

## PROPOSED DRAFT MAY 2015

### 208.03.2 Water Pollution Control

Contractor failure to provide erosion, sediment, and water pollution controls may cause the Department to provide the work and deduct those costs from monies due or to become due the Contractor, or otherwise billed to the Contractor. The Department may also stop the work or withhold any payments due until acceptable corrective action is taken.

**C. Construction General Permit.** 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. If the bid package contains a lump sum erosion control bid item, a storm water discharge permit authorization will be required. If not, a storm water discharge permit authorization may be required for the project depending on the Contractor's operations. Sum the disturbance area (as defined by the applicable regulatory agency) identified in the contract with the area of disturbance caused by contractor operations to determine if the permit acreage threshold is exceeded. Regardless of the area of disturbance, also consider whether a storm water discharge from construction activities has the potential to cause pollution of state waters. If either criterion is met, obtain MPDES and/or NPDES permit coverage.

- 1. MPDES.** Use the DEQ authorization to discharge under the MPDES General Storm Water Permit for this project. Separate Notice Of Intent (NOI) packages are required for areas within the right-of-way and areas outside of the right-of-way. A NOI package includes a Notice of Intent, with a topographic map, a Storm Water Pollution Prevention Plan (SWPPP), the erosion control plans, and supporting documentation.
  - a.** Submit one NOI package and the associated fees to DEQ for ground disturbance areas shown in the plans or within the right-of-way. Complete the SWPPP using DEQ's SWPPP Form. For ground disturbance areas shown in the plans and any other areas within the right-of-way where Contractor activities causing ground disturbance are planned, the Contractor is the sole permittee until construction is complete and the General Permit authorization is transferred to the Department or another entity. Do not begin construction activities until the required copy of the NOI package submitted to DEQ and confirmation of receipt of a complete NOI Package from DEQ is received by the Project Manager.
  - b.** Submit a separate NOI package and the associated fees to DEQ for ground disturbance outside of the right-of-way and not shown in the plans. Contractor furnished material sources, staging areas, plant sites, or any other Contractor caused ground disturbance outside of the right-of-way and not shown in the plans, are the Contractor's responsibility and must be submitted under a separate NOI package from the ground disturbance within the right-of-way. Be responsible for all temporary erosion, sediment, and pollution prevention controls for Contractor furnished material sources, staging areas, plant sites, or any other Contractor caused ground disturbance outside the right-of-way and not shown in the plans. The Contractor is the sole permittee until stabilization is complete and the general storm water permit authorization is terminated or transferred to

another entity. Provide a copy of the NOI Package submitted to DEQ and confirmation of receipt of a complete NOI Package from DEQ to the Project Manager prior to conducting any ground disturbing activities.

c. Complete and documents all inspections in accordance with the requirements of the General Permit. Use DEQ's Self Inspection Form included in Attachment D of the SWPPP Form. Provide a copy of all inspection reports to the Project Manager.

**2. NPDES.** The blank erosion control plans and SWPPP supplied by MDT do not include Contractor furnished material sources, staging areas, plant sites, or any other site that is not within the project limits. Permit these sites separately.

a. Complete the erosion control plans and "Contractor sections" of the MDT supplied SWPPP. Ensure the "Contractor sections" of the SWPPP do not conflict with the information MDT provided. Do not modify the SWPPP or MDT's responses. Return the completed signed SWPPP to the Department at the following address:

Environmental Services Bureau  
Attention: Field Services Engineer  
Montana Department of Transportation  
2701 Prospect Ave  
PO Box 201001  
Helena, MT 59620-1001

Within 7 business days of receiving the completed signed SWPPP, the Department will review the SWPPP. If the Contractor's portions of the SWPPP are not complete, the SWPPP will be returned to the Contractor for completion. If the Contractor's portion of the SWPPP is complete, MDT will sign and certify the SWPPP and send the executed SWPPP to the Project Manager. The Department's review of the Contractors' portion of the SWPPP is limited to the completeness of responses. The Contractor is responsible for the accuracy.

b. Notify tribes as specified in Section 9.5 of the CGP. Obtain any necessary tribal reviews and approvals as specified.

c. After the SWPPP has been signed and certified by both parties, submit the certified NOI to EPA at least 14 calendar days prior to commencing earth-disturbing activities and any applicable tribal authorities as specified in the General Storm Water Permit. Electronic NOI submittals to EPA may be completed through EPA's Electronic Notice of Intent (eNOI) Home Page at: <http://water.epa.gov/polwaste/npdes/stormwater/EPAs-Electronic-Construction-General-Permit-Notice-of-Intent-eNOI-Home-Page.cfm>.

d. If EPA or applicable tribes require revised or additional information, submit updated copies of this information to the Project Manager and Environmental Services Bureau within 5 business days of correspondence.

e. Submit to the Project Manager confirmation from EPA that coverage under the construction general permit is now active. Do not begin ground disturbing activities until confirmation from EPA is provided to the Project Manager and Environmental Services Bureau stating coverage under EPA's General Storm Water Permit is active for both the contractor and MDT.

f. Be responsible for all temporary erosion, sediment, and pollution prevention controls for Contractor furnished material sources, staging areas, plant sites, or any other Contractor caused ground disturbance outside the right-of-way and not shown in the plans.

g. Complete and document all inspections in accordance with the requirements of the General Storm Water Permit. Use the Department's form or another form that conforms to permit requirements. Provide a copy of all inspection reports to the Project Manager.

Comply with the conditions of the MPDES and/or NPDES General Storm Water Permit(s) and implement the SWPPP. Revise and/or update the SWPPP to reflect current conditions, pollution prevention measures, and installed BMPs in accordance with permit requirements. Submit all changes to the Project Manager.

Report potential noncompliance in accordance with applicable regulations, guidance, and permit conditions. Submit to the Project Manager within seven day sof sending or receiving all correspondence to or from regulatory agencies regarding potential noncompliance or violations.

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.

Upon acceptance of site conditions, measures, devices and all pertinent records, submit a signed copy of the permit Transfer Notification Form provided by the Department. 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. MDT will not be liable for the completeness or accuracy of Contractor records completed prior to the permit transfer. Upon receipt of the signed form, the Department will obtain signature of the new permit owner and submit to DEQ. Ensure permit conditions and responsibilities are met until confirmation of the transfer is received from DEQ.

If the Department concurs that final stabilization has been met during the final walk-through, the Contractor may submit a Notice of Termination form to DEQ. Pay the annual fee invoice due at the time of termination. Submit the annual fee invoice to the Project Manager for reimbursement.

**D. Inspections.** Complete and document all inspections in accordance with the requirements of the General Permit for Storm Water Discharges Associated with Construction Activity.

When no permit is required, conduct inspections to evaluate performance and maintenance needs of water pollution controls in accordance with the following schedule:

- At least once per month; and
- Within 24 hours of a storm event of 0.25 inches (6.5 mm) or greater.

Use the Department's most current SWPPP Inspection Report, when no permit is required. For MPDES permits, use DEQ's Self-Inspection Form included in Attachment D of the SWPPP Form. For NPDES permits, use the Department's form or another form

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that conforms to permit requirements. Provide one copy of the signed inspection report to the Project Manager.

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Failure to conduct inspections and submit inspection reports renders the BMPs unacceptable.

Immediately report potential noncompliance in accordance with applicable regulations, guidance, and permit conditions. The Contractor is wholly responsible for all violations including but not limited to those that result during the times when the required monitoring is not conducted, inspection report forms are not submitted, BMPs are ineffective, required maintenance or monitoring of BMPs is not performed.

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.

**E. Erosion Control Plan.** Use Department furnished blank erosion control plans to complete the SWPPP as required by the General Permit.

Deleted: 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.

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### 208.03.3 Aquatic Resource Protection

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

Deleted: ¶ Be responsible for erosion, sediment, and water pollution control for Contractor furnished material sources, staging areas, plant sites, or any other Contractor caused ground disturbance outside the project limits. Submit a separate NOI package and the associated fees to the permitting agency for ground disturbance areas outside the project limits. Contractor furnished material sources, staging areas, plant sites, or any other Contractor caused ground disturbance outside the project limits, are the Contractor's responsibility and must be submitted under a separate NOI package from the ground disturbance within the project limits. Although these areas are permitted separately, the areas of disturbance are considered cumulative with the project disturbance area when determining the requirement for permit coverage.¶  
Comply with the conditions of the permit. Revise and/or update the SWPPP to reflect current conditions, pollution prevention measures, and installed BMPs in accordance with permit requirements. Submit all changes to the Project Manager.¶ Do not transfer or terminate the General Storm Water Permit coverage until the BMPs are inspected and approved 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 replaced by another type of BMP as a condition of permit transfer.¶  
When submitting the 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.

Plan temporary construction facilities to:

1. Minimize disturbance to regulated aquatic resources;
2. Not restrict or impede fish passage in streams;
3. Not restrict water flow anticipated during use; and
4. Remove temporary facilities as soon as practicable once they are no longer needed.

Complete application forms in accordance with the permitting agency requirements. Plans included as part of the application forms must at a minimum contain the following information:

1. Details depicting regulated aquatic resource features before installation of temporary construction facilities and after removal;
2. Location of facilities relative to permanent work and regulated aquatic resources;
3. Plan and elevation views of facilities showing regulated aquatic resources;
4. Anticipated high water elevation during use of the facilities;
5. Waterway openings and clearances;
6. Type of bridge bent, pier, and superstructure construction (wood, steel, concrete, etc.);
7. Quantity and type of material proposed for use;
8. Written description for installing, operating, maintaining, and removing facilities including proposed construction techniques, containment plans, equipment, stockpile and storage areas, temporary erosion and sediment control measures, site re-vegetation/restoration and weed control plans;

9. Estimated time the temporary facilities are to be in place; and
10. A plan for and written description of existing structure removal, if applicable, as described in Subsection 208.03.4(C).

Shape and contour areas disturbed by the installation or removal of temporary construction facilities to match adjacent undisturbed ground upon removal of the facilities.

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 SPA 124 approvals within 5 business days of receipt of all required approvals.

#### 208.04 METHOD OF MEASUREMENT

If a temporary erosion control bid item is included, temporary erosion and sediment control devices for use within the project limits are measured as lump sum and will not be measured separately. If no temporary erosion control bid item is included, payment for necessary erosion control will be determined by the erosion control rate schedule.

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Only erosion and sediment controls within the project right-of-way and installed in accordance with the contract or manufacturer specifications will be paid for. BMPs and associated permit costs for Contractor furnished material sources, staging areas, plant sites, or any other site not within project limits are not measured for payment.

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Permit fees and monitoring costs associated with obtaining and maintaining permit coverage for ground disturbance areas both within and outside the project limits are considered incidental to the project and are not measured separately for payment.

Normal maintenance of BMPs, in accordance with permit requirements and the contract, are considered incidental to the work and no additional measurements will be made. Maintenance includes:

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- Removal of BMPs no longer required;
- Removal of sediment and debris in front of and around BMPs;
- Repair and replacement of incorrectly installed or inadequate devices;
- Mobilization and travel for inspections and maintenance; and
- Maintenance until the permit is terminated or transferred.

Replacement of satisfactory BMPs requested by the Department at the final inspection will be measured in accordance with the Erosion Control Rate Schedule.

#### 208.05 BASIS OF PAYMENT

No additional payment will be made for the fees or monitoring and maintenance costs associated with the General Permit for storm water discharges associated with construction activity. Include these costs in the temporary erosion control bid item. Include fees associated with transferring the permit in the Lump Sum Temporary Erosion Control bid item.

NO COMMENTS RECEIVED

NOT FINALIZED