

Proposed 2017 Construction General Permit (CGP) – Proposed Fact Sheet

Contents

- I. Background..... 5**
- II. Summary of C&D Rule Requirements 9**
- III. Summary of Proposed Changes to the CGP 11**
- IV. Geographic Coverage of the Permit 12**
- V. Categories of Facilities That Can Be Covered Under This Proposed Permit 12**
- VI. Frequently Asked Questions..... 13**
- VII. Proposed Permit Requirements 28**
 - Part 1: How to Obtain Coverage Under the CGP 28**
 - Part 1.1: Proposed Eligibility Conditions28
 - Part 1.2: Types of Discharges Authorized.....31
 - Part 1.3: Prohibited Discharges.....34
 - Part 1.4: Submitting Your NOI.....34
 - Part 1.4.1: How to Submit Your NOI.....35
 - Part 1.4.2: Deadlines for Submitting Your NOI and Your Official Date of Permit Coverage35
 - Part 1.4.3: Modifying your NOI.....37
 - Part 1.4.4: Your Official End Date of Permit Coverage38
 - Part 1.5: Requirement to Post a Notice of Your Permit Coverage39
 - Part 2: Technology-Based Effluent Limitations 40**
 - Part 2.1: General Stormwater Control Design, Installation, and Maintenance Requirements..... 40
 - Part 2.1.1: Design Factors40
 - Part 2.1.2: Good Engineering Practices41
 - Part 2.1.3: Complete Installation Prior to Commencement of Construction.....41
 - Part 2.1.4: Maintain Controls in Effective Operating Condition42
 - Part 2.2: Erosion and Sediment Control Requirements42
 - Part 2.2.1: Natural Buffers43
 - Part 2.2.2: Direct Stormwater to Vegetated Areas44
 - Part 2.2.3: Install Perimeter Controls44
 - Part 2.2.4: Minimize Sediment Track-Out.....45
 - Part 2.2.5: Manage Stockpiles or Land-Clearing Debris Piles.....47
 - Part 2.2.6: Minimize Dust47
 - Part 2.2.7: Minimize Steep Slope Disturbances48
 - Part 2.2.8: Preserve Native Topsoil48

Part 2.2.9: Minimize Soil Compaction	48
Part 2.2.10: Protect Storm Drain Inlets	49
Part 2.2.11: Minimize Erosion of Stormwater Conveyances.....	50
Part 2.2.12: Sediment Basins or Similar Impoundment	50
Part 2.2.13: Use of Treatment Chemicals	51
Part 2.2.14: Site Stabilization.....	52
Part 2.3: Pollution Prevention Requirements	54
Part 2.3.1: Equipment and Vehicle Fueling and Maintenance Requirements.....	54
Part 2.3.2: Equipment and Vehicle Washing Requirements.....	55
Part 2.3.3: Storage, Handling, and Disposal Requirements	55
Part 2.3.4: Applicator and Container Washing Requirements	60
Part 2.3.6: Emergency Spill Notification.....	61
Part 2.4: Construction Dewatering Requirements	62
Part 3: Water Quality-Based Effluent Limitations.....	63
Part 3.1: General Effluent Limitation to Meet Applicable Water Quality Standards	63
Part 3.2: Discharge Limitations for Sites Discharging to Sensitive Waters	64
Part 4: Site Inspection Requirements.....	67
Part 4.1: Person(s) Responsible for Inspecting Site	67
Part 4.2: Frequency of Inspections	67
Part 4.3: Increase in Inspection Frequency for Sites Discharging to Sensitive Waters	69
Part 4.4: Reductions in Inspection Frequency	69
Part 4.4.1: For Stabilized Areas	69
Part 4.4.2: For Arid, Semi-Arid, or Drought-Stricken Areas	70
Part 4.4.3: For Frozen Conditions.....	71
Part 4.5: Areas That Will Be Required To Be Inspected	71
Part 4.6: Requirements for Inspections.....	72
Part 4.7: Inspection Report	73
Part 4.7.1: Requirement to Complete Inspection Report	73
Part 4.7.2: Signature Requirements.....	73
Part 4.7.3: Recordkeeping Requirements	74
Part 4.7.4: Record Retention.....	74
Part 4.8: Inspections by EPA	74
Part 5: Corrective Actions	75
Part 5.1: Conditions Triggering Corrective Action	75
Part 5.2: Corrective Action Deadlines.....	75
Part 5.3: Corrective Action That Will be Required by EPA	76

Part 6: Staff Training Requirements	78
Part 7: Stormwater Pollution Prevention Plan (SWPPP).....	79
Part 7.1: General Requirements	79
Part 7.2: SWPPP Contents	80
Part 7.2.1: All Site Operators	80
Part 7.2.2: Stormwater Team	80
Part 7.2.3: Nature of Construction Activities.....	80
Part 7.2.4: Site Map.....	82
Part 7.2.6: Description of Stormwater Controls	85
Part 7.2.7: Procedures for Inspection, Maintenance, Corrective Action	90
Part 7.2.8: Staff Training	90
Part 7.2.9: Documentation of Compliance with Other Requirements.....	90
Part 7.2.10: SWPPP Certification.....	92
Part 7.2.11: Post-Authorization Additions to SWPPP.....	92
Part 7.3: On-Site Availability of the SWPPP	92
Part 7.4: Required SWPPP Modifications.....	93
Part 7.4.1: List of Conditions Requiring SWPPP Modification	93
Part 7.4.2: SWPPP Modification Records	94
Part 7.4.3: Certification Requirements	94
Part 7.4.4: Required Notice to Other Operators	95
Part 8: How to Terminate Coverage	95
Part 8.1: Minimum Information Required in NOT	95
Part 8.2: Conditions for Terminating Permit Coverage	96
Part 8.3: How to Submit Your NOT.....	96
Part 8.4: Deadline for Submitting NOTs	97
Part 8.5: Effective Date of Termination of Coverage	97
Part 9: Permit Conditions Applicable to Specific States, Indian Country Lands, or Territories	97
VIII. Appendices	98
Appendix A: Definitions and Acronyms	98
Appendix B: Permit Areas Eligible for Coverage and EPA Regional Addresses	102
Appendix C: Small Construction Waivers and Instructions.....	102
Appendix D: Eligibility Procedures Relating to Threatened and Endangered Species Protection	102
Appendix E: Historic Property Screening Process	103
Appendix F: List of Tier 3, Tier 2, and Tier 2.5 Waters	104
Appendix G: Buffer Requirements.....	104
Appendix H: 2-Year, 24-Hour Storm Frequencies	104

Appendix I: Standard Permit Conditions 104
Appendix J: NOI Form and Instructions 105
Appendix K: NOT Form and Instructions 106
Appendix L: Suggest Format for Request for Chemical Treatment 106

I. Background

Congress passed the Federal Water Pollution Control Act of 1972 (Public Law 92-500, October 18, 1972) (hereinafter the "Clean Water Act" or "CWA"), 33 U.S.C. 1251 et seq., with the stated objectives to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Section 101(a), 33 U.S.C. 1251(a). To achieve this goal, the CWA provides that "the discharge of any pollutant by any person shall be unlawful" except in compliance with other provisions of the statute. CWA section 301(a). 33 U.S.C. 1311. The CWA defines "discharge of a pollutant" broadly to include "any addition of any pollutant to navigable waters from any point source." CWA section 502(12). 33 U.S.C. 1362(12). EPA is authorized under CWA section 402(a) to issue a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of any pollutant from a point source. These NPDES permits are issued by EPA regional offices or NPDES-authorized state or tribal agencies. Since 1972, EPA and the authorized states have issued NPDES permits to thousands of dischargers, including industrial (e.g., manufacturing, energy and mining facilities) and municipal (e.g., sewage treatment plants) facilities. As required under Title III of the CWA, EPA has promulgated Effluent Limitations Guidelines (ELGs) and New Source Performance Standards (NSPS) for many industrial point source categories, and these requirements are incorporated into NPDES permits. The Water Quality Act (WQA) of 1987 (Public Law 100-4, February 4, 1987) amended the CWA, adding CWA section 402(p), requiring implementation of a comprehensive program for addressing stormwater discharges. 33 U.S.C. 1342(p).

1. Clean Water Act Stormwater Program

Prior to the Water Quality Act of 1987, there were numerous questions regarding the appropriate means of regulating stormwater discharges within the NPDES program due to the serious water quality impacts of stormwater discharges, the variable nature of stormwater, and the large number of stormwater point sources. EPA undertook multiple regulatory actions in an attempt to address these unique discharges. Congress, with the addition of section 402(p), established a structured and phased approach to address stormwater discharges and fundamentally altered the way stormwater is addressed under the CWA as compared with other point source discharges of pollutants. Section 402(p)(1) created a temporary moratorium on NPDES permits for point source stormwater discharges, except for those listed in section 402(p)(2), including dischargers already required to have a permit and discharges associated with industrial activity. In 1990, pursuant to section 402(p)(4), EPA promulgated the Phase I stormwater regulations for those stormwater discharges listed in 402(p)(2). See 55 FR 47990 (November 16, 1990). The Phase I regulations required NPDES permit coverage for discharges associated with industrial activity and from "large" and "medium" municipal separate storm sewer systems (MS4s). CWA section 402(p)(2). As part of that rulemaking, EPA interpreted stormwater "discharges associated with industrial activity" to include stormwater discharges associated with "construction activity" as defined at 40 CFR 122.26(b)(14)(x). See 55 FR 48033-34. As described in the Phase I regulations, dischargers must apply for and obtain authorization to discharge (or "permit coverage"), and permit coverage is required for discharges associated with construction activity, including clearing, grading, and excavation, if the construction activity:

- will result in the disturbance of five acres or greater; or
- will result in the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or greater.

See 40 CFR 122.26(b)(14)(x) and (c)(1).

Section 402(p)(6) establishes a process for EPA to evaluate potential sources of stormwater discharges not included in the Phase I regulations and to designate those discharges

for regulation in order to protect water quality. Section 402(p)(6) instructs EPA to “issue regulations...which designate stormwater discharges, other than those discharges described in [section 402(p)(2)], to be regulated to protect water quality and shall establish a comprehensive program to regulate such designated sources.” In 1999, pursuant to the broad discretion granted to the Agency under section 402(p)(6), EPA promulgated the Phase II stormwater regulations that designated discharges associated with “small” construction activity and “small” MS4s. 64 FR 68722 (December 8, 1999). NPDES permit coverage is required for discharges associated with “small” construction activity, including clearing, grading, and excavation, if the construction activity:

- will result in land disturbance of equal to or greater than one acre and less than five acres; or
- will result in disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres.

See 40 CFR 122.26(b)(15).

EPA continues to have the authority to use section 402(p)(6) to designate additional stormwater discharges for regulation under the CWA in order to protect water quality. See 40 CFR 122.26(a)(9)(i)(C)-(D); see also *Env't Defense Ctr. v. EPA*, 344 F.3d 832, 873-76 (9th Cir. 2003).

2. NPDES Permits for Stormwater Discharges Associated With Construction Activity

The NPDES regulations provide two options for obtaining authorization to discharge or “permit coverage”: general permits and individual permits. A brief description of these types of permits as they apply to construction and development (C&D) sites follows.

- a. General NPDES Permits.** The vast majority of discharges associated with construction activity are covered under NPDES general permits. EPA, states, and tribes use general permits to cover a group of similar dischargers under one permit. See 40 CFR 122.28. General permits simplify the process for dischargers to obtain authorization to discharge, provide permit requirements for any eligible discharger that files a Notice of Intent (NOI) to be covered, and reduce the administrative workload for NPDES permitting authorities. General permits, including the fact sheet describing the rationale for permit conditions, are issued by NPDES permitting authorities after an opportunity for public review of the proposed general permit. Typically, to obtain authorization to discharge under a construction general permit, a discharger (any owners and operators of the construction site; typically, a developer, builder, and/or contractor) submits to the permitting authority an NOI to be covered under the general permit. An NOI is not a permit or a permit application (see *Texas Independent Producers and Royalty Owners Ass'n v. EPA*, 410 F.3d 964, 977-78 (7th Cir. 2005)), but by submitting the NOI, the discharger asserts and acknowledges that it is eligible for coverage under the general permit and that it agrees to the conditions in the published general permit. Discharges associated with the construction activity are authorized consistent with the terms and conditions established in the general permit.

After reviewing information regarding permit eligibility contained in the NOI, EPA, states and tribes may notify a construction site operator that it must, instead, apply for an individual permit if the permitting authority determines that the operator does not meet the eligibility conditions for coverage. Examples of situations that might trigger such a determination are when the proposed discharges will not meet applicable water quality standards, or when it may adversely affect a Federally listed threatened or endangered species. In some cases, the permitting authority may allow the operator to proceed

with coverage under the general permit provided additional control measures designed to address the specific issue at hand are adopted.

- b. EPA Construction General Permit (CGP).** Since 1992, EPA has issued a series of Construction General Permits (CGPs) that cover areas where EPA is the NPDES permitting authority. At present, EPA is the permitting authority in four states (Idaho, Massachusetts, New Hampshire, and New Mexico), the District of Columbia, Puerto Rico, all other U.S. territories with the exception of the Virgin Islands, construction projects undertaken by Federal Operators in four states (Colorado, Delaware, Vermont, and Washington), most Indian Country lands and a couple of other specifically designated activities in specific states (e.g., oil and gas activities in Texas and Oklahoma). See Appendix B for a complete list of areas covered by EPA's CGP. The 2012 CGP became effective on February 16, 2012 (see 77 FR 12286), and will expire at midnight on February 16, 2017. The 2017 CGP, once finalized, will replace the 2012 CGP.
- c. Individual NPDES Permits.** A permitting authority may require any construction site to apply for an individual permit rather than using the general permit. Likewise, any discharger may apply to be covered under an individual permit rather than seek coverage under an otherwise applicable general permit. See 40 CFR 122.28(b)(3). Unlike a general permit, an individual permit is intended to be issued to one permittee, or a few co-permittees. Individual permits for stormwater discharges from construction sites are rarely used, but when they are, they are most often used for very large projects or projects located in sensitive watersheds. EPA estimates that less than one half of one percent (< 0.5%) of all construction sites in the country are covered under individual permits.

3. Technology-Based Effluent Limitations Guidelines and Standards in NPDES Permits

Effluent limitations guidelines (ELGs) and new source performance standards (NSPSs) are technology-based effluent limitations required by CWA sections 301 and 306 for categories of point source discharges. These effluent limitations, which can be either numeric or non-numeric, along with water quality-based effluent limitations, if necessary, are incorporated into NPDES permits. ELGs and NSPSs are based on the degree of control that can be achieved using various levels of pollutant control technology as defined in Title III of the CWA and summarized as follows:

- a. Best Practicable Control Technology Currently Available (BPT).** The CWA requires EPA to specify BPT effluent limitations for conventional, toxic, and nonconventional pollutants. In doing so, EPA must determine what level of control is technologically available and economically practicable. CWA section 301(b)(1)(A). In specifying BPT, EPA must look at a number of factors. EPA considers the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application. The Agency also considers the age of the equipment and facilities, the process employed and any required process changes, engineering aspects of the application of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the Administrator deems appropriate. CWA section 304(b)(1)(B).
- b. Best Available Technology Economically Achievable (BAT).** BAT effluent limitations are applicable to toxic (priority) and nonconventional pollutants. EPA has identified 65 pollutants and classes of pollutants as toxic pollutants, of which 126 specific pollutants have been designated priority toxic pollutants. See 40 CFR 401.15 and 40 CFR part 423, Appendix A. In general, BAT represents the best available performance of facilities through application of the best control measures and practices economically achievable including treatment techniques, process and procedure innovations,

operating methods, and other alternatives within the point source category. CWA section 304(b)(2)(A). The factors EPA considers in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the processes employed, the engineering aspects of the control technology, potential process changes, non-water quality environmental impacts (including energy requirements), and such factors as the Administrator deems appropriate. CWA section 304(b)(2)(B).

- c. Best Conventional Pollutant Control Technology (BCT).** The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with BCT technology for discharges from existing point sources. BCT is not an additional limitation, but replaces Best Available Technology (BAT) for control of conventional pollutants. In addition to other factors specified in CWA section 304(b)(4)(B), the Act requires that EPA establish BCT limitations after consideration of a two-part "cost-reasonableness" test. EPA explained its methodology for the development of BCT limitations in July 1986. 51 FR 24974 (July 9, 1986). Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD₅), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. See 40 CFR 401.16. The Administrator designated oil and grease as an additional conventional pollutant. 44 FR 44501 (July 30, 1979). CWA section 304(b)(4)(B).
- d. Best Available Demonstrated Control Technology (BADT) for New Source Performance Standards (NSPS).** NSPS apply to all pollutants and reflect effluent reductions that are achievable based on the BADT. New sources, as defined in CWA section 306, have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the greatest degree of effluent reduction attainable through the application of the best available demonstrated control technology. In establishing NSPS, CWA section 306 directs EPA to take into consideration similar factors that EPA considers when establishing BAT, namely the cost of achieving the effluent reduction and any non-water quality, environmental impacts and energy requirements. CWA section 306(1)(B).

NPDES permits issued for construction stormwater discharges are required under Section 402(a)(1) of the CWA 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 performance standard is promulgated in accordance with these sections, NPDES permits must incorporate limits based on such limitations and standards. See 40 CFR 122.44(a)(1). Prior to the promulgation of national effluent limitation guidelines and standards, permitting authorities establish technology-based effluent limitations on a best professional judgment basis. See CWA section 402(a)(1)(B); 125.3(a)(2)(ii)(B).

4. EPA's Construction and Development Effluent Limitations Guidelines and New Source Performance Standards

On December 1, 2009, EPA promulgated effluent limitations guidelines (ELGs) and new source performance standards (NSPS) to control the discharge of pollutants from construction sites. See 74 Fed. Reg. 62996, and 40 CFR 450.21. These requirements, known as the "Construction and Development Rule" or "C&D rule," became effective on February 1, 2010. Following the promulgation of the C&D rule in 2009, several parties filed petitions for review of the final rule, identifying potential deficiencies with the dataset that the EPA used to support its decision to adopt a numeric turbidity limitation as well as other issues. On March 6, 2014, pursuant to a settlement agreement to resolve the litigation, EPA finalized amendments to the C&D rule that withdrew the numeric turbidity limitation and monitoring requirements, and also

provided clarification regarding several other requirements of the rule. See 79 Fed. Reg. 12661 and 80 Fed. Reg. 25235. Because the 2017 CGP is being proposed after the effective date of the 2014 C&D rule amendments, EPA must incorporate these requirements into this proposed permit. Therefore, the proposed 2017 CGP includes revisions that reflect the 2014 C&D rule amendments, as well as maintains the existing changes that were made to the 2012 CGP to incorporate the other portions of C&D rule requirements not affected by the 2014 amendments. A summary of the C&D rule requirements is included in Section II below.

II. Summary of C&D Rule Requirements

The C&D rule requirements include non-numeric effluent limitations that apply to all permitted discharges from construction sites (40 CFR 450.21). The effluent limitations are structured to require construction operators to first prevent the discharge of sediment and other pollutants through the use of effective planning and erosion control measures; and second, to control discharges that do occur through the use of effective sediment control measures. Permittees are also required to implement a range of pollution prevention measures to limit or prevent discharges of pollutants including those from dry weather discharges.

The non-numeric effluent limitations are designed to prevent the mobilization and stormwater discharge of sediment and sediment-bound pollutants, such as metals and nutrients, and to prevent or minimize exposure of stormwater to construction materials, debris and other sources of pollutants on construction sites. In addition, these non-numeric effluent limitations limit the generation of dissolved pollutants, such as nutrients, organics, pesticides, herbicides and metals that may be present naturally in the soil on construction sites, such as arsenic or selenium, or may have been contributed by previous activities on the site such as agriculture or industrial activity. These pollutants, once mobilized by rainfall and stormwater, can detach from the soil particles and become dissolved pollutants. Once dissolved, these pollutants would not be removed by down-slope sediment controls. Source control through minimization of soil erosion is therefore the most effective way of controlling the discharge of these pollutants.

The C&D rule's non-numeric effluent limits are as follows (see 40 CFR 450.21).

1. Erosion and Sediment Controls

Permittees must design, install and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants. At a minimum, such controls will be required to be designed, installed and maintained to:

- a.** Control stormwater volume and velocity to minimize soil erosion in order to minimize pollutant discharges;
- b.** Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points;
- c.** Minimize the amount of soil exposed during construction activity;
- d.** Minimize the disturbance of steep slopes;
- e.** Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls will be required to address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater discharge, and soil characteristics, including the range of soil particle sizes expected to be present on the site;
- f.** Provide and maintain natural buffers around waters of the United States, direct stormwater to vegetated areas and maximize stormwater infiltration to reduce pollutant discharges, unless infeasible;

- g.** Minimize soil compaction. Minimizing soil compaction is not required where the intended function of a specific area of the site dictates that it be compacted; and
- h.** Unless infeasible, preserve topsoil. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed.

2. Soil Stabilization Requirements

Permittees will be required to, at a minimum, initiate soil stabilization measures immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures will be required to be employed as specified by the permitting authority. Stabilization will be required to be completed within a period of time determined by the permitting authority. In limited circumstances, stabilization may not be required if the intended function of a specific area of the site necessitates that it remain disturbed.

3. Dewatering Requirements

Permittees will be required to minimize the discharge of pollutants from dewatering trenches and excavations. Discharges are prohibited unless managed by appropriate controls.

4. Pollution Prevention Measures

Permittees will be required to design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures will be required to be designed, installed, implemented and maintained to:

- a.** Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters will be required to be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
- b.** Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater. Minimization of exposure is not required in cases where the exposure to precipitation and to stormwater will not result in a discharge of pollutants, or where exposure of a specific material or product poses little risk of stormwater contamination (such as final products and materials intended for outdoor use); and
- c.** Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

5. Prohibited Discharges

The following discharges from C&D sites are prohibited:

- a.** Wastewater from washout of concrete, unless managed by an appropriate control;
- b.** Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;
- c.** Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
- d.** Soaps or solvents used in vehicle and equipment washing.

6. Surface Outlets

When discharging from basins and impoundments, permittees must utilize outlet structures that withdraw water from the surface, unless infeasible.

This fact sheet discusses in the sections below how EPA has incorporated these requirements into its proposed 2017 CGP. The discussion will include a summary of each provision and the Agency's rationale for articulating the provision in this way. EPA notes that a number of the 2012 CGP's provisions are retained in the proposed 2017 CGP.

III. Summary of Proposed Changes to the CGP

The proposed permit includes several minor new or modified requirements. The following summarizes the proposed changes to the CGP.

1. Streamlining of Proposed Permit

EPA proposes to streamline and simplify language throughout the CGP to present requirements in a generally more clear and readable manner. This structure should enhance the permittees' understanding of and compliance with the permit's requirements. For example, EPA moved language that was not necessary in the proposed permit into the relevant appendix or to the fact sheet. Although the proposed permit has been streamlined from prior permits, many of the requirements remain unchanged.

2. Types of Discharges Authorized

EPA authorizes several non-stormwater discharges associated with construction activity under the 2012 CGP in Part 1.2.2. EPA proposes to require that authorized non-stormwater discharges of external building washdown waters will not be authorized to contain hazardous substances, such as paint or caulk containing polychlorinated biphenyl (PCBs). Non-stormwater discharges will be required to comply with any applicable effluent limitation requirements in Part 2 of the CGP. It is EPA's expectation that very few sites will be conducting external building washdown activities under the CGP, and that of the few permittees that will conduct these activities, most of the resulting discharges will not contain hazardous substances. EPA also expects that many permittees needing to conduct external building washdown activities can do so without discharging into a waterbody, e.g. by directing washwater flow into a pervious or vegetated area for infiltration. EPA is requesting comment on this proposed requirement.

3. Effluent Limitations

EPA proposes to make minor revisions to the technology-based effluent limits in the proposed permit to implement the 2014 amendments to the C&D rule, as discussed in section II. The 2012 CGP already incorporated the original C&D rule requirements and the proposed permit makes the necessary revisions to the language based on the rule amendments but does not add any new requirements. These revisions include clarifying the applicability of requirements to control erosion caused by discharges, providing additional details on areas where buffers are required, and clarifying requirements for soil stabilization, preservation of topsoil and pollution prevention measures.

4. Public Notice of Permit Coverage

Construction operators will be required to post a sign or other public notice of permit coverage at a safe, publicly accessible location in close proximity to the construction site, as in the 2012 CGP. EPA proposes that this notice will also be required to include information informing the public on how to contact EPA if stormwater pollution is observed in the discharge. EPA is proposing to require this condition to improve compliance with the permit.

5. Stockpiles and Land Clearing Debris Piles

EPA proposes to change the requirement for temporary stabilization for stockpiles or land clearing debris piles from “where practicable” to requiring cover or appropriate temporary stabilization for all inactive piles that will be unused for 14 or more days, consistent with the temporary stabilization deadlines in Part 2.2.14 of the proposed permit. EPA is proposing this change to ensure pollutants are minimized from these piles, but is clarifying that the requirement only applies where these piles are not actively being used.

6. Construction and Domestic Waste

EPA proposes to require waste container lids to be kept closed when not in use, or, for waste containers that do not have lids and could leak, EPA proposes to require cover or a similarly effective means to be provided to minimize the discharge of pollutants. EPA proposes this change to make the requirements for construction and domestic waste consistent with the cover requirements for most other types of materials and wastes in the 2012 CGP.

7. Pollution Prevention Requirements for Demolition Activities

Operators will be required to implement pollution prevention controls to minimize the discharge of pollutants in stormwater and to prevent the discharge of pollutants from spilled or leaked materials from construction activities. In order to ensure that discharges meet water quality standards, EPA proposes a requirement to implement controls to minimize the exposure of polychlorinated biphenyl- (PCB) containing building materials to precipitation and stormwater. This proposed provision would only apply to structures with at least 10,000 square feet of floor space built or renovated before January 1, 1980. EPA proposes to require information about the demolition location and associated pollutants to be documented in the SWPPP.

IV. Geographic Coverage of the Permit

This proposed permit will provide coverage for stormwater discharges associated with construction activities that occur in areas not covered by an approved State NPDES program. The areas of geographic coverage of this proposed permit are listed in Appendix B, and include the states of Idaho, Massachusetts, New Hampshire, and New Mexico as well as all Indian Country lands, and construction projects undertaken by Federal Operators in selected states. Permit coverage will also be provided in the District of Columbia, Puerto Rico, and all other U.S. territories with the exception of the Virgin Islands.

V. Categories of Facilities That Can Be Covered Under This Proposed Permit

The proposed permit will provide coverage for stormwater discharges associated with construction activities located in one of the areas identified in Appendix B, which disturb one or more acres of land, or will disturb less than one acre, but are part of a common plan of development or sale that will ultimately disturb one acre or more. See 40 CFR 122.26(b)(14)(x) and (15), and Part 1.1 of the proposed permit. The table below summarizes which construction activities are covered by this proposed permit:

Categories of facilities that can be covered under this proposed permit

Examples of Affected Entities	North American Industry Classification System (NAICS) Code
Construction site operators disturbing one or more acres of land, or less than one acre but part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more, and performing the following activities:	
Construction of Buildings	236
Heavy and Civil Engineering Construction	237

Note that this list of NAICS codes covers those industry segments most likely to make use of this proposed permit, but any construction operator that meets the eligibility requirements laid out for coverage is eligible. Eligibility for coverage by the proposed permit is available to "new projects," "existing projects," "new operators of new projects or existing projects," and operators of "emergency-related projects," as discussed in Part 1.2 and defined in Appendix A.

VI. Frequently Asked Questions

In this section, EPA provides answers to some of the more common questions on the construction stormwater permitting program. It is intended to help permittees understand the proposed permit. Questions and answers are organized into the following categories:

1. About EPA's NPDES Construction Stormwater Permitting Program
2. Activities that may Obtain NPDES Coverage (e.g. under the Proposed 2017 EPA CGP)
3. Obtaining CGP Authorization and Terminating Coverage
4. Construction and Development Effluent Limitations Guideline and New Source Performance Standards
5. Erosion and Sediment Control Requirements in the Proposed 2017 EPA CGP

1. About EPA's NPDES Construction Stormwater Permitting Program

- a. **What is the National Pollutant Discharge Elimination System (NPDES) program?** The NPDES program is a federal permitting program under the authority of the CWA that establishes controls on point source discharges of pollutants to waters of the United States. Point sources are defined as discernible, confined, and discrete conveyances including but not limited to any pipe, ditch, channel, or conduit from which pollutants are or may be discharged.
- b. **What is the EPA Construction General Permit (CGP)?** The EPA CGP is an NPDES permit issued under the authority of the CWA and associated regulations for those areas where EPA is the NPDES permitting authority. The CGP authorizes the discharge of stormwater (and certain non-stormwater discharges) from construction sites that disturb one acre or more of land, and from smaller sites that are part of a larger, common plan of development. This permit requires operators of such construction sites to implement stormwater controls and develop a Stormwater Pollution Prevention Plan (SWPPP) to minimize the amount of sediment and other pollutants associated with construction sites from being discharged in stormwater runoff.

c. Why is it necessary to authorize or permit stormwater discharges from construction sites?

As stormwater flows over a construction site, it can pick up sediment, debris, and chemicals, and transport them to receiving waterbodies. Stormwater discharges containing sediment and turbidity can cause an array of physical, chemical, and biological impacts on receiving waters. In addition to sediment and turbidity, a number of other pollutants (e.g., metals, organic compounds and nutrients) associated with construction sites may become absorbed or adsorbed onto mineral or organic particles found in fine sediment and end up being discharged to nearby waters. The sediment, turbidity, and other pollutants entrained in these stormwater discharges contribute to aquatic ecosystem degradation, increased drinking water treatment costs, and impairment of the recreational use and aesthetic value of impacted waters.

Sediment can also accumulate in rivers, lakes, and reservoirs, leading to the need for dredging or other mitigation to prevent reduced water storage or navigation capacity. The requirements in the proposed CGP for construction site stormwater discharges are necessary to minimize erosion from construction sites and to minimize the discharge of sediment and other construction site pollutants in stormwater.

d. Do state-issued permits have to be the same as the EPA-issued permits for stormwater discharges from construction activities? No. As long as they still meet their obligations under the CWA, nothing in the Act precludes a state from adopting or enforcing requirements that may be more appropriate to address discharges in their state or are more stringent or extensive than those required under NPDES regulations. Although states may issue permit requirements that differ from EPA's, the Agency recognizes that many state-issued permits follow EPA's permit and content.

Whether EPA, a state or a tribe issues the permit, the CWA and EPA regulations require NPDES permits to include requirements that implement the technology-based effluent limitations for the construction and development industry at 40 CFR part 450. In addition, where, notwithstanding, these technology-based effluent limitations the discharge has the reasonable potential to cause or contribute to an exceedance of water quality standards, permits must contain water quality-based effluent limitations as necessary to meet those standards.

2. Activities that may Obtain Coverage Under the 2017 EPA CGP

a. What types of construction activities will be required to obtain NPDES permit coverage for their stormwater discharges?

Generally speaking, any "construction activity" that will disturb, or that is part of a common plan of development or sale that will disturb, one or more acres of land and discharges stormwater to waters of the U.S. will be required to obtain NPDES permit coverage. Note that there are situations in which construction activities can be waived or excused from the requirement to obtain NPDES permit coverage (see related Q&A below). "Construction activities", as defined in Appendix A of the proposed 2017 EPA CGP, includes earth-disturbing activities, such as the clearing, grading, and excavation of land, and other construction-related activities (e.g., stockpiling of fill materials; placement of raw materials at the site) that could lead to the generation of pollutants. Also authorized under the CGP are discharges of stormwater from "construction support activities", which include construction-related activities that specifically support the construction activity and involve earth disturbance or pollutant-generating activities of its own (e.g., activities associated with concrete or asphalt batch plants, equipment staging yards, materials storage areas, excavated material disposal areas, borrow areas).

The definition for "Construction activities" does not refer to activities such as interior remodeling, completion of interiors of structures, etc. "Construction activities" also does

not include routine earth disturbing activities that are part of the normal day-to-day operation of a completed facility (e.g., daily cover for landfills, maintenance of gravel roads or parking areas, landscape maintenance) nor activities under a state or federal reclamation program to return an abandoned facility property to an agricultural or open land use (as opposed to demolition of something in order to build something new).

- b. Are there situations where a permit will not be needed?** If all of the stormwater from the construction activity is captured on-site and allowed to evaporate, soak into the ground on-site, or is used for irrigation (i.e., not discharged to a water of the U.S.), you do not need a permit. Under the CWA, it is illegal to have a point source discharge of pollutants to a water of the U.S. that is not authorized by the CWA. If you believe there is a potential for a discharge, EPA recommends that you apply for permit coverage before any potential discharge occurs. The controls that you use to keep the stormwater on your site so that it does not reach a water of the U.S. will be required to be effective under any size storm. You may also have an obligation to the state/tribe concerning discharges to ground water or impoundment of runoff (e.g., water rights).
- c. What if earth disturbance is a normal part of the post-construction use of the site?** The earth disturbing activity has to be part of a project to build, demolish, or replace a structure (e.g., building, road, pad, pipeline, transmission line) to trigger the need for permit coverage. Earth disturbance that is a normal part of the long-term use or maintenance of the property is not "active construction" and does not trigger the need for NPDES coverage under 40 CFR 122.26(b)(14)(x) or (15)(i). For example, re-grading a dirt road or cleaning out a roadside drainage ditch to maintain its "as built" state is road maintenance and not construction. Restoring the original well pad to work over an existing oil or gas well is operation of a well and not construction. Re-grading and re-graveling a gravel parking lot or equipment pad is site maintenance and not construction. Repaving is routine maintenance unless underlying and/or surrounding soil is cleared, graded, or excavated as part of the repaving operation. Where clearing, grading, or excavating (i.e., down to bare soils) takes place, permit coverage is required if more than one acre is disturbed. Reworking planters that are part of the landscaping at a building is landscape maintenance and not construction. Applying daily cover at a landfill is simply part of operating a landfill and not construction.
- d. If a construction activity does not adversely impact water quality, will coverage under the CGP still be necessary?** Waivers are possible only for discharges of stormwater associated with small construction activity (i.e., construction disturbing less than 5 acres). These waivers are authorized by federal regulation at 40 CFR 122.26(b)(15)(i)(A) & (B) and are explained in Appendix C of the proposed permit. Waivers are not available for any construction activity disturbing 5 acres or greater, or less than 5 acres if part of a common plan of development or sale that will ultimately disturb 5 or more acres (or if designated for permit coverage by EPA).
- e. My project will disturb less than one acre, but it might be part of a larger common plan of development or sale. How can I tell and what will I have to do?** In many cases, a common plan of development or sale consists of many small construction projects. For example, an original common plan of development for a residential subdivision might lay out the streets, house lots, and areas for parks, schools and commercial development that the developer plans to build or sell to others for development. All these areas would remain part of the common plan of development or sale until the intended construction occurs.

If your smaller project is part of a larger common plan of development or sale that collectively will disturb one or more acres (e.g., you are building on 6 half-acre residential lots in a 10-acre development or are putting in a fast food restaurant on a 3/4 acre pad

that is part of a 20 acre retail center) then you need permit coverage. The "common plan" of development or sale is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot. You will be required to still meet the definition of operator in order to be required to get permit coverage, regardless of the acreage you personally disturb. As a subcontractor, it is unlikely you would need a permit.

However, where only a small portion of the original common plan of development remains undeveloped and there has been a period of time where there is no ongoing construction activities (i.e., all areas are either undisturbed or have been finally stabilized), you can re-evaluate your individual project based on the acreage remaining from the original common plan. If less than five but more than one acre remains to build out the original common plan, then a permit might still be required, but you can treat your project as part of a "small" construction activity and might be eligible for the waivers available for small construction activities (e.g., one of six lots totaling 2 acres in a 50 acre subdivision can be treated as part of a 2 acre rather than 50-acre common plan). If less than one acre remains of the original common plan, your individual project could be treated as part of a less than one acre development and no permit would be required.

- f. When can you consider future construction on a property to be part of a separate plan of development or sale?** After the initial common plan construction activity is completed for a particular parcel, any subsequent development or redevelopment of that parcel would be regarded as a new common plan of development. For example, after a house is built and occupied, any future construction on that lot (e.g., reconstructing after fire, adding a pool or parking area for a boat), would stand alone as a new common plan for purposes of calculating acreage disturbed to determine if a permit is required. This would also apply to similar situations at an industrial facility, such as adding new buildings, a pipeline, new wastewater treatment facility. that was not part of the original plan.
- g. What if the extent of the common plan of development or sale is contingent on future activities?** EPA recognizes that there are situations where you will not know up front exactly how many acres will be disturbed, or whether some activities will even occur. If you are not sure exactly how many acres will be disturbed, you should make the best estimate possible and might wish to overestimate to ensure you do not run into the situation where you should have a permit, but do not have one. For example, if you originally estimated less than 5 acres would actually be disturbed and took advantage of the "R" Factor waiver, but you actually disturbed 5.5 acres, you would lose your waiver and may have to go through the permit process mid-stream. This could result in delays in obtaining permit authorization and costs associated with contract changes to implement permit requirements - in addition to being liable for any unpermitted discharges.

If you have a long-range master plan of development where some portions of the master plan are a conceptual rather than a specific plan of future development and the future construction activities would, if they occur at all, happen over an extended time period, you might consider the "conceptual" phases of development to be separate common plans provided the periods of construction for the physically interconnected phases will not overlap. For example, a university or an airport may have a long-range development concept for their property, with future development based largely on future needs and availability of funding. A school district could buy more land than needed for a high school with an indefinite plan to add more classrooms and a sports facility someday.

h. What if the common plan of development or sale actually consists of non-contiguous separate projects? There are several situations where discrete projects that could conceivably be considered part of a larger common plan can actually be treated as separate projects for the purposes of permitting:

- i. A public body (e.g., a municipality, state, tribe, or federal agency) need not consider all their construction projects within their entire jurisdiction to be part of an overall common plan. For example, construction of roads or buildings in different parts of a state, city, military base, university campus, etc. can be considered as separate common plans. Only the interconnected parts of single project would be considered to be a common plan (e.g., a building and its associated parking lot and driveways, airport runway and associated taxiways, a building complex).
 - ii. Where discrete construction projects within a larger common plan of development or sale are located at least 1/4 mile apart and the area between the projects is not being disturbed, each individual project can be treated as a separate plan of development or sale provided any interconnecting road, pipeline or utility project that is part of the same common plan is not concurrently being disturbed. For example, if a utility company was constructing new trunk lines off an existing transmission line to serve separate residential subdivisions located more than 1/4 mile apart, the two trunk line projects could be considered to be separate projects.
- i. Is NPDES permit coverage required for oil and gas construction?** Oil and gas construction activities are exempt from the requirement to obtain NPDES permit coverage unless the facility meets one of the conditions in 40 CFR 122.26(c)(1)(iii) noted below. The following regulations applicable to oil and gas construction activities are currently in effect:
- i. 40 CFR § 122.26(a)(2) The Director may not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.
 - ii. 40 CFR § 122.26(c)(1)(iii) The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with paragraph (c)(1)(i) of this section, unless the facility:
 - Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at any time since November 16, 1987; or
 - Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or
 - Contributes to a violation of a water quality standard.

Also in effect is the provision added to the CWA in accordance with Section 323 of the Energy Policy Act of 2005 defining the term “oil and gas exploration, production, processing, or treatment operations or transmission facilities” to mean “all field activities or operations associated with exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activity.” See 33 U.S.C. § 1362(24).

The exemption at 122.26(c)(1)(iii) does not apply to CWA 404 permits. The exemption only applies to stormwater discharges from oil and gas exploration, production, processing or treatment, or transmission facilities (e.g., facilities/activities directly related to extraction or basic oil/gas processing such as fractionation plants, and not to such operations as liquified natural gas (LNG) re-gasification and ethanol plants). Additionally, if any portion of the construction activity associated with one of these facilities no longer qualifies for the oil and gas exemption, the operator will be required to obtain construction stormwater permit coverage for all subsequent discharges of pollutants to a water of the U.S. from the site. If the operator determines that all of the construction activities associated with the facility are in fact exempt, the owner/operator is not required to obtain NPDES construction stormwater permit coverage (although EPA encourages development and implementation of a SWPPP). However, if the project has had a stormwater discharge of a reportable quantity or a stormwater discharge that contributes to a violation of a water quality standard (e.g., sediment discharges violating a water quality criterion or causing loss of fishing resources), the operator is in violation of the CWA prohibition on the discharge of a pollutant by a point source to a water of the U.S. without NPDES permit coverage for any subsequent discharges.

For more information about the potential need for permitting of oil and gas construction activities, see the Oil and Gas Stormwater Permitting webpage at <https://www.epa.gov/npdes/oil-and-gas-stormwater-permitting>.

3. Obtaining CGP Authorization and Terminating Coverage

- a. Who is eligible for coverage under EPA's CGP?** Operators in an area where EPA is the NPDES permitting authority may be eligible for coverage under EPA's 2017 CGP. The CGP applies to operators of construction activities that will disturb one or more acres of land, or that will disturb less than one acre but are part of a common plan of development or sale that will ultimately disturb one acre or more. Operators requiring permit coverage include any party associated with a construction activity that meets either of the following two criteria:
- i. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
 - ii. The party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the permit).

Where there are multiple operators associated with the same project, all operators are required to obtain permit coverage.

To be authorized under the CGP, the operator will be required to meet the eligibility requirements specified in Part 1.1 of the proposed permit. The operator will be required to also submit an NOI, which provides certification that the eligibility requirements have been met and that permit requirements will be complied with.

- b. What is a Notice of Intent (NOI)?** EPA's CGP relies on the submission of an electronic document called a NOI to gain coverage under its permit. An NOI for a general permit is notice to the NPDES permitting authority (EPA in this instance) of the operator's intent to be covered under the general permit. An NOI typically contains basic information about the site and the proposed discharge. By signing and submitting the NOI, the operator is certifying that the information submitted is true, accurate, and complete, that the operator meets the eligibility requirements, and that, if and when covered, the operator will comply with the permit conditions and effluent limitations. A fraudulent or erroneous NOI invalidates permit coverage. An incomplete NOI delays permit coverage until such time as the NOI has been completed and the applicable waiting period has passed (i.e., 14 days for the EPA CGP).
- c. What type of information will be required to be submitted in an NOI?** Operators will be required to provide the following in their NOI for coverage under the 2017 EPA CGP:
- i. Approval to use a paper NOI form if granted a waiver from electronic reporting by an EPA Regional Office;
 - ii. Permit information;
 - iii. Operator information;
 - iv. Project/site information;
 - v. Discharge information;
 - vi. Chemical treatment information, if applicable;
 - vii. SWPPP information;
 - viii. Endangered species protection information;
 - ix. Historic preservation information;
 - x. Certification of NOI; and
 - xi. Contact information for NOI preparer.

A paper copy of the NOI is included as Appendix J of the proposed 2017 CGP.

- d. Who is responsible for submitting the NOI for EPA CGP coverage?** Any operator of an eligible site that is required to obtain permit coverage is responsible for submitting an NOI to be covered under the permit. The party that meets the first part of the definition of "operator" (the party that has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications) in most cases will be the owner of the site. The party that meets the second part of the definition of "operator" (the party that has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions) in most cases will be the general contractor of the project. Where there are multiple operators associated with the same project, all parties meeting the definition of "operator" will be required to submit an NOI to be covered under the EPA CGP if such coverage is sought.

You are probably not an operator, and therefore are not responsible for submitting an NOI to be covered under the EPA CGP, if:

- i. You are a subcontractor hired by, and under the supervision of, the owner or a general contractor (i.e., if the general contractor directs your activities on-site, you probably are not an operator); or

- ii. Your activities on-site result in an earth disturbance and you are not legally a subcontractor, but there is another entity with permit coverage for the project and they have a SWPPP that specifically identifies someone other than you (or your subcontractor) as the party having operational control to address the impacts your activities might have on stormwater quality (i.e., another operator has assumed responsibility for the impacts of your construction activities). EPA anticipates that this will be the case for many, if not most, utility service line installations.
- e. **If I want to pursue EPA CGP coverage, how many NOIs will I have to submit?** Each operator for a site will be required to submit one NOI to cover the areas of the site that are under his/her control. For example, if you are building homes on multiple lots as part of a larger residential subdivision development, you can submit one NOI to cover all of your lots, even if they are on opposite sides of the development.
- f. **My site's disturbances will occur in an area covered by EPA's CGP and in an area covered under a state-issued construction stormwater permit. Do I need coverage under both the EPA-issued CGP and the state-issued permit?** Operators of sites disturbing one or more acres of land where only a portion of the project occurs in an area where EPA is the NPDES permitting authority (and there will be a discharge of pollutants through stormwater to waters of the U.S. within the area where EPA is the permitting authority) need coverage under an EPA-issued construction stormwater permit (e.g., the CGP), and likely would need coverage from the NPDES permitting authority(ies) that have jurisdiction over the other portions of the project (i.e., from a state or tribal permitting authority) if there will be a discharge of pollutants through stormwater to waters of the U.S. in the other area. For example, if a project has contiguous disturbances or disturbances that are part of a common plan of development or sale that occur both in the State of New Mexico and the State of Arizona, and the disturbances will total an acre or more of land and will result in the discharge of pollutants through stormwater in both states, the operator of the project will need coverage under an EPA-issued stormwater permit (e.g., the CGP) for the disturbances in New Mexico and, if required by the State of Arizona, an Arizona-issued stormwater permit (even if the portion of the project in EPA's jurisdiction is less than an acre).
- g. **Where are NOIs sent?** The final 2017 CGP will require the use EPA's NPDES eReporting Tool (NeT) to electronically prepare and submit NOIs for coverage under the 2017 CGP, unless you receive a waiver from your EPA Regional Office. Waivers from electronic reporting may be granted based on one of the following conditions:
 - i. If your operational headquarters is physically located in a geographic area (i.e., ZIP code or census tract) that is identified as under-served for broadband Internet access in the most recent report from the Federal Communications Commission; or
 - ii. If you have limitations regarding available computer access or computer capability.

If you wish to obtain a waiver from submitting a report electronically, you will be required to submit a request to the EPA Regional Office. In that request, you will be required to document which exemption you meet, provide evidence supporting any claims, and a copy of your completed NOI form. A waiver may only be considered granted once you receive written confirmation from EPA. If you are given approval by the EPA Regional Office to use a paper NOI, and you elect to use it, you will be required to complete the form in Appendix J of the proposed permit. You will be required to also look in Part 9 of the permit to determine if copies of the NOI form will be required to be sent to a state or Indian tribe.

h. What will be the deadlines for submitting an NOI for my construction activities and when will be my official start date for permit coverage after submitting my NOI?

Type of Operator	NOI Submittal Deadline ¹	Permit Authorization Date ²
Operator of a new site (i.e., a site where construction activities commence on or after February 16, 2017)	At least 14 calendar days prior to commencing construction activities.	14 calendar days after EPA notifies you that it has received a complete NOI, unless EPA notifies you that your authorization is delayed or denied.
Operator of an existing site (i.e., a site where construction activities commenced prior to February 16, 2017)	No later than [90 calendar days after permit effective date].	
New operator of a new or existing site (i.e., an operator that through transfer of ownership and/or operation replaces the operator of an already permitted construction site)	At least 14 calendar days before the date the transfer to the new operator will take place.	
Operator of an “emergency-related project” (i.e., a project initiated in response to a public emergency (e.g., natural disaster, disruption in essential public services), for which the related work requires immediate authorization to avoid imminent endangerment to human health or the environment, or to reestablish essential public services)	No later than 30 calendar days after commencing construction activities.	You are considered provisionally covered under the terms and conditions of this permit immediately, and fully covered 14 calendar days after EPA notifies you that it has received a complete NOI, unless EPA notifies you that your authorization is delayed or denied.

i. Who should certify/sign the NOI? The certifier of the NOI for the EPA CGP (i.e., the person who will be required to sign the NOI form before it is submitted to EPA) will be required to, in accordance with 40 CFR 122.22, be one of the following:

- i. For a corporation: A responsible corporate officer, which means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other

¹ If you missed the deadline to submit your NOI, any and all discharges from your construction activities will continue to be unauthorized under the CWA until they are covered by this or a different NPDES permit. EPA may take enforcement action for any unpermitted discharges that occur between the commencement of construction activities and discharge authorization.

² Discharges are not authorized if your NOI is incomplete or inaccurate or if you are not eligible for permit coverage.

comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

- ii. For a partnership or sole proprietorship: A general partner or the proprietor, respectively.
- iii. For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator of EPA).

Note that the certifier cannot use an authorized representative to certify the EPA CGP NOI form.

j. Who is authorized to sign the SWPPP, inspection reports, corrective action reports, and other compliance documents? SWPPPs, inspection reports, corrective action reports, and other permit documents can be signed by the person authorized to sign/certify the NOI (see Q&A above), or by a “duly authorized representative” of the person authorized to sign/certify the NOI, pursuant to 40 CFR 122.22(b) and Appendix I, Section I.11.2 of the proposed 2017 EPA CGP. A duly authorized representative may only sign these documents if:

- i. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and
- ii. The signed and dated written authorization is included in the SWPPP. A copy will be required to be submitted to EPA, if requested, pursuant to 40 CFR 122.22(c) and Appendix I, Section I.11.2.3 of the proposed 2017 EPA CGP.

The duly authorized representative cannot be a subcontractor or third party. The subcontractor or third party may develop the SWPPP, and may conduct inspections and corrective actions and complete reports, but the actual signature will be required to be made by the NOI signer/certifier or a duly authorized representative of a person authorized to sign/certify the NOI.

k. The information I submitted on my NOI has changed. Do I need to modify my NOI? If so, how do I modify it? To modify an NOI, you may submit a “Change NOI” form using EPA’s NPDES eReporting Tool (NeT). Waivers from electronic reporting may be granted as specified in Part 1.4.1. If you are given approval by the EPA Regional Office to submit a paper NOI modification, you may indicate any NOI changes on the same NOI form in Appendix J in the proposed permit. When there is a change to the site’s operator, a new NOI will be required to be submitted by the new operator, and the previous operator will be required to submit a Notice of Termination (NOT) form as specified in Part 8.3.

l. If a general contractor has permit coverage as part of a larger common plan of development or sale, when the project is completed does an NOT need to be filed out by the general contractor? Yes, once all of the construction activities included in the

original NOI are eligible for termination of coverage under Part 8 of the EPA CGP, then the operator will need to submit the NOT in accordance with the permit. However, if portions of the common plan project that are described by the operator in the original NOI are eligible for termination, but other portions are still undergoing active construction or are yet to be started, then the operator will be required to wait until all permitted portions of the project are completed before submitting the NOT.

- m. What are my options for meeting the “final stabilization” criteria?** In the proposed 2017 EPA CGP, you will be able to terminate permit coverage as soon final stabilization has been achieved on all areas not covered by permanent structures for which you had control over during construction, provided you have met the other requirements for terminating coverage. For the purpose of this discussion, “permanent structure” is used not only in the more traditional sense of “buildings,” but to refer also to other things built on the ground whose intended purpose would require it to remain in a non-vegetated condition after construction has ended (e.g., parking lots, roads, gravel equipment pads, sidewalks, runways). The proposed permit specifies that final stabilization be achieved through vegetative or non-vegetative measures.

Final vegetative stabilization means that vegetation has been established, or for arid or semi-arid areas, will be established, that provides a uniform (e.g., evenly distributed, without large bare areas) perennial cover with a density of 70 percent of the natural background vegetative cover. Perennial vegetation could include grasses, ground covers, trees, shrubs, etc. Vegetative final stabilization requires getting to at least 70 percent of the density of coverage that was provided by vegetation prior to commencing earth-disturbing activities. If prior to construction the natural cover on your site is 50 percent of the site, you would be required to return the site to 35 percent cover (70 percent of 50 percent). For arid, semi-arid, or drought-stricken areas, where the environmental threat is lower, final stabilization is considered to have been met if the area you have seeded or planted will within three years provide established vegetation that covers 70 percent or more of the density of vegetation prior to commencing earth-disturbing activities. In addition to seeding or planting the area to be vegetatively stabilized in arid and semi-arid areas, to the extent necessary to prevent erosion on the seeded or planted area, you will be required to apply non-vegetative erosion controls that provide cover for at least three years without active maintenance by you. Non-vegetative erosion controls in this context include what are known as “temporary degradable rolled erosion control products,” a.k.a., “erosion control blankets” (ECBs).

Final non-vegetative stabilization means that non-vegetative stabilization methods have been implemented to provide effective cover for exposed portions of the site. Examples include, but are not limited to, rip-rap, gravel, gabions, and geotextiles.

- n. What if the operator(s) changes before the project is completed?** If operational control changes, the old operator submits an NOT and the new operator submits an NOI before taking over operational control. In many instances, operational control changes, but only for a portion of the site. In these instances, the new operator will be required to:
- i. submit an NOI because their site is part of a larger common plan; and
 - ii. develop their own SWPPP or adopt the SWPPP of the previous owner if it's still applicable (revisions are likely to be necessary to update the explanations of the operators and BMPs - BMPs that were designed for site grading and utility installation for the overall project (e.g., perimeter controls) may not be adequate for the single "big box" or home site.)

4. Construction and Development Effluent Limitations Guideline and New Source Performance Standards

- a. How does EPA's Construction and Development Effluent Limitations Guideline and New Source Performance Standards (C&D rule) relate to the EPA CGP?** EPA finalized the Effluent Limitations Guidelines and New Source Performance Standards for the construction and development industry (i.e., the C&D rule) on December 1, 2009. The C&D rule became effective on February 1, 2010, after which all NPDES construction stormwater permits are required to incorporate the C&D rule requirements. EPA's 2012 CGP includes language that implements the C&D rule requirements. In March 2014, EPA amended the C&D rule. All new or re-issued NPDES construction stormwater permits must incorporate the C&D rule requirements, as amended.
- b. What does the C&D rule require?** The requirements in the C&D rule include a suite of non-numeric effluent limitations that apply to all permitted construction sites. (See 40 CFR 450.21.) The non-numeric effluent limits include requirements for:
- i. Erosion and Sediment Controls;
 - ii. Soil Stabilization;
 - iii. Dewatering;
 - iv. Pollution Prevention Measures;
 - v. Prohibited Discharges; and
 - vi. Surface Outlets.

5. Erosion and Sediment Control Requirements in the Proposed 2017 EPA CGP

- a. Do I have flexibility in preparing the SWPPP and selecting stormwater controls for my site?** SWPPP requirements were designed to allow maximum flexibility to develop the needed stormwater controls based on the specifics of the site. Some of the factors you might consider include: more stringent local development requirements and/or building codes; precipitation patterns for the area at the time the project will be underway; soil types; slopes; layout of structures for the site; sensitivity of nearby waterbodies; safety concerns of the stormwater controls (e.g., potential hazards of water in stormwater retention ponds to the safety of children; the potential of drawing birds to retention ponds and the hazards they pose to aircraft); and coordination with other site operators.

The approach and controls used for minimizing pollutants in stormwater discharges from small construction sites may vary from those used for large sites since their characteristics can differ in many ways. Operators of small sites may have more limited access to qualified design personnel and technical information. Sites may also have less space for installing and maintaining certain controls. A number of structural controls (mulching, use of inlet protection, or silt fence) and non-structural BMPs (minimizing disturbance, good housekeeping) have been shown to be efficient, cost effective, and versatile for small construction site operators to implement. As is the case with large construction sites, erosion and sediment control at small construction sites is best accomplished with proper planning, installation, and maintenance of controls.

For eligible small residential lot projects, EPA encourages operators to use the Small Residential Lot SWPPP template, which provides a streamlined template for developing the required SWPPP. See EPA's [small residential lot template](#) and [small lot brochure](#) for more information.

- b. Will every permittee have to have his or her own separate SWPPP or is a joint plan allowed?** The only requirement is that there be at least one SWPPP for a site that

incorporates the required elements for all operators, but there can be separate plans if individual permittees so desire. EPA encourages permittees to explore possible cost savings by having a joint SWPPP for several operators. For example, the prime developer could assume the inspection responsibilities for the entire site, while each homebuilder shares in the installation and maintenance of sediment traps serving common areas.

For sites with multiple operators, EPA reminds operators though that while they may divide responsibility for compliance with the terms of this proposed permit, each SWPPP, or a group SWPPP, will be required to document which operator will have responsibility for each requirement of the permit. The sharing of responsibilities for complying with the terms of the permit will not waive an individual operator's liability should another operator fail to implement any measures that are necessary for that individual operator to comply with the permit. In addition, where responsibilities are shared, all operators will be required to ensure, either directly or through coordination with other operators, that their activities do not render any other operators' controls and/or any shared controls ineffective. Thus, each individual operator will be liable for compliance with all applicable requirements of the permit, including the installation and maintenance of any shared controls, regardless of how permit responsibilities will be allocated among multiple operators. Also, if any individual operator develops a separate SWPPP, that operator will remain responsible for compliance with all effluent limits, terms, and conditions of the final permit that apply to discharges of stormwater from the operator's site, including requirements that apply to any shared controls relied upon by the operator.

- c. What are the buffer requirements in the EPA CGP and how do I determine my requirements?** The C&D rule includes a non-numeric effluent limitation to "provide and maintain natural buffers, unless infeasible". However, it does not specify what size buffer is necessary to meet the requirement, but rather leaves this and other related determinations up to the NPDES permitting authority. In issuing the requirements for the 2012 EPA CGP, EPA added specificity to the C&D rule buffer requirement to ensure consistent implementation where EPA is the permitting authority.

To provide maximum flexibility for permittees, EPA developed buffer compliance alternatives in the CGP. One compliance alternative allows permittees to provide a minimum undisturbed natural buffer width of at least 50 feet between the site's disturbances and any surface waters occurring within 50 feet of the construction site. Alternatively, the permittee can choose to establish a smaller buffer or no buffer, if establishing a 50-foot or any buffer is infeasible, as long as other controls are implemented that ensure that the equivalent level of sediment load reduction is achieved as a 50-foot natural buffer. EPA also established more flexible compliance alternatives for linear construction sites and for small residential lots. To learn more about EPA's buffer requirements and how to comply with them, see Appendix G in the proposed permit.

- d. If there is no existing or limited natural vegetation in the 50-foot buffer area between the surface water and my site's disturbances, do I need to comply with the buffer requirements?** If the 50-foot area between your site's disturbances and the surface water (i.e., the buffer area) is completely occupied by preexisting development disturbances (e.g., impervious cover), EPA would consider there to be no preexisting natural buffer area on your site and would consider it infeasible to provide and maintain a natural buffer, and you would be exempt from the buffer requirements in the proposed EPA CGP. For example, the buffer requirements would not apply if a waterfront promenade completely occupied the 50-foot buffer area.

For any buffer areas that are only partially occupied by preexisting development disturbances, the buffer requirements in the proposed EPA CGP will apply. The buffer requirements also apply to areas in the 50-foot buffer where natural vegetation is limited

or nonexistent (e.g., rocky or sandy areas) and that are otherwise not occupied by preexisting development disturbances.

For any natural buffer areas on your site with limited vegetation or where there are preexisting development disturbances partially occupying the area, the proposed permit does not require that the natural buffer area in existence be enhanced (e.g., through establishment of new vegetation). Compliance can be achieved simply by retaining and protecting from construction activities the natural buffer that existed prior to the commencement of construction. Or, if you will be conducting new disturbances within the 50-foot buffer area, to comply with the proposed permit you would only be required to compensate for the loss in buffer sediment removal function resulting from your project's new disturbances; you do not have to compensate for the preexisting development disturbances. EPA provides an example for how this calculation could be done in Attachment 3 of Appendix G in the proposed permit (see Example 2).

e. Is there any flexibility in applying the buffer requirements for small residential lots? Yes.

EPA recognizes that operators on small residential lots (i.e., lots being developed for residential purposes that will disturb less than one acre of land, but are part of a larger residential project that will ultimately disturb greater than or equal to one acre) that are constructing within the 50-foot buffer area may, due to limited technical resources, have difficulty determining the necessary supplemental erosion and sediment controls to provide the equivalent sediment removal function of a 50-foot buffer. Because of this, and due to the lower risk of sediment discharge from these sites, EPA provides in the proposed permit two streamlined compliance options to assist operators of small residential lots in meeting the proposed permit's buffer requirements.

The first compliance option identifies the minimum specific controls that an operator of a small residential lot would need to implement based on the buffer width to be retained. For example, Small Residential Lot Compliance Alternative 1 specifies that, if you retain a buffer width of 30 feet or less, you would need to provide the following: (1) a double row of perimeter controls between the disturbed portion of your site and the surface water spaced a minimum of five (5) feet apart, and (2) completion of stabilization within seven (7) calendar days of the temporary or permanent cessation of earth-disturbing activities.

The second compliance alternative specifies the controls the operator of the small lot would need to implement based on both the buffer width to be retained and the site's relative risk of sediment discharge. Operators on small lots will be required to first determine their site's sediment risk level (i.e., High, Moderate, or Low) based on their location, soil type, and slope using the tables provided in Appendix G in the proposed permit. Based on the site's risk level and the width of buffer to be retained, Small Residential Lot Compliance Alternative 2 then specifies the controls to be implemented. For example, if your site is of "Moderate" sediment discharge risk and you are able to retain a 35-foot buffer, you would be required to provide a double row of perimeter controls between the disturbed portion of your site and the surface water spaced a minimum of five (5) feet apart. See Appendix G in the proposed permit for details about these compliance alternatives.

f. Is there any flexibility in applying the buffer requirements to linear construction sites? Yes.

EPA recognizes that dispersal of stormwater discharges through adjacent vegetation is a common practice on many linear project sites, and therefore operators of linear construction sites will in many cases find it feasible to treat stormwater discharges through vegetated buffers. However, EPA recognizes that operators of linear construction sites may have difficulty in fully complying with each of the compliance alternatives due to site constraints (i.e., operators of linear construction sites may not be able to provide the full 50-foot naturally vegetated buffer width). For this reason, EPA has provided a more

flexible alternative to the buffer compliance alternatives in the CGP. The proposed permit requires operators of linear construction sites to retain as much natural buffer as feasible, and/or to the extent feasible provide supplemental erosion and sediment controls in the buffer area. For example, if a linear construction site has only ten feet of right-of-way between the disturbed area and a stream, permit compliance can be achieved by providing a ten-foot natural buffer, or by providing a narrower buffer (e.g., five feet) and additional erosion and sediment controls (e.g., a fiber roll barrier in addition to the perimeter control), or by providing exclusively erosion and sediment controls. Note that operators will be required to document in their SWPPP their rationale as to why it is infeasible to comply with the buffer requirements in Part 7.2.6.a.v, and describe any buffer width retained and/or supplemental erosion and sediment controls installed.

- g. Why will I have to obtain specific authorization to use cationic treatment chemicals under EPA's CGP?** Yes. A common theme among the comments received for the proposed 2012 CGP requirement regarding treatment chemicals was that EPA should take extreme precaution when authorizing the use of cationic chemicals, especially in light of data suggesting that they are acutely toxic to aquatic species and the fact that the use of such chemicals on construction sites is very different from their use in highly engineered systems for water or wastewater treatment. In response to the comments received on the use of these chemicals, EPA conducted additional research regarding the relative toxicity of cationic chemicals for aquatic species. EPA confirmed that cationic chemicals have been found to be acutely toxic to some species. EPA's research is encapsulated in a memorandum entitled "Literature Survey of Polymer Toxicity for Construction General Permit (CGP) Work Group" (Office of Research & Development, November 2011), which is available in the docket for the final 2012 CGP.

In addition to the public comments and the Agency's aquatic toxicity research, EPA considered approaches that state permitting programs have taken to address cationic treatment chemicals. EPA found that where cationic chemicals are specifically addressed, the use of these chemicals is heavily conditioned. These considerations, in addition to EPA's research, led EPA to the conclusion that the use of cationic treatment chemicals at construction sites is best managed if its proposed use is subject to a greater degree of individualized review. For that reason, EPA has provided for site-specific authorization if a site intends to use cationic treatment chemicals during construction. In authorizing the use of such chemicals, EPA may identify additional stormwater control measures that are needed in order to ensure that discharges do not cause or contribute to an exceedance of water quality standards.

The CGP authorizes the use of anionic polymers, flocculants, or other treatment chemicals at sites provided operators using such measures comply with the requirements in Part 2.2.13 of the proposed permit. Operators that plan to use cationic treatment chemicals are only eligible for coverage under the CGP if site-specific EPA authorization is provided; otherwise, an individual permit is required in order to use such chemicals associated with a discharge of pollutants to waters of the United States.

- h. What are the requirements for impaired and high quality waters in the EPA's CGP?** The proposed CGP includes requirements to protect impaired waters that receive construction site stormwater discharges. Sites that discharge to sediment- or nutrient-impaired waters will be required to comply with more rapid site stabilization requirements and increased site inspection requirements. Sites that discharge to high quality waters (i.e., Tier 2, 2.5, or 3 waters) will be required to also comply with the requirements for more rapid site stabilization and increased site inspections.
- i. With regard to the requirement to conduct an inspection within 24 hours of the occurrence of a storm event of 0.25 inches or greater, if a project's normal business hours are Monday**

through Friday and a storm produces greater than 0.25 inches of rain on a Saturday, would an inspection be required on Monday? Or, would an inspection be required on Sunday (i.e., a non-work day)? Under the proposed CGP, inspections are only required during a project's normal working hours. In addition, the proposed permit explains that "within 24 hours of the occurrence of a storm event" means that an inspection is required within 24 hours once a storm event has produced 0.25 inches of rain, even if the storm event is still continuing. With respect to when an inspection would be required for permittees conducting inspections after a 0.25 inch storm event if the rain volume threshold is reached on a non-working day, it was EPA's intention that the inspection be conducted on the next work day. For example, if the storm event that produces 0.25 inches of rain occurs on a Saturday, the inspection would be required on Monday, the next work day.

VII. Proposed Permit Requirements

This section outlines below the purpose of each provision, followed by the proposed permit requirements (in text box), followed by any additional explanation of each provision.

Part 1: How to Obtain Coverage Under the CGP

Part 1 of the proposed CGP details the provisions that will be required to be met to obtain coverage under the permit. Although this section has been reorganized from prior permits, many of the requirements for coverage and the process to be followed for seeking coverage remain unchanged.

Part 1.1: Proposed Eligibility Conditions

The requirements in Part 1.1 describe all the conditions that would be required to be met for coverage under the CGP, as follows. Listing these eligibility conditions ensures that operators have verified that their particular construction project, and discharges from it, are eligible for coverage under this permit.

Part 1.1 (1.1.1 - 1.1.9)	Proposed Permit Requirements
1.1.1	You are an operator of the construction project for which discharges will be covered under this permit;
1.1.2	The project will disturb one or more acres, or will disturb less than one acre but is part of a common plan of development or sale that will ultimately disturb one or more acres, or the project's discharges have been designated by EPA as needing a permit under § 122.26(a)(1)(v) or § 122.26(b)(15)(ii).
1.1.3	The construction project is located in an area where EPA is the permitting authority. For a list of such areas, see Appendix B.
1.1.4	Discharges from the project are not: <ul style="list-style-type: none"> <li data-bbox="321 1560 1421 1644">a. Already covered by a different NPDES stormwater permit for the same discharge. Note that this does not include sites currently covered under the 2012 CGP; or <li data-bbox="321 1665 1421 1833">b. In the process of having coverage under another NPDES stormwater permit denied, terminated, or revoked. Note that this does not include the following: (1) sites currently covered under the 2012 CGP, which will be seeking coverage under this permit, and (2) sites that will be covered under this permit that are transferring coverage to a different operator.

[Note that notwithstanding a project being ineligible for coverage under this permit because it falls under the description of (a) or (b) above, EPA may waive the applicable restriction after specific review if it determines that coverage under this permit is indeed appropriate.]

- 1.1.5** Discharges from the site are not likely to adversely affect any species that are federally listed as endangered or threatened under the Endangered Species Act (ESA) and will not result in the adverse modification or destruction of habitat that is federally designated as "critical habitat" under the ESA. To demonstrate this, one of the criteria listed in Appendix D will be required to be met, following the procedures set forth in that appendix;
- 1.1.6** The operator has completed the screening process in Appendix E with respect to the protection of historic properties and places;
- 1.1.7** Any specific requirements respecting eligibility as imposed by the applicable state, tribe, or territory through CWA section 401 certification and listed in Part 9 of this permit have been met;
- 1.1.8** For operators of a "new source" (as defined in Appendix A)
 - a. The operator would not be eligible under this proposed permit for discharges that EPA, prior to authorization under this proposed permit, determines will cause, have the reasonable potential to cause, or contribute to an excursion above any applicable water quality standard. Where such a determination is made prior to authorization, EPA may notify the permittee that an individual permit application is necessary in accordance with Part 1.2.2. However, EPA may authorize coverage under this proposed permit after the permittee has included appropriate controls and implementation procedures designed to bring the discharge into compliance with water quality standards. In the absence of information demonstrating otherwise, EPA expects that compliance with the stormwater control requirements of this proposed permit, including the requirements applicable to such discharges in Part 3, will result in discharges that will not cause, have the reasonable potential to cause, or contribute to an excursion above any applicable water quality standard; and
 - b. The operator is eligible to discharge to a Tier 2, Tier 2.5, or Tier 3 water³ only if the discharge will not lower the water quality of the applicable water. In the absence of information demonstrating otherwise, EPA expects that compliance with requirements of this proposed permit, including the requirements applicable to such discharges in Part 3.2, will result in discharges that will not lower the water quality of the applicable water.
- 1.1.9** If the operator plans to add cationic treatment chemicals (as defined in Appendix A) to stormwater and/or authorized non-stormwater prior to discharge, it is ineligible for coverage under this proposed permit and may not submit an NOI, unless and until it notifies the applicable EPA Regional Office (see Appendix L) in advance and the EPA Regional Office authorizes coverage under this permit after the operator has included appropriate controls and implementation procedures designed to ensure that their use of cationic treatment chemicals will not lead to discharges that cause

³ Note: Your site will be considered to discharge to a Tier 2, Tier 2.5, or Tier 3 water if the first water to which you discharge is identified by a state, tribe, or EPA as a Tier 2, Tier 2.5, or Tier 3 water. For discharges that enter a storm sewer system prior to discharge, the first water of the U.S. to which you discharge is the waterbody that receives the stormwater discharge from the storm sewer system. See list of Tier 2, Tier 2.5, and Tier 3 waters in Appendix F.

an exceedance of water quality standards. In the absence of such authorization, to use cationic treatment chemicals at the site, the operator will be required to apply for and receive coverage under an individual permit.

As defined in Appendix A of the proposed CGP, an “operator,” for the purposes of this permit, is “any party associated with a construction project that meets either of the following two criteria:

- The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
- The party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the permit).”

Note that subcontractors are generally not considered operators for the purposes of this permit.

Part 1.1 of the proposed permit also clarifies the requirements with respect to projects with multiple operators. Where there are multiple operators associated with the same project, all operators will be required to obtain permit coverage. Operators may divide responsibility for compliance with the terms of the final permit provided that each SWPPP, or a group SWPPP, documents which operator has responsibility for each requirement. However, the sharing of responsibilities for complying with the terms of the final permit does not waive an individual operator’s liability should another operator fail to implement any measures that are necessary for the individual operator to comply with the final permit. In addition, where responsibilities are shared, all operators will be required to ensure, either directly or through coordination with other operators, that their activities do not render any other operators’ controls and/or any shared controls ineffective. Thus, each individual operator is liable for compliance with all applicable requirements of the final permit, including the installation and maintenance of any shared controls, regardless of how permit responsibilities are allocated among multiple operators. Additionally, if any individual operator develops a separate SWPPP, that operator will remain responsible for compliance with all effluent limits, terms, and conditions of the final permit that apply to discharges of stormwater from the operator’s site, including requirements that apply to any shared controls relied upon by the operator. Also, if the operator of a “construction support activity” (see Part 1.2.1.c) is different than the operator of the main site, that operator will also be required to obtain permit coverage.

Request for Comment 1: EPA notes that it has included a request for comment in the proposed permit regarding projects with multiple operators on whether the permit should include a provision for sites with multiple operators requiring those operators to develop a group SWPPP, which would provide in one place documentation as to how the permit responsibilities will be divided among the permitted parties.

The definition of “operator” in Part 1.1.1 above is the same one that was used in the 2012 CGP. The party that meets the first part of the definition of “operator” (*the party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications*) in most cases will be the owner of the site. The party that meets the second part of the definition of “operator” (*the party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the permit)*) in most cases will be the general contractor of the project. Where there are multiple operators associated with the same project, all parties meeting the definition of “operator” will

be required to obtain permit coverage. EPA clarifies that subcontractors generally do not meet the definition of “operator,” and thus are generally not required to obtain permit coverage.

Operators of construction support activities (as defined in Part 1.2.1.c) are also required to obtain permit coverage if they are not the same entity as the operator of the main construction site. For example, if a construction support activity for the project is owned by a separate owner, and if the separate owner meets the definition of “operator”, that person would be required to obtain permit coverage for discharges from the site where the support activities are located. However, if the construction support activity is owned or operated by the site operator, then the support activity will be required to be included in the site operator’s permit coverage, including any documentation provided in the NOI and SWPPP.

With respect to projects with multiple operators, the new language in footnote 1 in Part 1.1.1 clarifies in the permit the longstanding requirement that all operators are joint and severally liable for compliance with the permit. For example, if multiple operators on the same site develop a group SWPPP that divides responsibilities, an individual operator’s liability is not waived should another operator fail to uphold its responsibility(ies) and thus comply with the terms of the permit. Additionally, if an individual operator develops a separate SWPPP, that individual operator is still responsible for compliance with the entire permit even if it relies upon shared controls.

The requirements in Part 1.1.8, which apply to new sources, are designed to comply with 40 CFR 122.4(i) requirements that address the issuance of permits to new sources to waterbodies not meeting instream water quality standards. EPA notes that while Part 1.1.8 is designed to specifically implement 40 CFR 122.4(i), other water quality-based requirements apply to existing sources. Part 3 of the permit includes water quality-based effluent limits applicable to all sources, which are designed to ensure that all discharges from all permittees are controlled as necessary to meet water quality standards.

Part 1.1.8 also requires operators to determine first if they discharge to a Tier 2, Tier 2.5, or Tier 3 water, and if they do, to comply with specific requirements in the permit, which are intended to ensure that their discharges will not result in a lowering of water quality in the receiving water. This provision makes clear to permittees their requirements for complying with antidegradation requirements, and provides assurance that permittees will not cause or contribute to a lowering of water quality in the receiving water.

Part 1.1.9 clarifies what operators electing to use cationic treatment chemicals will be required to do to be eligible for coverage under this permit and when they are ineligible for coverage, and therefore will be required to seek coverage under an individual NPDES permit. EPA has added Appendix L to the permit as a suggested format for notifying the operator’s applicable EPA Regional Office about its proposed use of cationic treatment chemicals. The addition of Appendix L is to help operators in providing the required information to their Regional Office in order to become eligible for permit coverage under Part 1.1.9. This provision is not being modified from the 2012 CGP.

EPA hereby incorporates by reference the discussion in the 2012 CGP fact sheet concerning background on cationic treatment chemicals as well as the Agency’s rationale for adopting this provision. See section VI.2.4 “Use of Cationic Treatment Chemicals” on pages 20 through 28 of the 2012 CGP fact sheet, available at https://www.epa.gov/sites/production/files/2015-10/documents/cgp2012_finalfactsheet.pdf.

Part 1.2: Types of Discharges Authorized

Part 1.2 of the CGP provides permittees with a comprehensive list of the types of discharges that are authorized once covered under this permit. This list makes permittees aware

of allowed stormwater and non-stormwater discharges, and of any additional requirements associated with those discharges to minimize the discharge of pollutants, and also makes permittees aware that any discharges not included on the list are not authorized under this permit.

Part 1.2.1 lists categories of stormwater discharges that would be allowed under the proposed CGP, provided that all applicable permit limits and conditions are met.

Part 1.2.1	Proposed Permit Requirements
<p>The following stormwater discharges are authorized under this permit provided that appropriate stormwater controls are designed, installed, and maintained (see Part 2):</p> <ol style="list-style-type: none"> a. Stormwater discharges, including stormwater runoff, snowmelt runoff, and surface runoff and drainage, associated with construction activity under 40 CFR 122.26(b)(14) or 122.26(b)(15)(i); b. Stormwater discharges designated by EPA as needing a permit under 40 CFR § 122.26(a)(1)(v) or § 122.26(b)(15)(ii); c. Stormwater discharges from construction support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided that: <ol style="list-style-type: none"> i. The support activity is directly related to the construction site required to have permit coverage for stormwater discharges; ii. The support activity is not a commercial operation, nor does it serve multiple unrelated construction projects; iii. The support activity does not continue to operate beyond the completion of the construction activity at the project it supports; and iv. Stormwater controls are implemented in accordance with Part 2 and, if applicable, Part 3, for discharges from the support activity areas. 	

Part 1.2.2 provides authorization for non-stormwater discharges from your construction activity.

Part 1.2.2	Proposed Permit Requirements
<p>The following non-stormwater discharges associated with your construction activity are authorized under this permit provided that, with the exception of water used to control dust and to irrigate vegetation in stabilized areas, these discharges are not routed to areas of exposed soil on your site and you comply with any applicable requirements for these discharges in Part 2:</p> <ol style="list-style-type: none"> a. Discharges from emergency fire-fighting activities; b. Fire hydrant flushings; c. Landscape irrigation; d. Water used to wash vehicles and equipment, provided there is no discharge of soaps, solvents, or detergents used for such purposes; e. Water used to control dust; f. Potable water including uncontaminated water line flushings; 	

- g. External building washdown, provided soaps, solvents, and detergents are not used, and external surfaces do not contain hazardous substances (e.g., paint or caulk containing PCBs);
- h. Pavement wash waters provided spills or leaks of toxic or hazardous material have not occurred (unless all spill material has been removed) and where soaps, solvents, and detergents are not used. The permittee is prohibited from directing pavement wash waters directly into any water of the U.S., storm drain inlet, or stormwater conveyance, unless the conveyance is connected to a sediment basin, sediment trap, or similarly effective control;
- i. Uncontaminated air conditioning or compressor condensate;
- j. Uncontaminated, non-turbid discharges of ground water or spring water;
- k. Foundation or footing drains where flows are not contaminated with process materials such as solvents or contaminated ground water; and
- l. Construction dewatering water discharged in accordance with Part 2.4.

Part 1.2.2. proposes a new condition that discharges of external building washdown waters will not be authorized to contain hazardous substances (e.g., paint or caulk containing PCBs). It is EPA's expectation that very few sites will be conducting external building washdown activities under the CGP, and that of the few permittees that will conduct these activities, most of the resulting discharges will not contain hazardous substances. EPA also expects that many permittees needing to conduct external building washdown activities can do so without discharging into a waterbody, e.g., by directing washwater flow into a pervious or vegetated area for infiltration. Thus, EPA assumes that any increase in burden associated with the proposed new condition will be minimal.

Request for Comment 2: EPA notes that it has included a request for comment in the proposed permit on the proposed new condition that external building washdown waters will not be authorized to contain hazardous substances. EPA is interested in receiving feedback on how frequently external building washdown activities are conducted by permittees covered under the CGP, and how frequently such discharges are expected to contain hazardous substances (e.g., paint or caulk containing PCBs).

EPA notes that "uncontaminated" means that the discharge does not cause or contribute to an exceedance of applicable water quality standards. Similarly, "non-turbid" means the discharge does not cause or contribute to an exceedance of turbidity-related water quality standards. See Appendix A.

Part 1.2.3 provides authorization to discharge authorized stormwater or authorized non-stormwater discharges, commingled with a discharge authorized by a different NPDES permit and/or a discharge that does not require NPDES permit authorization.

Part 1.2.3	Proposed Permit Requirements
<p>Also authorized under this permit are discharges of stormwater listed above in Part 1.2.1, or authorized non-stormwater discharges listed above in Part 1.2.2, commingled with a discharge authorized by a different NPDES permit and/or a discharge that does not require NPDES permit authorization.</p>	

Part 1.3: Prohibited Discharges

Part 1.3 identifies the types of discharges that are prohibited from occurring at the permittee's construction site. This list prohibits the following discharges:

Part 1.3 (1.3.1 - 1.3.5)	Proposed Permit Requirements
1.3.1.	Wastewater from washout of concrete;
1.3.2.	Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;
1.3.3.	Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
1.3.4.	Soaps, solvents, or detergents used in vehicle and equipment washing or external building washdown; and
1.3.5.	Toxic or hazardous substances from a spill or other release.
Part 1.3 also specifies that to prevent the above-listed prohibited non-stormwater discharges, operators will be required to comply with the applicable pollution prevent requirements in Part 2.3.	

Part 1.3 details the types of wastes and other pollutants that permittees will be prohibited from discharging under this permit. The requirement in Parts 1.3.1 through 1.3.4 above implement prohibitions included in the C&D rule at 40 CFR 450.21 (e). The requirement in Part 1.3.5 above to prohibit toxic or hazardous substances from a spill or other release corresponds to Part 3.1.1 of the 2008 CGP ("you are not authorized to discharge hazardous substances or oil resulting from an on-site spill"). EPA includes the types of prohibited non-stormwater discharges in the proposed permit as a reminder to the operator that the only authorized non-stormwater discharges are at Part 1.2.2. Any unauthorized non-stormwater discharges will be required to be covered under an individual permit or alternative general permit.

This proposed provision, which is now Part 1.3 in this proposed permit, was moved from Part 2 in the 2012 CGP. Moving this section on prohibited discharges to immediately follow Part 1.2 on authorized discharges specifies for permittees in one place in the proposed permit which discharges are and are not allowed under the CGP.

Part 1.4: Submitting Your NOI

The proposed requirements in Part 1.4 carry out the fundamental requirement that discharges are not authorized until permit coverage is obtained, and that permit coverage is obtained for the CGP through the submission of a complete and accurate NOI.

Part 1.4	Proposed Permit Requirements
Part 1.4 specifies that all "operators" (as defined in Appendix A) associated with the construction site, who meet the Part 1.1 eligibility requirements, and who will seek coverage under the final permit, will be required to submit to EPA a complete and accurate NOI prior to commencing construction activities.	
Part 1.4 provides an exception for operators that are conducting construction activities in response to a public emergency (e.g., <i>natural disaster, widespread disruption in essential public services</i>), and the related work requires immediate authorization to avoid imminent endangerment to human health, public safety, or the environment, or to reestablish essential public services. If any of these circumstances apply, the operator is authorized to discharge on the condition that a complete and accurate NOI is submitted within 30 calendar days after commencing construction activities (see Table 1 in the proposed permit) establishing	

that you are eligible for coverage under this permit. The operator is also required to provide documentation in the SWPPP to substantiate the occurrence of the public emergency.

EPA recognizes that obtaining CGP coverage following the normal procedures is not feasible in situations requiring emergency-related construction. EPA includes the exception in Part 1.4 to ensure that the authorization process does not interfere with emergency-related construction projects required to avoid endangerment to human health, public safety, or the environment. By providing the operators of these projects with the ability to immediately begin work, and to postpone the NOI submission and SWPPP completion deadlines for 30 calendar days, EPA intends that these projects may proceed without delay. Once the initial 30 calendar days has expired, however, it is the requirement of this permit that an NOI be submitted for permit coverage and that a SWPPP will be required to be completed.

Part 1.4.1: How to Submit Your NOI

The requirements in Part 1.4.1 clarify the method by which operators are to submit their NOIs for permit coverage.

Part 1.4.1	Proposed Permit Requirements
	<p>Part 1.4.1 specifies that operators will be required to use EPA's NPDES eReporting Tool (NeT) to electronically prepare and submit their NOIs for coverage under the 2017 CGP, unless the operator receives a waiver from your EPA Regional Office. Waivers from electronic reporting may be granted based on one of the following conditions:</p> <ul style="list-style-type: none"> a. If the operator's operational headquarters are physically located in a geographic area (<i>i.e.</i>, ZIP code or census tract) that is identified as underserved for broadband Internet access in the most recent report from the Federal Communications Commission; or b. If the operator has limitations regarding available computer access or computer capability. <p>If the operator wishes to obtain a waiver from submitting a report electronically, permittees will be required to submit a request to the EPA Regional Office. In that request, permittees will be required to document which exemption they meet, provide evidence supporting any claims, and a copy of their completed NOI form. A waiver may only be considered granted once permittees receive written confirmation from EPA. If the EPA Regional Office grants the operator approval to use a paper NOI, and they elect to use it, the operator will be required to complete the form in Appendix J.</p>

This is the first CGP that has made use of EPA's NPDES eReporting Tool (NeT), which replaces the previous electronic system required in the 2012 CGP, the eNOI system. Due to the expansion in Internet availability, greater efficiency in administrative processing, and reductions in cost to manage the system as compared to paper NOIs, it is required that NeT be the primary mechanism by which construction projects obtain permit coverage. If it is not possible for a permittee to make use of NeT, then permittees may submit a paper NOI to the Regional Office with a waiver request and an explanation as to why use of NeT is infeasible. Permittees will be required to receive affirmative confirmation from the Regional Office to then use a paper NOI.

Part 1.4.2: Deadlines for Submitting Your NOI and Your Official Date of Permit Coverage

Part 1.4.2 specifies the deadlines for submitting NOIs for permit coverage and official start dates for permit coverage in Table 1. NOI submittal deadlines vary depending on when the

operator commences construction activity. Table 1 summarizes the deadlines and permit coverage start dates based upon the type of construction project as follows:

Part 1.4.2 Proposed Permit Requirements		
Table 1 NOI Submittal Deadlines and Official Start Date for Permit Coverage.		
Type of Operator	NOI Submittal Deadline⁴	Permit Authorization Date⁵
Operator of a new site (<i>i.e., a site where construction activities commence on or after February 16, 2017</i>)	At least 14 calendar days prior to commencing construction activities.	14 calendar days after EPA notifies you that it has received a complete NOI, unless EPA notifies you that your authorization is delayed or denied.
Operator of an existing site (<i>i.e., a site with 2012 CGP coverage where construction activities commenced prior to February 16, 2017</i>)	No later than [90 calendar days after permit effective date].	
New operator of a new or existing site (<i>i.e., an operator that through transfer of ownership and/or operation replaces the operator of an already permitted construction site</i>)	At least 14 calendar days before the date the transfer to the new operator will take place.	
Operator of an “emergency-related project” (<i>i.e., a project initiated in response to a public emergency (e.g., natural disaster, disruption in essential public services), for which the related work requires immediate authorization to avoid imminent endangerment to human health or the environment, or to reestablish essential public services</i>)	No later than 30 calendar days after commencing construction activities.	You are considered provisionally covered under the terms and conditions of this permit immediately, and fully covered 14 calendar days after EPA notifies you that it has received a complete NOI, unless EPA notifies you that your authorization is delayed or denied.

The term “operator of a new site” in Table 1 is used to describe projects that commence earth disturbing activities on or after February 16, 2017, the effective date of the final permit. New sites include those new sources that are subject to the C&D rule’s NSPS because they commenced construction after February 1, 2010 (the effective date of the C&D rule). The term “new site” was adopted to avoid the confusion that would have resulted if the permit used the term “new source” to describe both projects that began construction after February 1, 2010, but before February 16, 2017, and those projects that begin on or after February 16, 2017.

⁴ If you missed the deadline to submit your NOI, any and all discharges from your construction activities will continue to be unauthorized under the CWA until they are covered by this or a different NPDES permit. EPA may take enforcement action for any unpermitted discharges that occur between the commencement of construction activities and discharge authorization.

⁵ Discharges are not authorized if your NOI is incomplete or inaccurate or if you are not eligible for permit coverage.

The term “operator of an existing site” in Table 1 refers to construction projects that commenced activities prior to February 16, 2017, the effective date of the final permit. Existing sites include both those activities that began prior to the February 1, 2010 effective date of the NSPS of the C&D rule, and may have been covered under the 2008 or 2012 CGPs, and those activities that are subject to the NSPS because they commenced after February 1, 2010, but before February 16, 2017.

The 14-day NOI submittal deadlines in Table 1 for operators of new sites and new operators of a new or existing site provides the Fish & Wildlife Service and the National Marine Fisheries Service (the “Services”), and the public, with an opportunity to review these submissions and to inform EPA if they believe that more time is needed to review the potential impacts from the project. The 14 days between receipt of the NOI and authorization is referred to as the “waiting period.”

During the 14-day waiting period, where one or both of the Services requests that they or EPA need to further explore whether a particular facility is eligible for permit coverage, EPA can delay authorization to allow such an assessment to take place. EPA may also use the waiting period to determine whether any more stringent control measures are necessary to ensure that discharges will meet applicable water quality standards, to be consistent with an applicable wasteload allocation (WLA), or to comply with state or tribal antidegradation requirements.

Additionally, during this waiting period, the public has an opportunity to review the NOIs and request review of applicable SWPPPs. Anyone wishing to provide feedback to EPA can send information to the appropriate EPA Regional Office listed in Appendix B of the proposed permit for consideration. EPA clarifies that this waiting period is not a formal public notice and comment period. EPA will consider any information provided to it during the waiting period, but does not plan to provide specific responses to comments received. Where appropriate, EPA will address concerns raised (e.g., will direct the relevant operator to make improvements to the designed stormwater controls). Depending on the nature of the issue and the timing of the comments, EPA will take appropriate action either prior to or following discharge authorization. In addition, EPA may delay authorization if warranted, or may determine that the discharge is not eligible for authorization under this permit.

Table 1 describes that operators of emergency-related projects are considered provisionally covered under the permit immediately upon the start of construction, and unprovisionally covered 14 calendar days after EPA acknowledges receipt of their NOI through posted information on EPA’s website (<https://www.epa.gov/npdes/stormwater-discharges-construction-activities#ereporting>), unless EPA notifies the permittee that their authorization has been delayed or denied.

If the operator requests a waiver and submits a paper NOI, the 14-day period prior to permit coverage is the same as above, however this period commences only after EPA completes manual entry of the paper NOI information into NeT. Note that if the paper NOI contains errors or is incomplete, this will result in delaying the commencement of the 14-day waiting period. The operator will be able to tell when the 14-day waiting period has begun by checking for their NOI in NeT at <https://www.epa.gov/npdes/stormwater-discharges-construction-activities#ereporting>.

Part 1.4.3: Modifying your NOI

Part 1.4.3 describes the process for modifying an NOI if the operator needs to correct or update any fields.

Part 1.4.3	Proposed Permit Requirements
<p>To modify an NOI, the operator may submit a "Change NOI" form using NeT. Waivers from electronic reporting may be granted as specified in Part 1.4.1. If the EPA Regional Office has granted the operator approval to submit a paper NOI modification, they may indicate any NOI changes on the same NOI form in Appendix J. When there is a change to the site's operator, a new NOI will be required to be submitted by the new operator, and the previous operator will be required to submit a NOT form as specified in Part 8.3.</p>	

Part 1.4.3 is a new provision in the permit that EPA added to clarify for permittees the existing procedure for modifying NOIs.

Part 1.4.4: Your Official End Date of Permit Coverage

Part 1.4.4 describes how long permit coverage lasts.

Part 1.4.4	Proposed Permit Requirements
<p>If covered under the CGP, permit coverage will last until:</p> <ul style="list-style-type: none"> a. The operator terminates permit coverage, consistent with Part 8; or b. The operator receives permit coverage under a different NPDES permit, or a reissued or replacement version of this permit after expiring on February 16, 2022 if the operator requests coverage under the reissued or replacement permit by the specified deadline (in this case the operator has no break in coverage); or c. The operator fails to submit an NOI for coverage under a revised or replacement version of this permit prior to the deadline for existing construction sites where construction activities continue after this permit has expired (in this case your coverage lapses and EPA may take enforcement action against any unpermitted discharges). 	

Part 1.4.4 clarifies for permittees the length of permit coverage under the CGP.

Continuation of Coverage for Existing Permittees After the 2017 Permit Expires

Note that if the final 2017 CGP is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with section 558(c) of the Administrative Procedure Act (see 40 CFR 122.6) and remain in force and effect for discharges that were covered prior to its expiration. All operators granted permit coverage prior to the expiration date of the final permit will automatically remain covered by the 2017 CGP until the earliest of:

- a. The authorization for coverage under a reissued or replacement version of this permit following the timely submittal of a complete and accurate NOI requesting coverage under the new permit. If a timely NOI for coverage under the reissued or replacement permit is not submitted, coverage will terminate on the date that the NOI was due; or
- b. The date of the submittal of an NOT; or
- c. Issuance or denial of an individual permit for the operator's discharges; or
- d. A final permit decision by EPA not to reissue the CGP, at which time EPA will identify a reasonable time period for covered dischargers to seek coverage under an alternative general permit or an individual permit. Coverage under this permit will terminate at the end of this time period.

EPA reserves the right to modify or revoke and reissue the final 2017 CGP under 40 CFR 122.62 and 63, in which case the permittee will be notified of any relevant changes or procedures to which you may be subject.

This clarification was previously stated in Part 1.4.4 of the 2012 CGP and has been moved to the fact sheet for the proposed 2017 CGP. The clarification describes for permittees the continuation of coverage for existing permittees if the permit expires. Where EPA fails to issue a final general permit prior to the expiration of a previous general permit, EPA has the authority to administratively extend the permit for permittees authorized to discharge under the prior general permit. However, EPA does not have the authority to provide coverage to construction projects not already authorized to discharge under that prior general permit. Once the five-year expiration date for this permit has passed, any such projects would need to obtain coverage under an individual permit, or other general permit that is still in effect.

Part 1.5: Requirement to Post a Notice of Your Permit Coverage

The requirement in Part 1.5 is to provide notice to the public, and any other interested parties, that discharges from the construction site are authorized by EPA.

Part 1.5	Proposed Permit Requirements
	<p>Part 1.5 of the CGP requires that the permittee post a sign or other notice of permit coverage at a safe, publicly accessible location in close proximity to the construction site. The notice will be required to be located so that it is visible from the public road that is nearest to the active part of the construction site, and it will be required to use a font large enough to be readily viewed from a public right-of-way. At a minimum, the notice will be required to include the NPDES ID (i.e., permit tracking number assigned to your NOI), a contact name and phone number for obtaining additional construction site information, and if available, the Uniform Resource Locator (URL) for the SWPPP. The notice will be required to include the following statement "If you observe indicators of stormwater pollutants in the discharge or in the receiving waterbody, contact the EPA Regional Office at [include the appropriate Regional Office contact information for noncompliance reporting found at https://www2.epa.gov/national-pollutant-discharge-elimination-system-npdes/contact-us-stormwater#regional]."</p>

By providing notice of permit coverage and other information about the site, interested parties are able to obtain publicly available information about the construction site, such as their SWPPP, and can identify the site when reporting potential permit violations. Note that under the 2012 CGP, permittees are only required to provide copies of the SWPPP, upon request, to EPA; a state, tribal or local agency approving stormwater management plans; the operator of a storm sewer system receiving discharges from the site; or representatives of the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS). Under the 2012 CGP, EPA would have provided access to portions of the SWPPP to a member of the public upon request. For the 2017 CGP, EPA is considering requiring the initial SWPPP to be posted online on a website or submitted to EPA to be made publicly available. See Request for Comment 8 in Part 7.3 of the proposed permit. Confidential Business Information (CBI) will be withheld from the public, but may not be withheld from EPA, USFWS, or NMFS.

EPA added a requirement that the public notice of permit coverage will be required to also include information informing the public on how to contact EPA if stormwater pollution is observed in the discharge. EPA is proposing to require this condition to improve compliance with the final permit.

Part 2: Technology-Based Effluent Limitations

Part 2 organizes the stormwater effluent limitations into four sections:

- Part 2.1: General Stormwater Control Design, Installation, and Maintenance Requirements;
- Part 2.2: Erosion and Sediment Control Requirements;
- Part 2.3: Pollution Prevention Requirements; and
- Part 2.4: Construction Dewatering Requirements.

The stormwater control requirements in Part 2 are the effluent limitations that apply to all discharges associated with construction activity eligible for permit coverage. The requirements in Part 2 generally apply the national effluent limitations guidelines and new source performance standards in the Construction and Development Rule (“C&D rule”) in 40 CFR Part 450 promulgated on December 1, 2009 (74 Fed. Reg. 62996), and amended on March 6, 2014 (79 Fed. Reg. 12661). These requirements apply to all permitted sites, including construction support activities that are covered under the permit under Part 1.2.1.c.

EPA’s Incorporation of the Non-Numeric Limits

A permittee can minimize the discharge of pollutants from construction sites by satisfying the non-numeric effluent limitations at 40 CFR 450.21 and by using various controls and practices, outlined in more detail by the permitting authority. EPA crafted the non-numeric effluent limits in the C&D rule to allow flexibility in how the permitting authority implements these requirements in permits. See 74 FR 63016. As an example, 40 CFR 450.21 (a)(5) requires construction operators to design, install, and maintain controls to “minimize sediment discharges from the site.” Thus, each NPDES permitting authority has discretion within this somewhat broad requirement to further define what it means to minimize sediment discharges, or to achieve any of the other non-numeric limits. See 74 FR 63016.

Accordingly, this proposed permit contains requirements that specifically implement or incorporate each of the C&D rule’s non-numeric limits in order to minimize the discharge of pollutants from construction sites. This is consistent with EPA’s objective to write general permits with conditions that are clear, specific, and measurable. In the sections that follow, EPA will discuss the permit requirements, and explain how the language is consistent with the non-numeric effluent limits in the C&D rule upon which they are based.

Part 2.1: General Stormwater Control Design, Installation, and Maintenance Requirements

Part 2.1 establishes the overall principle for designing, installing, and maintaining stormwater controls that work to minimize the discharge of pollutants from construction sites, as required in 40 CFR 450.21.

Part 2.1	Proposed Permit Requirements
	Part 2.1 includes the general requirement that the operator will be required to design, install, and maintain stormwater controls required in Parts 2.2 and 2.3 to minimize the discharge of pollutants in stormwater from construction activities. Part 2.1 includes design, installation, and maintenance requirements that are required to be followed for all such controls.

Part 2.1.1: Design Factors

Part 2.1.1 will require the permittee to account for design factors that address the corresponding C&D rule requirements in 40 CFR 450.21 (a)(2) and (5).

Part 2.1.1	Proposed Permit Requirements
<p>In the design of stormwater controls, permittees will be required to account for the following factors:</p> <ul style="list-style-type: none"> a. The expected amount, frequency, intensity, and duration of precipitation; b. The nature of stormwater runoff and run-on at the site, including factors such as expected flow from impervious surfaces, slopes, and site drainage features. You will be required to design stormwater controls to control stormwater volume, velocity, and peak flow rates to minimize discharges of pollutants in stormwater and to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points; and c. The soil type and range of soil particle sizes expected to be present on the site. 	

It is important to consider precipitation characteristics so that earth-disturbing activities can be planned during periods with a lower risk of precipitation and so that erosion and sediment control practices can be designed to convey and manage the precipitation that is expected to occur. The requirement to design stormwater controls to account for the nature of stormwater runoff and run-on on the site and to reduce peak flowrates and total stormwater is intended to minimize scouring and erosion caused by stormwater discharges from the site. Note that the requirement for stormwater controls to be designed to control peak flowrates and total stormwater volume is only applicable for stormwater discharges from a site that have been channelized. The requirement to account for soil characteristics, such as particle size distribution, erosivity, and cohesiveness, is also important for selecting and designing appropriate erosion and sediment controls.

Part 2.1.2: Good Engineering Practices

The proposed requirement in Part 2.1.2 implements the C&D rule requirement to “install effective erosion and sediment controls.”

Part 2.1.2	Proposed Permit Requirements
<p>The permittee will be required to design and install all stormwater controls in accordance with good engineering practices, including applicable design specifications.</p>	

In order for stormwater controls to be effective, they will be required to be properly designed and installed. EPA notes that design specifications may be found in manufacturer specifications and/or in applicable erosion and sediment control manuals or ordinances. Additionally, where it is appropriate to depart from such specifications, this will be required to reflect good engineering practice and will be required to be explained in the SWPPP.

Part 2.1.3: Complete Installation Prior to Commencement of Construction

The proposed requirement in Part 2.1.3 is intended to ensure that stormwater controls are installed and made operational to minimize pollutant discharges from the area of active disturbance.

Part 2.1.3	Proposed Permit Requirements
<p>The permittee will be required to complete the installation of stormwater controls by the time each phase of construction has begun:</p> <ul style="list-style-type: none"> a. By the time construction activities in any given portion of the site begins, the permittee will be required to install and make operational any downgradient sediment controls (e.g., buffers, perimeter controls, exit point controls, storm drain inlet protection) that control discharges from the initial site clearing, grading, excavating, and other earth-disturbing activities. EPA notes that this requirement does not apply to the earth 	

disturbance associated with the actual installation of these controls. Operators should take all reasonable actions to minimize the discharges of pollutant during the installation of stormwater controls.

- b. Following the installation of the initial controls, the permittee will be required to install and make operational all stormwater controls needed to control discharges prior to subsequent earth-disturbing activities.

For example, prior to initial site clearing and grading activities, the permittee will be required to install perimeter controls, exit point controls, and, if applicable, storm drain inlet protections and natural buffers or equivalent sediment controls to control stormwater discharges from the initial disturbances. After this initial work is completed, the permittee will be required to install and make operational other controls, such as sediment traps or sediment basins, that are expected to treat stormwater during the remaining phases of construction. Where a project is conducted in phases, such as for a large-scale road project, the requirement is to install such controls prior to commencing earth-disturbing activities for the particular phase. After initial controls are installed, the permittee will be required to install and make operational any remaining stormwater controls as conditions allow.

EPA notes that the phrase “unless infeasible” has been removed from the requirement to complete installation of initial downgradient sediment controls by the time construction has begun, which was included in the 2012 CGP. In EPA's judgement, this is not a meaningful change because the permit already accounts for the scenarios in which meeting this requirement would be infeasible in footnote #12 in the permit.

Part 2.1.4: Maintain Controls in Effective Operating Condition

The proposed requirement in Part 2.1.4 implements the C&D rule requirement to “maintain effective erosion controls and sediment controls” at 40 CFR 450.21 (a) and the NPDES requirement at 40 CFR 122.41 (e) to “at all times properly operate and maintain all facilities and systems of treatment and control ...”

Part 2.1.4	Proposed Permit Requirements
	<p>During permit coverage, the permittee will be required to ensure that all stormwater controls are maintained and remain in effective operating condition and are protected from activities that would reduce their effectiveness.</p> <ul style="list-style-type: none"> a. Comply with any specific maintenance needs for the stormwater controls listed in this permit, as well as any recommended by the manufacturer. b. If at any time you find that a stormwater control needs routine maintenance, you will be required to immediately initiate the needed maintenance work, and complete such work by the close of the next business day. c. If at any time you find that a stormwater control needs repair or replacement, you will be required to comply with the corrective action requirements in Part 5.

Part 2.2: Erosion and Sediment Control Requirements

The proposed requirement in Part 2.2 implements the C&D rule's requirement at 40 CFR 450.21 (a) to “design, install, and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants,” as well as the requirements in 40 CFR 450.21 (b) for soil stabilization.

Part 2.2	Proposed Permit Requirements
<p>Part 2.2 requires the permittee to implement erosion and sediment controls that minimize the discharge of pollutants in stormwater from construction activities.</p>	

The specific sections of the proposed permit within Part 2.2 include requirements that articulate what is expected of CGP permittees in order to comply with this effluent limitation established in the C&D rule.

Part 2.2.1: Natural Buffers

The proposed requirement in Part 2.2.1 implements the C&D rule’s requirement to minimize the discharge of pollutants from the site by providing and maintaining “natural buffers around waters of the United States... unless infeasible.” See 40 CFR 450.21 (a)(6).

Part 2.2.1	Proposed Permit Requirements
<p>Provide and maintain natural buffers and/or equivalent erosion and sediment controls when a water of the U.S. is located within 50 feet of the site’s earth disturbances.</p> <ul style="list-style-type: none"> a. For any discharges to “waters of the U.S.” (defined in Appendix A) located within 50 feet of the site’s earth disturbances, the operator will be required to comply with one of the following alternatives: <ul style="list-style-type: none"> i. Provide and maintain a 50-foot undisturbed natural buffer; or ii. Provide and maintain an undisturbed natural buffer that is less than 50 feet and is supplemented by erosion and sediment controls that achieve the sediment load reduction equivalent to a 50-foot undisturbed natural buffer; or iii. If infeasible to provide and maintain an undisturbed natural buffer of any size, implement erosion and sediment controls to achieve the sediment load reduction equivalent to a 50-foot undisturbed natural buffer. b. Exceptions to the requirement in Part 2.2.1.a are explained in Appendix G, Part G.2. 	

This proposed requirement will apply to all project sites that are situated within 50 feet of a surface water, with certain exceptions described in Appendix G. Appendix G of the proposed permit provides guidance on which sites will be required to comply with the buffer provision, and how to implement the different compliance alternatives.

EPA incorporates by reference the discussion in the 2012 CGP fact sheet concerning the Agency’s rationale for adopting the specific buffer requirements. See section “Provide Natural Buffers or Equivalent Sediment Controls” on pages 41 through 65 of the 2012 CGP fact sheet, available at https://www.epa.gov/sites/production/files/2015-10/documents/cgp2012_finalfactsheet.pdf.

EPA notes that the proposed permit moves much of the language from the 2012 CGP buffer provision to Appendix G since this requirement only applies to a subset of construction operators (i.e., those whose site disturbances occur within 50 feet of a water of the U.S.). While the requirements and the flexibility provided remain the same, it is more efficient to explain these compliance details and to provide further guidance in an Appendix (i.e., Appendix G), which is solely devoted to the topic of the buffer requirements.

Part 2.2.2: Direct Stormwater to Vegetated Areas

The proposed requirement in Part 2.2.2 implements the C&D rule requirement at 40 CFR 450.21(a)(6). This requirement reduces the discharge of sediment and other pollutants through filtration and infiltration.

Part 2.2.2	Proposed Permit Requirements
Direct stormwater to vegetated areas and maximize stormwater infiltration and filtering to reduce pollutant discharges, unless infeasible.	

Permittees can comply with this requirement by directing non-erosive flows leaving silt fences, filter berms, or other perimeter controls and sediment basins to natural buffers adjacent to streams or other vegetated areas on or adjacent to the property on which the construction activities will occur. Note that some site operators have found the use of level spreaders or other practices to be effective to prevent erosive discharges. These practices will help to prevent the formation of gulleys and associated erosion. Examples of where it may be infeasible to direct discharges from stormwater controls to vegetated areas include those areas where pervious or vegetated areas within the project footprint are non-existent, such as in some highly urban areas.

Part 2.2.3: Install Perimeter Controls

The proposed perimeter control requirements in Part 2.2.3 implement the C&D rule requirement to “install effective erosion and sediment controls.”

Part 2.2.3	Proposed Permit Requirements
Permittees will be required to install sediment controls, such as filter berms, silt fences, vegetative strips, and temporary diversion dikes, along any perimeter areas of the site that will receive pollutant discharges, and comply with the following perimeter control requirement: <ol style="list-style-type: none"> a. Remove sediment before it has accumulated to one-half of the above-ground height of any perimeter control. b. Exception: For areas at “linear construction sites” (as defined in Appendix A) where perimeter controls are infeasible (e.g., due to a limited or restricted right-of-way), implement other practices as necessary to minimize pollutant discharges to perimeter areas of the site. 	

The requirement will instruct permittees as to where downslope sediment controls should be installed so that they are effectively situated to minimize the discharge of pollutants on the site. The requirement in (a) above makes permittees aware that they will be required to maintain perimeter controls so that they remain effective throughout the duration of permit coverage. This requirement implements the C&D rule requirement to “maintain effective erosion controls and sediment controls” at 40 CFR 450.21(a).

The requirement in (b) above provides flexibility for linear projects with limited rights-of-ways by allowing them to document in the SWPPP when it is impracticable to install perimeter controls in certain areas of the site, and to maximize the use of these controls in the areas where it is practicable. The language in Part 2.2.3.b reflects a modification from the 2012 CGP, which required that perimeter controls for linear sites be maximized where practicable where there are rights-of-way restrictions. By comparison, the proposed Part 2.2.3.b clarifies that controls will be required to be provided unless infeasible, and where infeasible other practices will be required to be implemented as necessary to minimize pollutant discharges. For further information on the types of controls that can be used where perimeter controls are infeasible, see the following

Q&A on EPA's 2012 CGP website (<https://www.epa.gov/npdes/stormwater-discharges-construction-activities#faq>): *For linear utility projects, in areas where perimeter controls are not practicable or, alternatively, not necessary, can the operator document this fact in its SWPPP and proceed without installing such controls in those areas?*

Part 2.2.4: Minimize Sediment Track-Out

Collectively, the proposed requirements in Part 2.2.4 will result in the minimization of sediment that has been tracked out from the site onto paved surfaces and subsequently discharged in stormwater. The following practices are required for minimizing sediment track-out:

Part 2.2.4	Proposed Permit Requirements
	<ul style="list-style-type: none"> a. Restrict vehicle use to properly designated exit points; b. Use appropriate stabilization techniques (e.g., use of aggregate stone with an underlying geotextile or non-woven filter fabric, and turf mats) at all points that exit onto paved roads. <i>Exception:</i> Stabilization is not required for exit points at linear utility construction sites that are used only episodically and for very short durations over the life of the project, provided other exit point controls (e.g., preventing the use of exit points during wet periods; minimizing exit point use by keeping vehicles on site to the extent possible; limiting exit point size to the width needed for vehicle and equipment usage; using scarifying and compaction techniques on the soil; and avoiding establishing exit points in environmentally sensitive areas) are implemented to minimize sediment track-out; c. Implement additional track-out controls (e.g., wheel washing, rumble strips, and rattle plates) as necessary to ensure that sediment removal occurs prior to vehicle exit; and d. Where sediment has been tracked out from your site onto paved roads, sidewalks, or other paved areas, remove the deposited sediment by the end of the same business day in which the track-out occurs or by the end of the next business day if track-out occurs on a non-business day. Remove the track-out by sweeping, shoveling, or vacuuming these surfaces, or by using other similarly effective means of sediment removal. You are prohibited from hosing or sweeping tracked-out sediment into any stormwater conveyance, storm drain inlet, or water of the U.S.

The requirement to restrict vehicle use to properly designated exit points in (a) above, the requirement for appropriate stabilization techniques at all points that exit onto paved roads in (b) above, and the requirement for the use of additional controls as necessary to ensure that sediment removal occurs prior to vehicle exit in (c) above, implement the C&D rule requirement to “minimize sediment discharges from the site.” The requirement in (b) above also implements the C&D rule requirement to “minimize the amount of soil exposed during construction activity.” The requirement in (d) above implements the C&D rule requirements to “minimize sediment discharges” and the requirement to “minimize the discharge of pollutants from equipment and vehicle washing”

The exception language in (b) is added here to reflect the guidance included in EPA's FAQ for the corresponding section of the 2012 permit (i.e., Part 2.1.2.3.b). See EPA's FAQ for Part 2.1.2.3.b at <https://www.epa.gov/npdes/stormwater-discharges-construction-activities#faq>. Portions of this FAQ are repeated here to further explain the meaning of these requirements for linear utility projects:

EPA acknowledges that the use of exit points for certain narrow linear utility projects can differ from traditional residential or commercial construction projects, where the same exit points are consistently used throughout the life of a

project. Linear utility project disturbances, which include natural gas and electric transmission lines, typically consist of multiple disconnected areas of disturbance associated with access roads, stringing pull stations, laydown/staging yards, and pads. Because exit point stabilization is only required for points that exit onto paved roads, it will often be the case that exit point stabilization and the other track-out controls described in Parts 2.1.2.3.b [Part 2.2.4.b of the proposed CGP] and 2.1.2.3.c [Part 2.2.4.c of the proposed CGP] of the 2012 EPA CGP will not be required for linear utility projects that use existing unpaved roads to exit their work locations. However, to the extent that any sediment is tracked from existing access points onto paved roads, the requirement to remove tracked-out sediment in Part 2.1.2.3.d [Part 2.2.4.d of the proposed CGP] still applies.

Linear utility projects are also often constructed in phases with different access points corresponding to different phases or separate work locations within each phase. When access points are created for linear utility projects, they are often constructed as short ingress/egress locations from nearby existing roads, and are often used episodically and only for very short durations over the life of the project. Therefore, the types of exit point stabilization and other controls that are appropriate for these types of access points may differ from construction projects where access points are used more heavily and consistently throughout the life of the project. Examples of exit point stabilization techniques and controls that may be appropriate for access points that are used episodically and only for very short durations by such linear utility projects could include, but are not limited to, the following:

- Using scheduling techniques to prevent the use of exit points during wet periods;
- Minimizing exit point use by keeping vehicles onsite to the maximum extent possible;
- Limiting exit point size to the width needed for vehicle usage and using scarifying and compaction techniques on the soil;
- Using woody vegetation chips from the clearance of shrubs and trees on the exit point surface;
- Avoiding locating exit points in environmentally sensitive areas (e.g., wetlands, karst areas, steep slopes); and
- Conducting routine inspections (e.g., daily on scheduled work days) at exit points to assess the need to implement the mitigation measures in Part 2.1.2.3.d [Part 2.2.4 of the proposed CGP].

Exit point stabilization techniques will be required to be selected to ensure that sediment track-out is minimized. To the extent that any sediment is tracked from the existing access point onto paved roads, all operators will be required to ensure that it is removed consistent with the mitigation requirements in Part 2.1.2.3.d [Part 2.2.4.d of the proposed CGP] (e.g., sweeping, shoveling, vacuuming, or other similar means). For all projects, the exit point stabilization and controls will be required to be selected based on site-specific conditions to meet the overall requirement in Part 2.1.2.3 [Part 2.2.4 of the proposed CGP] to minimize sediment track-out, and will be required to take into account safety considerations. The controls that are selected will be required to also be documented in the SWPPP.

Note that EPA proposes to no longer allow for hosing down or sweeping pollutants into a stormwater conveyance where it is connected to a sediment basin, sediment trap, or similarly effective controls. Upon further consideration, EPA is concerned that this practice will lead to these controls being compromised, and that a standard approach for removing sediment track-out (e.g., by sweeping, shoveling, or vacuuming these surfaces, or by using other similarly effective means of sediment removal) should be applied to all sites, including those that discharge to a sediment basin or similar control.

Part 2.2.5: Manage Stockpiles or Land-Clearing Debris Piles

The proposed requirements to control discharges from stockpiled sediment or soil are intended to prevent the discharge of sediment from stockpiled soil and dirt on the site.

Part 2.2.5	Proposed Permit Requirements
<p>Permittees will be required to manage stockpiles or land clearing debris piles composed, in whole or in part, of sediment and/or soil.</p> <ul style="list-style-type: none"> a. Locate the piles outside of any natural buffers established under Part 2.2.1 and away from any stormwater conveyances, drain inlets, and areas where stormwater flow is concentrated; b. Surround piles with a sediment barrier (e.g., include berms, dikes, fiber rolls, silt fences, sandbags, gravel bags, or straw bale); c. Provide cover or appropriate temporary stabilization (consistent with the requirements of Part 2.2.14), and contain and securely protect from wind, for piles that will be unused for 14 or more days; and d. You are prohibited from hosing down or sweeping soil or sediment accumulated on pavement or other impervious surfaces into any stormwater conveyance, storm drain inlet, or water of the U.S. 	

The required use of "appropriate temporary stabilization" will only apply when a pile is "inactive," whereas in the 2012 permit the requirement applies only "where practicable." It is EPA's judgement that the proposed change better captures the intent of this provision to ensure that pollutant discharges are minimized as a result of storm events, while at the same time it addresses the practicability of these controls by limiting this requirement to times when the piles are inactive.

Note also that EPA proposes in (d) to no longer allow for hosing down or sweeping pollutants into a stormwater conveyance where it is connected to a sediment basin, sediment trap, or similarly effective controls. Upon further consideration, EPA is concerned that this practice will lead to these controls being compromised, and that a standard approach for managing soil or sediment accumulation from stockpiles or land clearing debris piles should be applied to all sites, including those that discharge to a sediment basin or similar control.

Part 2.2.6: Minimize Dust

The proposed requirement is intended to minimize the generation of dust on the site is to minimize the discharge of sediment in stormwater.

Part 2.2.6	Proposed Permit Requirements
<p>On areas of exposed soil, the permittee will be required to minimize the generation of dust through the appropriate application of water or other dust suppression techniques.</p>	

Dust suppression techniques prevent dust from being generated, minimizing the potential for the dust to accumulate where it is likely to discharge from the site in stormwater discharges.

Part 2.2.7: Minimize Steep Slope Disturbances

The proposed requirement in Part 2.2.7 implements the C&D rule requirement to “minimize the disturbance of steep slopes” at 40 CFR 450.21(a)(4).

Part 2.2.7	Proposed Permit Requirements
The permittee will be required to minimize the disturbance of “steep slopes” (as defined in Appendix A).	

The proposed permit does not prevent or prohibit disturbance on steep slopes. EPA recognizes that for some projects, disturbance on steep slopes may be necessary for construction (e.g., a road cut in mountainous terrain). If disturbances to steep slopes are required for the project, EPA would recognize that it is not practicable to minimize the disturbance of steep slopes. EPA also notes that the requirement to minimize the disturbance of steep slopes does not apply to the creation of soil stockpiles. EPA incorporates by reference the discussion in the 2012 CGP fact sheet concerning this requirement. See part 2.1.2.6 “Minimize the Disturbance of Steep Slopes” on pages 67 through 68 of the 2012 CGP fact sheet, available at https://www.epa.gov/sites/production/files/2015-10/documents/cgp2012_finalfactsheet.pdf.

Part 2.2.8: Preserve Native Topsoil

The proposed requirement in Part 2.2.8 implements the C&D rule requirement to preserve topsoil, unless infeasible at 40 CFR 450.21(a)(8).

Part 2.2.8	Proposed Permit Requirements
Permittees will be required to preserve native topsoil on the site, unless infeasible.	

The proposed requirement to preserve topsoil will help to maintain the soil structure on construction sites and provides a growing medium for vegetative stabilization measures. Better vegetative stabilization reduces erosion rates of the underlying soil and also increases the infiltrative capacity of the soil, thereby reducing the amount of sediment transported to downslope sediment and perimeter controls. Topsoil can be preserved by stockpiling the native topsoil on the site for later use (e.g., for vegetative stabilization), or by limiting disturbance and removal of the topsoil and associated vegetation. For example, topsoil can be preserved by limiting clearing and grading to only those areas where necessary to accommodate the building footprint. EPA notes that some projects may be designed to be highly impervious after construction, and therefore little or no vegetation is intended to remain. In these cases, EPA recognizes that preserving topsoil at the site would not be feasible or desirable. In addition, some sites may not have space to stockpile topsoil on site for later use, in which case, it may also not be feasible to preserve topsoil. EPA is aware that stockpiling of topsoil in off-site locations, or transfer of topsoil to other locations, is frequently used in these situations and EPA would view this as acceptable practice. However, EPA notes that stormwater discharges from any construction support activities meeting the proposed requirements of Part 1.2.1.c will be subject to the permit requirements.

Part 2.2.9: Minimize Soil Compaction

The proposed requirements in Part 2.2.9 implement the C&D rule requirement to “minimize soil compaction.” The proposed requirement is intended to allow for infiltration and retention of stormwater to reduce stormwater discharge volume and velocity.

Part 2.2.9	Proposed Permit Requirements
<p>In any areas of the site where final vegetative stabilization will occur or where infiltration practices will be installed, the permittee will be required to:</p> <ul style="list-style-type: none"> a. Restrict vehicle and equipment use in these locations to avoid soil compaction; and b. Prior to seeding or planting areas of exposed soil that have been compacted, use techniques that rehabilitate and condition the soils as necessary to support vegetative growth. 	

Reducing stormwater discharges reduces erosion and therefore reduces the amount of sediment and other pollutants discharged from the site. To comply with this proposed requirement, permittees may either restrict vehicle and equipment use on areas that will be vegetatively stabilized or where infiltration practices will be installed, or use soil conditioning techniques to decompact soils to support vegetative growth. Specific types of soil conditioning techniques could include deep-ripping and decompaction or sub-soiling. EPA also notes that the proposed requirement to minimize soil compaction will not apply to areas that will not be used for final vegetative stabilization or for areas where infiltration practices will not be installed. For example, the proposed requirements will not apply to disturbed areas that will become paved surfaces, such as roads, foundations, footings, or on embankments, or on areas where soil compaction is necessary by design.

EPA notes that the proposed requirement in (b) above is no longer conditioned on the feasibility of using soil conditioning or rehabilitation practices. In EPA's judgement, requiring these practices "as necessary" provides adequate flexibility to operators and that this proposed modification does not significantly change the provision in the 2012 CGP. For example, in the 2012 CGP fact sheet, EPA explained that "the requirement to use soil conditioning techniques is not required in any area where it would not be feasible, such as on steep slope areas or any other areas where it is not safe for the required equipment." Using the proposed provision, EPA would not find it to be "necessary" to use soil conditioning techniques in an area of the site where it was unsafe to use the required equipment because these areas are unlikely to be compacted in the first place given the safety concerns of operating heavy equipment in this area.

Part 2.2.10: Protect Storm Drain Inlets

The proposed requirements in Part 2.2.10 implement the C&D rule requirement to "minimize sediment discharges from the site" by requiring stormwater inlets to be protected with sediment controls during construction.

Part 2.2.10	Proposed Permit Requirements
<ul style="list-style-type: none"> a. Install inlet protection measures that remove sediment from discharges prior to entry into any storm drain inlet that carries stormwater flow from your site to a water of the U.S. that you have authority to access; and b. Clean, or remove and replace, the protection measures as sediment accumulates, the filter becomes clogged, and/or performance is compromised. Where there is evidence of sediment accumulation adjacent to the inlet protection measure, remove the deposited sediment by the end of the same business day in which it is found or by the end of the following business day if removal by the same business day is not feasible. 	

Inlet protection measures prevent sediment-laden stormwater from being discharged into storm drains, and ultimately surface waters. The proposed maintenance requirements in (b)

support the need for the inlet measures to be kept in working condition so that they are effective at preventing the discharge of pollutants. Note that inlet protection measures can be removed in the event of flood conditions or to prevent erosion.

Note that EPA proposes to require installation of inlet protection measures to any storm drain inlet that carries stormwater flow from the site to a water of the U.S. that you have authority to access, even if it is connected to a sediment basin, sediment trap, or similarly effective controls. Upon further consideration, EPA is concerned that this practice will lead to these controls being compromised, and that a standard approach for inlet protection measures should be applied.

Part 2.2.11: Minimize Erosion of Stormwater Conveyances

The proposed requirements in Part 2.2.11 implement the C&D rule requirements to “control stormwater volume and velocity to minimize soil erosion in order to minimize pollutant discharges,” to “control stormwater discharges... to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points”, to “minimize the amount of soil exposed during construction activity,” and to “minimize the disturbance of steep slopes.”

Part 2.2.11	Proposed Permit Requirements
	<p>The permittee will be required to minimize erosion of stormwater conveyance channels and their embankments, outlets, adjacent streambanks, slopes, and downstream waters. As part of this requirement, the permittee will be required to use erosion controls and velocity dissipation devices (e.g., check dams, sediment traps, riprap, and grouted riprap at outlets) within and along the length of any stormwater conveyance channel and at any outlet to slow down runoff to minimize erosion.</p>

Part 2.2.12: Sediment Basins or Similar Impoundment

Part 2.2.12 outlines the proposed requirements that will apply to installation of sediment basins or similar impoundments.

Part 2.2.12	Proposed Permit Requirements
	<p>If a permittee installs a sediment basin:</p> <ol style="list-style-type: none"> a. Situate the basin or impoundment outside of any water of the U.S. and any natural buffers established under Part 2.2.1; b. Design the basin or impoundment to avoid collecting water from wetlands; c. Design the basin or impoundment to provide storage for either: <ol style="list-style-type: none"> i. The calculated volume of runoff from a 2-year, 24-hour storm (see Appendix H); or ii. 3,600 cubic feet per acre drained. d. Utilize outlet structures that withdraw water from the surface of the sediment basin or similar impoundment, unless infeasible; e. Use erosion controls and velocity dissipation devices, such as check dams, sediment traps, riprap, and grouted riprap at outlets, to prevent erosion at inlets and outlets; and f. Remove accumulated sediment to maintain at least one-half of the design capacity and conduct all other appropriate maintenance to ensure the basin or impoundment remains in effective operating condition.

Sediment basins are often used on construction sites to minimize sediment discharges. They are typically placed at or near low points of drainageways on in order to temporarily

detain stormwater discharges, allowing sediment particulates to settle. Sediment basins are also often designed to reduce peak flowrates, reducing downstream flooding and channel erosion. At the point of discharge, which is typically a pipe or channel, installation of riprap or other stabilization measures is often necessary because the concentrated discharge can cause erosion. Sediment basins are also often designed to reduce flow duration impacts by reducing the total volume of stormwater being discharged or by providing extended detention to reduce discharge rates. The purpose of the requirements in this part is to provide specific design and maintenance requirements for the proper implementation of sediment basins, if used on a site.

The proposed requirements in (a) and (b) above are design specifications that have been included in the CGP since the 2003 permit. The requirement in (c) above implements the following C&D rule requirement: “When discharging from basins and impoundments, utilize outlet structures that withdraw water from the surface, unless infeasible.” EPA notes in the proposed permit that the circumstances in which it will be infeasible to design outlet structures in this manner are rare. Exceptions may include areas with extended cold weather, where surface outlets may not be feasible during certain time periods (although it is expected that they would be used during other periods). If the permittee determines that it is infeasible to meet this proposed requirement, the permittee will be required to provide documentation in the SWPPP to support its determination, including the specific conditions or time periods when this exception will apply.

EPA also includes a proposed requirement, subsection (d) above, to prevent erosion of the sediment basin and the inlet and outlet to implement the C&D rule requirement to “design, install and maintain effective erosion and sediment controls to minimize the discharge of pollutants,” and the requirement to “control stormwater discharges ... to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points.” The proposed requirement in (e) above implements the C&D rule requirement to “... maintain effective erosion controls and sediment controls to minimize the discharge of pollutants.”

Part 2.2.13: Use of Treatment Chemicals

The proposed requirements in Part 2.2.13 establish the minimum requirements that apply to the use of treatment chemicals at permitted construction sites.

Part 2.2.13	Proposed Permit Requirements
	<p>If the permittee will use polymers, flocculants, coagulants, or other treatment chemicals at the construction site, the permittee will be required to comply with the following minimum requirements.</p> <ul style="list-style-type: none"> a. Use conventional erosion and sediment controls prior to and after the application of treatment chemicals. Chemicals may only be applied where treated stormwater is directed to a sediment control (e.g., <i>sediment basin, perimeter control</i>) prior to discharge. b. Select appropriate treatment chemicals. Chemicals will be required to be appropriately suited to the types of soils likely to be exposed during construction and present in the discharges being treated (i.e., the expected turbidity, pH, and flow rate of stormwater flowing into the chemical treatment system or area). c. Minimize discharge risk from stored chemicals. Store all treatment chemicals in leak-proof containers that are kept under storm-resistant cover and surrounded by secondary containment structures (e.g., <i>spill berms, decks, spill containment pallets</i>), or provide equivalent measures designed and maintained to minimize the potential discharge of treatment chemicals in stormwater or by any other means (e.g., <i>storing chemicals in covered area, having a spill kit available on site and ensuring personnel are available to respond expeditiously in the event of a leak or spill</i>).

- d. Comply with state/local requirements. Comply with applicable state and local requirements affecting the use of treatment chemicals.
- e. Use chemicals in accordance with good engineering practices and specifications of the chemical provider/supplier. Use treatment chemicals and chemical treatment systems in accordance with good engineering practices, and with dosing specifications and sediment removal design specifications provided by the provider/supplier of the applicable chemicals, or document in your SWPPP specific departures from these specifications and how they reflect good engineering practice.
- f. Ensure proper training. Ensure that all persons who handle and use treatment chemicals at the construction site are provided with appropriate, product-specific training. Among other things, the training will be required to cover proper dosing requirements.
- g. Comply with additional requirements for the approved use of cationic chemicals. If you have been authorized to use cationic chemicals at your site pursuant to Part 1.1.9, and the authorization is conditioned on your compliance with additional requirements necessary to ensure that the use of such chemicals will not cause an exceedance of water quality standards, you will be required to comply with all such requirements.

EPA incorporates by reference the discussion in the 2012 CGP fact sheet concerning the Agency’s rationale supporting these requirements. See section “Use of Treatment Chemicals. (Part 2.1.3.3)” on pages 71 through 75 of the 2012 CGP fact sheet, available at https://www.epa.gov/sites/production/files/2015-10/documents/cgp2012_finalfactsheet.pdf.

Part 2.2.14: Site Stabilization

The proposed requirements in 2.2.14 will require the permittee to implement and maintain stabilization measures that minimize erosion from exposed portions of the site.

Part 2.2.14	Proposed Permit Requirements
	<p>Implement and maintain stabilization measures (e.g., seeding protected by erosion controls until vegetation is established, sodding, mulching, erosion control blankets, hydromulch, gravel) that minimize erosion from exposed portions of the site in accordance with the following:</p> <ul style="list-style-type: none"> a. Stabilization Deadlines: <ul style="list-style-type: none"> i. Initiate the installation of stabilization measures immediately in any areas of exposed soil where construction activities have ceased and will not resume for 14 or more calendar days; and ii. Complete the installation of stabilization measures as soon as practicable, but no later than 14 calendar days after stabilization has been initiated. iii. Exceptions: <ul style="list-style-type: none"> • Arid, semi-arid, and drought-stricken areas (as defined in Appendix A). If it is the seasonally dry period or during a period in which drought is occurring, and vegetative stabilization measures are being used: <ul style="list-style-type: none"> - Immediately initiate, and within 14 calendar days of a temporary or permanent cessation of work in any portion of your site complete, the installation of temporary non-vegetative stabilization measures to the extent necessary to prevent erosion; - As soon as practicable, given conditions or circumstances on the site, complete all activities necessary to seed or plant the area to be stabilized; and

- If construction is occurring during the seasonally dry period, indicate in your SWPPP the beginning and ending dates of the seasonally dry period and your site conditions. Also include the schedule you will follow for initiating and completing vegetative stabilization
 - Permittees that are affected by unforeseen circumstances that delay the initiation and/or completion of vegetative stabilization:
 - Immediately initiate, and within 14 calendar days complete, the installation of temporary non-vegetative stabilization measures to prevent erosion;
 - Complete all soil conditioning, seeding, watering or irrigation installation, mulching, and other required activities related to the planting and initial establishment of vegetation as soon as conditions or circumstances allow it on the site; and
 - Document in the SWPPP the circumstances that prevent the operator from meeting the deadlines in Part 2.2.14.a and the schedule the operator will follow for initiating and completing stabilization.
 - Discharges to a sediment- or nutrient-impaired water or to a water that is identified by your state, tribe, or EPA as Tier 2, Tier 2.5, or Tier 3 for antidegradation purposes. Complete stabilization as soon as practicable, but no later than 7 calendar days after stabilization has been initiated.
- b. Final Stabilization Criteria (for any areas not covered by permanent structures):
- i. Vegetation will be required to provide a uniform (i.e., evenly distributed, without large bare areas) perennial cover with a density of 70 percent or more of the natural background cover; and/or
 - ii. Permanent non-vegetative stabilization measures (e.g., riprap, gabions, and geotextiles) will be required to be implemented to provide effective cover.
 - iii. Exceptions:
 - Arid, semi-arid, and drought-stricken areas (as defined in Appendix A). If it is the seasonally dry period or during a period in which drought is occurring, final stabilization is met if the area has been seeded or planted to provide established vegetation that covers 70 percent or more of the natural background cover within 3 years and, to the extent necessary to prevent erosion on the seeded or planted area, non-vegetative erosion controls have been applied that provide cover for at least three years without active maintenance.
 - Disturbed areas on agricultural land that are restored to their preconstruction agricultural use. The Part 2.2.14.b final stabilization criteria does not apply.

Stabilization will not be required if the intended function of a specific area of the site necessitates that it remain disturbed, and only the minimum area needed remains disturbed (e.g., dirt access roads, utility pole pads, areas being used for storage of vehicles, equipment, materials).

EPA incorporates by reference the discussion in the 2012 CGP fact sheet concerning these requirements. See section VII.2 "Stabilization Requirements (Part 2.2)" on pages 76 through

82 of the 2012 CGP fact sheet, available at https://www.epa.gov/sites/production/files/2015-10/documents/cgp2012_finalfactsheet.pdf.

EPA notes that with respect to the exception to the final stabilization criteria for restored agricultural areas, the proposed permit retains the requirement from the 2012 CGP that areas disturbed that were not previously used for agricultural activities, and areas that are not being returned to preconstruction agricultural use, will not be covered by the exception in Part 2.2.14(b)(iii) and will be required to meet the conditions for stabilization.

Request for Comment 3: EPA notes that it has included a request for comment in the proposed permit on whether to modify the deadline to complete stabilization from 14 calendar days to 7 calendar days after stabilization has been initiated (except for sites in arid, semi-arid, and drought-stricken areas and for permittees affected by circumstances beyond their control) in order to ensure discharges meet water quality standards. Under the current 2012 CGP, sites discharging to sensitive waters (i.e., impaired waters and Tier 2, 2.5, or 3 waters) will be required to complete stabilization within a 7-day timeframe. EPA requests comment on completing stabilization within 7-days for all sites (except for sites in arid, semi-arid, and drought-stricken areas and for permittees affected by circumstances beyond their control).

Part 2.3: Pollution Prevention Requirements

The proposed requirements in Part 2.3 implement the C&D rule requirements in 40 CFR 450.21(d) and (e).

Part 2.3	Proposed Permit Requirements
	The permit will require permittees to implement pollution prevention controls in accordance with the proposed requirements in Part 2.3 to minimize the discharge of pollutants in stormwater and to prevent the discharge of pollutants from spilled or leaked materials from construction activities.

Part 2.3.1: Equipment and Vehicle Fueling and Maintenance Requirements

The proposed requirements in Part 2.3.1 implement the 40 CFR 450.21(d)(3) requirement to “minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures” and the 40 CFR 450.21(e)(3) requirement prohibiting the discharge of “fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance.”

Part 2.3.1	Proposed Permit Requirements
	<p>The permittee will be required to comply with the following requirements:</p> <ol style="list-style-type: none"> a. Provide an effective means of eliminating the discharge of spilled or leaked chemicals, including fuels and oils, from these activities; b. If applicable, comply with the Spill Prevention Control and Countermeasures (SPCC) requirements in 40 CFR 112 and Section 311 of the CWA; c. Ensure adequate supplies are available at all times to handle spills, leaks, and disposal of used liquids; d. Use drip pans and absorbents under or around leaky vehicles; e. Dispose of or recycle oil and oily wastes in accordance with other federal, state, tribal, or local requirements; and

- f. Clean up spills or contaminated surfaces immediately, using dry clean up measures (do not clean contaminated surfaces by hosing the area down), and eliminate the source of the spill to prevent a discharge or a continuation of an ongoing discharge.

Examples of effective means of eliminating the discharge of spilled or leaked chemicals include, but are not limited to, locating activities away from waters of the U.S. and stormwater inlets or conveyances so that stormwater coming into contact with these activities cannot reach waters of the U.S.; providing secondary containment (e.g., spill berms, decks, spill containment pallets) and cover where appropriate; and having a spill kit available on site and ensuring personnel are available to respond expeditiously in the event of a leak or spill.

Part 2.3.2: Equipment and Vehicle Washing Requirements

The proposed requirement in Part 2.3.2 implements the 40 CFR 450.21 (d)(1) requirement to “Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters will be required to be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge.”

Part 2.3.2	Proposed Permit Requirements
<p>The permittee will be required to comply with the following requirements:</p> <ul style="list-style-type: none"> a. Provide an effective means of minimizing the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other types of wash waters; b. Ensure there is no discharge of soaps, solvents, or detergents in equipment and vehicle wash water; and c. For storage of soaps, detergents, or solvents, provide either (1) cover (e.g., plastic sheeting, temporary roofs) to minimize the exposure of these detergents to precipitation and to stormwater, or (2) a similarly effective means designed to minimize the discharge of pollutants from these areas. 	

The proposed requirement that permittees will have to properly manage wash waters reduces the discharge of pollutants, such as sediment and other pollutants, from the site. Examples provided in the proposed permit for providing an effective means of minimizing the discharge of pollutants from the washing of equipment or vehicles include, but are not limited to, locating activities away from surface waters and stormwater inlets or conveyances and directing wash waters to a sediment basin or sediment trap, using filtration devices, such as filter bags or sand filters, or using other similarly effective controls. This proposed requirement also implements the 40 CFR 450.21 (e)(4) prohibition against discharging soaps or solvents, and is consistent with the eligibility condition that allows the use of non-stormwater wash waters as long as they do not contain soaps, solvents, or detergents.

Part 2.3.3: Storage, Handling, and Disposal Requirements

The proposed requirements in Part 2.3.3 will require permittees to comply with specific pollution prevention standards for activities that may result in pollutant discharges.

Part 2.3.3	Proposed Permit Requirements
<p>The permittee will be required to comply with the following requirements:</p> <ul style="list-style-type: none"> a. <i>For building materials and building products (e.g., asphalt sealants, copper flashing, roofing materials, adhesives, concrete admixtures, and gravel and mulch stockpiles), provide either (1) cover (e.g., plastic sheeting, temporary roofs) to minimize the</i> 	

exposure of these products to precipitation and to stormwater, or (2) a similarly effective means designed to minimize the discharge of pollutants from these areas.

- b. *For pesticides, herbicides, insecticides, fertilizers, and landscape materials:*
 - i. In storage areas, provide either (1) cover (e.g., plastic sheeting, temporary roofs) to minimize the exposure of these chemicals to precipitation and to stormwater, or (2) a similarly effective means designed to minimize the discharge of pollutants from these areas; and
 - ii. Comply with all application and disposal requirements included on the registered pesticide, herbicide, insecticide, and fertilizer label (see also Part 2.3.5).
- c. *For diesel fuel, oil, hydraulic fluids, other petroleum products, and other chemicals:*
 - i. Store chemicals in water-tight containers, and provide either (1) cover (e.g., plastic sheeting, temporary roofs) to minimize the exposure of these containers to precipitation and to stormwater, or (2) a similarly effective means designed to minimize the discharge of pollutants from these areas (e.g., having a spill kit available on site and ensuring personnel are available to respond expeditiously in the event of a leak or spill), or provide secondary containment (e.g., spill berms, decks, spill containment pallets); and
 - ii. Clean up spills immediately, using dry clean-up methods where possible, and dispose of used materials properly. The operator is prohibited from hosing the area down to clean surfaces or spills. Eliminate the source of the spill to prevent a discharge or a continuation of an ongoing discharge.
- d. *For hazardous or toxic wastes:*
 - i. Separate hazardous or toxic waste from construction and domestic waste;
 - ii. Store waste in sealed containers, which are constructed of suitable materials to prevent leakage and corrosion, and which are labeled in accordance with applicable Resource Conservation and Recovery Act (RCRA) requirements and all other applicable federal, state, tribal, or local requirements;
 - iii. Store all outside containers within appropriately-sized secondary containment (e.g., spill berms, decks, spill containment pallets) to prevent spills from being discharged, or provide a similarly effective means designed to prevent the discharge of pollutants from these areas (e.g., storing chemicals in covered area, having a spill kit available on site);
 - iv. Dispose of hazardous or toxic waste in accordance with the manufacturer's recommended method of disposal and in compliance with federal, state, tribal, and local requirements;
 - v. Clean up spills immediately, using dry clean-up methods, and dispose of used materials properly. The operator is prohibited from hosing the area down to clean surfaces or spills. Eliminate the source of the spill to prevent a discharge or a furtherance of an ongoing discharge; and
 - vi. Follow all other federal, state, tribal, and local requirements regarding hazardous or toxic waste.
- e. *For construction and domestic wastes:*
 - i. Provide waste containers (e.g., dumpster, trash receptacle) of sufficient size and number to contain construction and domestic wastes;
 - ii. Keep waste container lids closed when not in use. For waste containers that do not have lids and could leak, provide either (1) cover (e.g., a tarp, plastic sheeting, temporary roof) to minimize exposure of wastes to precipitation, or (2) a

- similarly effective means designed to minimize the discharge of pollutants (e.g., secondary containment);
- iii. On business days, clean up and dispose of waste in designated waste containers; and
 - iv. Clean up immediately if containers overflow.
- f. *For demolition of any structure with at least 10,000 square feet of floor space built or renovated before January 1, 1980:*
- i. Implement controls to minimize the exposure of polychlorinated biphenyl- (PCB) containing building materials, including paint, caulk, and pre-1980 fluorescent lighting fixtures to precipitation and to stormwater; and
 - ii. Ensure that disposal of such materials is performed in compliance with applicable state, federal, and local laws.
- g. *For sanitary waste, position portable toilets so that they are secure and will not be tipped or knocked over, and located away from waters of the U.S. and stormwater inlets or conveyances.*

EPA incorporates by reference the discussion in the 2012 CGP fact sheet concerning these requirements. See section VII.3.3 "Pollution Prevention Standards (Part 2.3.3)" on pages 83 through 87 of the 2012 CGP fact sheet, available at https://www.epa.gov/sites/production/files/2015-10/documents/cgp2012_finalfactsheet.pdf.

Note that the proposed requirement in (e)(ii) is a modification to the construction and domestic waste requirements in the 2012 CGP. Even though a cover requirement was included for most of the other types of materials and wastes in the 2012 permit (e.g., building products; pesticides, herbicides, insecticides, etc.; diesel fuel, oil, hydraulic fluids, other petroleum products and other chemicals; and hazardous or toxic wastes), EPA had inadvertently not included such a requirement for construction and domestic wastes. This proposed modification corrects this prior oversight so that the cover requirements are consistent for most types of materials and wastes.

The provision in (f) above is a new proposed requirement for this proposed permit. Buildings and structures originating or remodeled between the years of 1950-1979 often contain polychlorinated biphenyls (PCBs) in materials such as caulk and paint. Without proper controls, the demolition of such structures can cause PCBs to be released into the environment and discharged into waters of the U.S. during storm events. To address this concern, EPA is proposing in Part 2.3.3.f to require controls to be implemented to minimize exposure of PCBs-containing building materials to precipitation and stormwater, and to ensure that such materials are disposed in compliance with applicable state, federal, and local laws. The proposed requirement is limited to the demolition of buildings or structures with at least 10,000 square feet of floor space built or renovated before January 1, 1980. This proposed requirement implements the 40 CFR 450.21(d)(2) effluent limit to "minimize the exposure of building materials... to precipitation and to stormwater."

Releases of PCBs into the environment from PCB-containing building materials have been well studied in certain regions of the country. In Washington State, stormwater was identified as the largest delivery pathway to surface waters for PCBs. Washington's "PCB Chemical Action Plan" identifies PCBs in caulk and paint as the second largest source of PCBs, accounting for 87 metric tons of PCBs in WA, with 160 kg/yr. released to the environment.⁶ The Plan states that

⁶ 2015. PCB Chemical Action Plan. Washington State Department of Ecology <https://fortress.wa.gov/ecy/publications/SummaryPages/1507002.html>

“Releases from building materials can be greatly accelerated during remodeling and demolition. There is an opportunity, through use of best management practices, to prevent releases of PCBs during remodeling and demolition.”

Another Washington State Department of Ecology report, focusing on the Puget Sound Basin,⁷ estimates 59 metric tons of PCBs are in building sealants in that area with about 110 kg released annually. This is likely an underestimate because the report did not consider all uses in buildings, e.g., windows, uses in residential buildings, or in other structures, such as bridges and sidewalks.

Building materials and caulk were also found to be potential sources of PCBs at both the Lower Duwamish Waterway⁸ and Commencement Bay/Nearshore Tidelands Superfund sites in Washington State. The Rainier Commons building, currently a Toxic Substances Control Act (TSCA) cleanup site, was found to contain high concentrations of PCBs in caulk and paint that entered the stormwater system via catch basins on site. This system drains to the Lower Duwamish Waterway cleanup area. Elevated concentrations of PCBs in roadway caulk were found during source tracing by the City of Tacoma in response to the re-contamination of the Thea Foss Waterway in Commencement Bay.⁹

Releases of PCBs into the environment from PCB-containing building materials have also been well studied in the San Francisco Bay region. The San Francisco Bay Regional Water Quality Control Board found that “of the sources to the Bay, stormwater runoff contributes the greatest mass of PCBs.”¹⁰ A study of buildings within greater San Francisco Bay region found PCBs in 88% of the caulk samples tested; 40% of the samples contained >50 ppm PCBs, and 20% > 10,000 ppm PCBs.¹¹ Data suggest a correlation between PCB levels observed in the water with construction activity. Based on these studies, the San Francisco Bay Regional Water Quality Control Board stated that controlling demolition of buildings containing PCBs could significantly reduce the loading of PCBs in their stormwater.

There are a variety of controls that can be implemented to minimize the potential discharge of PCBs from demolition activities. The following examples provide guidance for permittees in selecting the site-specific controls to meet the proposed Part 2.3.3.f effluent limit. These examples are not required or exhaustive. Permittees have flexibility in selecting the specific controls they will implement to meet proposed Part 2.3.3.f, but will be required to ensure that such controls minimize exposure of building materials to precipitation and stormwater, and ensure that such materials are properly disposed. Permittees will be required to also document the selected controls in the SWPPP.

⁷ 2011 Control of Toxic Chemicals in Puget Sound Phase 3: Primary Sources of Selected Toxic Chemicals and Quantities Released in the Puget Sound Basin. Ecology Publication No. 11-03-024.

⁸ 2011 Lower Duwamish Waterway Survey of Potential PCB-Containing Building Material Sources. Prepared for Ecology. 339 pages.

⁹ Section 2.1.3 of *Thea Foss and Wheeler-Osgood Waterways 2014 Source Control and Water Year 2014 Stormwater Monitoring Report*, City of Tacoma, March 2015

¹⁰ San Francisco Bay Regional Water Quality Control Board. 2013. San Francisco Bay PCBs TMDL – Implementation at Cleanup Sites. http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/sfbaypcbs/SF%20Bay%20PCBs%20TMDL%20-%20Considerations%20for%20Cleanup%20Sites%20September%205%202013.pdf

¹¹ 2013. San Francisco Bay Regional Water Quality Control Board. San Francisco Bay PCB TMDL- Implementation at Cleanup Sites. http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/sfbaypcbs/SF%20Bay%20PCBs%20TMDL%20-%20Considerations%20for%20Cleanup%20Sites%20September%205%202013.pdf (P. 3)

- Separate work areas from non-work areas and select appropriate personal protective equipment and tools.
- Construct a containment area so that all dust or debris generated by the work remains within the protected area.
 - Apply plastic sheeting to the floor, ground, or other applicable surfaces to prevent contamination of the building interior or exterior from dust generated by the work.
 - Put all necessary tools and supplies on the protective sheeting in the work area before you begin work to avoid stepping off the protective sheeting before the work is complete.
 - Construct a decontamination area outside of the work area by placing heavy plastic sheeting on the ground. Use this area for removing personal protective equipment and for cleaning equipment used in the enclosure.
 - Every time you leave the plastic sheeting, remove disposable shoe covers, and wipe or vacuum shoes, especially, the soles, before stepping off the plastic sheeting. A large disposable tack pad on the floor can help to clean the soles of shoes.
 - Remove or vacuum off Tyvek suits when exiting the work area so the dust stays inside the work area.
- For locations where a containment area cannot be constructed, consider the following techniques:
 - Cover the ground and plants with heavy plastic sheeting to catch debris. The covering should extend at least ten feet out from the building. Secure the covering to the exterior wall with a wood strip and staples, or tape.
 - Seal off any vents or air exchange systems into the building that are located within the work area.
 - Move or cover any play areas within 20 feet of the work area.
 - To prevent debris from falling beyond the ten-foot covering when working on the second story or above, extend the sheeting farther out from the base of the building and to each side of the area where materials are being disturbed.
 - To prevent the spread of debris when work is close to a sidewalk, street, or property boundary, or the building is more than three stories high, scaffolding sides should be covered in plastic.
 - Avoid working in high winds. Otherwise, take special precautions to keep the work area contained when the wind is strong enough to move dust and debris. For example, a wind screen can be constructed of plastic at the edge of the ground-cover plastic to keep dust and debris from migrating.
- For inside work, consider placing the containment area under negative air pressure and/or using high-efficiency particulate air (HEPA).
- Use tools that minimize dust and heat (<212°F). Detailed information on tools can be found at <https://www3.epa.gov/epawaste/hazard/tsd/pcbs/pubs/caulk/guide/guide-appendix.htm>.
 - When using electromechanical tools, use HEPA vacuum attachments to contain the dust generated.
 - Use wet sanders and misters to keep down the dust created during sanding, drilling, and cutting.
- Leave the work area clean at the end of every day and at the end of the project.
 - Daily activities include:

- Pick up as you go. Put trash in heavy-duty plastic bags.
- Vacuum the work area with a HEPA vacuum cleaner frequently during the day and at the end of the day.
- Clean tools at the end of the day.
- Dispose of or clean off personal protective equipment
- Properly dispose of wastewater produced during the job.
- End of project activities include:
 - Make sure all trash and debris, including building components, are disposed of properly.
 - Vacuum any exposed surfaces, including walls and ceilings, with a HEPA vacuum cleaner.
 - Mist dusty sections of the plastic sheeting with water before taking them down to keep dust from becoming airborne again.
 - Remove plastic sheeting carefully, fold it with the dirty side in, tape it shut, and properly dispose of it.
 - Visually inspect the site to ensure that no dust or debris is present and re-clean the area thoroughly if you find dust or debris.

The following are also recommended practices for minimizing PCB exposure to workers, building occupants, and community members during demolition activities:

- Use site security measures to prevent access of unauthorized persons to the work areas until after the final cleanup. Examples of security measures include:
 - Lock fence gates or doors to the work areas during off hours.
 - Place signs, barrier tape and/or cones to keep all non-workers out of the work area. Signs should be in the primary languages of the occupants, and should say "Do Not Enter - Authorized Personnel Only" and "No Eating, Drinking, or Smoking."
 - Establish a system to identify authorized persons and any limitations to their approved activities.
 - Provide a means for approving all visitors to the work area; ensure trained site personnel accompany visitors at all times and provide them with appropriate personal protective equipment.
- Close windows and doors within 20 feet of the work area to keep dust and debris from getting into the building.
- Change out of work clothing before going home, and launder non-disposable protective clothing separately from family laundry.

Part 2.3.4: Applicator and Container Washing Requirements

The proposed requirements in Part 2.3.4 implement the requirements of 40 CFR 450.21(e)(1) and (e)(2). The requirements apply to the washing of applicators and containers used for stucco, paint, concrete, form release oils, curing compounds, or other materials.

Part 2.3.4	Proposed Permit Requirements
	<ul style="list-style-type: none"> a. Direct wash water into a leak-proof container or leak-proof and lined pit designed so that no overflows can occur due to inadequate sizing or precipitation; b. Handle washout or cleanout wastes as follows: <ul style="list-style-type: none"> i. Do not dump liquid wastes in storm sewers or waters of the U.S.; ii. Dispose of liquid wastes in accordance with applicable requirements in Part 2.3.3; and iii. Remove and dispose of hardened concrete waste consistent with your handling of other construction wastes in Part 2.3.3; and c. Locate any washout or cleanout activities as far away as possible from waters of the U.S. and stormwater inlets or conveyances, and, to the extent feasible, designate areas to be used for these activities and conduct such activities only in these areas.

Part 2.3.5: Fertilizer Application Requirements

The proposed fertilizer discharge restrictions in Part 2.3.5 are included to prevent the discharge of nutrients in stormwater and to further implement the C&D rule requirement to “minimize the discharge of pollutants” at 40 CFR 450.21 (d).

Part 2.3.5	Proposed Permit Requirements
	<p>The following requirements apply if the permittee will be applying fertilizer on the construction site:</p> <ul style="list-style-type: none"> a. Apply at a rate and in amounts consistent with manufacturer’s specifications, or document departures from the manufacturer specifications where appropriate in Part 7.2.7.i of the SWPPP; b. Apply at the appropriate time of year for your location, and preferably timed to coincide as closely as possible to the period of maximum vegetation uptake and growth; c. Avoid applying before heavy rains that could cause excess nutrients to be discharged; d. Never apply to frozen ground; e. Never apply to stormwater conveyance channels with flowing waters; and f. Follow all other federal, state, tribal, and local requirements regarding fertilizer application.

EPA includes specific guidelines to follow regarding fertilizer application which are meant to minimize any potential discharge of excess or improperly applied fertilizers.

Part 2.3.6: Emergency Spill Notification

The proposed requirements in Part 2.3.6 will prohibit the discharge of toxic or hazardous substances from a spill or other release and will require permittees to comply with federal reporting requirements of 40 CFR Part 110, Part 117, and Part 302 in the event that a leak, spill, or other release contains a toxic or hazardous substance in an amount equal to or in excess of a reportable quantity.

Part 2.3.6	Proposed Permit Requirements
	<p>The proposed permit will prohibit permittees from discharging toxic or hazardous substances from a spill or other release. Furthermore, where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR 110, 40 CFR 117, or 40 CFR 302 occurs during a 24-hour period, the permittee will be required to notify the National Response Center (NRC) at (800) 424-8802 or, in the Washington, DC metropolitan area, call (202) 267-2675 in accordance with the requirements of 40 CFR 110, 40 CFR 117, and 40 CFR 302 as soon as the permittee has knowledge of the release. Permittees will be required to also, within 7 calendar days of knowledge of the release, provide a description of the release, the circumstances leading to the release, and the date of the release. State, tribal, or local requirements may necessitate additional reporting of spills or discharges to local emergency response, public health, or drinking water supply agencies.</p>

Part 2.4: Construction Dewatering Requirements

The proposed requirements in Part 2.4 implement the C&D rule requirement that prohibits “discharges from dewatering activities, including discharges from dewatering of trenches and excavations” unless managed by “appropriate controls.”

Part 2.4 (2.4.1 – 2.4.7)	Proposed Permit Requirements
	<p>Permittees will be required to comply with the following requirements to minimize the discharge of pollutants in ground water or accumulated stormwater that is removed from excavations, trenches, foundations, vaults, or other similar points of accumulation, in accordance with Part 1.2.2 of the proposed permit:</p> <ul style="list-style-type: none"> <li data-bbox="203 1024 1372 1150">2.4.1 Treat dewatering discharges with controls to minimize discharges of pollutants (e.g., appropriate controls include sediment basins or sediment traps, sediment socks, dewatering tanks, tube settlers, weir tanks, and filtration systems (e.g., <i>bag or sand filters</i>) that are designed to remove sediment); <li data-bbox="203 1165 901 1197">2.4.2 Do not discharge visible floating solids or foam; <li data-bbox="203 1211 1388 1306">2.4.3 Use an oil-water separator or suitable filtration device (such as a cartridge filter) that is designed to remove oil, grease, or other products if dewatering water is found to contain these materials; <li data-bbox="203 1320 1372 1415">2.4.4 To the extent feasible, utilize vegetated, upland areas of the site to infiltrate dewatering water before discharge. The operator is prohibited from using waters of the U.S. as part of the treatment area; <li data-bbox="203 1430 1274 1488">2.4.5 At all points where dewatering water is discharged, comply with the velocity dissipation requirements of Part 2.2.11; <li data-bbox="203 1503 1372 1562">2.4.6 With backwash water, either haul it away for disposal or return it to the beginning of the treatment process; and <li data-bbox="203 1577 1356 1635">2.4.7 Replace and clean the filter media used in dewatering devices when the pressure differential equals or exceeds the manufacturer’s specifications.

The specific proposed restrictions in Part 2.4 provide the proposed permit’s interpretation of what is meant by “appropriate controls” in the C&D rule. These specific proposed requirements, in part, also implement the C&D rule requirements to control peak flowrates and total stormwater volume (40 CFR 450.21 (a)(2)), to minimize sediment discharges (40 CFR 450.21 (a)(5)), and to direct stormwater to vegetated areas (40 CFR 450.21 (a)(6)).

Request for Comment 4: EPA notes that it has included a request for comment in the proposed permit on additional controls or requirements EPA should consider to ensure that discharges of pollutants in construction dewatering discharges are minimized.

Part 3: Water Quality-Based Effluent Limitations

This proposed CGP includes water quality-based effluent limits (WQBELs) to control discharges as necessary to meet applicable water quality standards. The proposed provisions of Part 3 constitute the WQBELs of the permit, and supplement the permit's proposed technology-based effluent limits in Part 2.

Part 3.1: General Effluent Limitation to Meet Applicable Water Quality Standards

The proposed provision in Part 3.1 will require that all permittees control their stormwater discharges as necessary to meet applicable water quality standards, consistent with 40 CFR 122.44(d)(1).

Part 3.1	Proposed Permit Requirements
	<p>The proposed permit will require discharges of stormwater to be controlled as necessary to meet applicable water quality standards, including meeting any specific water quality-based conditions or limits required by states, tribes, and U.S. territories in Part 9. EPA solicits comment on these limitations.</p> <p>In the absence of information demonstrating otherwise, EPA expects that compliance with the conditions in this permit will result in stormwater discharges being controlled as necessary to meet applicable water quality standards. If at any time the permittee becomes aware, or EPA determines, that the discharge is not being controlled as necessary to meet applicable water quality standards, the permittee will be required to take corrective action as required in Parts 5.1 and 5.2, and document the corrective actions as required in Part 5.4.</p> <p>EPA may also impose additional controls (to meet the narrative water quality-based effluent limit above) on a site-specific basis, or require the operator to obtain coverage under an individual permit, if information in the NOI or from other sources indicates that the operator's discharges are not controlled as necessary to meet applicable water quality standards. This includes situations where additional controls are necessary to comply with a wasteload allocation in an EPA-established or approved TMDL.</p> <p>If during the operator's coverage under a previous permit, the operator was required to install and maintain stormwater controls specifically to meet the assumptions and requirements of an EPA-approved or established TMDL (for any parameter) or to otherwise control the discharge to meet water quality standards, the operator will be required to continue to implement such controls as part of coverage under this permit.</p>

To support EPA's expectation that compliance with the conditions and effluent limitations in this proposed permit will result in discharges that meet applicable water quality standards, the proposed permit includes additional water quality-based effluent limitations, which, in combination with the technology-based effluent limits in Part 2, EPA expects to be as stringent as necessary to achieve water quality standards. These additional WQBELs will apply in the permit where EPA has determined that discharges from construction sites may have the reasonable potential to cause or contribute to exceedances of applicable water quality standards, such as when a waterbody is impaired for sediment or nutrients, which are parameters associated with stormwater discharges from construction sites. The fact sheet will discuss these additional requirements below for Part 3.2.

Part 3.2: Discharge Limitations for Sites Discharging to Sensitive Waters

The proposed requirements in Part 3.2 are to inform permittees that the requirements in Parts 4.3 and 2.2.14.a.iii will apply if they discharge to a water impaired for sediment or a sediment-related parameter, and/or nutrients, or to a water that is identified by the state, tribe, or EPA as Tier 2, Tier 2.5, or Tier 3 for antidegradation purposes.

Part 3.2	Proposed Permit Requirements
	<p>For any portion of the site that discharges to a sediment or nutrient-impaired water or to a water that is identified by the state, tribe, or EPA as Tier 2, Tier 2.5, or Tier 3 for antidegradation purposes, instead of the inspection frequency specified in Part 4.2, the permittee will be required to comply with the frequency specified in 4.3, and instead of the stabilization deadline specified in Part 2.2.14.a.ii, the permittee will be required to comply with the deadline specified in Part 2.2.14.a.iii.¹²</p> <p>If the permittee discharges to a water that is impaired for a parameter other than a sediment-related parameter or nutrients, EPA will inform you if any additional controls are necessary for your discharge to be controlled as necessary to meet water quality standards, including for it to be consistent with the assumptions of any available wasteload allocation in any applicable TMDL, or if coverage under an individual permit is necessary.</p> <p>In addition, on a case-by-case basis, EPA may notify operators of new sites or operators of existing sites with increased discharges that additional analyses and/or stormwater controls are necessary to comply with the applicable antidegradation requirements, or notify you that an individual permit application is necessary.</p>

The proposed permit explains what is meant by discharges to “impaired waters” or discharges to Tier 2, 2.5, or 3 waters as follows:

“Impaired waters” are those waters identified by the state, tribe, or EPA as not meeting an applicable water quality standard and (1) requires development of a TMDL (pursuant to section 303(d) of the CWA; or (2) is addressed by an EPA-approved or established TMDL; or (3) is not in either of the above categories but the waterbody is covered by a pollution control program that meets the requirements of 40 CFR 130.7(b)(1). Your construction site will be considered to discharge to an impaired water if the first water of the U.S. to which you discharge is an impaired water. For discharges that enter a storm sewer system prior to discharge, the first water of the U.S. to which you discharge is the waterbody that receives the stormwater discharge from the storm sewer system. For assistance in determining whether your site discharges to impaired waters, EPA has developed a tool that is available both within the electronic NOI form in NeT, and at <https://water.epa.gov/polwaste/npdes/stormwater/discharge.cfm>.

Tiers 2, 2.5 and 3 refer to waters either identified by the state as high quality waters or Outstanding National Resource Waters under 40 CFR 131.12(a)(2) and (3). For the purposes of this permit, you are considered to discharge to a Tier 2, Tier 2.5, or Tier 3 water if the first water of the U.S. to which you discharge is identified by a state, tribe, or EPA as Tier 2, Tier 2.5, or Tier 3. For discharges that enter a storm sewer system prior to discharge, the water of the U.S. to which you discharge is the first water of the U.S. that receives the stormwater discharge from the storm sewer system. See list of Tier 2, Tier 2.5, and Tier 3 waters in Appendix F.

¹² If you qualify for any of the reduced inspection frequencies in Part 4.4, you may conduct inspections in accordance with Part 4.4 for any portion of your site that discharges to a sensitive water.

EPA may determine on a case-by-case basis that a site discharges to an impaired water.

The rationale for the more stringent impaired waters requirements was explained in the 2012 CGP fact sheet, available at https://www.epa.gov/sites/production/files/2015-10/documents/cgp2012_finalfactsheet.pdf, as follows:

Frequency of Site Inspections. ... It is EPA's judgement that these modified inspection requirements will enhance the permittee's ability to find and correct problems before a discharge of pollutants to the impaired water occurs.

Deadline to Complete Stabilization. ... It is EPA judgement that, in waters already degraded for pollutants associated with construction activities, further reducing the amount of time that exposed soil is left in an unstabilized state is especially important for limiting the sediment and/or nutrient load to these waters. The faster stabilization requirement for areas discharging to sediment and nutrient-impaired waters is designed to minimize the erosion and sedimentation that is associated with large, exposed areas.

EPA specifically anticipated that a stricter stabilization timeframe would be within the permitting authority's discretion in implementing the 40 CFR 450.21 (b) requirement of the C&D rule. In the preamble to the C&D rule, EPA explained that "the permitting authority may determine it necessary for permittees to initiate soil stabilization measures when construction activity has permanently or temporarily ceased and will not resume for a period exceeding 7 calendar days, as opposed to 14 calendar days".

The rationale for the more stringent requirements for Tier 2, 2.5, and 3-designated waters was explained in the 2012 CGP fact sheet as follows:

As stated in Part 3.1 of the [2012] permit, in the absence of information demonstrating otherwise, EPA expects that compliance with the conditions in this permit will result in stormwater discharges being controlled as necessary to meet applicable water quality standards (which include state antidegradation requirements). More specifically, by imposing on permittees that discharge to Tier 2, Tier 2.5, or Tier 3 waters the requirement to comply with the additional requirements, on top of the permit's other effluent limits and conditions, to stabilize exposed areas faster and to conduct more site inspections than other sites, It is EPA's judgment that authorizing these discharges will not result in a lowering of water quality. Thus, EPA has determined that compliance with the CGP generally will be sufficient to satisfy Tier 2 (or 2.5) and Tier 3 antidegradation requirements because the controls will not result in a lowering of water quality, making individualized Tier 2 or Tier 3 review unnecessary, assuming of course that the discharger is in compliance with any other applicable state or tribal antidegradation conditions that are included in Part 9 of the permit. Furthermore, the controls in the permit are sufficiently stringent that they would generally satisfy the requirement at the heart of Tier 2 review, that the discharge is necessary to accommodate important economic or social development in the area where the discharge is located. Construction is usually important to economic and social development, and the controls already required in Part 2 of this permit have been identified by EPA in its effluent limitations guideline for the construction and development category as the level of pollutant abatement that is the best available technology economically achievable. However, in cases where information submitted with the NOI, or available from other sources, indicates that further Tier 2 or Tier 3 review and/or conditions are necessary either for a new

project or an existing project with a significantly increased discharge, EPA will conduct this review and require any appropriate additional controls.

The conclusion that compliance with the CGP will generally meet the Tier 2 and Tier 3 antidegradation requirements depends on several key aspects of the permit. First, all construction sites that will be subject to this permit must meet the stringent general effluent limits set out in Part 2. Through compliance with these limits alone, EPA expects that the discharge of pollutants will be reduced and/or eliminated so that there should not be a lowering of water quality. EPA bases this conclusion in part on the fact that the limits in this permit are based on the nationally-developed effluent limitations guidelines process that defined the BAT/BCT/BPT and NSPS level of control. EPA also is imposing on these sites the requirement to meet even more stringent controls defined in 4.1.3 [of the 2012 CGP] (more frequent inspections) and 2.2.1.3c [of the 2012 CGP] (stricter stabilization deadlines). Furthermore, once installed and implemented, the permittee is obligated to maintain these controls and to correct deficiencies where inspection determines that deficiencies exist. Where EPA determines through its oversight activities (e.g., onsite inspection) that a discharger is not meeting its limits, such a deficiency will constitute a violation of the permit and will require follow-up corrective action pursuant to Part 5.2.1.3 [of the 2012 CGP].

Second, there may very well be individual cases where EPA determines that further controls are necessary or that coverage under the CGP is no longer appropriate to protect the Tier 2, 2.5, or 3 status of the receiving water. For this reason, EPA has included the following language in Part 3.3.2 [of the 2012 CGP]: “on a case-by-case basis, EPA may notify operators of such new projects or operators of existing projects with significantly increased discharges that additional analyses, stormwater controls, or other permit conditions are necessary to comply with the applicable antidegradation requirements, or notify you that an individual permit application is necessary in accordance with Part 1.4.5 [of the 2012 CGP].” It is anticipated that if EPA decides to require a Tier 2 or Tier 3 review for a particular new project or an existing project with a significantly increased discharge, EPA may either change the terms of coverage or terminate CGP coverage and require an individual permit.

EPA notes that it has requested comment in the proposed permit on whether the more stringent stabilization and inspection requirements should apply to all sites. [See Request for Comment 3 and 5 in the proposed permit.](#)

Part 3.2 also clarifies that permittees will be informed if any additional controls are necessary for the discharge to be consistent with the assumptions of any available wasteload allocation in the TMDL. These proposed provisions are intended to implement the requirements of 40 CFR 122.44(d)(1)(vii)(B), which requires that water quality-based effluent limits in permits be “consistent with the assumptions and requirements of any available wasteload allocation for the discharge” and of 40 CFR 122.4(i), which contains requirements regarding the issuance of permits for new sources.

Part 3.2 also clarifies when discharges from construction sites are discharging to an impaired water. EPA considers such a clarification to be necessary due to the considerable amount of uncertainty that exists among the regulated community as to how to determine whether a site discharges to an impaired water.

Part 4: Site Inspection Requirements

Part 4.1: Person(s) Responsible for Inspecting Site

Part 4.1 clarifies that it is the permittee who will be responsible for ensuring that the person who conducts inspections, whether he/she is a member of the project staff or a third party, will be required to be a “qualified person.”

Part 4.1	Proposed Permit Requirements
	<p>Part 4.1 clarifies that the person(s) inspecting the site may be a person on the project staff or a third party hired to conduct such inspections. Whoever will be charged with conducting the inspections will be required to be a “qualified person,” who is knowledgeable in the principles and practice of erosion and sediment controls, and pollution prevention, who possesses the skills to assess conditions at the construction site that could impact stormwater quality, and the skills to assess the effectiveness of any stormwater control measures selected and installed to meet the requirements of the permit.</p>

Part 4.2: Frequency of Inspections

The proposed provision in Part 4.2 will require the permittee to, at a minimum, conduct a site inspection in accordance with one of two schedules, unless they are subject to the Part 4.3 site inspection frequency for discharges to sensitive waters or qualify for a Part 4.4 reduction in the inspection frequency.

Part 4.2	Proposed Permit Requirements
	<p>Part 4.2 will require the permittee to conduct inspections of the site and establishes the required minimum inspection frequency. The permittee will have the option to either (1) conduct a site inspection once every seven calendar days; or (2) conduct a site inspection once every 14 days and within 24 hours of the occurrence of a storm event of 0.25 inches or greater or the occurrence of runoff from snowmelt. To determine if a storm event of 0.25 inches or greater has occurred on the site, the permittee will be required to either keep a properly maintained rain gauge on the site, or obtain the storm event information from a weather station that is representative of the location. For any day of rainfall during normal business hours that measures 0.25 inches or greater, the permittee will be required to record the total rainfall measured for that day in accordance with Part 4.7.1.d.</p>

This proposed provision retains the 2012 CGP's choice between the weekly inspection and bi-weekly inspection frequency. Permittees will be required to conduct their inspection within 24 hours once a storm event has produced 0.25 inches within a 24 hour period, even if the storm event is still continuing. Thus, if the permittee has elected to inspect bi-weekly and there is a storm event at the site that continues for multiple days, and each day of the storm produces 0.25 inches or more of rain, the permittee will be required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm (inspections are only required during the sites normal working hours). In EPA's judgement, it is important for inspections to be conducted within a day of the occurrence of a qualifying rainfall event so that the permittee could catch any potential problems on the site and correct such problems before a prolonged discharge of pollutants occurs. Requiring inspections to be conducted within 24 hours of the occurrence of a qualifying storm event provides assurance that, during multiple days of discharge from a single storm event, problems with the control of pollutants will be identified sooner and corrected in accordance with the corrective action timeframes specified in Part 5 of the proposed permit. EPA modified the proposed requirement in option (2) to add “or the occurrence of runoff from snowmelt” to when inspections will be required to be

conducted, in order to clarify that snowmelt runoff is also a stormwater discharge, and also triggers the proposed inspection requirement.

Request for Comment 5: EPA solicits comment on the appropriate inspection frequency. In particular, EPA solicits comment in the proposed permit on modifying the minimum site inspection frequency to once every 7 calendar days and within 24 hours of the occurrence of a storm event of 0.25 inches or greater. Under the current 2012 CGP, this inspection frequency applies to sites discharging to sensitive waters (i.e., impaired waters and Tier 2, 2.5, or 3 waters). EPA requests comment on the feasibility of the appropriate inspection frequency for all sites (except for sites qualifying for a reduction in inspection frequency in Part 4.4 below). Please identify specifically the situations where this frequency would not be reasonable. EPA also requests comment on requiring the inspection frequency to be once every seven days (without the option of inspection once every 14 calendar days and within 24 hours of a storm event).

Request for Comment 6: EPA notes that it has included a request for comment in the proposed permit on the frequency of inspections that should be required for snowmelt runoff. Where snowmelt discharges occur over multiple days, as many frequently do, EPA is interested in receiving feedback on a recommended inspection frequency for these discharge events.

Complying with the bi-weekly inspection frequency: EPA intends that sites electing to inspect once every 14 days and within 24 hours of a 0.25 inch storm or the occurrence of runoff from snowmelt will conduct at a minimum one inspection every 14 days and additional inspections as is warranted depending on whether a 0.25 inch storm event or snowmelt runoff occurs during normal working hours. To comply with this requirement, permittees should ensure that no more than 14 days pass after each inspection before the next inspection is conducted. This could be accomplished by choosing a regular day during the two-week period on which inspections will be conducted in the absence of precipitation events. However, where a rain event produces 0.25 inches or more during the two-week period or snowmelt runoff occurs, an inspection will be required to be performed within 24 hours of the occurrence of the event. Following the event-related inspection (or final event related inspection in cases of multi-day events), the permittee will be required to conduct the next inspection within no more than 14 calendar days.

Multiple day storms: The permit clarifies that if the site experiences a storm event that continues for multiple days, and each day of the storm produces 0.25 inches or more of rain, the permittee will be required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm.

0.25 inch rain event threshold: EPA incorporates by reference the discussion in 2012 CGP fact sheet (Section IX.1.2) in which EPA presented data that supported the 0.25 inch threshold for inspections. EPA found that a 0.25 inch threshold would cover an estimated 47 percent of storms in New Hampshire, 10 percent of storms in Idaho, and 27 percent of storms in New Mexico. It is EPA's judgement that storms with rainfall totals greater than 0.25 inches have the potential to produce discharges of stormwater that could lead to discharges of pollutants to surface waters, particularly if stormwater controls are not functioning effectively. Further, storms greater than 0.25 inches may compromise stormwater controls on the site. Thus, inspection immediately after such events (or during such events in the case of multi-day storms) is important to meet the purposes of adopting a storm-based inspection schedule. See section IX.1.2 "Frequency of Inspections (Part 4.1.2)" on pages 94 through 96 of the 2012 CGP fact sheet, available at https://www.epa.gov/sites/production/files/2015-10/documents/cgp2012_finalfactsheet.pdf.

Part 4.3: Increase in Inspection Frequency for Sites Discharging to Sensitive Waters

Part 4.3 requires modified inspection frequencies for the portion of any sites discharging to a sediment or nutrient-impaired water or to a water identified by a state, tribe, or EPA as Tier 2, Tier 2.5, or Tier 3 for antidegradation purposes.

Part 4.3	Proposed Permit Requirements
	<p>The permittee will be required to conduct inspections in accordance with the following inspection frequencies:</p> <p>4.3.1 Once every seven calendar days; and</p> <p>4.3.2 Within 24 hours of a storm event of 0.25 inches or greater, or the occurrence of runoff from snowmelt. To determine if a storm event of 0.25 inches or greater has occurred on your site, the operator will be required to either keep a properly maintained rain gauge on the site, or obtain the storm event information from a weather station that is representative of its location. For any day of rainfall during normal business hours that measures 0.25 inches or greater, the operator will be required to keep a record of rainfall occurrences in accordance with Part 4.7.1 d.</p>

As noted in the fact sheet section on Part 3.2, it is EPA's judgement that these inspection requirements will enhance the permittee's ability to find and correct problems before a discharge of pollutants occurs. EPA expects that compliance with the water quality-based effluent limits in the permit, in combination with the general effluent limits in Part 2, will result in discharges that meet applicable water quality standards. EPA clarifies that the more frequent site inspections are required only for those portions of the site that are discharging to the sensitive water. For example, for a highway construction project spanning many miles over multiple watersheds, the increase in inspection frequency would only be required in areas of the site that are located within the watershed of the sensitive water. EPA also notes that if the permittee qualifies for any of the reduced inspection frequencies specified in Part 4.4, they may comply with those reduced frequencies despite the fact that they discharge to a sensitive water. This is because the reduced frequencies in Part 4.4 apply only to situations where the reduced inspection frequency is justified by circumstances that ensure protection of all waters, including sensitive waters.

Note that, similar to the requirements for conducting bi-weekly site inspections under Part 4.2.2, the proposed permit clarifies that if the site experiences a storm event that continues for multiple days, and each day of the storm produces 0.25 inches or more of rain, the permittee will be required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm. The permittee will also be required to conduct an inspection upon the occurrence of runoff from snowmelt.

Part 4.4: Reductions in Inspection Frequency

Part 4.4 identifies three different situations in which a reduction in the frequency of inspections is will be permitted. Each of these represent situations of comparatively lower risk for discharges to surface waters.

Part 4.4.1: For Stabilized Areas

Part 4.4.1 provides the opportunity for permittees to reduce their inspection frequencies in any areas of the site that will have achieved temporary or final stabilization as proposed to be required in Part 2.2.14.

Part 4.4.1	Proposed Permit Requirements
	<p>The proposed permit will enable the permittee to reduce the frequency of inspections to once per month in any area of the site where the stabilization steps in Part 2.2.14a have been completed. If construction activity resumes in this portion of the site at a later date, the inspection frequency will immediately increase to the frequency specified in Part 4.2 or 4.3 if applicable. The permittee will be required to document the beginning and ending date of this period in its SWPPP.</p>

Areas of the site that will have achieved temporary or final stabilization present a significantly lower risk of producing unacceptable discharges of pollutants in stormwater to surface waters. EPA further expects that, especially for larger projects, where construction activities may take place in different phases in separate locations of the site, reducing site inspection frequency where areas have been stabilized will encourage stabilization to take place closer to the time that active disturbances have ended. It is EPA's judgement that the reduction in inspection frequency will provide a benefit in reduced administrative burden to the permittee.

Part 4.4.2: For Arid, Semi-Arid, or Drought-Stricken Areas

The proposed requirements in Part 4.4.2 will allow permittees whose construction projects will occur in areas considered arid or semi-arid to reduce the frequency of inspection to account for the comparatively lower amounts of rainfall.

Part 4.4.2	Proposed Permit Requirements
	<p>The proposed permit will enable permittees to reduce their inspection frequency to once per month and within 24 hours of the occurrence of a storm event of 0.25 inches or greater if the project is located in an arid, semi-arid, or drought-stricken area and construction is occurring during the seasonally dry period or during a period in which drought is predicted to occur. The permittee will be required to document that they are using this schedule and the beginning and ending dates of this period in your SWPPP. To determine if a storm event of 0.25 inches or greater has occurred on the site, the permittee will be required to either keep a properly maintained rain gauge on the site, or obtain the storm event information from a weather station that is representative of the location. For any day of rainfall during normal business hours that measures 0.25 inches or greater, the permittee will be required to record the total rainfall measured for that day in accordance with Part 4.7.1.d.</p>

This reduced inspection frequency will still allow permittees to identify potential problems that could result in a discharge of pollutants in the unlikely event that a storm event does occur. To determine when the seasonal dry periods occur in arid and semi-arid areas, one tool that is available for permittees is the U.S. Department of Agriculture, Natural Resources Conservation Service's Climate Analysis for Wetlands tool:
<http://www.wcc.nrcs.usda.gov/climate/wetlands.html>.

Note that, similar to the proposed requirements for conducting bi-weekly site inspections under Part 4.2.2, the proposed permit clarifies that if the site experiences a storm event that continues for multiple days, and each day of the storm produces 0.25 inches or more of rain, the permittee will be required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm.

Part 4.4.3: For Frozen Conditions

The proposed requirements in Part 4.4.3 will enable permittees that experience frozen conditions on their site to reduce their inspection frequency to account for the fact that a discharge will not be likely during this period of time.

Part 4.4.3	Proposed Permit Requirements
	<p>The proposed permit will enable operators to reduce inspection frequencies under the following conditions:</p> <ul style="list-style-type: none"> a. <u>Where earth-disturbing activity is suspended:</u> If the permittee is suspending earth-disturbing activities due to frozen conditions, the permittee may temporarily suspend inspections on the site until thawing conditions begin to occur if: <ul style="list-style-type: none"> i. Runoff is unlikely due to continuous frozen conditions that are likely to continue at the site for at least three months based on historic seasonal averages. If unexpected weather conditions (such as above freezing temperatures or rain events) make discharges likely, the permittee will be required to immediately resume the regular inspection frequency as described in Parts 4.2 or 4.3 as applicable; ii. Land disturbances have been suspended; and iii. All disturbed areas of the site have been stabilized in accordance with Part 2.2.14.a. b. <u>Where earth-disturbing activities continue on portions of the site:</u> If the permittee is still conducting earth-disturbing activities during frozen conditions, the permittee may reduce the inspection frequency to once per month if: <ul style="list-style-type: none"> i. Runoff is unlikely due to continuous frozen conditions that are likely to continue at the site for at least three months based on historic seasonal averages. If unexpected weather conditions (such as above freezing temperatures or rain events) make discharges likely, the permittee will be required to immediately resume the regular inspection frequency as described in Parts 4.2 or 4.3 as applicable; and ii. Except for areas in which the permittee is actively conducting earth-disturbing activities, disturbed areas of the site have been stabilized in accordance with Part 2.2.14.a. <p>Part 4.4.3 will also require that permittees document the beginning and ending dates of this period in their SWPPP.</p>

The proposed permit retains the 2012 CGP's waiver approach for projects that suspend all construction work during frozen conditions. This proposed permit also will allow permittees to reduce inspection frequencies to once per month if the ground is frozen and they will still be conducting earth-disturbing activities. For both scenarios under which a reduction is possible, this proposed permit includes the proposed requirement that the disturbed areas be stabilized either vegetatively or non-vegetatively. Including this proposed requirement also provides further assurance that in the case of an unexpected thaw or rain on snow event, the discharge of pollutants from all areas has been minimized.

Part 4.5: Areas That Will Be Required To Be Inspected

The proposed requirements in Part 4.5 describe the areas on the site that will need to be inspected.

Part 4.5 (4.5.1 – 4.5.6)	Proposed Permit Requirements
	<p>The proposed permit specifies which areas of the site will be required to be inspected during each site inspection, which include, at a minimum, the following:</p> <ul style="list-style-type: none"> <li data-bbox="240 331 1380 394">4.5.1 All areas that have been cleared, graded, or excavated, and that have not yet completed stabilization consistent with Part 2.2.14.a; <li data-bbox="240 422 1401 485">4.5.2 All stormwater controls (including pollution prevention controls) installed at the site to comply with this permit; <li data-bbox="240 512 1370 575">4.5.3 Material, waste, borrow or equipment storage and maintenance areas that are covered by this permit; <li data-bbox="240 602 1386 665">4.5.4 All areas where stormwater typically flows within the site, including drainageways designed to divert, convey, and/or treat stormwater; <li data-bbox="240 693 862 714">4.5.5 All points of discharge from the site; and <li data-bbox="240 741 1138 762">4.5.6 All locations where stabilization measures have implemented. <p>Permittees will not be required to inspect areas of the site that, at the time of the inspection, are considered unsafe to inspection personnel.</p>

The 2012 CGP included many of the same specific areas to be inspected in Part 4.1.5 of the 2012 CGP. In Part 4.5.2, EPA clarifies that all stormwater controls installed at the site required in Part 2 and Part 3 will be required to be inspected, including the inspection for sediment that has been tracked out from the site onto paved roads, sidewalks, or other paved areas consistent with Part 2.2.4.

Part 4.6: Requirements for Inspections

The proposed provision in Part 4.6 include specific requirements regarding the focus of the inspection.

Part 4.6 (4.6.1 – 4.6.7)	Proposed Permit Requirements
	<p>The permit requires that inspections, at a minimum, consist of the following:</p> <ul style="list-style-type: none"> <li data-bbox="240 1325 1414 1419">4.6.1 Check whether all stormwater controls (i.e., erosion and sediment controls and pollution prevention controls) are properly installed, appear to be operational, and are working as intended to minimize pollutant discharges. <li data-bbox="240 1446 1325 1509">4.6.2 Check for the presence of conditions that could lead to spills, leaks, or other accumulations of pollutants on the site; <li data-bbox="240 1537 1406 1600">4.6.3 Identify any locations where new or modified stormwater controls are necessary to meet the requirements of Parts 2 and/or 3; <li data-bbox="240 1627 1401 1743">4.6.4 At points of discharge and, if applicable, the banks of any waters of the U.S. flowing within or immediately adjacent to the site, check for signs of visible erosion and sedimentation (i.e., sediment deposits) that have occurred and are attributable to the discharge; <li data-bbox="240 1770 1003 1791">4.6.5 Identify any incidents of noncompliance observed. <li data-bbox="240 1818 1393 1839">4.6.6 If a discharge is occurring during the inspection, the permittee will be required to:

<ul style="list-style-type: none"> a. Identify all points at the site; and b. Observe and document the visual quality of the discharge, and take note of the characteristics of the stormwater discharge, including color; odor; floating, settled, or suspended solids; foam; oil sheen; and other indicators of stormwater pollutants. <p>4.6.7 Based on the results of the inspection, complete any necessary maintenance under Part 2.1.4 and corrective actions under Part 5.</p>

EPA clarifies that the permittee will be required to complete any necessary maintenance discovered during an inspection.

Part 4.7: Inspection Report

Part 4.7.1: Requirement to Complete Inspection Report

The proposed requirements in Part 4.7.1 provide a consistent means of documenting the results of each inspection.

Part 4.7.1	Proposed Permit Requirements
	<p>The permittee will be required to complete an inspection report within 24 hours of completing any site inspection. Each inspection report will be required to include the following:</p> <ul style="list-style-type: none"> a. The inspection date; b. Names and titles of personnel making the inspection; c. A summary of the inspection findings, covering at a minimum the observations you made in accordance with Part 4. 6, including any necessary maintenance or corrective actions; d. If the permittee is inspecting the site at the frequency specified in Part 4.2.2, Part 4.3.2, or Part 4.4.2, and the permittee conducted an inspection because of rainfall measuring 0.25 inches or greater, it will be required to include the applicable rain gauge or weather station readings that triggered the inspection; and e. If the permittee has determined that it is unsafe to inspect a portion of the site, the permittee will be required to describe the reason it was found to be unsafe and specify the locations that this condition applied to.

Part 4.1.7 of the 2012 CGP requires, similar to the concept of a log book, that an inspection report be completed for each inspection. It is EPA’s judgement that requiring an inspection report to be kept will improve the organization of the inspection-related records, and make it easier for permittees to keep track of their findings from inspection to inspection.

Part 4.7.2: Signature Requirements

The proposed requirements in Part 4.7.2 will require that inspection reports, whether in paper or electronic format, provide accountable documentation of compliance with the inspection requirements in this permit. Appendix I provides proposed signature requirements for both paper and electronic reports.

Part 4.7.2	Proposed Permit Requirements
	<p>Each inspection report will be required to be signed in accordance with Appendix I, Part I.11 of the proposed permit.</p>

Part 4.7.3: Recordkeeping Requirements

The proposed requirements in Part 4.7.3 will require inspection reports be kept at the site and available to EPA inspectors.

Part 4.7.3	Proposed Permit Requirements
The proposed permit will require that the permittee keep a copy of all inspection reports at the site or at an easily accessible location, so that they are available at the time of an on-site inspection or upon request by EPA.	

Part 4.7.4: Record Retention

The proposed requirement in Part 4.7.4 to retain all reports a minimum of three years comes from the standard permit condition requirements at 40 CFR 122.41 (j) (2).

Part 4.7.4	Proposed Permit Requirements
The proposed permit will require that all inspection reports be retained for at least three years from the date that permit coverage expires or is terminated.	

Part 4.8: Inspections by EPA

The proposed requirements in Part 4.8 are to inform the permittee of its obligations with respect to providing access to EPA (or its authorized representatives) in order to conduct site inspections of its own for the purposes of determining compliance with this proposed permit.

Part 4.8 (4.8.1 – 4.8.4)	Proposed Permit Requirements
Part 4.8.1 will require the permittee to allow EPA or an authorized representative of EPA to conduct the following activities at reasonable times. To the extent the permittee is utilizing shared controls that are not on-site to comply with this proposed permit, the permittee will be required to make arrangements for EPA to have access at all reasonable times to those areas where the shared controls are located.	
4.8.1	Enter onto all areas of the site, including any construction support activity areas covered by this permit, any off-site areas where shared controls are utilized to comply with this permit, discharge locations, adjoining waterbodies, and locations where records are kept under the conditions of this permit;
4.8.2	Access and copy any records that will be required to be kept under the conditions of this permit;
4.8.3	Inspect the construction site, including any construction support activity areas covered by the permit (see Part 1.2.1c), any stormwater controls installed and maintained at the site, and any off-site shared controls utilized to comply with this permit; and
4.8.4	Sample or monitor for the purpose of ensuring compliance.

This same authority is included in Appendix I, Part 9 of the 2012 CGP as a standard permit condition based on 40 CFR 122.41 (i). This authority is based on section 308 of the CWA. It is EPA's judgement that it is appropriate to place this same language in the inspection part of the permit so that it is more visible to the permittee.

Part 5: Corrective Actions

Part 5.1: Conditions Triggering Corrective Action

The proposed requirements in Part 5.1 explain when a permittee is expected to take corrective action.

Part 5.1 (5.1.1 – 5.1.4)	Proposed Permit Requirements
	<p>Part 5.1 defines the conditions under which a permittee will be required to take corrective action at their site:</p> <ul style="list-style-type: none"> <li data-bbox="240 506 1040 539">5.1.1 A stormwater control needs repair or replacement; or <li data-bbox="240 556 1419 621">5.1.2 A stormwater control necessary to comply with the requirements of this permit was never installed, or was installed incorrectly; or <li data-bbox="240 638 1344 703">5.1.3 The permittee's discharges are causing an exceedance of applicable water quality standards; or <li data-bbox="240 720 1013 753">5.1.4 A prohibited discharge has occurred (see Part 1.3).

The conditions that will require corrective action are substantively similar to and consistent with those from Part 5.1 of the 2012 CGP. EPA added a proposed triggering condition for corrective action if a stormwater control needs repair or replacement. This clarifies EPA's intent in the 2012 CGP that corrective action would be needed when control repairs are required. This condition for corrective action is distinguished from when controls require routine maintenance in Part 2.1.4 of the proposed permit.

Part 5.2: Corrective Action Deadlines

The proposed requirements in Part 5.2 will establish deadlines for initiating and completing work to correct the conditions identified at the site in accordance with Part 5.1. Corrective action is distinguished from routine maintenance of stormwater controls and pollution prevention measures required in Parts 2.1.4 and 2.3.

Part 5.2	Proposed Permit Requirements
	<p>Part 5.2 describes the deadlines the permittee will be required to meet when addressing any of the corrective action triggering conditions described in Part 5.1</p>

EPA notes that if the condition identified in this Part constitutes a permit violation, correcting it will not remove the original violation. However, enforcement authorities will consider the promptness and effectiveness of any corrective action taken in determining an appropriate response. Additionally, failing to take corrective action in accordance with this Part will be an additional permit violation.

The proposed provision in Part 5.2.1 will require the permittee to immediately take reasonable steps to address any conditions at the site triggering corrective action to minimize pollutant discharges from the site.

Part 5.2.1	Proposed Permit Requirements
	<p>Part 5.2.1 requires permittees to immediately take all reasonable steps to address the condition identified in Part 5.1, including cleaning up any contaminated surfaces so the material will not discharge in subsequent storm events.</p>

EPA notes that in the context of Part 5.2.1 the term “immediately” will require construction operators to, on the same day a condition requiring corrective action is found, take steps to minimize or prevent the discharge of pollutants unless a new or replacement control or significant repair is required.

The proposed requirement in Part 5.2.2 will establish a specific timeframe for completing corrective actions that do not require a new or replacement control or significant repair.

Part 5.2.2	Proposed Permit Requirements
Part 5.2.2 will require permittees to complete the corrective action by the close of the next business day when the problem does not require a new or replacement control or significant repair.	

Examples of corrective actions that do not require significant repair or replacement include sweeping up tracked-out sediment, cleaning up spilled materials, and minor repairs such as fixing a hole in a silt fence. EPA notes that if the problem is identified at a time in the work day when it is too late to initiate corrective action, the initiation of corrective action will be required to begin on the following work day.

The proposed requirement in Part 5.2.3 will establish a specific timeframe for completing corrective actions that require a new or replacement control or significant repair.

Part 5.2.3	Proposed Permit Requirements
Part 5.2.3 will require the permittee to install the new or modified control and make it operational, or complete the repair, by no later than seven calendar days from the time of discovery when the problem requires a new or replacement control or significant repair. If it will be infeasible to complete the installation or repair within seven calendar days, the permittee will be required to document in their records why it is infeasible to complete the installation or repair within the seven-day timeframe and document their schedule for installing the stormwater control(s) and making it operational as soon as feasible after the seven-day timeframe. Where these actions result in changes to any of the stormwater controls or procedures documented in their SWPPP, the permittee will be required to modify their SWPPP accordingly within seven calendar days of completing this work.	

Examples of corrective actions that require significant repair or replacement include extensive removal and replacement of an existing control or controls, or repairing a sophisticated treatment control, such as a chemical treatment system.

Part 5.2.3 will also ensure that the SWPPP adequately reflects the stormwater controls being implemented on the site. Where a new control is installed and made operational, or a modification is made to an existing control, the SWPPP will be required to be updated to reflect these site changes. Note that this will be true for all such modifications, including those made to implement corrective actions.

Part 5.3: Corrective Action That Will be Required by EPA

The proposed requirement in Part 5.3 clarifies that, in addition to corrective actions that may result from the permittee’s own inspections, EPA may also require corrective actions to address permit violations found during the Agency’s inspections.

Part 5.3	Proposed Permit Requirements
The permittee will be required to comply with any corrective actions required by EPA as a result of permit violations found during an inspection carried out under Part 4.8.	

Part 5.4: Corrective Action Report

The proposed provisions in Part 5.4 establish requirements for proper documentation of all corrective actions that will be required to be taken under this part of the proposed permit.

Part 5.4	Proposed Permit Requirements
Part 5.4 will require that permittees complete a corrective action report for each corrective action taken in accordance with this part of the proposed permit.	

This proposed requirement is similar to the 2012 CGP's Part 5.4 corrective action report requirement to document problems found on the site and the corresponding corrective actions taken and applicable implementation dates.

The proposed requirement in Part 5.4.1 will require the permittee to immediately record some basic information with respect to the initial finding of the triggering condition.

Part 5.4.1	Proposed Permit Requirements
Within 24 hours of identifying the corrective action condition, the permittee will be required to document the specific condition and the date and time it was identified.	

The proposed requirement in Part 5.4.2 will require the permittee to document the completion of corrective actions that were identified in Part 5.4.2.

Part 5.4.2	Proposed Permit Requirements
Within 24 hours of completing the corrective action (in accordance with the deadlines in Part 5.2), the permittee will be required to document the actions taken to address the condition, including whether any SWPPP modifications are required.	

The proposed requirement in Part 5.4.2 is different from the 2012 CGP Part 5.4.2 which required a report within seven calendar days of discovering a condition that required a corrective action. The permittee will be required to document the completion of the corrective action within 24 hours, whether the correction action was completed in three days, seven days, or later (after the permittee documents that it is infeasible to complete the repair within seven days and sets a schedule for completing the repair in accordance with Part 5.2.3).

The proposed provision in Part 5.4.3 on corrective action signature requirements provide accountable documentation of compliance with the corrective action requirements in this permit. Appendix I provides proposed signature requirements for reports.

Part 5.4.3	Proposed Permit Requirements
Each corrective action report will be required to be signed in accordance with Appendix I, Part I.11 of this permit.	

The proposed requirement in 5.4.4 is intended to ensure that EPA officials have immediate access to such records during an on-site inspection.

Part 5.4.4	Proposed Permit Requirements
The permittee will be required to keep a copy of all corrective action reports at the site or at an easily accessible location, so that it can be made available at the time of an on-site inspection or upon request by EPA.	

The proposed requirement in Part 5.4.5 to retain all reports a minimum of three years comes from the standard permit condition requirements at 40 CFR 122.41 (j) (2).

Part 5.4.5	Proposed Permit Requirements
<p>The permittee will be required to keep all corrective action reports completed for this Part for at least three years from the date that permit coverage expires or is terminated.</p>	

Part 6: Staff Training Requirements

The proposed staff training requirements in Part 6 is to ensure that each member of the stormwater team will understand the requirements of the permit and his or her particular responsibilities relating to complying with those requirements.

Part 6	Proposed Permit Requirements
<p>Part 6 will require the permittee, or group of multiple operators, to assemble a “stormwater team” and describes the training requirements for all members of the stormwater team prior to the commencement of construction activities to ensure that they will understand the permit requirements and their specific responsibilities with respect to those requirements. The requirements to conduct training prior to commencing construction activities will not apply to emergency-related construction activities that are eligible for permit coverage under Part 1.4; however for such activities, training will be required to be conducted prior to NOI submission.</p> <p>Part 6 will require the following members of the stormwater team to receive training:</p> <ul style="list-style-type: none"> • Personnel who are responsible for the design, installation, maintenance, and/or repair of stormwater controls (including pollution prevention controls); • Personnel responsible for the application and storage of treatment chemicals (if applicable); • Personnel who are responsible for conducting inspections as required in Part 4.1; and • Personnel who are responsible for taking corrective actions as required in Part 5. <p>Part 6 specifies that the permittee will be ultimately responsible for ensuring that all activities on the site comply with the proposed requirements of this permit. The permittee will not be required to provide or document formal training for subcontractors or other outside service providers, but will be required to ensure that such personnel understand any requirements of the permit that may be affected by the work they are subcontracted to perform.</p> <p>Part 6 also specifies that the content and extent of training will be required to be tailored to match the stormwater team member’s duties and responsibilities related to the permit’s requirements. At a minimum, personnel will be required to be trained to understand the following if related to the scope of their job duties (e.g., only personnel responsible for conducting inspections need to understand how to conduct inspections):</p> <ul style="list-style-type: none"> • The permit deadlines associated with installation, maintenance, and removal of stormwater controls and with stabilization; • The location of all stormwater controls on the site required by this permit and how they are to be maintained; • The proper procedures to follow with respect to the permit's pollution prevention requirements; and • When and how to conduct inspections, record applicable findings, and take corrective actions. 	

Each member of the stormwater team will be required to have easy access to an electronic or paper copy of applicable portions of this permit, the most updated copy of the permittee's SWPPP, and other relevant documents or information that will be required to be kept with the SWPPP.

The proposed training requirements in Part 6 are similar to the staff training requirements in Part 6 of the 2012 CGP.

Part 6 also specifies the minimum understanding that applicable members of the stormwater team should have with respect to the pertinent aspects of permit compliance. All of the above listed areas that will be required to be understood by stormwater team members relate to specific permit provisions in the CGP.

If the person requiring training is a new employee who starts after commencement of construction activities, the permittee will be required to ensure that this person has the proper understanding as required above prior to assuming particular responsibilities related to compliance with this permit. New training may not be necessary for some employees if the permittee is able to ensure that the employee, due to prior training, already understands the applicable topic area.

EPA also notes that for emergency-related projects, the requirement to train personnel prior to commencement of earth-disturbing activities does not apply. Because immediate authorization is available for these projects, given the urgency of the timing associated with such projects, it is EPA's judgement that it is appropriate to provide greater flexibility in the initial weeks of construction. However, the permit will require that upon submittal of the NOI, personnel be trained in accordance with this section.

Part 7: Stormwater Pollution Prevention Plan (SWPPP)

Part 7 describes the proposed requirements for developing and maintaining a SWPPP.

Part 7.1: General Requirements

The proposed requirements in Part 7.1 will establish the overall requirement that operators develop SWPPPs prior to submitting their NOIs. The SWPPP will be required to be in place prior to discharging so that the appropriate erosion and sediment controls are selected and to ensure that the eligibility and other requirements under the permit will be met.

Part 7.1	Proposed Permit Requirements
	<p>Part 7.1 will require all operators associated with a construction site covered under this permit to develop a SWPPP. The operator will be required to develop the SWPPP prior to submitting the NOI. The proposed permit notes that the operator may develop a group SWPPP where several operators will be engaged in construction activities at the same site. For instance, if both the owner and the general contractor of the construction site are permitted, the owner may be the party responsible for SWPPP development, and the general contractor (or any other operator at the site) can choose to use this same SWPPP, as long as the SWPPP addresses the general contractor's (or some other operators') scope of construction work and obligations under this permit.</p> <p>If the SWPPP was prepared under a previous version of the permit (i.e., the 2012 CGP), the operator will be required to review and update the SWPPP to ensure that this permit's requirements are addressed prior to submitting the NOI.</p>

Part 7.2: SWPPP Contents

The proposed provisions in Part 7.2 include the minimum requirements to be included in the SWPPP, as follows.

Part 7.2.1: All Site Operators

The proposed requirements in Part 7.2.1 provide information about other operators engaged in activities covered under the permit.

Part 7.2.1	Proposed Permit Requirements
	Part 7.2.1 will require that the SWPPP contain a list of all other operators who will be engaged in construction activities at the site, and the areas of the site over which each operator has control.

Part 7.2.4 of the 2012 CGP required the SWPPP to include a list of all other operators who will be engaged in construction activities at the site. Part 7.2.1 restates this proposed requirement to clarify in the SWPPP which operators the SWPPP covers, and the areas of the site over which each operator has control. For construction sites with only one operator, this provision will not apply.

Part 7.2.2: Stormwater Team

The proposed requirement in Part 7.2.2 to provide information about the Stormwater Team in the SWPPP provides assurance that specific staff members are identified as responsible for overseeing the development of the SWPPP and are responsible for ensuring compliance with the permit requirements. Identification of staff members on the stormwater team in the SWPPP provides notice and clarification to facility staff and management (e.g., those responsible for signing and certifying the plan) of the responsibilities of certain key staff for following through on compliance with the permit's conditions and limits.

Part 7.2.2	Proposed Permit Requirements
	Part 7.2.2 will require the permittee to identify the personnel (by name or position) that are part of the stormwater team, as well as their individual responsibilities, including which members are responsible for conducting inspections.

The proposed requirement to assemble a stormwater team to oversee the development of the SWPPP and to ensure permit compliance is similar to Part 7.2.1 of the 2012 CGP, which required each operator to assemble a “stormwater team which is responsible for overseeing the development of the SWPPP... and for compliance.” This proposed requirement is also a logical extension of the need for the operator to designate personnel (whether or not they are members of the operator's staff or a subcontractor's) that are assigned the responsibility of carrying out the permit's proposed requirements related to preparing the SWPPP, installing and maintaining stormwater control measures, conducting inspections, taking samples (if required), and implementing corrective actions. EPA has also, in past CGPs, required that operators name a “SWPPP contact” in the NOI and the SWPPP itself.

Part 7.2.3: Nature of Construction Activities

The proposed provision in Part 7.2.3 requiring a description of the nature of the construction activities taking place on the construction site provides general information about the construction project, which can be readily understood by an EPA inspector or other third party who may be unfamiliar with the purpose and general layout of the projects.

Part 7.2.3 Proposed Permit Requirements

Part 7.2.3 will require that the SWPPP describe the nature of the construction activities, including:

- a. A description of the nature of your construction activities, including the age and/or dates of past renovations for structures that are undergoing demolition;
- b. The size of the property (in acres);
- c. The total area expected to be disturbed by the construction activities (to the nearest quarter acre);
- d. A description of any on-site and off-site construction support activity areas covered by this permit (see Part 1.2.1.c);
- e. The maximum area expected to be disturbed at any one time, including on-site and off-site construction support activity areas;
- f. A description and projected schedule for the following:
 - i. Commencement of construction activities in each portion of the site, including clearing and grubbing, mass grading, demolition activities, site preparation (*i.e.*, excavating, cutting and filling), final grading, and creation of soil and vegetation stockpiles requiring stabilization;
 - ii. Temporary or permanent cessation of construction activities in each portion of the site;
 - iii. Temporary or final stabilization of exposed areas for each portion of the site; and
 - iv. Removal of temporary stormwater controls and construction equipment or vehicles, and the cessation of construction-related pollutant-generating activity.
- g. A list and description of all pollutant-generating activities (e.g., paving operations; concrete, paint, and stucco washout and waste disposal; solid waste storage and disposal; and dewatering operations) on the site. For each pollutant-generating activity, include an inventory of pollutants or pollutant constituents (e.g., sediment, fertilizers, pesticides, paints, caulks, sealants, fluorescent light ballasts, contaminated substrates, solvents, fuels) associated with that activity, which could be discharged in stormwater from your construction site. You will be required to take into account where potential spills and leaks could occur that contribute pollutants to stormwater discharges, and any known hazardous or toxic substances, such as PCBs and asbestos, that will be disturbed or removed during construction;
- h. Business days and hours for the project;
- i. If you are conducting construction activities in response to a public emergency (see Part 1.4), a description of the cause of the public emergency (e.g., mud slides, earthquake, extreme flooding conditions, widespread disruption in essential public services), information substantiating its occurrence (e.g., state disaster declaration or similar state or local declaration), and a description of the construction necessary to reestablish effected public services.

To improve clarity, the proposed requirements in Part 7.2.3 combine the requirements from Parts 7.2.2, 7.2.3, and 7.2.5 from the 2008 CGP. Permittees will be required to describe the “age and/or dates of past renovation for structures that are undergoing demolition” to

document any relevant information related to the new proposed provision in Part 2.3 on implementing pollution prevention controls to minimize the exposure of polychlorinated biphenyl-(PCB) containing building materials for demolition of any structure with at least 10,000 square feet of floor space built or renovated before January 1, 1980.

Identification of the size of the property, total area expected to be disturbed by construction activities, description of construction support activities, and the area expected to be disturbed provides the permittee, among other things, with information about properly designing and installing stormwater control measures to minimize the discharge of pollutants, as well as information about the placement and type of stabilization practices that should be implemented to minimize the discharge of pollutants in stormwater.

This Part also will require, from Part 7.2.5 of the 2012 CGP, the schedule for activities such as commencement of construction, temporary or permanent cessation of construction, temporary or final stabilization, and removal of controls. The purpose of requiring documentation of the sequencing of construction activities is to assist permittees with planning their construction activity sequencing in conjunction with the control measures they intent to use to meet the effluent limitations in this proposed permit. Proper construction site planning limits the amount of land disturbed at one time and limits the exposure of unprotected soils through rapid stabilization, which in turn reduces the amount of sediment that gets discharged from the construction site. This requirement will provide permittees a better understanding of the site runoff characteristics throughout all phases of construction activity, which will help them to plan for the types of stormwater control measures necessary to meet effluent limitations. It is EPA's judgement that documenting this schedule of activities will help permittees to minimize earth disturbances to the extent necessary for the construction activity, which will also minimize pollutants discharged in stormwater. If plans change due to unforeseen circumstances or for other reasons, the requirement to describe the sequence and estimated dates of construction activities is not meant to "lock in" the operator to meeting these dates. When departures from initial projections are necessary, this should be documented in the SWPPP itself, or in associated records, as appropriate.

EPA also clarifies that in the description of each pollutant-generating activity, permittees will be required to list any known hazardous or toxic substances, such as PCBs and asbestos, that will be disturbed or removed during construction. This clarifies what EPA expects would be listed under the similar provision in Part 7.2.7 of the 2012 CGP. Permittees will be required to also now document the business days and hours for the project so that EPA, or any authorized representative of EPA, can be informed of normal operating hours in the instance of an inspection in accordance with Part 4.8 of the proposed permit.

Part 7.2.4: Site Map

Part 7.2.4 will require that the SWPPP contain a legible site map, or series of maps. In the proposed permit, EPA kept a similar format from the 2012 CGP that divided the Site Map requirements into sub-categories to provide greater clarity for the various site map requirements. The proposed requirements in Part 7.2.4.a and 7.2.4.b provide a visual depiction of where construction activities are occurring in relation to the boundaries of the property.

Part 7.2.4.a - b	Proposed Permit Requirements
	<p>a. <i>Boundaries of the property.</i> The map(s) in the SWPPP will be required to show the overall boundary of the property.</p> <p>b. <i>Locations where construction activities will occur.</i> The map(s) in the SWPPP will be required to show the locations where construction activities will occur, including:</p>

- i. Locations where earth-disturbing activities will occur (note any phasing), including any demolition activities;
- ii. Approximate slopes before and after major grading activities (note any steep slopes (as defined in Appendix A));
- iii. Locations where sediment, soil, or other construction materials will be stockpiled;
- iv. Any waters of the U.S. crossings;
- v. Designated points where vehicles will exit onto paved roads;
- vi. Locations of structures and other impervious surfaces upon completion of construction; and
- vii. Locations of on-site and off-site construction support activity areas covered by the permit (see Part 1.2.1.c).

With the exception of the proposed requirement to include the location of any demolition activities, all of these proposed requirements correspond to Part 7.2.6 of the 2012 CGP. EPA is proposing to include the areas of demolition activities on the site map to clarify what EPA expected to be included on the site map under the 2012 CGP.

The proposed requirement in Part 7.2.4.c compels permittees to develop an understanding of the location of any waters flowing through or near the property where the construction will take place.

Part 7.2.4.c	Proposed Permit Requirements
	<i>c. Locations of all waters of the U.S. within and one mile downstream of the site. Also identify if any are listed as impaired, or are identified as a Tier 2, Tier 2.5, or Tier 3 water.</i>

Requiring a visual showing these waters will provide permittees with information necessary to comply with the requirements for impaired waters (Parts 3.1), and Tier 2, 2.5, and 3-protected waters (Part 3.2). Identifying the location of these waters on the site map will also help permittees comply with the proposed Erosion and Sediment Control requirements (Part 2.2), particularly those related to buffers (Part 2.2.1), and Pollution Prevention Standards (Part 2.3).

Part 7.2.4.d will require documentation on the site map of areas of threatened or endangered species critical habitat. This proposed requirement is consistent with Part 7.2.6.4 from the 2012 CGP.

Part 7.2.4.d	Proposed Permit Requirements
	<i>d. Areas of federally listed critical habitat within the site and/or at discharge locations.</i>

The proposed requirement in Part 7.2.4.e to map pre-construction cover on the site will assist operators in understanding how stormwater moves onto, through, and from the property prior to construction, and how any changes in this cover due to construction activities may affect the flow of stormwater.

Part 7.2.4.e	Proposed Permit Requirements
	<i>e. Type and extent of pre-construction cover on the site (e.g., vegetative cover, forest, pasture, pavement, structures).</i>

The proposed 7.2.4.f requirement to map the flow of stormwater on the site will give operators an understanding of how stormwater moves onto, through, and from the property, which will in turn provide valuable information to assist with planning, designing, and installing the appropriate stormwater control measures necessary to meet the permit's requirements regarding erosion and sediment controls, pollution prevention, and stabilization. Specifically it will also assist the permittee with complying with the requirements in Part 2.2.2 to “Direct stormwater to vegetated areas.

Part 7.2.4.f	Proposed Permit Requirements
	<p>f. <i>Drainage patterns of stormwater and authorized non-stormwater before and after major grading activities.</i></p>

The proposed requirements in Part 7.2.4.g will inform the operator and to document for EPA's purposes where stormwater discharges will occur.

Part 7.2.4.g	Proposed Permit Requirements
	<p>g. <i>Stormwater and authorized non-stormwater discharge locations.</i> The permit will require the site map to show information pertaining to discharge locations including:</p> <ul style="list-style-type: none"> i. Locations where stormwater and/or authorized non-stormwater will be discharged to storm drain inlets; and ii. Locations where stormwater and/or authorized non-stormwater will be discharged directly to waters of the U.S.

There are multiple uses for the information that will be required in proposed Part 7.2.4.g, among which include: (1) learning where sewer inlet protections will need to be installed prior to commencing construction disturbances; and (2) helping to plan stormwater controls that will reduce the erosive force of the discharge. The proposed permit notes that the proposed requirement to show storm drain inlets in the immediate vicinity of the site only applies to those inlets that are easily identifiable from the site or from a publicly accessible area immediately adjacent to the site.

The proposed requirement in Part 7.2.4.h to identify the locations of all pollutant-generating activities on the site map will provide operators with an understanding of how the location of their various pollutant-generating activities will correspond to the areas of disturbance at the site, the potential impacts of where these activities are located on the discharge pollutants, and the ideal locations for stormwater control measures to reduce or eliminate such discharges. This information will be used to comply with the pollution prevention requirements in Part 2.3.

Part 7.2.4.h	Proposed Permit Requirements
	<p>h. <i>Locations of all potential pollutant-generating activities identified in Part 7.2.3.g.</i> The permit requires identification in the site map of all potential pollutant-generating activities identified in Part 7.2.3.g.</p>

The proposed requirement in Part 7.2.4.i to show on the site map the location of stormwater control measures is intended to provide a spatial correlation between pollutant sources on the site, the flow of stormwater through and from the site, and the location of waters of the U.S.

Part 7.2.4.i	Proposed Permit Requirements
	<p>i. <i>Locations of stormwater controls, including natural buffer areas and any shared controls utilized to comply with this permit.</i> The permit requires identification on the site map of the location of stormwater control measures.</p>

It is EPA's judgement that by requiring such information on the site map, the permittee will be better able to locate stormwater control measures strategically so as to comply with the permit's proposed requirements for erosion and sediment and pollution prevention in Parts 2.2 and 2.3. The proposed requirement to show on the site map where areas of exposed soil will be stabilized, or have already been stabilized, provides permittees with a visual aid that will help them to comply with the proposed temporary and final stabilization requirements in Part 2.2.14. The proposed requirement document natural buffer areas is included to help permittees implement Part 2.2.1 to "Provide and maintain natural buffers."

The proposed requirements in Part 7.2.4.j to show where chemicals will be applied on the site, and where they will be stored, is included to help permittees implement Part 2.2.13 (treatment chemicals) and Part 2.3.3 (storage, handling and disposal of building products, materials, and waste). This proposed requirement will encourage the operator to think strategically about where the chemicals are applied and stored to minimize the risk of accidental release.

Part 7.2.4.j	Proposed Permit Requirements
	<p>j. Locations where polymers, flocculants, or other treatment chemicals will be used and stored. The permit requires identification on the site map of the locations where polymers, flocculants, or other treatment chemicals will be used and stored.</p>

Part 7.2.5: Non-Stormwater Discharges

The proposed provision in Part 7.2.5 will require permittees to create a comprehensive list of all non-stormwater discharges expected to occur from the site. Documentation in the SWPPP of all non-stormwater discharges from the site provides permittees with information that will help them to minimize non-stormwater associated pollutant discharges, and to ensure that only authorized non-stormwater discharges occur.

Part 7.2.5	Proposed Permit Requirements
	<p>Part 7.2.5 will require the SWPPP to identify all sources of allowable non-stormwater discharges listed in Part 1.2.2.</p>

Part 7.2.6: Description of Stormwater Controls

The proposed provision in Part 7.2.6 will require permittees to include in the SWPPP a description of stormwater controls that will be implemented.

Part 7.2.6	Proposed Permit Requirements
	<p>For each of the Part 2.2 erosion and sediment control effluent limits, Part 2.3 pollution prevention effluent limits, and Part 2.4 construction dewatering effluent limits, the SWPPP will be require to include the following:</p> <p>a. A description of the specific control(s) to be implemented to meet the effluent limit;</p>

- b. Any applicable design specifications (including references to any manufacturer specifications and/or erosion and sediment control manuals/ordinances relied upon);
- c. Routine maintenance specifications; and
- d. The projected schedule for its installation/implementation.

The proposed requirements in Part 7.2.6 have been reorganized to follow the organization of the proposed requirements in Part 2. The proposed permit notes that design specifications may be found in manufacturer specifications and/or in applicable erosion and sediment control manuals or ordinances. Any departures from such specifications will be required to reflect good engineering practice and will be required to be explained in the SWPPP.

Part 7.2.6 will require permittees to also include the following additional information in the SWPPP, as applicable.

a. Natural buffers and/or equivalent sediment controls (see Part 2.2.1 and Appendix G).

Proposed Part 7.2.6.a will require permittees to document their compliance with respect to the proposed buffer requirements in Part 2.2.1 and Appendix G of the proposed permit.

Part 7.2.6.a	Proposed Permit Requirements
	<p>The permittee will be required to include the following in the SWPPP:</p> <ul style="list-style-type: none"> i. The compliance alternative to be implemented; ii. If complying with alternative 2, the width of natural buffer retained; iii. If complying with alternative 2 or 3, the erosion and sediment control(s) the permittee will use to achieve an equivalent sediment reduction, and any information the permittee relied upon to demonstrate the equivalency; iv. If complying with alternative 3, a description of why it is infeasible for the permittee to provide and maintain an undisturbed natural buffer of any size; v. For "linear construction sites" where it is infeasible to implement compliance alternative 1, 2, or 3, a rationale for this determination, and a description of any buffer width retained and/or supplemental erosion and sediment controls installed; and vi. A description of any disturbances that are exempt under Part 2.2.1 that occur within 50 feet of a water of the U.S.

Such documentation will provide inspectors with verification that the permittee has complied with the permit's buffer and/or equivalent sediment controls compliance alternatives.

b. Perimeter controls for a "linear construction site" (see Part 2.2.3).

Proposed Part 7.2.6.b will require permittees to document their compliance the linear construction site exception for perimeter controls.

Part 7.2.6.b	Proposed Permit Requirements
	<p>For areas at linear construction sites where perimeter controls are not feasible, proposed Part 7.2.6.b requires the permittee to include documentation to support this determination and a description of the other practices that will be implemented to minimize discharges of pollutants in stormwater associated with construction activities.</p>

The proposed permit also notes that routine maintenance specifications for perimeter controls documented in the SWPPP will be required to include the Part 2.2.3.a requirement that sediment be removed before it has accumulated to one-half of the above-ground height of any perimeter control.

This proposed requirement corresponds to Part 7.2.10.1.d from the 2012 CGP (stormwater control measures to be used during construction activity) and also documents in the SWPPP the maintenance requirement from Part 2.1.2.2.b from the 2012 CGP for removing sediment before it has accumulated to one-half of the above-ground height of any perimeter control.

c. Sediment track-out controls (See Parts 2.2.4.b and 2.2.4.c).

The proposed requirement in Part 7.2.6.c will ensure proper documentation regarding the controls that will be implemented to remove sediment prior to vehicle exit and demonstrate the permittee's ability to comply with the Part 2.2.4.b and 2.2.4.c proposed requirements.

Part 7.2.6.c	Proposed Permit Requirements
	The permittee will be required to document the specific stabilization techniques and/or controls that will be implemented to remove sediment prior to vehicle exit.

This proposed requirement corresponds to Part 7.2.10.1.d from the 2012 CGP (stormwater control measures to be used during construction activity).

d. Sediment basins (See Part 2.2.12).

The proposed requirement in Part 7.2.6.d ensures documentation when it is infeasible to utilize outlet structures required in Part 2.2.12 for withdrawing water from sediment basins.

Part 7.2.6.d	Proposed Permit Requirements
	In circumstances where it is infeasible to utilize outlet structures that withdraw water from the surface, the permittee will include documentation in the SWPPP to support this determination, including the specific conditions or time periods when this exception will apply.

This proposed requirement corresponds to Part 2.1.3.2 from the 2012 CGP (sediment basin design requirements), and provides SWPPP documentation for when this requirement is infeasible.

e. Treatment chemicals (see Part 2.2.13).

The proposed requirements in Part 7.2.6.e will ensure proper documentation regarding the use of chemicals at permitted sites, and a demonstration of the permittee's ability to comply with the Part 2.2.13 requirements.

Part 7.2.6.e	Proposed Permit Requirements
	<p>The permittee will be required to include the following in the SWPPP:</p> <ul style="list-style-type: none"> i. A listing of the soil types that are expected to be exposed during construction in areas of the project that will drain to chemical treatment systems. Also include a listing of soil types expected to be found in fill material to be used in these same areas, to the extent the permittee has this information prior to construction; ii. A listing of all treatment chemicals to be used at the site and why the selection of these chemicals is suited to the soil characteristics of the permittee's site;

- iii. If the EPA Regional Office authorized the permittee to use cationic treatment chemicals for sediment control, include the specific controls and implementation procedures designed to ensure that the permittee's use of cationic treatment chemicals will not lead to a violation of water quality standards;
- iv. The dosage of all treatment chemicals to be used at the site or the methodology to be used to determine dosage;
- v. Information from any applicable Safety Data Sheet (SDS);
- vi. Schematic drawings of any chemically-enhanced stormwater controls or chemical treatment systems to be used for application of the treatment chemicals;
- vii. A description of how chemicals will be stored consistent with Part 2.2.13.c;
- viii. References to applicable state or local requirements affecting the use of treatment chemicals, and copies of applicable manufacturer's specifications regarding the use of your specific treatment chemicals and/or chemical treatment systems; and
- ix. A description of the training that personnel who handle and apply chemicals have received prior to permit coverage, or will receive prior to use of the treatment chemicals at the permittee's site

For Part 7.2.6.e.i above, information on soils may be obtained at <http://websoilsurvey.nrcs.usda.gov/app/>. This proposed requirement corresponds to Part 7.2.10.2 from the 2012 CGP (stabilization practices).

f. Stabilization measures (See Part 2.2.14).

The proposed requirements in Part 7.2.6.f provides greater specificity regarding the use of vegetative and/or non-vegetated controls, and the use of such controls for both temporary and final stabilization.

Part 7.2.6.f	Proposed Permit Requirements
	<p>The permittee will be required to include the following in the SWPPP:</p> <ul style="list-style-type: none"> i. The specific vegetative and/or non-vegetative practices that will be used; ii. If complying with the deadlines for sites in arid, semi-arid, or drought-stricken areas, the beginning and ending dates of the seasonally dry period and the schedule the permittee will follow for initiating and completing vegetative stabilization; and iii. If complying with deadlines for sites affected by unforeseen circumstances that delay the initiation and/or completion of vegetative stabilization, document the circumstances and the schedule for initiating and completing stabilization.

EPA includes such specificity so that documentation in the SWPPP corresponds to the permit requirements for stabilization in Part 2.2.14 of the CGP. The proposed requirements in Part 7.2.6.f will provide the permittee the opportunity to support its compliance with the stabilization requirements in Part 2.2.14 of the CGP in the SWPPP. Such documentation will also provide inspectors with verification that the permittee has complied with the permit's stabilization requirements. This proposed requirement corresponds to Part 7.2.10.3 from the 2012 CGP (stabilization practices).

g. Spill prevention and response procedures (See Part 1.3.5 and Part 2.3).

The requirements in Part 7.2.6.g provide the permittee an opportunity to develop a response plan for preventing spills from occurring and, if they do occur, a plan for responding to them in order to minimize the potential discharge of any pollutants from the site. The documentation in the SWPPP of spill prevention and response procedures also will demonstrate to inspectors the permittee's compliance with the spill prevention and response procedures of the Pollution Prevention procedures in Part 2.3 of the proposed permit.

Part 7.2.6.g	Proposed Permit Requirements
<p>The permittee will be required to include the following in its SWPPP:</p> <ul style="list-style-type: none"> <li data-bbox="250 558 1373 653">i. Procedures for expeditiously stopping, containing, and cleaning up spills, leaks, and other releases. Identify the name or position of the employee(s) responsible for detection and response of spills or leaks; and <li data-bbox="250 674 1409 863">ii. Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity consistent with Part 2.3.6 and established under either 40 CFR 110, 40 CFR 117, or 40 CFR 302, occurs during a 24-hour period. Contact information will be required to be in locations that are readily accessible and available to all employees. <p>The permittee may also reference the existence of Spill Prevention Control and Countermeasure (SPCC) plans developed for the construction activity under Part 311 of the CWA, or spill control programs otherwise required by an NPDES permit for the construction activity, provided that the permittee keep a copy of that other plan onsite.</p>	

This proposed requirement corresponds to Part 7.2.11.1 from the 2012 CGP (spill prevention and response procedures).

h. Waste management procedures (See Part 2.3.3).

The proposed requirements in Part 7.2.6.h will allow permittees the opportunity to develop procedures for waste management, and provide documentation to inspectors demonstrating compliance with the pollution prevention requirements relating to the management of construction wastes.

Part 7.2.6.h	Proposed Permit Requirements
<p>The permittee will be required to describe procedures it will follow for handling, storing, and disposing of all wastes generated at its site consistent with all applicable federal, state, tribal, and local requirements, including clearing and demolition debris, sediment removed from the site, construction and domestic waste, hazardous or toxic waste, and sanitary waste.</p>	

This proposed requirement corresponds to Part 7.2.11.2 from the 2012 CGP (waste management procedures).

i. Application of fertilizers (See Part 2.3.5).

The proposed requirement in Part 7.2.6.i ensure documentation in the SWPPP when the permittee applies fertilizers at a rate, in an amount, at a time or in another manner that is a departure from the manufacturer specifications. This may be necessary in some limited circumstances, and Part 7.2.6.i will require the permittee to document these departures from manufacturer specifications.

Part 7.2.6.i	Proposed Permit Requirements
<p>The permittee will be required to document any departures from the manufacturer specifications where appropriate.</p>	

This proposed requirement corresponds to Part 7.2.7.2 from the 2012 CGP (construction site pollutants).

Part 7.2.7: Procedures for Inspection, Maintenance, Corrective Action

Part 7.2.7 will require SWPPP documentation of the procedures that will be employed to meet the permit’s inspection, maintenance, and corrective action requirements.

Part 7.2.7	Proposed Permit Requirements
<p>The SWPPP will be required to describe the procedures that will be followed for maintaining stormwater control measures, conducting site inspections, and, where necessary, taking corrective actions, in accordance with proposed Parts 2.1.4, Part 4, and Part 5 of the permit. The following information will be required to also be included in the SWPPP:</p> <ol style="list-style-type: none"> a. The inspection schedule the permittee will be following, which is based on whether the site is subject to Part 4.2 or Part 4.3, and whether the site qualifies for any of the allowances for reduced inspection frequencies in Part 4.4. b. If the permittee will be conducting inspections in accordance with the inspection schedule in Part 4.2.2, Part 4.3.2, or Part 4.4.2, the location of the rain gauge or the address of the weather station the permittee will be using to obtain rainfall data. c. If the permittee will be reducing the inspection frequency in accordance with Part 4.4.2, the beginning and ending dates of the seasonally-defined arid period for the area or the valid period of drought. d. If the permittee will be reducing the inspection frequency in accordance with Part 4.4.3, the beginning and ending dates of frozen conditions on the site; and e. Any inspection or maintenance checklists or other forms that will be used. 	

The proposed requirements in Part 7.2.7 will allow permittees the opportunity to develop and document their procedures for inspections, maintenance activities, and corrective actions, and allow permittees to demonstrate their compliance with the permit requirements corresponding to this documentation.

Part 7.2.8: Staff Training

The proposed provision in Part 7.2.8 will require the SWPPP to include documentation on the training it conducted pursuant to Part 6 of the permit.

Part 7.2.8	Proposed Permit Requirements
<p>The SWPPP will be required to include documentation that the required personnel were trained in accordance with Part 6.</p>	

Part 7.2.9: Documentation of Compliance with Other Requirements

The proposed provision in Part 7.2.9 will require permittees to include in the SWPPP documentation for compliance with the following other requirements:

a. Threatened and Endangered Species Protection.

The proposed requirements in Part 7.2.9.a specify what Endangered Species Act documentation will be required to be kept with the SWPPP.

Part 7.2.9.a	Proposed Permit Requirements
The SWPPP will be required to include documentation that will be required in Appendix D supporting the permittee's eligibility with regard to the protection of threatened and endangered species and critical habitat.	

The proposed permit will require documentation with regard to endangered species in Part 7.2.9.a to provide the permittee the opportunity to document their compliance with Appendix D of the proposed permit, and to provide anyone who inspects the SWPPP the opportunity to review such compliance.

b. Historic Properties.

The proposed requirement in Part 7.2.9.b specifies what historic property documentation will be required to be kept with the SWPPP.

Part 7.2.9.b	Proposed Permit Requirements
The SWPPP will be required to include documentation that will be required in Appendix E supporting the permittee eligibility with regard to the protection of historic properties.	

The proposed permit will require documentation with regard to historic properties in Part 7.2.9.b to provide the permittee the opportunity to document their compliance with the screening process in Appendix E.

c. Safe Drinking Water Act Underground Injection Control (UIC) Requirements for Certain Subsurface Stormwater Controls.

The proposed requirement in Part 7.2.9.c specifies what UIC documentation will be required to be kept with the SWPPP.

Part 7.2.9.c	Proposed Permit Requirements
<p>If the permittee is using any of the following stormwater controls at the site, the permittee will be required to document any contact with the applicable state agency or EPA Regional Office responsible for implementing the requirements in the Safe Drinking Water Act and EPA's implementing regulations at 40 CFR Parts 144 – 147. Such controls would generally be considered Class V UIC wells:</p> <ul style="list-style-type: none"> <li data-bbox="232 1486 1386 1583">i. Infiltration trenches (if stormwater is directed to any bored, drilled, driven shaft or dug hole that is deeper than its widest surface dimension, or has a subsurface fluid distribution system); <li data-bbox="232 1602 1386 1698">ii. Commercially manufactured pre-cast or pre-built proprietary subsurface detention vaults, chambers, or other devices designed to capture and infiltrate stormwater flow; and <li data-bbox="232 1717 1386 1814">iii. Drywells, seepage pits, or improved sinkholes (if stormwater is directed to any bored, drilled, driven shaft or dug hole that is deeper than its widest surface dimension, or has a subsurface fluid distribution system). 	

The proposed permit will require documentation with regard to underground injection wells in Part 7.2.9.c to make permittees aware of and to provide permittees the opportunity to document their compliance with the Safe Drinking Water Act requirements for underground injection wells. For state UIC program contacts, refer to the following EPA website: <https://www.epa.gov/uic>.

Part 7.2.10: SWPPP Certification

Part 7.2.10 establishes the certification requirements for the SWPPP.

Part 7.2.10	Proposed Permit Requirements
The permittee will be require to sign and date the SWPPP in accordance with Appendix I, Part I.11.	

This proposed requirement is consistent with standard NPDES permit conditions described in 40 CFR 122.22 and is intended to ensure that the permittee understands their responsibility to create and maintain a complete and accurate SWPPP. Permittees will be allowed to appoint an authorized representative consistent with the regulations. Therefore, if a facility feels it is more appropriate for a member of the stormwater team to sign the documentation, that option will be available under the permit. The signature requirement will include an acknowledgment that there are significant penalties for submitting false information.

Part 7.2.11: Post-Authorization Additions to SWPPP

The proposed requirements in Part 7.2.11 specify the documents that will be required to be included in the SWPPP following authorization to discharge.

Part 7.2.11	Proposed Permit Requirements
<p>The permittee will be required to include the following documents as part of the SWPPP once the permittee is notified of coverage under this permit:</p> <ul style="list-style-type: none"> a. A copy of the NOI submitted to EPA along with any correspondence exchanged with EPA related to coverage under this permit; b. A copy of the acknowledgment letter the permittee received from the NeT assigning the NPDES ID (i.e., permit tracking number); and c. A copy of this permit (an electronic copy easily available to the stormwater team is also acceptable). 	

Part 7.2.11 will assist facility personnel and EPA (and other agency) inspectors in determining that the construction site has been authorized for permit coverage.

Part 7.3: On-Site Availability of the SWPPP

The proposed requirements in Part 7.3 will instruct the permittee on the requirements for retaining the SWPPP on-site.

Part 7.3	Proposed Permit Requirements
The permittee will be required to keep a current copy of the SWPPP at the site or at an easily accessible location so that it can be made available at the time of an on-site inspection or upon request by EPA; a state, tribal, or local agency approving stormwater management plans; the operator of a storm sewer system receiving discharges from the site; or	

representatives of the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) (known together as “the Services”).

EPA may provide access to portions of the SWPPP to a member of the public upon request. Confidential Business Information (CBI) will be withheld from the public but may not be withheld from EPA, USFWS, or NMFS. (Note: Information covered by a claim of confidentiality will be disclosed by EPA only to the extent of, and by means of, the procedures set forth in 40 CFR Part 2, Subpart B. In general, submitted information protected by a business confidentiality claim may be disclosed to other employees, officers, or authorized representatives of the United States concerned with implementing the CWA. The authorized representatives, including employees of other executive branch agencies, may review CBI during the course of reviewing draft regulations.)

If an on-site location is unavailable to keep the SWPPP when no personnel are present, notice of the plan’s location will be required to be posted near the main entrance of the permittee’s construction site.

Part 7.3 is will require permittees to retain copies of their SWPPP on site, and to make the document available to EPA or the Services immediately upon request. If a member of the public wishes to have access to the non-CBI portions of the permittee’s SWPPP, they will be required to first contact EPA. EPA may require that a copy be sent to the Agency so that it can be provided to the requestor. The mechanism for providing EPA with a copy of the SWPPP is at the discretion of the operator (e.g., web-based, hard copy), though EPA strongly encourages that SWPPPs be provided electronically.

Request for Comment 7: EPA notes that it has included a request for comment on whether EPA should require the initial SWPPP to be made publicly available by requiring operators to either post it online on a website or submit it to EPA. See request for comment 7 in the proposed permit. Enhanced transparency and availability of CGP SWPPP information will provide stakeholders with more timely and complete information about potential sources of water pollution and measures to control discharges for the sites covered under the CGP, and will help EPA to ensure that SWPPPs are meaningfully developed and implemented.

Part 7.4: Required SWPPP Modifications

Part 7.4.1: List of Conditions Requiring SWPPP Modification

The proposed requirements in Part 7.4.1 set out the conditions requiring the SWPPP to be modified.

Part 7.4.1	Proposed Permit Requirements
	<p>The permittee will be required to modify the SWPPP, including the site map(s), within 7 days of any of the following conditions:</p> <ul style="list-style-type: none"> a. Whenever new operators become active in construction activities on the site, or changes are made to the construction plans, stormwater controls, or other activities at the site that are no longer accurately reflected in the SWPPP. This includes changes made in response to corrective actions triggered under Part 5. The permittee is not required to modify the SWPPP if the estimated dates in Part 7.2.3.f change during the course of construction; b. To reflect areas on the site map where operational control has been transferred (and the date of transfer) since initiating permit coverage;

- c. If inspections or investigations by EPA or its authorized representatives determine that SWPPP modifications are necessary for compliance with this permit;
- d. Where EPA determines it is necessary to impose additional requirements on the discharge. The following will be required to be included in the SWPPP:
 - i A copy of any correspondence describing such requirements; and
 - ii A description of the controls that will be used to meet such requirements.
- e. To reflect any revisions to applicable federal, state, tribal, or local requirements that affect the stormwater controls implemented at the site; and
- f. If applicable, if a change in chemical treatment systems or chemically-enhanced stormwater controls is made, including use of a different treatment chemical, different dosage, or different area of application.

The proposed requirement in Part 7.4.1 to maintain a modified SWPPP under any of the conditions listed above provides assurance that the SWPPP will be updated to accurately reflect the conditions on the construction site. It is important that the SWPPP be accurate in terms of changes to construction plans, stormwater controls, changes in operational control, and other important changes on the site, so that the facility personnel have access to a SWPPP that is current, and so that inspectors are provided with accurate site information for compliance purposes.

To improve clarity, EPA moved the deadline requirement of SWPPP revisions within 7 days from Part 7.4.2 of the 2012 CGP and to Part 7.4.1. The proposed requirement that any SWPPP revisions be completed within 7 days will ensure that any necessary revisions made to the SWPPP are incorporated in a timely manner so that the SWPPP is kept up to date.

Part 7.4.2: SWPPP Modification Records

The proposed provision in Part 7.4.2 will require the permittee to maintain a record of all SWPPP modifications.

Part 7.4.2	Proposed Permit Requirements
	The permittee will be required to maintain records showing the dates of all SWPPP modifications. The records will be required to include the name of the person authorizing each change (see Part 7.2.10) and a brief summary of all changes.

The proposed requirement to maintain a record of all SWPPP modifications is to ensure that a record of all of the changes to the SWPPP is kept. Keeping a record of such changes will help facility personnel to stay current with the changes that have been made to the SWPPP, and will allow inspectors to determine if appropriate modifications were made to the SWPPP under the required circumstances.

Part 7.4.3: Certification Requirements

The proposed requirement in Part 7.4.3 establishes the certification requirement for SWPPP modifications, as follows:

Part 7.4.3	Proposed Permit Requirements
	All modifications made to the SWPPP consistent with Part 7.4 will be required to be authorized by a person identified in Appendix I, Part I.11.b.

The proposed requirement that the SWPPP and all modifications be authorized by a person identified in Appendix I, Part I.11.b is consistent with standard NPDES permit conditions described in 40 CFR 122.22 and is intended to ensure that the permittee certifies any SWPPP modifications. As described in the fact sheet for Part 7.2.10, permittees will be allowed to appoint an authorized representative consistent with the regulations. Therefore, if a permittee feels it is more appropriate for a member of the stormwater team to sign the documentation, that option will be available under the permit. The proposed signature requirement includes an acknowledgment that there will be significant penalties for submitting false information.

Part 7.4.4: Required Notice to Other Operators

The proposed requirement in Part 7.4.4 specifies the notice requirement for other operators when the SWPPP is modified.

Part 7.4.4	Proposed Permit Requirements
	Part 7.4.4 will require permittees, upon determining that a modification of the SWPPP is required, if there are multiple operators covered under the permit, to immediately notify any operators who may be impacted by the change to the SWPPP.

The proposed requirement in Part 7.4.4 will ensure that any other operators covered under the permit are kept up to date on the SWPPP so that they can comply with the modifications to the pollution prevention plan.

Part 8: How to Terminate Coverage

Part 8 details the proposed requirements that will be required to be met before an operator of a construction project may be authorized to terminate coverage under the permit. Part 8 reminds the permittee that until permit coverage is terminated, the permittee will be required to comply with all conditions and effluent limitations in the permit. Permit coverage is not terminated until EPA has received a complete and accurate NOT, certifying that the requirements for termination in Part 8 are met.

Part 8.1: Minimum Information Required in NOT

The proposed requirements in Part 8.1 list the minimum information that will be required to be provided in the NOT. The minimum information includes the following:

Part 8.1 (8.1.1 – 8.1.5)	Proposed Permit Requirements
8.1.1	NPDES permit tracking number provided by EPA when the permittee received coverage under this permit;
8.1.2	Basis for submission of the NOT (see Part 8.2);
8.1.3	Operator contact information;
8.1.4	Name of site and address (or a description of location if no street address is available); and
8.1.5	NOT certification.

The proposed requirements in Part 8.1 inform permittees of the information that will be required to be included in their NOT. The required information facilitates prompt processing of NOTs and provides assurance that operators have a valid basis for terminating.

EPA notes that the NPDES permit tracking number is not the same number that was reported on the NOI form. The NOI contains the “NPDES permit number” as identified in the CGP

(e.g., NHR100000) while the “NPDES permit tracking number” is that number provided by EPA’s NPDES eReporting Tool (NeT) acknowledging receipt of a complete NOI. The permit tracking numbers are assigned sequentially as NOIs are received by the NeT (e.g., NHR1000001, NHR1000002, NHR1000003, etc.).

Part 8.2: Conditions for Terminating Permit Coverage

The proposed requirements in Part 8.2 describe the triggering conditions for terminating permit coverage. These conditions are as follows:

Part 8.2 (8.2.1 – 8.2.3)	Proposed Permit Requirements
8.2.1	<p>The permittee has completed all construction activities at the site and, if applicable, construction support activity areas covered by this permit (see Part 1.2.1.c), and the permittee has met the following requirements:</p> <ul style="list-style-type: none"> a. For any areas that (1) were disturbed during construction, (2) are not covered over by permanent structures, and (3) over which the permittee had control during the construction activities, the permittee has met the requirements for final vegetative or non-vegetative stabilization in Part 2.2.14.b; b. The permittee has removed and properly disposed of all construction materials, waste and waste handling devices, and has removed all equipment and vehicles that were used during construction, unless intended for long-term use following termination of permit coverage; c. The permittee has removed all stormwater controls that were installed and maintained during construction, except those that are intended for long-term use following termination of permit coverage or those that are biodegradable; and d. The permittee has removed all potential pollutants and pollutant-generating activities associated with construction, unless needed for long-term use following termination of permit coverage; or
8.2.2	<p>The permittee has transferred control of all areas of the site for which the permittee is responsible under this permit to another operator, and that operator has submitted an NOI and obtained coverage under this permit; or</p>
8.2.3	<p>Coverage under an individual or an alternative general NPDES permit has been obtained.</p>

The proposed requirements in Part 8.2 provide permittees a list of all of the conditions for terminating permit coverage. These conditions will be required to be satisfied before an NOT can be filed and permit coverage terminated. EPA notes that the proposed conditions for terminating permit coverage in Part 8.2 are the same as in Part 8.2 of the 2012 CGP.

Part 8.3: How to Submit Your NOT

The proposed requirements in Part 8.3 describe the process for submitting an NOT. This section also provides information about EPA’s NPDES eReporting Tool, or “NeT.”

Part 8.3	Proposed Permit Requirements
<p>The electronic NOT form the permittee will be required to complete is found at https://www.epa.gov/npdes/stormwater-discharges-construction-activities#ereporting. The permittee will use their NPDES permit tracking number (i.e., the EPA number assigned upon authorization under the permit) to prepare the fillable NOT form, which will ensure that EPA properly records your termination of coverage. A permittee may request a waiver from electronic reporting if they meet one of the requirements specified in Part 1.4.1. If the EPA Regional Office grants approval to use a paper NOT for a permittee requesting a waiver from electronic reporting, they will be required to complete the form in Appendix K.</p>	

In Part 8.3, EPA is proposing to require that permittees file an electronic NOT to notify EPA that it has met the conditions for terminating permit coverage under Part 8.2. EPA has made use of an electronic reporting system for the past four CGPs. Due to the expansion in internet availability, greater efficiency in administrative processing, and reductions in cost to manage the system as compared to paper NOTs, it is required that the NeT system be the primary mechanism by which operators of construction projects obtain permit coverage and submit an NOT. If the permittee requests a waiver from electronic reporting as specified in Part 1.4.1 and the EPA Regional Office grants approval to use of a paper NOT in Appendix K, then permittees may submit a paper NOT to the Regional Office.

Part 8.4: Deadline for Submitting NOTs

The proposed requirements in Part 8.4 provides the permittee with a deadline for when the NOT will be required to be submitted following the occurrence of any of the triggering conditions in 8.2. The deadline is as follows:

Part 8.4	Proposed Permit Requirements
<p>Part 8.4 will require that the NOT be submitted within 30 calendar days after any one of the triggering conditions listed in Part 8.2 occur.</p>	

The purpose of requiring a deadline for filing an NOT will be to ensure that permittees do not remain covered under the CGP for a long period of time after reaching the conditions for permit termination.

Part 8.5: Effective Date of Termination of Coverage

The proposed requirements in Part 8.5 specify to permittees when their permit termination will become effective and therefore when they will no longer responsible for complying with the permit.

Part 8.5	Proposed Permit Requirements
<p>The permittee's authorization to discharge under this permit will terminate at midnight of the day that a complete NOT is submitted to EPA.</p>	

If EPA determines that the NOT is incomplete or the permittee has not satisfied one or more of the conditions in Part 8.2 for being able to submit a NOT, then the NOT will not be valid, and the permittee will be required to continue to comply with the conditions of the permit.

Part 9: Permit Conditions Applicable to Specific States, Indian Country Lands, or Territories

This part of the proposed permit will be completed as the states, Indian Country Lands, and U.S. territories complete their Section 401 certifications for the final permit.

Section 401 of the CWA (See also 40 CFR §122.44(d)(3) and §124.53(a)) provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the State/Tribe in which the discharge originates certifies that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA. The states, Indian Country lands, and U.S. territories will document the completion of their Section 401 certifications for this permit in this section.

VIII. Appendices

Appendix A: Definitions and Acronyms

Appendix A of the proposed permit includes definitions of terms and a list of acronyms used throughout the permit. Appendix A provides a reference tool for terms and acronyms used throughout the proposed permit.

The following terms are defined in the proposed 2017 CGP:

1. "Action Area"
2. "Agricultural Land"
3. "Antidegradation Policy" or "Antidegradation Requirements"
4. "Arid Areas"
5. "Bank"
6. "Bluff"
7. "Borrow Areas"
8. "Bypass"
9. "Cationic Treatment Chemical"
10. "Commencement of Construction Activities"
11. "Construction Activities"
12. "Construction and Development Effluent Limitations and New Source Performance Standards"
13. "Construction Site" or "Site"
14. "Construction Support Activity"
15. "Construction Waste"
16. "Conveyance Channel"
17. "Critical Habitat"
18. "CWA"
19. "Dewatering"
20. "Discharge"
21. "Discharge of a Pollutant"
22. "Discharge Point"
23. "Discharge-Related Activity"
24. "Discharge to an Impaired Water"

25. "Domestic Waste"
26. "Drainageway"
27. "Drought-Stricken Area"
28. "Earth-Disturbing Activity"
29. "Effective Operating Condition"
30. "Effluent Limitations"
31. "Effluent Limitations Guideline" (ELG)
32. "Eligible"
33. "Emergency-Related Project"
34. "Endangered Species"
35. "Excursion"
36. "Existing Site"
37. "Exit Points"
38. "Exposed Soils"
39. "Federal Operator"
40. "Final Stabilization"
41. "Hazardous Substances" or "Hazardous or Toxic Waste"
42. "Historic Property"
43. "Impaired Water"
44. "Impervious Surface"
45. "Indian Country" or "Indian Country Lands"
46. "Infeasible"
47. "Install" or "Installation"
48. "Intermittent (or Seasonal) Stream"
49. "Jar test"
50. "Landward"
51. "Large Construction Activity"
52. "Linear Construction Site"
53. "Minimize"
54. "Municipal Separate Storm Sewer System" or "MS4"
55. "National Pollutant Discharge Elimination System" (NPDES)
56. "Native Topsoil"
57. "Natural Buffer"
58. "Natural Vegetation"
59. "New Operator of a New or Existing Site"

60. "New Site"
61. "New Source"
62. "New Source Performance Standards" (NSPS)
63. "Non-Stormwater Discharges"
64. "Non-Turbid"
65. "Notice of Intent" (NOI)
66. "Notice of Termination" (NOT)
67. "NPDES eReporting Tool" (NeT)
68. "Operational"
69. "Operator"
70. "Ordinary High Water Mark"
71. "Permitting Authority"
72. "Point(s) of Discharge"
73. "Point Source"
74. "Pollutant"
75. "Pollution Prevention Controls"
76. "Polymers"
77. "Prohibited Discharges"
78. "Provisionally Covered Under this Permit"
79. "Receiving Water"
80. "Run-On"
81. "Semi-Arid Areas"
82. "Small Construction Activity"
83. "Small Residential Lot"
84. "Snowmelt"
85. "Spill"
86. "Stabilization"
87. "Steep Slopes"
88. "Storm Sewer System"
89. "Stormwater"
90. "Stormwater Control"
91. "Stormwater Discharge Associated with Construction Activity"
92. "Stormwater Inlet"
93. "Stormwater Team"
94. "Storm Event"

95. "Storm Sewer"
96. "Subcontractor"
97. "SWPPP"
98. "Temporary Stabilization"
99. "Thawing Conditions"
100. "Threatened Species"
101. "Tier 2 Waters"
102. "Tier 2.5 Waters"
103. "Tier 3 Waters"
104. "Total Maximum Daily Load" or "TMDL"
105. "Toxic Waste"
106. "Treatment Chemicals"
107. "Turbidity"
108. "Uncontaminated Discharge"
109. "Upland"
110. "Upset"
111. "Water-Dependent Structures"
112. "Water Quality Standards"
113. "Waters of the United States"
114. "Wetland"
115. "Work Day"

The following acronyms were added to the list that appears in the 2012 CGP:

1. ACHP – Advisory Council on Historic Preservation
2. BMP – Best Management Practice
3. CBI – Confidential Business Information
4. CZMA – Coastal Zone Management Act
5. ECHO – EPA Enforcement and Compliance History Online
6. ELG – Effluent Limitations Guideline
7. FR – Federal Register
8. NEPA – National Environmental Policy Act
9. NeT – NPDES eReporting Tool
10. NHPA – National Historic Preservation Act
11. NSPS – New Source Performance Standards
12. ONRW – Outstanding National Resource Water
13. PAM – Polyacrylamide

14. RUSLE – Revised Universal Soil Loss Equation
15. SDS – Safety Data Sheet
16. SHPO – State Historic Preservation Office
17. THPO – Tribal Historic Preservation Office
18. TSS – Total Suspended Solids
19. UIC – Underground Injection Control
20. USDA – United States Department of Agriculture
21. USFWS – United States Fish and Wildlife Service

EPA notes that it has changed the terms “new project,” “existing project,” and “new operator of a new or existing project” in the 2012 CGP to “new site,” “existing site,” and “new operator of a new or existing site” in the proposed 2017 permit. The meaning of these terms has not changed. EPA previously used both “project” and “site” in the 2012 CGP and for consistency and clarity is now using “site” in the proposed permit.

The terms “catchment,” “chemical treatment system,” “commencement of pollutant-generating activities,” “corrective action,” “eNOI,” “level spreader,” “native vegetation,” “outfall,” “pollutant-generating activities,” and “surface water” were removed from Appendix A for the proposed 2017 permit because these terms were either not used in the proposed permit, were already covered under another definition, or were already well defined in the proposed permit. EPA also notes that it has added several acronyms to ensure that every acronym that appears in the proposed permit also appears in Appendix A.

Appendix B: Permit Areas Eligible for Coverage and EPA Regional Addresses

Appendix B specifies in what areas of the country the proposed permit would apply and EPA Regional Office addresses, and includes specific corresponding permit numbers.

Appendix C: Small Construction Waivers and Instructions

Appendix C provides information to construction operators on the availability of permit waivers for rainfall erosivity (App. C, Sec. A), TMDLs (App. C, Sec. B), and equivalent analysis (App. C, Sec. C).

Appendix D: Eligibility Procedures Relating to Threatened and Endangered Species Protection

Appendix D specifies the proposed eligibility criteria related to the protection of endangered and threatened species and critical habitat. Each operator will be required to certify that they have met one of the 6 proposed eligibility criteria.

Operators who cannot certify to one of the proposed endangered species eligibility criteria cannot submit an NOI to gain coverage under the proposed CGP; instead they will be required to apply to EPA for an individual NPDES permit. As appropriate, EPA will conduct ESA section 7 consultations when issuing individual permits. If there are concerns that CGP coverage for a particular facility may result in adverse effects to listed species or critical habitat, EPA may hold up discharge authorization until such concerns are adequately addressed. Regardless of an operator's eligibility certification under one of the six proposed criteria, EPA may require an application for an individual permit on the basis of adverse effects to species or habitat.

Consistent with Section 7(a)(2) of the Endangered Species Act (ESA), EPA has initiated and is in the process of consulting with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), both collectively known as the “Services,” regarding the

proposed CGP and ESA eligibility criteria. See, 50 CFR Part 402. Appendix D provides the proposed eligibility language for determining which criterion operators may meet to ensure eligibility under the ESA-related provisions of the permit. EPA's consultation with the Services may identify new and/or different eligibility criteria that may be necessary to ensure appropriate protection of listed species and critical habitat implicated by the minor changes in the proposed CGP. As a result, EPA is soliciting comment on the proposed eligibility criteria in Appendix D.

The FWS and NMFS are responsible for developing and maintaining the list of protected species and critical habitat. Once listed as endangered or threatened, a species is afforded the full range of protections available under the ESA, including prohibitions on killing, harming or otherwise taking a species. In certain instances, the FWS or NMFS may establish a critical habitat for a threatened or endangered species as a means to further protect those species. Critical habitat is an area determined to be essential for the conservation of a species and need not be in an area currently occupied by the species. Some, but not all, listed species have designated critical habitat. Exact locations of such designated critical habitat are provided in the Services regulations at 50 CFR Parts 17 and 226.

Operators have an independent ESA obligation to ensure that any of their activities do not result in prohibited "take" of listed species. Section 9 of the ESA prohibits any person from "taking" a listed species, e.g., harassing or harming it, with limited exceptions. See ESA Sec 9; 16 U.S.C. §1538. This prohibition generally applies to "any person," including private individuals, businesses and government entities. Many of the requirements and procedures in the proposed CGP to protect species may also assist operators in ensuring that their construction activities do not result in a prohibited take of species in violation of section 9 of the ESA. Operators who intend to undertake construction activities in areas that harbor endangered and threatened species may seek protection from potential "take" liability under ESA section 9 either by obtaining an ESA section 10 permit or by requesting coverage under an individual permit and participating in the section 7 consultation process with the appropriate FWS or NMFS office. Operators unsure of what is needed for such liability protection should confer with the appropriate Services.

Appendix E: Historic Property Screening Process

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to take into account the effects of Federal "undertakings" on historic properties that are listed on, or eligible for listing on, the National Register of Historic Places. The term Federal "undertaking" is defined in the NHPA regulations to include a project, activity, or program under the direct or indirect jurisdiction of a Federal agency including those requiring a Federal permit, license or approval. See 36 CFR 800.16(y). Historic properties are defined in the NHPA regulations to include prehistoric or historic districts, sites, buildings, structures, or objects that are included in, or are eligible for inclusion in, the National Register of Historic Places. See 36 CFR 800.16(l).

EPA's issuance of the final permit will be a Federal undertaking within the meaning of the NHPA. To address any issues relating to historic properties in connection with issuance of the final permit, EPA has included a proposed screening process in Appendix E for all prospective dischargers to follow to ensure that potential impacts of their covered activities on historic properties have been appropriately considered and addressed. Although individual applications for coverage under the general permit will not constitute separate Federal undertakings, the proposed screening process and related NOI questions provide an appropriate site-specific means of addressing historic property issues in connection with EPA's issuance of the final permit.

Under the NHPA regulations, a determination that a Federal undertaking has no potential to cause effects on historic properties fulfills an agency's obligations under section 106 of the NHPA. See 36 CFR 800.3(a)(1). EPA has reason to believe that the vast majority of activities that will be authorized under the final CGP will have no potential to cause effects on historic properties. EPA does not anticipate effects on historic properties from the pollutants in stormwater and allowable non-stormwater discharges from construction activities that will be covered under the final permit. Thus, to the extent EPA's issuance of the final general permit will authorize discharges of such constituents, confined to existing stormwater channels or natural drainage areas, the final permitting action will not have the potential to cause effects on historic properties. Additionally, where the site will not be installing stormwater controls that cause subsurface earth disturbance (see Step 1 of Appendix E for examples of these controls), EPA similarly finds that the issuance of the final permit will not have the potential to cause effects on historic properties.

It is EPA's judgement that the final permit may have some potential to cause effects on historic properties where the final permit will authorize or require the construction and/or installation of stormwater controls that involve subsurface disturbance. Where the operator has to disturb the land through the construction and/or installation of such controls, there is a possibility that artifacts, records, or remains associated with historic properties could be impacted. Therefore, if the operator is installing new stormwater controls to manage its stormwater that will involve subsurface ground disturbance, the operator will be required to consider the potential for effects to historic properties and may need to contact the applicable State Historic Preservation Officer (SHPO), Tribal Historic Preservation Office (THPO), or other tribal representative, to determine the likelihood that these controls will impact historic properties. Refer to Appendix E, Steps 2 through 5.

Appendix F: List of Tier 3, Tier 2, and Tier 2.5 Waters

Appendix F provides a list of Tier 3, Tier 2, and Tier 2.5 waters to assist construction operators in determining eligibility for coverage under proposed Parts 1.1, and in complying with any applicable antidegradation proposed requirements in Part 3.2.

Appendix G: Buffer Requirements

Appendix G includes proposed requirements and additional guidance for operators on how to establish the 50-foot buffer or satisfy one of the two other compliance alternatives described in Part 2.2.1.a, as well as how to qualify for and comply with the exceptions in Part 2.2.1.b.

Appendix G provides information to assist permittees in complying with Part 2.2.1. This appendix was developed for the permit to help implement the C&D rule requirement at 40 CFR 450.21(a)(6) to "provide and maintain natural buffers around waters of the United States ... unless infeasible." In an effort to streamline the proposed permit, much of the language on the buffer requirements from Part 2.1.2.1 of the 2012 CGP was moved to Appendix G for the proposed 2017 permit.

Appendix H: 2-Year, 24-Hour Storm Frequencies

Appendix H provides a guide to permittees to determine the volume of precipitation associated with their local 2-year, 24-hour storm event for permittees who elect to provide storage for the calculated volume of runoff from a 2-year, 24-hour storm.

Appendix I: Standard Permit Conditions

Appendix I includes the standard NPDES permit conditions consistent with 40 CFR 122.41. No significant changes were made to the standard permit conditions.

Appendix J: NOI Form and Instructions

Part 1.4.1 will require operators to use EPA's NPDES eReporting Tool (NeT) to prepare and submit NOIs. However, where an operator requests and receives approval from his/her EPA Regional Office, the operator will be authorized use the paper NOI form included in Appendix J.

The following proposed modifications have been made in the NOI form:

- Clarified the waiver options for using a paper NOI;
- Removed the IRS Employer Identification Number (EIN). This is not a number EPA uses for any purpose;
- Latitude/Longitude information has to be reported in decimal degrees instead of one of three possible formats. This is consistent with the NPDES Electronic Reporting Rule. See 80 FR 64063.
- Added a question on the estimated percentage of impervious area that will remain on the site at the completion of construction. Permittees are currently required to document the locations where impervious surfaces will occur after construction is completed under the current 2012 CGP as part of the SWPPP development, so this requirement will not add new burden for permittees. Permittees can therefore use this information from the SWPPP to estimate the percent impervious cover of the final site. The question allows permittees to select from broad ranges of estimates (i.e., 0% to 19%; 20% to 39%; 40% to 59%; 60% to 79%; or 80% to 100%).
- Added a question on type of construction site;
- Added a question on whether the pre-development land use used for agriculture. Appendix A of the proposed permit provides a definition of "agriculture land".
- Added a question requiring permittees to confirm that they understand that the CGP only authorizes the allowable stormwater discharges in Part 1.2.1 and the allowable non-stormwater discharges listed in Part 1.2.2, and that any discharges not expressly authorized in the permit cannot become authorized or shielded from liability under CWA section 402(k) by disclosure to EPA, state, or local authorities after issuance of the permit via any means, including the NOI to be covered by the permit, the SWPPP, during an inspection, etc. If any discharges requiring NPDES permit coverage other than the allowable stormwater and non-stormwater discharges listed in Parts 1.2.1 and 1.2.2 will be discharged, they will be required to be covered under another NPDES permit. This is consistent with EPA's long-standing interpretation of the scope of this permit.
- Added latitude and longitude for all stormwater outfalls at the site. EPA is requiring this information to be reported to facilitate the identification of receiving waterbodies and their impairment status. The new electronic reporting system, the NPDES eReporting Tool (NeT), will use the reported latitude and longitude information for each outfall to automatically determine the receiving waters that the site discharges to and the receiving waters' impairment status, which will reduce the burden of permittees having to separately look up and manually enter this information. Users can manually input this information if they choose. Information on receiving water impairment status is readily accessible from the state or tribal integrated report/CWA section 303(d) lists of waters. This information is already required to be collected under the current 2012 CGP as part of the SWPPP development, so this requirement will not add new burden for permittees.

Appendix K: NOT Form and Instructions

Part 8.3 will require the permittee to use EPA's NPDES eReporting Tool (NeT) to prepare and submit the NOT when any of the proposed conditions in 8.2 have been met. However, where the EPA Regional Office specifically authorizes the permittee to use a paper NOT form, that permittee will be required to complete and submit the paper form included in Appendix K.

Appendix K also provides potential operators with an idea of what types of questions to anticipate when completing the NOT. The NOT form includes modified reasons for termination. These proposed modifications were considered necessary to reflect the changes made to the proposed conditions for terminating permit coverage in Part 8.2.

Appendix L: Suggest Format for Request for Chemical Treatment

Part 1.1.9 will require permittees to notify the applicable EPA Regional Office in advance of submitting an NOI if the permittee plans to add "cationic treatment chemicals" (as defined in Appendix A) to stormwater and/or authorized non-stormwater prior to discharge. The EPA Regional Office will authorize coverage under the permit after the permittee has included appropriate controls and implementation procedures designed to ensure that its use of cationic treatment chemicals will not lead to an exceedance of water quality standards.

Appendix L provides a suggested format for notifying the operator's applicable EPA Regional Office about its proposed use of cationic treatment chemicals. The addition of Appendix L to the proposed permit is to help operators in providing the required information to their Regional Office in order to become eligible for permit coverage under Part 1.1.9.