

PROPOSED DRAFT
NOVEMBER 2014

208.03.2 Water Pollution Control

C. Inspections.

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BMPs will be inspected during construction and as part of the final inspection to ensure they are adequate, maintained, and functioning properly.

D. **Erosion Control Plan.** MPDES permits are issued by the DEQ for discharges within the state of Montana not including Indian Countries. NPDES permits are issued by the EPA for discharges inside the boundaries of Indian Countries. Some Tribal governments also have NPDES review authority and/or separate permitting authority. For projects requiring MPDES and/or NPDES General Storm Water Permit coverage, submit one NOI package and the associated fees for ground disturbance areas within the project limits to the appropriate permitting agency. Use Department furnished blank erosion control plans to complete the SWPPP as required by the General Permit. Provide a copy of the NOI package submitted and confirmation for receipt of a complete NOI package from the permitting agency to the Project Manager prior to conducting any ground disturbance activities.

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Do not transfer or terminate the General Storm Water Permit coverage until the BMPs are inspected and accepted and all records required under the permit, including inspection and monitoring reports, are furnished to the Project Manager. The Department may require that certain BMPs be removed and/or replaced by another type of BMP as a condition of permit transfer.

When submitting the MPDES General Storm Water Permit transfer package/application to the Department, include a check for the permit transfer fee. Make the check for the amount of the fee payable to the DEQ.

208.03.3 Aquatic Resource Protection

A. **General.** Unless authorized with approved permits and authorizations, meet the following general provisions:

1. Do not operate mechanized equipment in any regulated aquatic resource, unless authorized in accordance with Subsection 208.03.3(B).
2. Isolate work zones from flowing and standing waters during construction, unless authorized in accordance with Subsection 208.03.3(B).
3. Do not spill or dump material from equipment into regulated aquatic resources.
4. Do not discharge wastewater from washout of concrete related equipment, concrete finishing, saw cutting, wet concrete, hydraulic demolition, etc. into any regulated aquatic resource.
5. Do not place fill or other materials in any regulated aquatic resource unless included in the contract, or authorized in accordance with Subsection 208.03.3(B).

B. **Temporary Facilities and Construction Activities.** Obtain required permits and authorizations for the installation, maintenance, operation, and removal of temporary

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facilities such as work bridges, work pads, cofferdams, temporary detours, diversions, etc. Department obtained permits and authorizations do not typically include removal and disposal of existing structures, access to and from authorized locations, sequencing and construction methodology to construct authorized features, impacts to areas outside of the planned construction footprint, and other items potentially affecting an aquatic resource. Submit Temporary Facility and Construction Activity permit applications for COE 404 and SPA 124 Notifications in accordance with Subsection 107.11.2.

Submit copies of the plans and application packages, their modifications, or their revisions to the Project Manager. The Department will review each submittal of the plans and application packages, their modifications, or their revisions, and either request revisions or submit to applicable resource and regulatory agencies within 21 calendar days. Resource and regulatory agency review time does not begin until the Department submits the application to the applicable agencies. Do not begin work on temporary construction facilities or modifications to approved plans until receiving written notification from the Project Manager that all of the required approvals from the regulatory and resource agencies have been obtained and distributed. The Department will distribute COE 404 and SPA124 approvals within 5 business days of receipt of all required approvals.

208.05 BASIS OF PAYMENT

Failure to provide erosion and sediment controls that preclude discharges to adjacent properties and/or aquatic resources. implement BMPs identified in the SWPPP, update the SWPPP as required by the Construction General Permit, or conduct BMP inspections and submit inspection reports renders the BMPs unacceptable.

COMMENTS

1. What happens if we take more than 5 days to distribute these? “The Department will distribute COE 404 and SPA124 approvals within 5 business days of receipt of all required approvals.”

Response: As with other submittals, if the delay impacts the schedule as defined in Subsection 108.07.5, time will be added.

2. I recommend changing “preclude” to “prevent” in 208.05

Response: Agree

3. We suggest the title of this section be changed to “Storm Water Control” or “Erosion Control.” The last sentence in (C): “BMPs will be inspected during construction and as part of the final inspection to ensure they are adequate, maintained and functioned properly” is highly troubling to us, given the Department’s insistence on lump sum bids for erosion control and past statements that it is solely the contractor’s responsibility to adhere to terms of the stormwater permit. The proposed spec change says nothing about who will do the inspections and what their qualifications are. The DEQ, not MDT, issues the permit to the contractor, and consequently makes the determination as to compliance. The contractor is held accountable to terms of the permit, as required by law,

rendering the sentence redundant and overbearing. At the minimum, the sentence should be amended to state: "BMPs will be inspected by a qualified MDT SWPPP Administrator for proper installation."

Response: Section 208 addresses spill prevention and waste disposal requirements, as well as erosion and sediment control measures. As such, the Department does not believe it is appropriate to modify the title to this section. Additionally, federal aid requirements compel the Department to inspect erosion and sediment control measures and practices throughout construction to ensure they are fulfilling their intended use. MDT conducts these inspections in order to ensure contract requirements are being met, not to determine permit compliance. As such, SWPPP Administrator qualifications are inappropriate. The final draft was modified to address differences in inspections during and after construction.

4. In addition, based on verbal assurances made during the November Technical Committee meeting, we request that the spec be amended to clearly state that MDT will pay for additional BMPs stipulated by MDT Maintenance as a condition for transfer of the permit.

Response: Subsection 208.05.1 states that "The installation of additional BMPs requested by the Department at the final inspection will be added by change order and paid for in accordance with the Erosion Control Rate Schedule." As shown on part of the Final MPDES/NPDES Permit Walk-through form below, BMPs that need to be changed, replaced or added are paid for by the Department.

Existing BMPs that need to be repaired or corrected (Contractor responsibility)

- [Click here to enter text.](#)

BMPs that need to be removed (Contractor responsibility)

- [Click here to enter text.](#)

BMPs that need to be changed, replaced or added (paid by MDT)

- [Click here to enter text.](#)

FINAL EFFECTIVE APRIL 16, 2015

208.03.2 Water Pollution Control

E. Inspections.

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BMPs will be inspected during construction and during the final inspection to ensure they are installed, maintained, and functioning as required by the contract and permits. BMPs will be inspected as part of the final walk-through to ensure they are adequate, maintained, and functioning properly.

- F. **Erosion Control Plan.** MPDES permits are issued by the DEQ for discharges within the state of Montana not including Indian Countries. NPDES permits are issued by the EPA

for discharges inside the boundaries of Indian Countries. Some Tribal governments also have NPDES review authority and/or separate permitting authority. For projects requiring MPDES and/or NPDES General Storm Water Permit coverage, submit one NOI package and the associated fees for ground disturbance areas within the project limits to the appropriate permitting agency. Use Department furnished blank erosion control plans to complete the SWPPP as required by the General Permit. Provide a copy of the NOI package submitted and confirmation for receipt of a complete NOI package from the permitting agency to the Project Manager prior to conducting any ground disturbance activities.

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