state action (reissuance of the MTR100000) does not change the meaning of the term “Owner or Operator.” Please see DEQ Responses to Copper Ridge Comments #1, #3, #4, and #6. The draft Environmental Assessment assesses direct, secondary, and cumulative environmental impacts of reissuance of General Permit for Storm Water Discharges Associated with Construction Activity, MTR100000, and subsequent authorizations under that permit. No significant impacts to the distribution and density of population and housing are expected to occur as a result of reissuance of MTR100000. No further environmental analysis is required based on this comment.

Comment #10: The Department did not take a hard look at significant impacts that changes in the definition and scope of the term “Owner or Operator” will have on the ability of smaller entities to play some role in residential subdivisions...The proposed changes will have an impact on what persons or entities will be willing to take part in construction related to residential subdivisions. Persons or entities who do not have the resources to fund and control every aspect in the activity for fear of liability that may be assigned to them for activities over which they have no control. Considering the significant impact, the Environmental Assessment is not the appropriate level of evaluation.

Response #10: This state action (reissuance of the MTR100000) does not change the meaning of the term “Owner or Operator.” Please see DEQ Response to Copper Ridge Comments #1, #3, #4, and #6. The draft Environmental Assessment assesses direct, secondary, and cumulative environmental impacts of reissuance of General Permit for Storm Water Discharges Associated with Construction Activity, MTR100000, and subsequent authorizations under that permit. No significant impacts to commercial or residential development activity or to other social or economic circumstances are expected to occur as a result of reissuance of MTR 100000. No further environmental analysis is required based on this comment.

Summit Gas Resources, Inc. - Bob Irwin, Regulatory Specialist/Geologist

Summit Gas Resources, Inc. provided 1 comment below.

Comment #1: Is there any kind of an avenue to perhaps grandfather through or at least be able to utilize the materials that have already all been supplied to these projects and just update that information that might be needed...to meet the new fee registry of that?...I think there should be an ability to expedite the process of upgrading it to current standards of the permit...I just think that 95 percent or better of the materials are on file.

Response # 1: DEQ appreciates Summit Gas Resources, Inc.'s attendance and comments during the public hearing. The 2018 General Permit utilizes the 2013 permitting requirements as a foundation and expands upon the effluent limits by outlining clear and specific controls and practices to achieve these limits, and with the same respect, information previously submitted may be used as a foundation and expanded on to comply with the 2018 General Permit. DEQ has updated the NOI-SWC form and streamlined the SWPPP form. Based on stakeholder feedback, the SWPPP requirements were clarified to provide the necessary framework to identify pollutant sources within all phases of the construction project and proceed through a methodical process of corresponding pollutants to BMP selection within each phase. These requirements have not changed significantly, but DEQ's updates to the SWPPP form reflecting the clarifications provide a better foundation for permittees to meet the minimum objectives outlined for SWPPP requirements.

DEQ encourages open and frequent communication from Summit Gas Resources, Inc. regarding any questions or concerns with their five existing storm water permits and their future renewal NOI-SWC Packages. DEQ can address, on a case-by-case basis, the applicability of previously submitted information and the requirements of the 2018 General Permit. No changes were made to the permit in response to this comment.