



**Montana Pollutant Discharge Elimination System (MPDES)
General Permit for
Storm Water Discharges Associated with Construction Activity**

MPDES Permit Number: MTR100000

Fact Sheet

I. Summary

The Montana Department of Environmental Quality (DEQ) proposes to renew the Montana Pollutant Discharge Elimination System (MPDES) General Permit for Storm Water Discharges Associated with Construction Activity, MTR100000. This fact sheet documents the legal requirements and technical rationale that serve the decision-making process involved with developing effluent limits, monitoring, and reporting requirements, and special conditions specific to municipal storm water discharges in Montana. All references to 'Part' in this fact sheet refer to sections of the 2023 General Permit.

A. Permit Status

The proposed reissuance is for a five-year permit cycle and is the seventh iteration of the General Permit for Storm Water Discharges Associated with Construction Activity (SWC or General Permit). The current permit (2018 General Permit) became effective January 1, 2018, and expires on December 31, 2022.

B. Stakeholder Engagement

To support the General Permit reissuance process, DEQ convened a public meeting on November 29, 2021, to solicit feedback about the 2018 General Permit and proposed changes. During the meeting, DEQ proposed changing the requirements on the public sign. Information received was used to craft changes to the General Permit and related documents. For example, stakeholders expressed concerns over proposed changes in the public sign requirements, as many of them had already created reusable signs for future projects. In response, DEQ decided to keep consistent sign language from the 2018 General Permit but include more specifics about sign size and location. Stakeholders also suggested that a list of BMPs requiring specifications would be helpful, so DEQ incorporated this list into the Form SWPPP.

C. Proposed Permit Changes

DEQ proposes the following the changes below in this reissuance.

1. General Permit

- Improve the readability and navigability of the 2023 General Permit by changing paragraphs to bulleted and numbered lists.
- Clarify the activities covered by the General Permit (Part 1.1.1)
 - Part 1.1.1 was reworded and an additional provision about larger common plans of development or sale was added.
- Create a separate section for support activities (Part 1.1.1.1)
- Clarify permit requirements for projects part of a larger common plan of development or sale

- Several new sections have been added including Part 1.1.2 (Larger Common Plan of Development or Sale), Part 1.2.4.1 (Modifications to Projects Part of a Larger Common Plan of Development or Sale), and Part 1.4.1 (Terminations for Projects Part of a Larger Common Plan of Development or Sale). There are changes to forms reflecting changes in the General Permit.
- Increase flexibility for permit-related document submission (Part 1.2.1)
 - This new section explains how all permit-related documents may be submitted and gives permittees the option of submitting materials via DEQ's online permitting system FACTS or by mail.
- Clarify the names of the maps submitted to DEQ
 - The map that is submitted with the NOI is now called the topographic map (Part 1.2.2) and the map submitted with the SWPPP is called the SWPPP site map (Part 3.10).
- Relocate additional requirements for NOT submission to Termination of Coverage Section (Part 1.4)
- Modify Public Sign Section (Part 1.5)
 - New information about the size of the sign and lettering was added to this section. This section was also moved.
- Add more information about Rainfall Erosivity Waivers (Part 1.6)
- Create a Standard Requirements for Best Management Practices (BMPs) section (Part 2.1.1)
 - This new section specifies requirements applicable to all BMPs. It also includes an emphasis on permittees choosing BMPs appropriate to the timing of the project/season and an emphasis on the transition from temporary to permanent BMPs.
- Add more detail to surface outlets section (Part 2.1.6)
- Clarify qualifying events for reductions in inspection frequency (Part 2.3.5)
- Add a third condition for severe winter conditions delay (Part 2.3.6)
 - This new condition specifies that in addition to remote site access and severe winter conditions, the worksite must have a temporary work shutdown (due to severe winter weather) to qualify for a delayed inspection.
- Add new section headings in Part 3.1.1-3.1.3 to improve navigability
- Add a requirement for Major Construction Activity and BMP Phasing (Part 3.7)
 - The 2023 General Permit requires that the SWPPP have a table or narrative description of major construction activities and associated BMP phasing.
- Clarify the difference between signatory authority and duly authorized representative (Part 4.18)
 - New subsections were added to help permittees distinguish between the signatory authority and duly authorized representative roles.

2. Notice of Intent (NOI)

- Add facility contact section to improve communication between DEQ and permittees (Section C)
- Require both NAICS and SIC codes (Section F)
- Add duly authorized representative section (Section H)
- Include impairment question for each receiving water (Section I)
- Add questions about the type of construction project (Section J)
- Include questions for modifications of larger common plans of development or sale (Section K)
- Require map for modifications of larger common plans of development or sale (Section M)
- Clarify appropriate signatories (Section N)

3. Storm Water Pollution Prevention Plan (SWPPP)

- Number questions for improved navigability
- Include more status options (Section A)
- Include definition of terms for outfall table (Section E)

- Require that the source of BMP specifications be provided (Section G)
 - Move Water Quality Controls for Discharges to Impaired Water Bodies Section (Section H)
 - Create MS4 and Dewatering Activities sections (Section I and J)
 - Require applicants to choose a method for documenting updates and revisions (Section O)
- 4. Notice of Termination (NOT)**
- Add larger common plan of development or sale section (Section C)
 - Include acknowledgement of fee invoice (Section D)
 - Clarify appropriate signatories (Section F)
- 5. Attachment A**
- Reformat for consistency with other forms
 - Add an additional contact's section (Section B)
 - Include a removal of contacts section (Section C)
 - Clarify appropriate signatories (Section D)
- 6. Rainfall Erosivity Waiver**
- Reformat and retitle sections for consistency with other forms
 - Change the name of form to Erosivity Waiver Request Form
 - Add facility contact section
 - Add project summary sections and project description sections (Section D and E)
 - Include a table requiring applicants to list the receiving water(s) and outfall location(s) (Section F)
 - Reduce the number of acceptable methods for calculating R Factor (Section G)
 - Method #2 from the 2018 General Permit was removed as the maps needed to complete the calculation were of low resolution, and not able to be easily read.
 - Add additional statements in the eligibility section, so applicants understand all requirements (Section I)
 - Clarify appropriate signatories (Section K)

II. Background Information

“Storm water discharges associated with construction activity” is a discharge of storm water from construction activities including clearing, grading, and excavation that result in the disturbance of equal to or greater than one acre of total land area. “Storm water” is defined as storm water runoff, snow melt runoff, and surface runoff and drainage. The federal storm water Phase I and II Rules expanded the scope of storm water permitting to include construction activities. The proposed reissuance is the seventh generation of MTR100000 and DEQ reaffirms that the General Permit is an effective and efficient permitting mechanism for storm water discharges associated with construction activities.

MTR100000 requires the owner or operator of the construction activities to obtain authorization under this General Permit. An owner or operator, also identified as a permittee, acknowledges eligibility for coverage under MTR100000 and agrees to comply with the effluent limits and conditions of the General Permit. Authorizations under the proposed reissuance of MTR100000 require DEQ review of a complete Notice of Intent (NOI-SWC) package as outlined in Part 1.2 of the General Permit.

DEQ will provide an opportunity for public comment on the General Permit for Storm Water Discharges associated with Construction Activity shall adhere to the requirements regarding public comments and public hearings.

III. Authority

DEQ regulates storm water discharges associated with construction activities. Any person who discharges or proposes storm water discharges associated with construction activity must obtain MPDES permit coverage.

IV. General Permit Authorization

This 2023 General Permit renewal authorizes storm water discharges associated with construction activity within the state of Montana, excluding Indian lands as defined in 25 CFR § 502.12. Two criteria that determine applicability of permit coverage include (1) there are areas of ground disturbance or other potential pollutant sources due to construction activity where a storm water discharge to state surface waters can occur; and (2) Construction activity disturbs a total area of greater than or equal to one acre. If a construction activity disturbs less than an acre but is part of a larger common plan or development or sale that disturbs at least an acre, then permit coverage is required. An owner or operator of construction activities meeting these two criteria are required to apply for, and obtain, authorization for the discharge of storm water into state waters under this General Permit or an individual MPDES permit.

A. Clarification of Requirements under the General Permit

1. Larger Common Plan of Development or Sale

Over the past five years, DEQ has found permittees are looking for more specificity in the general permit to make it easier to know what is required of the permittee, particularly in regard to large construction projects that may have areas in different phases of construction. As a result, the 2023 General Permit includes more specific requirements and guidance for construction projects part of a larger common plan of development or sale. These changes are also reflected in form updates.

a. Authorization

A section has been added to the SWC-NOI asking applicants to identify whether their project is part of a larger common plan of development or sale.

b. Modifications

The General Permit offers increased flexibility for projects part of a larger common plan of development or sale to modify their authorization. This allows for permittees to reduce their permitted area even if dirt work for the entire project has not been completed. Owner/operators of projects part of a larger common plan of development or sale may request a modification to reduce the area covered by the General Permit in two scenarios:

- 1) Areas requested to be removed have achieved final stabilization; or
- 2) There is a new owner/operator of a specific parcel(s) who has obtained separate coverage under the General Permit.
 - a. As part of the SWC Modification Package, the owner/operator of record (i.e. the current permittee) must include the authorization number for the parcel(s) with a new owner/operator and a provide a map showing the parcel(s) with coverage under a new authorization.

c. Transfers

The PTN-SWC form may only be used to transfer an entire project authorized under the General Permit to a single owner/operator (i.e. part of the authorized area cannot be transferred, nor can an authorized area be transferred to multiple parties.) Projects part of a larger common plan of development or sale often have multiple owner/operators responsible for distinct parts of the project area during the course of construction. For this reason, it is usually more appropriate for projects that are part of a larger common plan of development or sale to modify or terminate an authorization instead of transferring it.

d. Termination

Due to their complex nature, all construction activities for projects that are part of a larger common plan of development or sale may not end simultaneously. In order to provide greater flexibility for permittees with these types of projects, the General Permit offers termination of coverage as an

option for projects where each parcel has reached final stabilization or has a new owner/operator who has obtained coverage under the General Permit.

To improve accountability, and recordkeeping, permittees with projects with a larger common plan of development or sale who request termination of permit coverage must include the authorization number for the parcel(s) with a new owner/operator in the NOT-SWC form. A map must also be included with the NOT-SWC form which shows:

- The parcel(s) with coverage under a new authorization,
- The parcel(s) that have achieved final stabilization, and
- The owner/operator for each parcel.

2. Owner and Operator

a. Possible Owner Operator Variations (not limited to):

- 1) Owner or Developer- an owner or developer who is operating as the site manager or otherwise has supervision and control over the site, either directly or through a contract with an entity such as those listed below.
- 2) General Contractor or Subcontractor- a contractor with contractual responsibility and operational control (including SWPPP implementation) to address the impacts construction activities may have on storm water quality; or
- 3) Other Designated Agents or Contractors- other agents with contractual responsibility and operational control to address the impacts construction activities may have on storm water quality.

b. Owner and Operator (in general):

- Any person or entity that has operational control over construction plans and specifications or day-to-day operational control over project activities required for compliance with this General Permit.
- Multiple persons or entities may be an operator of project activities throughout the lifetime of the construction project.
- The General Permit remains flexible for these multiple persons or entities (including and not limited to the variations listed above) all associated with the same overall construction project to request authorization and transfers, obtain separate authorizations for the same project, or develop a collaborative SWPPP.
- Shared responsibility does not waive operators from compliance with permit requirements; and
- Any contractual agreements between owners and/or operators of any construction related activities requiring coverage under this General Permit are beyond the permit's scope and the sole responsibility of the parties involved. DEQ does not provide any type of oversight on contractual agreements, to include but not limited to, permitting actions involved with the General Permit such as submission of NOI-SWC for initial authorization, transfers, modifications, SWPPP development and implementation, and terminations.

B. Authorization under this Permit

1. New Authorizations (Not Previously Authorized)

Owners or operators can obtain first-time coverage under this permit by submitting a complete a Notice of Intent to Discharge under the Storm Water Discharges Associated with Construction Activity General Permit (NOI-SWC) Package to DEQ.

The NOI-SWC Package must consist of:

- A complete NOI-SWC form (signed by an authorized signatory per Part 4.18.1) and topographic map(s);
- A separate SWPPP (signed by an authorized signatory or duly authorized representative per Part 4.18), including all associated SWPPP site maps, diagrams, details, and plans, which has been completed in accordance with the requirements identified in Part 3;
- A copy of the consultation letter from the Montana Sage Grouse Habitat Conservation Program (if applicable); and
- The appropriate application fee.

2. Continuing Authorizations Under the 2018 General Permit

Permittees requiring continued authorization beyond the December 31, 2022 expiration date must submit a complete a SWC Renewal Package to DEQ for coverage under this reissued General Permit, effective from January 1, 2023- December 31, 2027.

Permittees that do not submit a SWC Renewal Package in the timeline outlined by DEQ will be required to reapply for coverage under the General Permit. These applications will be processed as new authorizations and will require the associated fees.

The SWC Renewal Package must consist of:

- A complete renewal NOI-SWC form (signed by an authorized signatory per Part 4.18.1) with “Renewal” selected in Section A and updated topographic map(s);
- A separate SWPPP (signed by an authorized signatory or duly authorized representative per Part 4.18), including all associated SWPPP site maps, diagrams, details, and plans, updated which has been completed in accordance with the requirements identified in Part 3;
- A copy of the consultation letter from the Montana Sage Grouse Habitat Conservation Program (if applicable); and
- The appropriate fee.
 - Renewal application fees will only be required for authorizations that have been in effect for more than four years.

C. Permitting Actions after Authorization

The General Permit outlines the requirements, the processes involved, and the required documentation for a permittee to request modifications, permit transfers, and termination of permit coverage. In this renewal, these permitting options have been clarified to explain appropriate permitting actions for projects part of a larger common plan of development or sale.

D. Additional Requirements for Authorization

1. Local Sediment and Erosion Controls

Prior to submission of a Notice of Intent Package, the applicant for coverage under this General Permit will determine if the proposed construction activities are located within a regulated Municipal Separate Storm Sewer System (MS4). The permittee is required to document contact with the MS4 in the NOI-SWC and incorporate local sediment and erosion control requirements in its SWPPP.

2. Sage Grouse

Prior to submission of a NOI-SWC Package, the applicant for coverage under the 2023 General Permit will determine if the proposed construction activities are located within designated sage grouse habitat (core, general, and or connectivity). Per Governor Executive Order No. 12-2015, the Montana Sage Grouse Habitat Conservation Program (Program) will potentially provide recommendations that are protective of sage grouse populations through a consultation process for construction projects based on initially the location of a project and subsequently, the purpose of the proposed construction project or

operation. Any recommendations and mitigations determined by the Program are provided in a consultation letter.

Permittees with construction activities in sage grouse habitat must consult with the Program, submit the consultation letter with the NOI-SWC Package. DEQ may include recommendations and mitigation actions (to the extent of the proposed action) in an authorization under the General Permit. These measures confirm if a project will be located within sage grouse habitat and mitigate any potential impacts through incorporation of recommendations within an issued consultation letter.

3. Public Sign or Other Notice Requirement

Upon authorization, the permittee must post a sign to publicly 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. DEQ updated the sign size and location requirements in the renewed 2023 General Permit to provide more clarity to permittees and to provide better customer service for the public.

4. Ineligibility for Coverage

DEQ may determine that an owner or operator does not qualify for coverage under the renewed 2023 General Permit for Storm Water Discharges associated with Construction Activity, citing one or more of the following reasons:

- Storm water discharges that are mixed with non-storm water, other than those non-storm water discharges listed in Part 1.1.4;
- Prohibited discharges as listed in Part 2.1.7;
- Discharges of construction dewatering effluent to state surface waters requiring authorization under the MPDES General Permit for Construction Dewatering;
- Storm water discharges to impaired waterbodies that are inconsistent with approved TMDLs and assigned WLAs, and the additional requirements with the General Permit;
- Storm water discharges to waterbodies that are inconsistent with additional DEQ requirements, on a case-by-case basis; or
- Discharges which DEQ determines have a reasonable potential to cause, or contribute to, an exceedance of any applicable water quality standard, and/or DEQ has determined coverage under a MPDES Individual Permit is required.

Coverage does not relieve the permittee from any other statute, regulation, permits, or other regulatory requirements for activities occurring within the project area and not associated with permitted storm water discharges associated with construction activities.

DEQ may deny coverage for storm water discharges citing that the permittee appears unable to comply with one or more of the following requirements:

- Effluent standards, effluent limitations, standards of performance for new sources of pollutants, toxic effluent standards and prohibitions, and pretreatment standards;
- Water quality standards established pursuant to 75-5-301, MCA;
- Prohibition of discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;
- Prohibition of any discharges to which the EPA regional administrator has objected in writing;
- Prohibition of any discharge which is in conflict with a plan or amendment thereto approved pursuant to section 208(b) of the Clean Water Act;
- Any additional requirements that DEQ determines are necessary to carry out the provisions of 75-5-101, et seq., MCA; and
- A point source is a new source or a new discharge and the discharge from its construction or operation will cause or contribute to a violation of water quality standards per ARM 17.30.1311(7).

In addition, DEQ may deny coverage for the following reasons:

- The storm water discharge is different in degree or nature from discharges reasonably expected from sources or activities within the category described in this MPDES General Permit (including pollutants from process wastewater streams).
- The MPDES permit authorization for the same operation has previously been denied or revoked.
- The discharge sought to be authorized under the 2023 General Permit is also included within an application or is subject to review under the Major Facility Siting Act, 75-20-101, et seq., MCA.
- The point source is, or will be, located in an area of unique ecological or recreational significance. Such determination must be based upon considerations of Montana stream classifications adopted under 75-5-301, MCA, impacts on fishery resources, local conditions at proposed discharge sites, and designations of wilderness areas under 16 USC 1132 or of wild and scenic rivers under 16 USC 1274.

If a discharger is subject to MPDES permitting under a different MPDES permit and the proper MPDES authorization for these discharges has been obtained, then storm water authorized under this General Permit may be mixed with the other authorized discharge(s) provided that the mixed discharge is in compliance with all pertinent permit requirements.

If DEQ determines ineligibility for coverage under this permit, DEQ shall proceed, unless the application withdrawn, to process the application through the Individual MPDES Permit requirements. DEQ will contact the applicant regarding ineligibility and request more information and fees, as needed, for Individual MPDES permit requirements.

5. Storm Water Rainfall Erosivity Waiver

The Storm Water Rainfall Erosivity Waiver (Erosivity Waiver) is an optional alternative to obtaining coverage under the General Permit for discharges associated with construction activity. Construction activities must meet the following requirements to be eligible for coverage under the Waiver:

- Total area of “disturbance related to construction activity” (disturbance), as defined in Part 5, is less than five acres;
- Disturbance related to construction activity starts after March 1 and reaches “final stabilization” (per Parts 3.8 and 5) before November 30th of a given calendar year;
- The project’s Rainfall Erosivity (R) Factor is less than five; and
- The Erosivity Waiver request encompasses the entire construction project.
 - The Erosivity Waiver is not available for individual filings, phases, or portions of a construction project or site. A project that is part of a larger common plan of development or sale is only eligible for an Erosivity Waiver if the entire development meets the conditions listed above.
- To request a Waiver, the “owner/operator” (as defined in Part 5) must submit an Erosivity Waiver Request Form, applicable attachments, and the associated fee to DEQ. A project is not waived from coverage under the General Permit until DEQ receives a complete application and issues an Erosivity Waiver Confirmation Letter.

If any of the above criteria no longer reflective of the project, it no longer qualifies for the Erosivity Waiver and the owner/operator must apply for coverage under this General Permit or an Individual MPDES Permit. DEQ may notify any operator covered by a waiver that they must obtain General Permit coverage.

In the 2018 General Permit cycle, owner/operators expressed confusion about qualifying factors for a Waiver. In response, the 2023 General Permit clearly outlines the conditions that must be met for a project to be eligible for an Erosivity Waiver.

Few construction projects typically qualify for a Waiver due to the following: (1) the timeframe realistically required to complete a project based on the number and coordination of phases, and (2) the dependency (including timeframe) of natural rainfall to establish vegetation for a project to achieve final stabilization.

V. Description of Storm Water Discharges

Storm water means storm water runoff, snow melt runoff, and surface runoff and drainage. Storm water runoff picks up and transports pollutants then discharges them, untreated, to waterways. Storm water discharges associated with construction activity are a concern because these activities provide a diffuse source of water pollution. Construction activities typically disturb the project site's stabilizing vegetative cover and expose the soil underneath to erosive elements such as rainfall and snowmelt runoff. Consequently, storm water runoff from construction activities may carry increased sediment loading and potentially other pollutants from construction-related activities and materials. The primary pollutant generated from construction activities is sediment including, total suspended solids, turbidity, and siltation. Pollutant concentrations may vary considerably from, and not limited to, factors such as the overall scope of the construction project, the size and duration 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.

In addition, non-storm water discharges can occur from construction activities to 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;
- Soaps or solvents used in vehicle and equipment washing or external building washdown;
- Commingled storm water discharges of disturbed, contaminated soils; and
- Toxic or hazardous substances from a spill or other release impact plants, fish, animals, and people.

These potential discharges are general descriptions of typical construction activity related discharges and are not intended to be representative of any project specifically.

VI. Receiving Waters and Applicable Standards

A. Nondegradation

Construction activities are temporary in nature; the potential pollutants discharged vary based on storm events; and the activities are regulated until the site achieves final stabilization. The storm water pollution prevention plan (SWPPP) includes development and implementation of controls that will reduce the impact of pollutants from construction sites to waterbodies through storm water runoff. Implementation of temporary and permanent BMPs in the SWPPP mitigates 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. The activities covered by the current General Permit have been determined to be non-significant based on 17.30.715(3) and 75-5-317(u) MCA and the renewed General Permit will continue to protect water quality from pollutants generated from temporary construction activities and conveyed through storm water

If a permittee provides information that indicates the proposed discharge will not meet conditions of Montana's Nondegradation Policy, DEQ will require updates to the SWPPP in order to comply with Montana's Nondegradation Policy and rules or require the applicant to obtain an Individual MPDES Permit.

B. Mixing Zones

No mixing zones are authorized under this General Permit. This determination is consistent with all previously issued MPDES General Permits for Storm Water Discharges Associated with Construction Activity.

C. Impaired Waterbodies

The water quality-based effluent limitations section (Part 2.2) of the General Permit requires permittees to identify if potential storm water discharges from their construction activity will discharge to impaired waterbodies. The SWPPP must also 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. Where a TMDL has been approved, MPDES permits must contain effluent limits and conditions consistent with the requirements and assumptions of the wasteload allocations (WLAs) in the TMDL. Discharges of 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.

VII. Proposed Effluent Limitations

The control of pollutants is established through effluent limits and other requirements in an MPDES permit. Two types of effluent limits are required in the 2023 General Permit for Storm Water Discharges Associated with Construction Activity including: technology-based effluent limits (TBELs) that specify the minimum level of treatment or control; and water quality-based effluent limits (WQBELs) that attain and maintain applicable numeric and narrative water quality standards.

A. TBELs

Technology-based effluent limits (TBELs) are the minimum effluent quality required in MPDES permits and are developed based on currently available treatment technologies. NPDES permits issued for construction storm water discharges are required under 402(a)(1) of the Clean Water Act to include conditions for meeting technology-based effluent limitations guidelines established under Section 301 and, where applicable any new source performance standard established under Section 306. Once an effluent limitations guideline or new source standard is promulgated in accordance with these sections, NPDES permits must incorporate limits based on such limitations and standards.

EPA promulgated the Construction and Development Rule (40 CFR § 450) which included effluent limitation guidelines (ELGs) and new source performance standards (NSPS) to control the discharge of pollutants from construction sites. The Construction and Development Rule went into effect February 1, 2010. On March 6, 2014, the Construction and Development Rule was amended to withdraw numeric turbidity limitations and monitoring requirements and provided clarification regarding other requirements under the rule.

Effluent limits contained in the 2023 General Permit for Storm Water Discharges Associated with Construction Activity are consistent with the Construction and Development Rule and the amendments. These effluent limits are non-numeric and 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 and Montana Water Quality Act.

The control measures outlined to satisfy technology requirements for construction activities include:

- Implement erosion and sediment controls;
- Stabilize soils;
- Manage dewatering activities;
- Implement pollution prevention measures;
- Prohibit certain discharges; and
- Utilize surface outlets for discharges from basins and impoundments.

The General Permit includes language about non-numeric effluent limits that is consistent with the Construction and Development Rule and outlines clear and specific controls and practices to achieve these limits. DEQ included more clear and specific controls based on stakeholder feedback received during the renewal period for the 2018 General Permit. Stakeholders requested that the General Permit include better permitting and compliance direction on specific requirements, outline the requirements for specific BMP selection, and be more prescriptive on other specific requirements.

B. WQBELs

WQBELs are designed to protect the beneficial uses of the receiving water. The storm water pollution prevention plan (SWPPP) is the mechanism used in this permit to protect water quality and determine compliance with water quality standards. 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. Self-inspections (Part 2.3) are a critical tool in evaluating BMP effectiveness, compliance with permit requirements, and triggering corrective actions (Part 2.4) to ensure protection of water quality from storm water discharges from the regulated construction activities.

DEQ has conducted a qualitative analysis to determine whether additional construction project-specific WQBELs would be needed. DEQ finds that the primary pollutant generated from construction activities is sediment (including total suspended solids and turbidity). Pollutant concentrations may vary considerably due to factors including: the scope of each project; the intensity, duration, and frequency of storm events impacting a site; the phase of construction during a storm event; and soil characteristics of each site. When left uncontrolled, storm water discharges associated with construction activities can potentially result in the sedimentation of waterways and degrade aquatic habitat and water quality. To prevent movement of sediment, each permittee is required to control its discharge as necessary to meet applicable water quality standards as an effluent limit in the 2023 General Permit for Storm Water Discharges Associated with Construction Activity.

DEQ has 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. 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 authorized under the 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.

1. Impaired Waterways and TMDLs

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)). The 2023 General Permit requires permittees to identify potential storm water discharges from their construction activity will discharge to impaired waterbodies. 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 has provided specific requirements for permittees to address potential discharges to impaired waterbodies. DEQ also 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.

C. Effluent Limits Rationale

DEQ finds that best management practices (BMPs) are the most effective pollution control measure for storm water runoff associated with construction activity. Construction activity is temporary in nature and areas of exposed soils are constantly changing. Discharge frequencies are sporadic due to inconsistent timing of storm events. BMPs are designed to infiltrate and retain precipitation when a storm event does occur. 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. 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 (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.

VIII. Inspections and Corrective Actions

Self-inspections are a critical tool in evaluating BMP effectiveness, compliance with permit requirements, and triggering corrective actions to ensure protection of water quality from storm water discharges from the regulated construction activities. Based on stakeholder feedback during the renewal of the 2018 General Permit, DEQ has allowed the permittee to switch between inspection frequencies to meet the needs of the construction industry and their processes. This inspection update does not change the underlying non-numeric effluent limits required by this General Permit.

DEQ has included an option for severe winter conditions delay of inspections due to safety concerns during severe winter conditions and inaccessibility of remote sites. These inspections must meet certain criteria, be documented, and determination is subject to review. For clarity, DEQ has added temporary work shutdown due to severe winter weather as an additional criterion for delay of inspections in the 2023 General Permit.

In the 2023 General Permit, DEQ has included a definition of “infeasible” in the BMP maintenance, replacement, and failures section (Part 2.3.8), to clarify when maintenance and replacement timeframes may be extended.

IX. Storm Water Pollution Prevention Plan (SWPPP)

The core requirement of regulating storm water discharges through this General Permit is for permittees (owners and operators with permit coverage) to develop, submit, implement, and maintain a storm water

pollution prevention plan (SWPPP). The SWPPP is a document (including associated maps, diagrams, details, and plans) that identifies construction activity sources of pollution potentially affecting the quality of storm water and requires control measures. These control measures known as best management practices (BMPs) must be developed and implemented in accordance with good engineering selection and design, hydrologic principles, and pollution control practices to minimize and control potential pollutants in storm water discharges associated with construction activities. SWPPPs are intended to be living documents and 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 permittee 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.

Based on stakeholder feedback and compliance evaluation inspections, 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 include requesting that permittees describe the transition of temporary to permanent BMPs and list the specifications used for BMPs. A section listing the standard requirements for all BMPs has been added to the General Permit to clarify the applicability of specific requirements for different BMPs. These changes provide a better foundation for permittees to meet the minimum objectives outlined for SWPPP requirements.

X. Standard Permit Conditions

Conditions that apply to all MPDES permits including General Permit MTR100000 are listed in ARM 17.30.1342. Additional conditions applicable to MPDES permits are set forth in ARM 17.30.1344. All conditions applicable to MPDES permits must be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these rules must be given in the permit. A listing of all Standard Conditions pertaining to all MPDES permits will be included in the 2023 General Permit.

XI. Definitions and Abbreviations

All relevant definitions and abbreviations are provided in the General Permit.

XII. Public Notice

DEQ provides an opportunity for public participation in the permit process through public notice and a public hearing. The public notice period is the venue to inform and solicit comments from all interested parties and members of the general public of the General Permit renewal. The public hearing provides a physical location for all interested parties and members of the general public to provide written and oral comments. DEQ will consider and respond to all significant comments prior to final determination and issuance of the General Permit.

XIII. Information Sources

Administrative Record for MPDES Permit MTR100000.

Administrative Rules of Montana Title 17 Chapter 30 – Water Quality

Subchapter 2 – Water Quality Permit and Application Fees

Subchapter 5 – Mixing Zones in Surface and Ground Water

Subchapter 6 – Montana Surface Water Quality Standards and Procedures

Subchapter 7 – Nondegradation of Water Quality

Subchapter 11 – Storm Water Discharges

Subchapter 12 – Montana Pollutant Discharge Elimination (MPDES) Standards

Subchapter 13 – Montana Pollutant Discharge Elimination (MPDES) Permits

Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. §§ 1251-1387, October 18, 1972, as amended 1973-1983, 1987, 1988, 1990-1992, 1994, 1995 and 1996.

Montana Code Annotated (MCA), Title 75-5-101, *et seq.*, “Montana Water Quality Act.”

Montana Department of Environmental Quality. *2020 Water Quality Integrated Report*, Appendix A-Impaired Waters, January 2021.

Montana Department of Environmental Quality. *Department Circular DEQ-7, Montana Numeric Water Quality Standards*, June 2019.

U.S. Code of Federal Regulations, 40 CFR Parts 122-125, 130-133, 136, 442, and 450.

U.S. EPA. *Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs”*; Memorandum, November 2014.

U.S. EPA. *National Pollutant Discharge Elimination System - Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges*; Final Rule, 1999.

U.S. EPA. *Proposed 2022 Construction General Permit*. May 2021.

U.S. EPA. *Understanding Impaired Waters and Total Maximum Daily Load (TMDL) Requirements for Municipal Storm Water Programs*, January 2008.

U.S. EPA Stormwater Phase II Final Rule Fact Sheets: 1.0, 3.0, and 3.1.