

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VIII  
999 18<sup>TH</sup> STREET, SUITE 300  
DENVER, COLORADO 80202-2466

National Pollutant Discharge Elimination System  
General Permit for Storm Water Discharges from Federal Facility  
Small Municipal Separate Storm Sewer Systems in Colorado

Authorization to Discharge Under the National Pollutant Discharge Elimination System

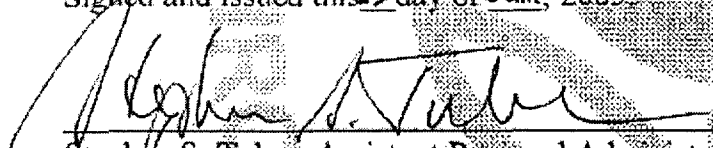
In compliance with the provisions of the Clean Water Act, as amended (33 U.S.C. §1251 et seq.), except as provided in Part 1.4 of this permit, operators of small municipal separate storm sewer systems located in the area specified in Part 1.1 are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth herein.

Only operators of small municipal separate storm sewer systems in the general permit area who submit a Notice of Intent and a storm water management program in accordance with Part II of this permit are authorized to discharge storm water under this general permit.

This permit becomes effective on June 23, 2003

This permit and the authorization to discharge expire at midnight, June 22, 2008

Signed and issued this 23 day of June, 2003.

  
Stephen S. Tuber, Assistant Regional Administrator  
Office of Partnerships and Regulatory Assistance  
U.S. Environmental Protection Agency, Region 8

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## Part 1. Coverage Under This General Permit

### 1.1 Permit Area

This permit covers **Federal Facilities** in the State of Colorado

### 1.2 Eligibility

1.2.1 This permit authorizes discharges of storm water from small municipal separate storm sewer systems (MS4s) operated by federal facilities in Colorado. This includes small MS4s designated pursuant to 40 CFR 122.32. An operator of a small MS4 is authorized to discharge under the terms and conditions of this general permit if the MS4:

1.2.1.1 Is located within the permit area described in Part 1.1;

1.2.1.2 Is located fully or partially within an urbanized area as determined by the latest Decennial Census by the Bureau of Census;

1.2.1.3 Is not limited by coverage as described in Part 1.4; and

1.2.1.4 Submits a complete Notice of Intent (NOI) according to Part 2 of this permit. An operator that has submitted a complete NOI under this permit is referred to sometimes as a "permittee." An operator seeking coverage under this permit is referred to sometimes as an "applicant."

### 1.3 Non-Storm Water Discharges

1.3.1 The permittee shall prohibit all types of non-storm water discharges into its MS4, except for discharges that are authorized by a separate NPDES permit, or are allowable non-storm water discharges listed in Part 1.3.2

1.3.2 *Allowable non-storm water discharges.* The following sources of non-storm water discharges are allowed to be discharged into the MS4 provided that the permittee determines that they are not significant contributors of pollutants to the MS4. If the permittee identifies any of the following categories as a significant contributor of pollutants, the permittee must include the category as an illicit discharge (see Part 3.2.3):

- Water line flushing;
- Landscape irrigation;
- Diverted stream flows;
- Rising ground waters;
- Uncontaminated ground water infiltration;
- Uncontaminated pumped ground water;
- Discharges from potable water sources;
- Foundation drains;
- Air conditioning condensate;
- Irrigation water;

- Springs;
- Water from crawl space pumps;
- Footing drains;
- Lawn watering;
- Individual residential car washing;
- Flows from riparian habitats and wetlands;
- Dechlorinated swimming pool discharges; or
- Street wash water.

Discharges or flows from fire fighting activities occur during emergency situations. The permittee does not need to evaluate these sources because they are exempt from the definition of illicit discharge under 40 CFR §122.26(b)(2).

#### 1.4 Limitations on Coverage

This permit does not authorize:

- 1.4.1 Discharges that are mixed with sources of non-storm water unless such non-storm water discharges are:
  - In compliance with a separate NPDES permit; or
  - Determined not to be a substantial contributor of pollutants to waters of the United States. See Part 1.3.2.
- 1.4.2 Storm water discharges associated with industrial activity as defined in 40 CFR §122.26(b)(14)(i)-(ix) and (xi).
- 1.4.3 Storm water discharges associated with construction activity as defined in 40 CFR §122.26(b)(14)(x) or 40 CFR §122.26(b)(15).
- 1.4.4 Storm water discharges currently covered under another NPDES permit.
- 1.4.5 Discharges or discharge-related activities that are likely to jeopardize the continued existence of any species that are listed as endangered or threatened under the Endangered Species Act (ESA), (16 U.S.C. §1531 et seq). Applicants must determine eligibility according to the ESA Eligibility Provisions of Part 1.5 prior to applying for permit coverage.
- 1.4.6 Discharges and discharge-related activities that adversely affect properties listed or eligible for listing on the National Register of Historic Places. Applicants must determine eligibility according to the National Historic Preservation Act (NHPA) Eligibility Provisions of Part 1.6 prior to applying for permit coverage.
- 1.4.7 Discharges that are causing or contributing to an exceedance of applicable numeric or narrative water quality standards. EPA may require corrective action according to Part 1.7 or an application for an individual permit if discharges from the MS4 are determined to cause or contribute to instream exceedances of water quality standards.

- 1.4.8 Discharges of pollutants into waters which a Total Maximum Daily Load (TMDL) has been either established or approved by the EPA unless the discharge is consistent with that TMDL (see Part 1.7.2). Permittees must incorporate any conditions and requirements applicable to discharges from the MS4 into the Storm Water Management Program in order to remain eligible for permit coverage.
- 1.4.9 Discharges that do not comply with Colorado's anti-degradation policy for water quality standards. Colorado's anti-degradation policy can be obtained from the Colorado Department of Public Health and Environment or from its web site: <http://www.cdph.state.co.us/op/regs/waterqualityregs.asp> (The anti-degradation rules are contained within Regulation 31 - Basic Standards and Methodologies for Surface Water).

### 1.5 Endangered Species Act (ESA) Eligibility Provisions

- 1.5.1 Coverage under this permit is available only if the applicant's storm water discharges, allowable non-storm water discharges, and discharge-related activities are not likely to:
- jeopardize the continued existence of any species that are listed as endangered or threatened ("listed") under the ESA or result in the adverse modification or destruction of habitat that is designated as critical under the ESA ("critical habitat"); or
  - cause a prohibited "take" of endangered or threatened species (as defined under Section 3 of the Endangered Species Act and 50 CFR 17.3), unless such takes are authorized under sections 7 or 10 of the Endangered Species Act.

By submitting a signed NOI, the applicant certifies that it has met all eligibility criteria in this section.

- 1.5.2 "Discharge-related activities" include: activities which cause, contribute to, or result in storm water point source pollutant discharges; and measures to control storm water discharges, including the siting, construction, and operation of best management practices (BMPs) to control, reduce, or prevent storm water pollution.
- 1.5.3 Eligibility Criteria: Addendum A of this permit establishes a process that must be used to determine permit eligibility related to this provision. This eligibility must be evaluated before the NOI is submitted to EPA. The applicant must meet one or more of the criteria in Parts 1.5.3.1 through 1.5.3.5 for the entire term of coverage under the permit. The information used to make the eligibility determination must be documented and included as part of the Storm Water Management Program.
- 1.5.3.1 Criterion A: No endangered or threatened species or critical habitat are in proximity to the MS4 or the point where authorized discharges reach waters of the United States; or
- 1.5.3.2 Criterion B: In the course of a separate federal action involving the MS4, formal or informal consultation with the Fish and Wildlife Service (FWS) under Section 7 of the ESA has been concluded and that consultation:
- Addressed the effects of the storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed species and critical habitat; and

- The consultation resulted in either a no jeopardy opinion or a written concurrence by the FWS on a finding that the storm water discharges, allowable non-storm water discharges, and discharge-related activities are not likely to adversely affect listed species or critical habitat; or

- 1.5.3.3 Criterion C: The activities of the MS4 are authorized under Section 10 of the ESA and that authorization addresses the effects of the storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed species and critical habitat; or
- 1.5.3.4 Criterion D: The applicant has evaluated, using best judgement and knowledge, the effects of the storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed endangered or threatened species and critical habitat. Based on the evaluation, the permittee has determined that there is no reason to believe the discharge and discharge-related activities will jeopardize the continued existence of any species or result in the adverse modification or destruction of critical habitat; or
- 1.5.3.5 Criterion E: The storm water discharges, allowable non-storm water discharges, and discharge-related activities were already addressed in another operator's certification of eligibility under Part 1.5.3.1 through 1.5.3.4 which includes the MS4 activities. By certifying eligibility under this Part, the applicant agrees to comply with any measures or controls upon which the other operator's certification was based.

## **1.6 National Historic Preservation Act (NHPA) Eligibility Provisions**

- 1.6.1 Determining eligibility: In order to be eligible for coverage under this permit, the applicant must be in compliance with the National Historic Preservation Act. Discharges may be authorized under this permit only if:
- 1.6.1.1 Criterion A: storm water discharges, allowable non-storm water discharges, and discharge-related activities do not affect a property that is listed or is eligible for listing on the National Register of Historic Places as maintained by the Secretary of the Interior; or
- 1.6.1.2 Criterion B: the applicant has obtained and is in compliance with a written agreement with the State Historic Preservation Officer (SHPO) that outlines all measures the MS4 operator will undertake to mitigate or prevent adverse effect to the historic property.
- 1.6.2 Addendum B of this permit provides guidance and references to assist with determining permit eligibility concerning this provision.

## **1.7 Discharges to Water Quality Impaired Waters**

- 1.7.1 EPA will notify MS4 operators whose discharges are likely to cause or contribute to a water quality impairment, or whose discharges contribute directly or indirectly to a 303(d) listed waterbody. If EPA determines that discharges from the MS4 are causing or contributing to a water quality impairment, that MS4's storm water management program (SWMP) must

include a section describing how the program will control the discharge of the pollutants of concern and ensure discharges from the MS4 will not cause or contribute to instream exceedances of the water quality standards. This documentation must specifically identify measures and BMPs that will collectively control the discharge of the pollutants of concern. The MS4 operator may be required to provide additional information to EPA to determine whether its discharge is causing or contributing to an impairment.

- 1.7.2 EPA will notify an MS4 operator if a TMDL has been developed that specifies a wasteload allocation (WLA) for discharges from the MS4. The notification will require the MS4 operator to assess and document whether the WLA is being met through implementation of existing storm water control measures or if additional control measures are necessary. The notification may also include requirements to describe and document an implementation schedule for controls, calculations, and monitoring or other proof that show that the WLA is being met. This may involve an iterative process of controls and evaluation. All documentation related to these requirements must be included as part of the records for the SWMP.

## **Part 2. Obtaining Authorization Under This General Permit**

### **2.1 Application for Coverage**

- 2.1.1 An applicant seeking authorization for discharges of storm water from a small MS4 must submit a notice of intent (NOI) according to the deadlines in Part 2.2 of this permit. The NOI must include the information and attachments required in Parts 2.3, 1.5 and 1.6 of this permit.
- 2.1.2 Where the operator changes, or where a new operator is added after submittal of an NOI, a new NOI must be submitted in accordance with Part 2.2.3 prior to the change or addition.
- 2.1.3 Each applicant that submits a complete NOI and meets the eligibility requirements in Part 1.2 of this permit is authorized to discharge storm water from its MS4s under the terms and conditions of this general permit thirty (30) days after the effective date of this permit. Upon review of the NOI, EPA may notify the applicant that it did not meet the eligibility requirements for coverage.
- 2.1.4 If EPA notifies the applicant of deficiencies or inadequacies in any portion of the NOI or attachments, the applicant is not authorized by this permit to discharge until correcting the deficient or inadequate portions and submitting a written statement to EPA certifying that appropriate changes have been made. The certification must be submitted within the time frame specified by EPA and must include the amended portions of the NOI.

### **2.2 Deadlines for Notification**

- 2.2.1 Each small MS4 automatically designated because it is located within an urbanized area (see 40 CFR §122.32(a)(1)) is required to submit an NOI and a description of the storm water management program (SWMP) or apply for an individual permit, by March 10, 2003.



- 2.2.2 Each small MS4 designated according to 40 CFR §122.32(a)(2) is required to submit an NOI and a description of the SWMP to EPA within 180 days of notice (unless additional time is provided in the designation notice).
- 2.2.3 *New Operators.* Each operator of an existing small MS4 must submit an NOI to EPA no later than 30 days prior to taking operational control of the MS4. The previous operator must submit a notice of termination (NOT) according to Part 2.6 of this permit.
- 2.2.4 *Submitting a Late NOI.* An applicants is not prohibited from submitting an NOI after the dates provided in Parts 2.2.1 and 2.2.2. If a late NOI is submitted, the authorization is only for discharges that occur after permit coverage is granted. EPA reserves the right to take appropriate enforcement actions for any unpermitted discharges.

### 2.3 Contents of the Notice of Intent (NOI)

The NOI must be signed in accordance with Part 5.7 of this permit and must include the following information:

- 2.3.1 The legal name of the federal facility or municipal entity;
- 2.3.2 The full facility mailing address and telephone number;
- 2.3.3 The name and phone number of the person or persons responsible for overall coordination of the SWMP;
- 2.3.4 An attached location map showing the boundaries of the MS4 under the applicant's jurisdiction. The map must include streets or other demarcations so that the exact boundaries can be located;
- 2.3.5 The area of land that drains to the applicant's MS4 (in square miles);
- 2.3.6 The latitude and longitude of the approximate center of the MS4;
- 2.3.7 The name(s) of the waters of the United States that receive discharges from the system;
- 2.3.8 If the applicant is relying on another entity to satisfy one or more permit obligations (see Part 3.3), the identity of that entity(ies) and the element(s) the entity(ies) will be implementing;
- 2.3.9 Information on each of the storm water minimum control measures in Part 3.2 of this permit. For each minimum control measure, include the following:  
a. Description of the best management practices (BMPs) that will be implemented;  
b. Measurable goals for each BMP; and  
c. Timeframes (i.e., month and year) for implementing each BMP;
- 2.3.10 Based on the requirements of Part 1.5, describe how the eligibility criteria for listed species and critical habitat have been met;

- 2.3.11 Based on the requirements of Part 1.6, describe how the eligibility criteria for historic properties have been met; and
- 2.3.12 Signature and certification by an appropriate official (see Part 5.7 ). The NOI must include the certification statement from Part 5.7 .

**2.4 Where to Submit**

Submit the signed NOI or NOT to EPA at the following address:

Greg Davis (8EPR-EP)  
Small MS4 Storm Water NOI  
US EPA Region 8  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2466

**2.5 Co-Permittees Under a Single NOI**

Applicants may jointly submit an NOI with one or more small MS4s. Permittees may partner with other MS4s to develop and implement the SWMP. The SWMP must clearly describe which permittees are responsible for implementing each of the control measures.

**2.6 Terminating Coverage**

A permittee may terminate coverage under this general permit by submitting a notice of termination (NOT). Authorization to discharge terminates at midnight on the day the NOT is post-marked for delivery to EPA.

- 2.6.1 A permittee may submit an NOT for the following reasons:
  - 2.6.1.1 The permittee ceases discharging storm water from the MS4;
  - 2.6.1.2 The permittee ceases operations of the MS4; or
  - 2.6.1.3 The permittee transfers ownership of or responsibility for the MS4 to another operator.
- 2.6.2 The NOT must be sent in letter format to EPA and include the following information:
  - 2.6.2.1 Name, mailing address, and location of the MS4 for which the notification is submitted;
  - 2.6.2.2 Name, address, and telephone number of the operator addressed by the NOT;
  - 2.6.2.3 An explanation of whether another operator has assumed responsibility for the MS4, the permittee has ceased operations of the MS4, or the storm water discharges have been eliminated; and
  - 2.6.2.4 The following certification:

*I certify under penalty of law that all storm water discharges from the identified MS4 that are authorized by an NPDES general permit have been eliminated, or that I am no longer the operator of the MS4, or that I have ceased operations of the MS4. I understand that by submitting this Notice of Termination I am not longer authorized to discharge storm water under the general permit and that discharging pollutants in storm water to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by an NPDES permit. I also understand that the submission of this Notice of Termination does not release an operator from liability for any violations of the general permit or the Clean Water Act.*

- 2.6.3 NOTs shall be signed in accordance with Part 5.7 and submitted to EPA at the address provided in Part 2.4.

### **Part 3. Storm Water Management Program (SWMP)**

#### **3.1 General Requirements**

- 3.1.1 The permittee must develop, implement, and enforce a SWMP designed to reduce the discharge of pollutants from the small MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy Colorado's water quality standards. The SWMP must include management practices; control techniques, system design, engineering methods, and other provisions the permittee or EPA determines appropriate for the control of pollutants in discharges from the MS4.
- 3.1.2 The permittee must fully implement the SWMP, including meeting its measurable goals, within 5 years after the date of authorization under this permit. Implementation should take place in approximate equal intervals throughout the permit and progress will be tracked in the annual report (see Part 4.3).
- 3.1.3 The SWMP must include each of the minimum control measures of Part 3.2. For each of the minimum control measures the SWMP must include the BMPs that will be implemented and the measurable goals for each of the BMPs including, as appropriate, the months and years in which the required actions will be started and completed, and the frequency of the action.

#### **3.2 Minimum Control Measures**

*The six minimum control measures that must be included in the storm water management program are:*

##### **3.2.1 Public Education and Outreach on Storm Water Impacts**

- 3.2.1.1 The permittee must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff.

- 3.2.1.2 The SWMP must document the following information related to public education and outreach:
- 3.2.1.2.1 A description of the public education program and outreach activities;
  - 3.2.1.2.2 A description of the methods and frequency of disseminating information;
  - 3.2.1.2.3 A description of the target audiences and target pollutants and sources that the permittee will address in the program and how they were selected;
  - 3.2.1.2.4 An estimation of the number of people expected to be reached by the program over the permit term;
  - 3.2.1.2.5 A list of measurable goals for the public education and outreach program;
  - 3.2.1.2.6 Dates by which the permittee will achieve each of the measurable goals; and
  - 3.2.1.2.7 The name or title of the person(s) responsible for coordination and implementation of the storm water public education and outreach program.

**3.2.2 Public Involvement/Participation**

- 3.2.2.1 The permittee must comply with applicable State and local public notice requirements when implementing a public involvement/participation program.
- 3.2.2.2 The permittee is encouraged to make the SWMP and NOI available to the public, including, but not limited to, the operator of any MS4 affected by the permittee's MS4 facility.
- 3.2.2.3 The SWMP must document the following information related to public involvement/participation:
  - 3.2.2.3.1 A description of the plan to involve the public in the development and implementation of the SWMP;
  - 3.2.2.3.2 The types of activities for public involvement that the program will include and the target audiences;
  - 3.2.2.3.3 A list of measurable goals for the public involvement/participation program;
  - 3.2.2.3.4 Dates by which the permittee will achieve each of the measurable goals; and
  - 3.2.2.3.5 The name or title of the person(s) responsible for coordination and implementation of the storm water public education and outreach program.

**3.2.3 Illicit Discharge Detection and Elimination**

***The permittee must:***

- 3.2.3.1 Develop, implement, and enforce a program to detect and eliminate illicit discharges into the small MS4;
- 3.2.3.2 Develop, if not already completed, a storm sewer system map showing the location of all outfalls and the names and location of all waters of the United States that receive discharges from those outfalls;
- 3.2.3.3 Effectively prohibit, through ordinance or other regulatory mechanism available under the legal authorities of the small MS4, non-storm water discharges into the storm sewer system and implement appropriate enforcement procedures and actions;
- 3.2.3.4 Develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, to the system;
- 3.2.3.5 Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste; and
- 3.2.3.6 Address the categories of non-storm water discharges or flows listed in Part 1.3.2. Only those discharges identified by the permittee as significant contributors of pollutants to the small MS4 need to be addressed as illicit discharges. The permittee must document in the SWMP any local controls or conditions placed on the discharges. All other non-storm water discharges must be prohibited according to Part 1.3 and Part 3.2.3.3.
- 3.2.3.7 The permittee may also develop a list of other similar occasional incidental non-storm water discharges (e.g., non-commercial or charity car washes, etc.) that will not be addressed as illicit discharges. These non-storm water discharges must not be reasonably expected (based on information available to the permittee) to be significant sources of pollutants to the MS4 because of either the nature of the discharges or conditions the permittee has established for allowing these discharges to the MS4 (e.g., a charity car wash with appropriate controls on frequency, proximity to sensitive waterbodies, BMPs on the wash water, etc.). The permittee must document in the SWMP any local controls or conditions placed on the discharges. All other non-storm water discharges must be prohibited according to Part 1.3 and Part 3.2.3.3.
- 3.2.3.8 The SWMP must document the following information related to illicit discharge detection and elimination:
  - 3.2.3.8.1 A description of procedures to identify priority areas. This includes areas suspected of having illicit connections (e.g., areas with older sanitary sewer lines);
  - 3.2.3.8.2 A description of procedures for identifying illicit discharges. The permittee must consider using dry weather field screening for non-storm water flows and field tests of selected chemical parameters as indicators of discharge sources; or ambient sampling to locate impacted reaches; or dye or smoke testing;

- 3.2.3.8.3 A description of procedures for locating and removing the source of the illicit discharge;
- 3.2.3.8.4 A description or citation of the established ordinance or other regulatory mechanism used to prohibit illicit discharges into the MS4. If the permittee needs to develop this mechanism, describe the plan and a schedule to do so;
- 3.2.3.8.5 A description of the enforcement procedures and jurisdiction;
- 3.2.3.8.6 A description of the methods for informing/training public employees about illicit discharges;
- 3.2.3.8.7 A description of the methods for informing the public of hazards associated with illegal discharges and improper disposal of waste;
- 3.2.3.8.8 A list of measurable goals for the illicit discharge detection and elimination program;
- 3.2.3.8.9 Dates by which the permittee will achieve each of the measurable goals; and
- 3.2.3.8.10 The name or title of the person(s) responsible for coordination and implementation of the illicit discharge detection and elimination program.

**3.2.4 Construction Site Storm Water Runoff Control**

*The permittee must:*

- 3.2.4.1 Develop, implement, and enforce a program to reduce pollutants in any storm water runoff to the small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If EPA waives the permit requirements for storm water discharges associated with a specific small construction activity (i.e., a single project) in accordance with §122.26(b)(15)(i)(A) or (B), the permittee is not required to develop, implement, and/or enforce a program to reduce pollutant discharges from that particular site;
- 3.2.4.2 Use an ordinance or other regulatory mechanism available under the legal authorities of the small MS4 to require erosion and sediment controls and sanctions to ensure compliance;
- 3.2.4.3 Develop requirements for construction site operators to implement appropriate erosion and sediment control best management practices;
- 3.2.4.4 Develop requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

- 3.2.4.5 Develop procedures for site plan review which incorporate consideration of potential water quality impacts;
- 3.2.4.6 Develop procedures for receipt and consideration of information submitted by the public; and
- 3.2.4.7 Develop procedures for site inspection and enforcement of control measures.
- 3.2.4.8 The SWMP must document the following information related to construction site runoff control:
  - 3.2.4.8.1 A description or citation of the established ordinance or other regulatory mechanism used to require erosion and sediment controls at construction sites. If the permittee needs to develop the required regulatory mechanism, describe the plan and a schedule to do so;
  - 3.2.4.8.2 A description of the sanctions and enforcement mechanisms the permittee will use to ensure compliance;
  - 3.2.4.8.3 A description of the requirements for construction site operators to implement appropriate erosion and sediment control BMPs and control waste at construction sites that may cause adverse impacts to water quality. Such waste includes discarded building materials, concrete truck washouts, chemicals, litter, and sanitary waste;
  - 3.2.4.8.4 A description of the procedures for site plan review, including the review of pre-construction site plans, which incorporate consideration of potential water quality impacts. Describe the procedures and the rationale for how certain sites will be identified for site plan review. Describe the estimated number and percentage of sites that will have pre-construction site plans reviewed;
  - 3.2.4.8.5 A description of the procedures for receipt and consideration of information submitted by the public;
  - 3.2.4.8.6 A description of the procedures for site inspection, including how sites will be prioritized for inspection;
  - 3.2.4.8.7 A list of measurable goals for the construction site runoff control program;
  - 3.2.4.8.8 Dates by which the permittee will achieve each of the measurable goals; and
  - 3.2.4.8.9 The name or title of the person(s) responsible for coordination and implementation of the construction site runoff control program.

**3.2.5 Post-Construction Storm Water Management in New Development and Redevelopment**

*The permittee must:*

- 3.2.5.1 Develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the small MS4. The program must ensure that controls are in place that would prevent or minimize water quality impacts;
- 3.2.5.2 Develop and implement strategies which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for the community;
- 3.2.5.3 Use an ordinance or other regulatory mechanism available under the legal authorities of the small MS4 to address post-construction runoff from new development and redevelopment projects; and
- 3.2.5.4 Ensure adequate long-term operation and maintenance of BMPs.
- 3.2.5.5 The SWMP must document the following information related to post-construction storm water management:
  - 3.2.5.5.1 A description of the structural and non-structural BMPs that will be used to manage post-construction runoff from new development and redevelopment projects within the MS4. Also, list any specific priority areas for this program;
  - 3.2.5.5.2 An explanation of the design features of the chosen BMPs that are intended to minimize water quality impacts;
  - 3.2.5.5.3 A description or citation of the established ordinance or other regulatory mechanism used to address post-construction runoff control. If the permittee needs to develop the required regulatory mechanism, describe the plan and a schedule to do so;
  - 3.2.5.5.4 A description of how long-term operation and maintenance of the selected BMPs will be preformed;
  - 3.2.5.5.5 A list of measurable goals for the post-construction runoff control program;
  - 3.2.5.5.6 Dates by which the permittee will achieve each of the measurable goals; and
  - 3.2.5.2.7 The name or title of the person(s) responsible for coordination and implementation of the post-construction storm water management program.
- 3.2.6 Pollution Prevention/Good Housekeeping for Municipal Operations**
  - The permittee must:*
  - 3.2.6.1 Develop and implement an operation and maintenance program with the ultimate goal of preventing or reducing pollutant runoff from municipal operations. The program must include an employee training component;



- 3.2.6.2 As part of maintenance activities and employee training, address the following activities at a minimum: park and open space maintenance, fleet and building maintenance, new construction and land disturbances, storm water system maintenance, and snow disposal.
- 3.2.6.3 The SWMP must document the following information related to pollution prevention/good housekeeping:
- 3.2.6.3.1 A description of the operation and maintenance program to prevent or reduce pollutant runoff from the municipal operations. **The description must include:**
    - 3.2.6.3.1.1 maintenance activities, maintenance schedules, and long-term inspection procedures for controls to reduce floatables and other pollutants to the MS4;
    - 3.2.6.3.1.2 employee training program used to prevent and reduce storm water pollution;
    - 3.2.6.3.1.3 controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, waste transfer stations, fleet or maintenance shops with outdoor storage areas, and salt/sand storage locations, and snow disposal areas operated by the MS4;
    - 3.2.6.3.1.4 procedures for the proper disposal of waste removed from the MS4 and the MS4's operations including dredge spoil, accumulated sediments, floatables, and other debris;
    - 3.2.6.3.1.5 procedures to ensure that new flood management projects are assessed for impacts on water quality and existing projects are assessed for incorporation of additional water quality protection devices or practices;
  - 3.2.6.3.2 A list of the municipal operations that are impacted by this operation and maintenance program;
  - 3.2.6.3.3 A list of industrial facilities owned or operated by the permittee that ultimately discharge to the small MS4. The list must include industrial facilities that are subject to EPA's Multi-Sector General Permit (MSGP) or individual NPDES permits for discharges of storm water associated with industrial activity. Include the EPA permit number or a copy of the Industrial NOI form for each facility;
  - 3.2.6.3.4 A list of measurable goals for the pollution prevention and good housekeeping program;
  - 3.2.6.3.5 Dates by which the permittee will achieve each of the measurable goals; and
  - 3.2.6.3.6 The name or title of the person(s) responsible for coordination and implementation of the pollution prevention and good housekeeping program.

### **3.3 Sharing Responsibility**

If the permittee hires another entity to implement any control measure(s), the permittee remains responsible for compliance with all terms of this permit.

### **3.4 Reviewing and Updating Storm Water Management Programs**

3.4.1 The permittee must conduct an annual review of the SWMP in conjunction with preparation of the annual report required under Part 4.3.

3.4.2 The permittee may change the SWMP during the life of the permit according to the following procedures:

3.4.2.1 Changes adding (but not subtracting or replacing) components, controls, goals, or requirements to the SWMP may be made at any time upon written notification to the EPA;

3.4.2.2 Requests to change or replace an ineffective or unfeasible BMP or goal, with an alternate BMP, may be made at any time. Unless denied by the EPA, changes proposed in accordance with the criteria below shall be deemed approved and may be implemented 60 days from the date the request is submitted to EPA. Modification requests must include the following:

3.4.2.2.1 An analysis of why the BMP or goal is ineffective or infeasible (including cost prohibitive);

3.4.2.2.2 Expectations on the effectiveness of the replacement BMP or goal; and

3.4.2.2.3 An analysis of why the replacement BMP or goal is expected to better achieve the SWMP requirements.

3.4.2.3 Change requests or notifications must be made in writing and signed in accordance with Part 5.7.

3.4.3 EPA may request documentation of the minimum control measures as required by the SWMP. EPA may review and subsequently notify the permittee that changes to the SWMP are necessary to:

3.4.3.1 Address discharges from the MS4 that are causing or contributing to water quality impacts;

3.4.3.2 Include more stringent requirements necessary to comply with new Federal or State statutory or regulatory requirements;

3.4.3.3 Include other conditions deemed necessary by the EPA to comply with water quality standards, ESA related requirements, and/or other goals and requirements of the CWA; or

- 3.4.3.4 Address the SWMP requirements of the permit, if EPA determines that the permittee's current SWMP does not meet permit requirements.
- 3.4.4 EPA may request changes in writing and can require include a schedule to develop and implement the changes. The request will offer the permittee the opportunity to propose alternative program changes to meet the objectives of the requested modification.
- 3.4.5 Transfer of Ownership, Operational Authority, or Responsibility for SWMP Implementation. The permittee must implement the SWMP on all new areas added to the permittee's MS4 (or for which the permittee becomes responsible for implementation of storm water quality controls) as expeditiously as practicable, but not later than one year from addition of the new areas. Implementation may be accomplished in a phased manner to allow additional time for controls that cannot be implemented immediately.

#### **Part 4. Monitoring, Recordkeeping and Reporting**

##### **4.1 Monitoring**

- 4.1.1 The permittee must evaluate program compliance, the appropriateness of identified best management practices, and progress toward achieving identified measurable goals. If the permittee discharges to a water for which a TMDL has been approved or established, the permittee may have additional monitoring requirements under Part 1.7.2.
- 4.1.2 Any monitoring required by this permit must be conducted in accordance with the following:
  - 4.1.2.1 *Representative monitoring.* Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity;
  - 4.1.2.2 *Test Procedures.* Monitoring results must be conducted according to test procedures approved under 40 CFR part 136; and
  - 4.1.2.3 *Discharge Monitoring Report.* Monitoring results must be recorded on a Discharge Monitoring Report (DMR).
- 4.1.3 Records of monitoring information must include:
  - 4.1.3.1 The date, exact place, and time of sampling or measurements;
  - 4.1.3.2 The names(s) of the individual(s) who performed the sampling or measurements;
  - 4.1.3.3 The date(s) analyses were performed;
  - 4.1.3.4 The names of the individuals who performed the analyses;
  - 4.1.3.5 The analytical techniques or methods used; and
  - 4.1.3.6 The results of such analyses.

**4.2 Recordkeeping**

- 4.2.1 The permittee must retain records of all monitoring information, including, all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, copies of Discharge Monitoring Reports (DMRs), a copy of the NPDES permit, and records of all data used to complete the application (NOI) for this permit for a period of at least three years from the date of the sample, measurement, report or application, or for the term of this permit, whichever is longer. This period may be extended by request of the EPA at any time.
- 4.2.2 The permittee must submit the records referred to in Section 4.2.1 to EPA only when specifically asked to do so. The permittee must retain a description of the SWMP required by this permit (including a copy of the permit language) at a location accessible to the EPA. The permittee must make records, including the notice of intent (NOI) and the description of the SWMP, available to the public if requested to do so in writing.

**4.3 Annual Reports**

The permittee must submit an annual report to EPA for each year of the permit term. The first report is due June 30, 2004 and must cover the activities during the period beginning on the effective date of the permit through March 10, 2004. Each subsequent annual report are due on June 30 of each year following 2004 for the remainder of the permit term. Reports must be submitted to EPA at the address given in Part 2.4. Each report must include:

- 4.3.1 The status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices, progress towards achieving the statutory goal of reducing the discharge of pollutants to the MEP, and the status of meeting the measurable goals for each of the minimum control measures;
- 4.3.2 Results of information collected and analyzed, if any, during the reporting period, including monitoring data used to assess the success of the program at reducing the discharge of pollutants to the MEP;
- 4.3.3 A summary of the storm water activities the permittee plans to undertake during the next reporting cycle (including an implementation schedule);
- 4.3.4 Proposed changes to the SWMP, including changes to any BMPs or any identified measurable goals that apply to the program elements; and
- 4.3.5 Notice that the permittee is relying on another government entity to satisfy some of the permit obligations, if applicable.

## Part 5. Standard Permit Conditions

### 5.1 Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

#### 5.1.1 *Criminal Violations.*

5.1.1.1 *Negligent Violations.* The CWA provides that any person who *negligently* violates permit conditions implementing section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both. In the case of a second, or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or both.

5.1.1.2 *Knowing Violations.* The CWA provides that any person who *knowingly* violates permit conditions implementing section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both. In the case of a second, or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or by imprisonment of not more than 6 years, or both.

5.1.1.3 *Knowing Endangerment.* The CWA provides that any person who *knowingly* violates permit conditions implementing section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction be subject to a fine not more than \$250,000 or by imprisonment for not more than 15 years, or both. In the case of a second, or subsequent conviction for a knowing endangerment violation, a person shall be subject to criminal penalties of not more than \$500,000 per day of violation, or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the CWA shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.

5.1.1.4 *False Statement.* The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required

to be maintained under the Act, shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than four years, or by both. (See section 309(c)(4) of the Clean Water Act).

5.1.2 *Civil Penalties.*

The CWA provides that any person who violates a permit condition implementing section 301, 302, 306, 307, 308, 318, or 405 of the Act or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act is subject to a civil penalty not to exceed \$27,500 per day for each violation.

5.1.3 *Administrative Penalties.*

The CWA provides that any person who violates a permit condition implementing section 301, 302, 306, 307, 308, 318, or 405 of the Act or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act is subject to an administrative penalty as follows:

5.1.3.1 *Class I penalty.* Not to exceed \$11,000 per violation nor shall the maximum amount exceed \$27,500.

5.1.3.2 *Class II penalty.* Not to exceed \$11,000 per day for each day during which violation continues nor shall the maximum amount exceed \$137,500.

**5.2 Continuation of the Expired General Permit**

If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedure Act (5 U.S.C. §551 et seq.), and remain in force and effect. Any permittee who was granted permit coverage prior to the expiration date will automatically remain covered by the continued permit until the earliest of:

5.2.1 Reissuance or replacement of this permit, at which time the permittee must comply with the Notice of Intent and other conditions of the new permit to maintain authorization to discharge; or

5.3.2 Issuance of an individual permit for the discharges; or

5.3.3 A formal permit decision by the EPA not to reissue this general permit, at which time the permittee must seek coverage under an alternative general permit or an individual permit.

**5.3 Need to Halt or Reduce Activity Not a Defense**

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

**5.4 Duty to Mitigate**

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

**5.5 Duty to Provide Information**

The permittee shall furnish to the EPA, within a reasonable time, any information which the EPA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the EPA, upon request, copies of records required to be kept by this permit.

**5.6 Other Information**

If the permittee becomes aware that the permittee has failed to submit any relevant facts in the Notice of Intent or submitted incorrect information in the Notice of Intent, or in any other report to the EPA, the permittee must promptly submit such facts or information.

**5.7 Signatory Requirements**

All Notices of Intent, Notices of Termination, reports, certifications, or information submitted to the EPA, or that this permit requires be maintained by the permittee, shall be signed and certified as follows:

5.7.1 *Notices of Intent.* All Notices of Intent/Termination shall be signed by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (1) the chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

5.7.2 *Reports and other information.* All reports required by the permit and other information requested by the EPA or authorized representative of the EPA shall be signed by a person described in Part 5.7.1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

5.7.2.1 The authorization is made in writing by a person described in Part 5.7.1 and submitted to the EPA; and

5.7.2.2 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 manager, operator, superintendent, or position of equivalent responsibility for environmental matter for the regulated entity.

5.7.3 *Changes to authorization.* If an authorization under Part 5.7.2 is no longer accurate because a different individual or position has responsibility for the overall operation of the MS4, a new authorization satisfying the requirements of Part 5.7.2 must be submitted to the EPA prior to or together with any reports, information, or notices of intent to be signed by an authorized representative.

5.7.4 *Certification.* Any person signing a document under Parts 5.7.1 or 5.7.2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

#### **5.8 Property Rights**

The issuance of this permit does not convey any property rights of any sort, or any exclusive privilege, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations

#### **5.9 Proper Operation and Maintenance**

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the conditions of the permittee's storm water management program. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by the permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

#### **5.10 Inspection and Entry**

The permittee shall allow the EPA or an authorized representative (including an authorized contractor acting as a representative of the Administrator) upon the presentation of credentials and other documents as may be required by law, to:

5.10.1 Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

5.10.2 Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;



- 5.10.3 Inspect at reasonable times, any facilities or equipment (including monitoring and control equipment) practices, or operations regulated or required under this permit; and
- 5.10.4 Sample or monitor, at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA, any substances or parameters at any location.

**5.11 Permit Actions**

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

**5.12 Permit Transfers**

This permit is not transferable to any person except after notice to the EPA. The EPA may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act.

**5.13 Anticipated Noncompliance**

The permittee shall give advance notice to the EPA of any planned changes in the permitted small MS4 or activity which may result in noncompliance with permit conditions.

**5.14 State/Tribal Environmental Laws**

- 5.14.1 Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State/Tribal law or regulation under authority preserved by section 510 of the Act.
- 5.14.2 No condition of this permit releases the permittee from any responsibility or requirements under other environmental statutes or regulations.

**5.15 Severability**

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

**5.16 Procedures for Modification or Revocation**

Permit modification or revocation will be conducted according to 40 CFR 122.62, 122.63, 122.64 and 124.5.

**5.17 Requiring an Individual Permit or an Alternative General Permit**

- 5.17.1 *Request by EPA.* The EPA may require any person authorized to discharge by this permit to apply for either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the EPA to take action under this paragraph. Where the EPA requires the permittee to apply for an individual NPDES permit, the EPA will notify the permittee in writing that a permit application is required. This notification shall include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for filing the application, and a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. Applications must be submitted to the address provided in Section 2.4. The EPA may grant additional time to submit the application upon request of the applicant. If the permittee fails to submit in a timely manner an individual NPDES permit application, as required by the EPA under this paragraph, then the applicability of this permit to the permittee is automatically terminated at the end of the day specified by the EPA for application submittal.
- 5.17.2 *Request by permittee.* Any discharger authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. In such cases, the permittee must submit an individual application in accordance with the requirements of 40 CFR 122.33(b)(2), with reasons supporting the request, to the EPA at the address provided in Section 2.4. The request may be granted by issuance of any individual permit or an alternative general permit if the reasons cited by the permittee are adequate to support the request.
- 5.17.3 *General permit termination.* When an individual NPDES permit is issued to a discharger otherwise subject to this permit, or the permittee is authorized to discharge under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an operator otherwise subject to this permit, or the operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial unless otherwise specified by the EPA.

## Part 6. Definitions

All definitions contained in Section 502 of the Act and 40 CFR 122 shall apply to this permit and are incorporated herein by reference. For convenience, simplified explanations of some regulatory/statutory definitions have been provided but, in the event of a conflict, the definition found in the Statute or Regulation takes precedence.

- 6.1 *Best Management Practices (BMPs)* means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

- 6.2 *Control Measure* as used in this permit, refers to any Best Management Practice or other method used to prevent or reduce the discharge of pollutants to waters of the United States.
- 6.3 *CWA or The Act* means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub.L. 92-500, as amended Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483 and Pub. L. 97-117, 33 U.S.C. 1251 et.seq.
- 6.4 *Discharge*, when used without a qualifier, refers to "discharge of a pollutant" as defined at 40 CFR 122.2.
- 6.5 *Discharge-related Activities* include: activities which cause, contribute to, or result in storm water point source pollutant discharges and measures to control storm water discharges, including the siting, construction, and operation of best management practices to control, reduce or prevent storm water pollution.
- 6.6 *EPA* means the EPA Regional Administrator or an authorized representative.
- 6.7 *Illicit Connection* means any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.
- 6.8 *Illicit Discharge* is defined at 40 CFR 122.26(b)(2) and refers to any discharge to a municipal separate storm sewer that is not entirely composed of storm water, except discharges authorized under an NPDES permit (other than the NPDES permit for discharges from the MS4) and discharges resulting from fire fighting activities.
- 6.9 *MEP* means "maximum extent practicable," the technology-based discharge standard for municipal separate storm sewer systems to reduce pollutants in storm water discharges that was established by CWA §402(p). A discussion of MEP as it applies to small MS4s is found at 40 CFR 122.34.
- 6.10 *Measurable Goal* means a quantitative measure of progress in implementing a component of a storm water management program.
- 6.11 *MS4* means "municipal separate storm sewer system" and is used to refer to either a Large, Medium, or Small Municipal Separate Storm Sewer System. The term, as used within the context of this permit, refers to small MS4s (see definition below) and includes systems operated by a variety of public entities (e.g., military facilities, prisons, and systems operated by other levels of government).
- 6.12 *Municipal Separate Storm Sewer* means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and

approved management agency under section 208 of the CWA that discharges to waters of the United States; (ii) Designed or used for collecting or conveying storm water; (iii) Which is not a combined sewer; and (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

- 6.13 *NOI* means Notice of Intent to be covered by this permit (see Part 2.3) and is the mechanism used to apply for coverage under this general permit.
- 6.14 *NOT* means Notice of Termination.
- 6.15 *Outfall* means a point source (defined below) at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers or pipes, tunnels, or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.
- 6.16 *Point Source* means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.
- 6.17 *Small Municipal Separate Storm Sewer System* is defined at 40 CFR 122.26(b)(16) and refers to all separate storm sewers that are owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States, but is not defined as "large" or "medium" municipal separate storm sewer system. This term includes systems similar to separate storm sewer systems in municipalities such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas such as individual buildings.
- 6.18 *Storm Water* is defined at 40 CFR 122.26(b)(13) and means storm water runoff, snow melt runoff, and surface runoff and drainage.
- 6.19 *Storm Water Management Program (SWMP)* refers to a comprehensive program to manage the quality of storm water discharged from the municipal separate storm sewer system.
- 6.20 *Waters of the United States* means:
1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; including all waters which are subject to the ebb and flow of the tide;
  2. All interstate waters, including interstate "wetlands";

3. All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
  - a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
  - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - c. Which are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as waters of the United States under this definition;
5. Tributaries of waters identified in paragraphs 1. through 4. of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs 1. through 6. of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds for steam electric generation stations per 40 CFR 423) which also meet the criteria of this definition) are not waters of the United States. Waters of the United States do not include prior converted cropland.

Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

## **Addendum A**

### **Endangered Species Eligibility Process**

#### **A. Background**

To meet its obligations under the Clean Water Act and the Endangered Species Act (ESA) and to promote those Acts' goals, the Environmental Protection Agency (EPA) is seeking to ensure the activities regulated by this small MS4 general permit pose no adverse effect to endangered and threatened species and critical habitat. Small MS4 operators applying for permit coverage must assess the impacts of their storm water discharges, allowable non-storm water discharges, and discharge-related activities on Federally listed endangered and threatened species ("listed species") and designated critical habitat ("critical habitat") to ensure that those goals are met. Prior to obtaining general permit coverage, applicants must meet the ESA eligibility provisions in Part 1.5 of this permit. EPA strongly recommends that applicants follow the process in this addendum at the earliest possible stage to ensure that measures to protect listed species and critical habitat are incorporated early in the planning process.

Applicants also have an independent ESA obligation to ensure that their activities do not result in any prohibited "takes" of listed species<sup>1</sup>. Many of the measures required in this general permit and in these instructions to protect species may also assist in ensuring that the applicant's activities do not result in a prohibited take of species in violation of section 9 of the ESA. If the MS4 operator has plans or activities in areas that are not covered by this general permit, and where endangered and threatened species are located, they may wish to ensure that they are protected from potential takings liability under ESA section 9 by obtaining an ESA section 10 permit. The applicant may also want to obtain a section 10 permit if there is a separate federal action regarding the MS4. Section 10 permits may be obtained by requesting formal consultation under ESA section 7 regarding that action. Applicants that are unsure whether to pursue a section 10 permit or a section 7 consultation for takings protection should confer with the appropriate U.S. Fish and Wildlife Service (FWS)<sup>2</sup> office.

#### **B. The ESA Eligibility Process**

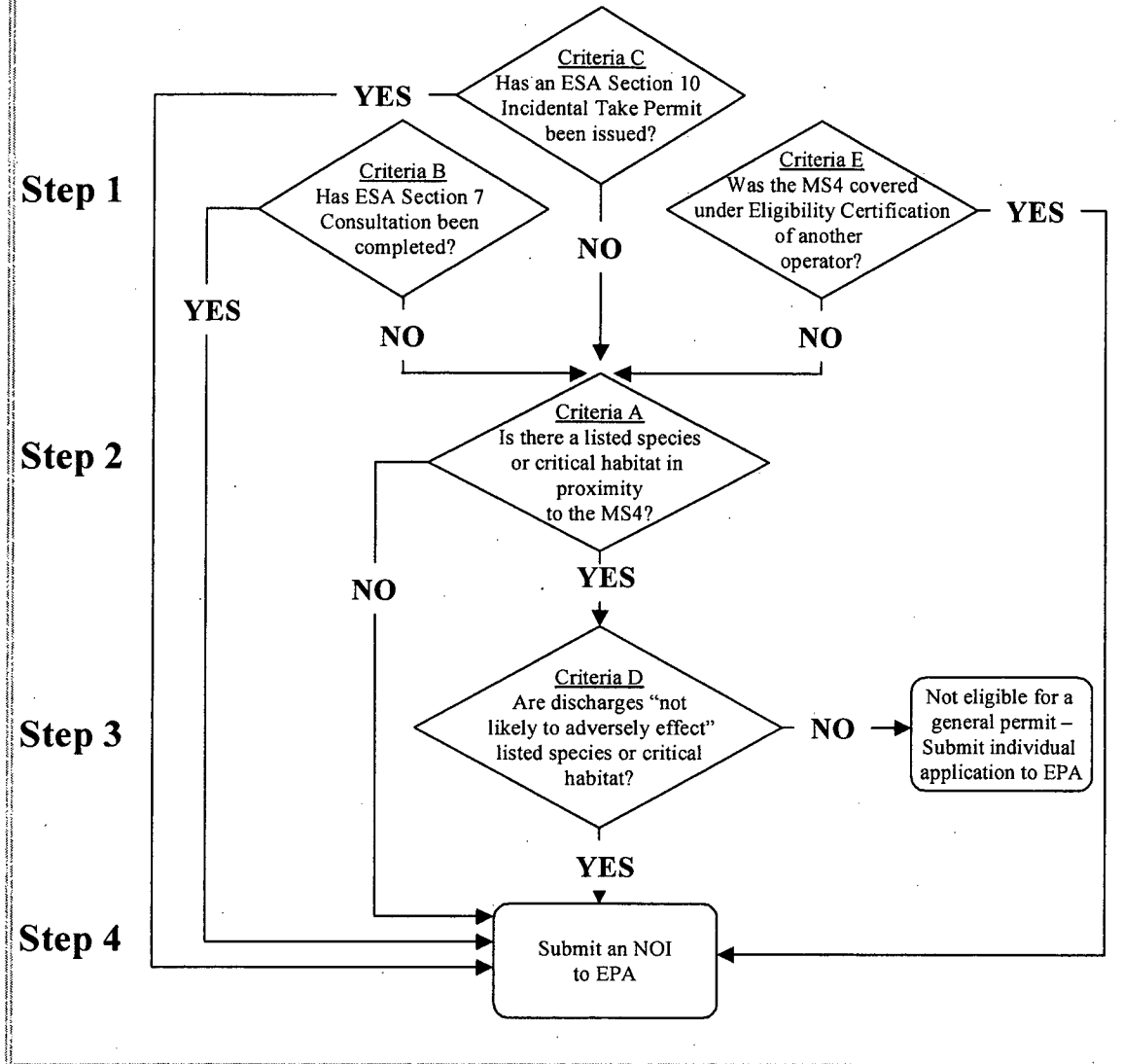
Before submitting a notice of intent (NOI) for coverage by this permit, applicants must determine whether they meet the ESA eligible criteria by following the steps in Section "D" below. The following flow chart is a summary of the process. However, the individual steps should be followed to make sure the details of each eligibility criteria are met. Applicants who cannot meet any of the eligibility criteria must apply for an individual permit.

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<sup>1</sup> Section 9 of the ESA prohibits any person from "taking" a listed species (e.g., harassing or harming it) unless: (1) the taking is authorized through a "incidental take statement" as part of completion of formal consultation according to ESA section 7; (2) where an incidental take permit is obtained under ESA section 10 (which requires the development of a habitat conservation plan); or (3) where otherwise authorized or exempted under the ESA. This prohibition applies to all entities including private individuals, businesses, and governments.

<sup>2</sup> For certain actions not relevant to small MS4s in EPA Region 8, discharges to marine waters may require consultation with the National Marine Fisheries Service instead.

# Endangered Species Act Eligibility Flowchart



### **C. The ESA Eligibility Criteria**

The ESA eligibility requirements in Part 1.5 of this permit may be satisfied by documenting that one or more of the following criteria have been met. EPA may notify an applicant to pursue eligibility under Criteria B for specific reasons explained in the notification. While not required, it is suggested that both proposed and candidate species be included in any evaluation. Doing so will provide additional protection to the species and help avoid further delays if a species is formally listed after an NOI is submitted for permit coverage.

- Criteria A. No endangered or threatened species or critical habitat are in proximity to the MS4 or the point(s) where authorized discharges reach waters of the United States (see part 1.5.3.1).
- Criteria B. In the course of a separate federal action involving the MS4, formal or informal consultation with the fish and wildlife service under Section 7 of the ESA has been concluded (see part 1.5.3.2).
- Criteria C. An incidental take permit was issued, under Section 10 of the ESA, and that authorization addressed the effects of the storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed species and critical habitat (see part 1.5.3.3)
- Criteria D. The applicant has determined adverse effects are not likely based on an evaluation of the effects of the MS4's storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed endangered or threatened species and critical habitat (see part 1.5.3.4).
- Criteria E. The storm water discharges, allowable non-storm water discharges, and discharge-related activities of the MS4 were already addressed in another operator's certification of eligibility under Criteria A, B, C, or D above (see part 1.5.3.5).

### **D. The Steps To Determine if the ESA Eligibility Criteria Can Be Met**

To determine eligibility, the applicant (sometimes referred to as "you"), must assess (or have previously assessed) the potential effects of your storm water discharges, allowable non-storm water discharges and discharge-related activities on listed species and critical habitat, PRIOR to completing and submitting a Notice of Intent (NOI). You must follow the steps outlined below and document the results of your eligibility determination.

#### **Step 1. Determine If You Can Meet Eligibility Criteria "B", "C", or "E"**

**Criteria B.** You can certify eligibility, according to Criteria B, for coverage by this permit if you can answer "Yes" to all of the following questions:



- Has consultation, under ESA Section 7, already been completed for discharges from your MS4<sup>3</sup>?
- Did the previously completed ESA Section 7 consultation consider all currently listed species and critical habitat and address your storm water, allowable non-storm water, and discharge-related activities?
- Did the ESA Section 7 consultation result in either a “no jeopardy” opinion by the Service (for formal consultations) or a concurrence by the service that your activities would be “unlikely to adversely affect” listed species or critical habitat?
- If a biological opinion was issued by the FWS, do you agree to implement all measures upon which the consultation was conditioned?

*If you answered “Yes” to all four questions above, you have met ESA eligibility Criteria B. Skip to Step 4.*

*If you answered “No” to any of the four questions above, check to see if you can meet Criteria C or E, or Go to Step 2.*

**Criteria C.** You can certify eligibility, according to Criteria C, for coverage by this permit if you can answer “Yes” to all of the following questions:

- Has an ESA Section 10 permit already been issued for discharges from your MS4<sup>4</sup>?
- Does your ESA Section 10 Permit consider all currently listed species and critical habitat, and address your storm water, allowable non-storm water, and discharge related activities, for discharges from your MS4?

*If you answered “Yes” to the two questions above, you have met ESA eligibility Criteria C. Skip to Step 4.*

*If you answered “No” to either of the two questions above, check to see if you can meet Criteria E, or Go to Step 2.*

**Criteria E.** You can certify eligibility, according to Criteria E, for coverage by this permit if you can answer “Yes” to all of the following questions:

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<sup>3</sup> A formal or informal ESA Section 7 consultation on this or another federal action (e.g., New source review under NEPA, application for a dredge and fill permit under CWA Sec. 404, application for an individual NPDES permit, etc.) addressed the effects of your MS4 discharges and discharge-related activities on listed species and critical habitat. (See 50 CFR 402.13).

<sup>4</sup> You have a permit under section 10 of the ESA and that authorization addresses the effects of your storm water discharges and discharge-related activities on listed species and critical habitat. You must follow FWS procedures when applying for an ESA section 10 permit (see 50 CFR 17.22(b)(1)).

- Did another MS4 operator previously certify ESA eligibility for your MS4 area<sup>5</sup>?
- Did the other operator's certification of eligibility consider all currently listed species and critical habitat and address your storm water, allowable non-storm water, and discharge related activities?
- Do you agree to implement all measures upon which the other operator's certification was based?

This situation will typically occur where an ownership of an MS4 covered by this permit changes. Before you rely on another operator's certification, you should carefully review that certification along with any supporting information. You also need to confirm that no additional species have been listed or critical habitat designated in the area of your MS4 since the other operator's endangered species assessment was done. If you do not believe that the other operator's certification provides adequate coverage for your MS4, you should provide your own independent endangered species assessment and certification.

*If you answered "Yes" to all three questions above, you have met ESA eligibility Criteria E. Skip to Step 4.*

*If you answered "No" to any of the three questions above, Go to Step 2.*

## **Step 2. Determine if You Can Meet Eligibility Criteria "A"**

**Criteria A.** You can certify eligibility, according to Criteria A, for coverage by this permit if you can answer "No" to all of the following questions:

- Are there any listed species or critical habitat in your county?
- Are there any listed species or critical habitat in proximity to your MS4 or discharge locations?

Use the process below to answer these questions, and to: "*Check for Listed Species in Your County,*" "*Check for Critical Habitat in Your County,*" and "*Check for Proximity to Your MS4 or MS4 Discharge Locations.*"

*If you answered "No" to the two questions above, you have met ESA eligibility Criteria A. Skip to Step 4.*

*If you answered "Yes" to either of the questions above, Go to Step 3.*

### ***Check for Listed Species in Your County.***

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<sup>5</sup> In order to meet the permit eligibility requirements by relying on another operator's certification of eligibility, the other operator's certification must apply to the location of your MS4 and must address the effects from your storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed species and critical habitat.

Look at the latest county species list to see if any listed species are found in your county. If you are located close to the border of a county or your MS4 is located in one county and your discharge points are located in another, you must look under both counties. Since species are listed and de-listed periodically, you will need the most current list at the time you are conducting your endangered species assessment. The nearest FWS field office will have the most current list for your county. EPA has developed a county-species list which can be used as a guide, but it is not as accurate as FWS's list (<http://cfpub.epa.gov/npdes/stormwater/endangerspecies.cfm>).

Using the latest County Species List available from FWS and any other relevant information sources, you must determine whether listed species or critical habitat are in proximity to your MS4. Listed species and critical habitat are in proximity to an MS4 when they are:

- Located in the path or immediate area through which or over which contaminated point source storm water flows from the MS4 to the point of discharge into the receiving water. This may also include areas where storm water from your MS4 enters groundwater that has a direct hydrological connection to a receiving water (e.g., groundwater infiltrates at your MS4 and re-emerges to enter a surface waterbody within a short period of time.);
- Located in the immediate vicinity of, or nearby, the point of discharge into receiving waters; or
- Located in the area of an MS4 where storm water BMPs are planned or are to be constructed.

***Check for Critical Habitat in Your County.***

Some (but not all) listed species have designated critical habitat. Exact locations of such habitat are provided in the endangered species regulations at 50 CFR part 17 and part 226. To determine if MS4 or discharge locations are within designated critical habitat, you should either:

- Review those regulations (which can be found in many larger libraries); or
- Contact the nearest Fish and Wildlife Service (FWS) field office. A list of FWS field offices for Colorado is found in section "F" of this Addendum; or
- Contact the Colorado Natural Heritage Program. Heritage programs gather, manage, and distribute detailed information about the biological diversity found within their jurisdictions. They frequently have the most current information on listed species and critical habitat. Contact information for the Colorado program is provided in section "G" of this Addendum.

***Check for Proximity to Your MS4 or MS4 Discharge Locations.***

If there are listed species or critical habitat in your county, are they in proximity to your MS4 or discharge locations? To determine whether listed species are in proximity to your MS4, you will need to use the proximity criteria listed in the "Check for Listed Species in Your County" process above. The area in proximity to be searched/surveyed for listed species will vary with the size of the MS4, the nature and quantity of the storm water discharges, and the type of receiving waters. You should use the method(s) which allow you to determine, to the best of your knowledge, whether listed species are in proximity to your particular MS4.

These methods may include:

- Conducting visual inspections. This method may be particularly suitable for MS4s that are smaller in size, MS4s located in non-natural settings such as highly urbanized areas or industrial parks where there is little or no natural habitat and MS4s that discharge directly into municipal storm water collection systems. For other MS4s, a visual survey may not be sufficient to determine whether listed species are in proximity. However, some species may occur only during certain times of the year (e.g., bald eagle).
- Contacting the nearest State Wildlife Agency or U.S. FWS field offices. Many endangered and threatened species are found in well-defined areas or habitats. That information is frequently known to state or federal wildlife agencies.
- Contacting local/regional conservation groups such as natural heritage programs (see section G below). These groups inventory species and their locations and maintain lists of sightings and habitats.
- Conducting a formal biological survey. MS4s with extensive storm water discharges may choose to conduct biological surveys as the most effective way to assess whether listed species are located in proximity and whether there are likely adverse effects.

### **Step 3. Determine If You Can Meet Eligibility Criteria “D”**

**Criteria D.** You can certify eligibility, according to Criteria D, for coverage by this permit if you can answer “Yes” to all of the following questions:

- Have you determined that your MS4's storm water discharges, allowable non-storm water discharges, and discharge-related activities are “not likely to adversely affect” listed species or critical habitat and/or have you reached agreement with the U.S. FWS on measures to avoid, eliminate, or minimize adverse affects?
- Do you agree to implement all measures upon which the determination was conditioned?

Use the process below to understand adverse affect determinations and to answer these questions.

*If you answered “Yes” to both questions above, you have met ESA eligibility Criteria D. Go to Step 4.*

*If you answered “No” to either of the questions above you are not eligible for coverage by this permit. You must submit an individual application for your discharges to EPA. (See 40 CFR 122.33(b)(2))*

If you are unable to certify eligibility under Criteria A, B, C, or E, you must assess whether your storm water discharges, allowable non-storm water discharges, and discharge-related activities are likely to adversely affect listed species or critical habitat. “Storm water discharge-related activities” include: activities which cause, contribute to, or result in point source storm water pollutant discharges and measures to control storm water discharges and allowable non-storm water discharges including the siting, construction, operation of best management practices (BMPs) to control, reduce, or prevent water pollution. Please be aware that no protection from incidental takings liability is provided under this criteria.

The scope of effects to consider will vary with each MS4. If you are having difficulty in determining whether your MS4 is likely to cause adverse effects to a listed species or critical habitat, you should contact the appropriate office of the FWS or Natural Heritage Program for assistance. In order to complete the determination of effects, it may be necessary to follow the consultation procedures in section 7 of the ESA. (See Criteria B information above, and section 7 consultation web link in section G below).

Upon completion of your assessment, document the results of your effects determination. If adverse effects are not likely, you are eligible under criteria "D" - proceed to Step 4 of this Addendum. Your determination may be based on measures that you implement to avoid, eliminate, or minimize adverse affects.

*If the determination is "May Adversely Affect."* You must contact the FWS to discuss your findings and measures you could implement to avoid, eliminate, or minimize adverse affects. If you and the service(s) reach agreement on measures to avoid adverse effects, you are eligible under criteria "D". Any terms and/or conditions to protect listed species and critical habitat that you relied on in order to complete an adverse effects determination must be incorporated into your Storm Water Management Program (required by the permit) and implemented in order to maintain permit eligibility.

*If endangered species issues cannot be resolved.* If you cannot reach agreement with the FWS on measures to avoid, eliminate, or reduce adverse effects and the likely adverse effects cannot be otherwise addressed through meeting the other criteria of Part 1.5, then you are not eligible for coverage under this general permit. You must seek coverage under an individual permit.

Effects from storm water discharges, allowable non-storm water discharges, and discharge-related activities which could pose an adverse effect include:

- *Hydrological.* Wastewater or storm water discharges may cause siltation, sedimentation, or induce other changes in receiving waters such as temperature, salinity or pH. These effects will vary with the amount of wastewater or storm water discharged and the volume and condition of the receiving water. Where a discharge constitutes a minute portion of the total volume of the receiving water, adverse hydrological effects are less likely.
- *Habitat.* Excavation, site development, grading, and other surface disturbance activities, including the installation or placement of storm water ponds or BMPs, may adversely affect listed species or their habitat. Storm water associated with MS4 operation may drain or inundate listed species habitat.
- *Toxicity.* In some cases, pollutants in storm water may have toxic effects on listed species.

#### **Step 4. Submit Notice of Intent and Document Results of the Eligibility Determination.**

Once the Part 1.5 ESA eligibility requirements have been met and you have determined NHPA eligibility (see Addendum B below), you may submit the Notice of Intent (NOI). Signature and submittal of the NOI constitutes your certification, under penalty of law, of your eligibility for permit coverage.

You must include documentation of Part 1.5 ESA eligibility in the SWMP required for the MS4. Documentation required for the various ESA eligibility criteria are as follows:

**Criteria A:** A copy of the most current county species list pages for the county(ies) where your MS4 and discharges are located. You must also include a statement on how you determined that no listed species or critical habitat are in proximity to your MS4 or MS4 discharge locations.

**Criteria B:** A copy of the FWS's biological opinion or concurrence on a finding of "unlikely to adversely effect" regarding the ESA Section 7 consultation.

**Criteria C:** A copy of the FWS's letter transmitting the ESA Section 10 authorization.

**Criteria D:** Documentation on how you determined adverse effects on listed species and critical habitat were unlikely.

**Criteria E:** A copy of the documents originally used by the other operator of your MS4 (or area including your MS4) to satisfy the documentation requirement of Criteria A, B, C or D.

#### **E. Duty To Implement Terms and Conditions Upon Which Eligibility Was Determined**

You must comply with any terms and conditions imposed under the ESA eligibility requirements of Part 1.5 to ensure that your storm water discharges, allowable non-storm water discharges, and discharge-related activities do not pose adverse effects to listed species and/or critical habitat. You must incorporate such terms and conditions into your MS4's SWMP as required by the permit. If the ESA eligibility requirements of Part 1.5 cannot be met, then you may not receive coverage under this permit, and must apply for an individual permit.

#### **F. U.S. Fish and Wildlife Service Offices**

*National Websites For Endangered Species Information.*

Endangered Species Home page: <http://endangered.fws.gov/>

ESA Section 7 Consultations: <http://endangered.fws.gov/consultations/index.html>

##### *State Field Offices*

Field Supervisor  
U.S. Fish and Wildlife Service  
Colorado Field Office  
P.O. Box 25486  
Denver Federal Center  
Lakewood, CO 80225-0046  
(303) 275-2370

Field Supervisor  
U.S. Fish and Wildlife Service  
Western Colorado Field Office  
764 Horizon Drive South, Annex A  
Grand Junction, CO 81506-3946

(970) 243-2778

### **G. Natural Heritage Network**

The Natural Heritage Network comprises 75 independent heritage program organizations located in all 50 states, 10 Canadian provinces, and 12 countries and territories located throughout Latin America and the Caribbean. These programs gather, manage, and distribute detailed information about the biological diversity found within their jurisdictions. Developers, businesses, and public agencies use natural heritage information to comply with environmental laws and to improve the environmental sensitivity of economic development projects. Local governments use the information to aid in land use planning.

The Natural Heritage Network is overseen by NatureServe, the Network's parent organization, and is accessible on-line at: <http://www.natureserve.org/> This website provides access to a large number of specific biodiversity centers and the online encyclopedia of plants, animals, and ecosystems in the U.S. and Canada. The Colorado program contact information is listed below for the area of coverage of this permit:

#### **Colorado Natural Heritage Program**

Colorado State University  
8002 Campus Delivery  
Fort Collins, CO 80523-8002  
Tel: (970) 491-1309  
Fax (970) 491-3349  
Internet: <http://www.cnhp.colostate.edu/>

## **Addendum B**

### **Historic Properties Eligibility Process**

Applicants must determine whether their MS4's storm water discharges, allowable non-storm water discharges, or construction of best management practices (BMPs) to control such discharges, has potential to affect a property that is either listed or eligible for listing on the National Register of Historic Places.

For existing dischargers who do not need to construct BMPs for permit coverage, a simple visual inspection may be sufficient to determine whether historic properties are affected. However, for MS4s which are new storm water dischargers and for existing MS4s which are planning to construct BMPs for permit eligibility, applicants should conduct further inquiry to determine whether historic properties may be affected by the storm water discharge or BMPs to control the discharge. In such instances, applicants should first determine whether there are any historic properties or places listed on the National Register or if any are eligible for listing on the register (e.g., they are "eligible for listing").

EPA suggests that applicants first access the "National Register of Historic Places" information listed on the National Park Service's web page: <http://www.cr.nps.gov/nr> The address for the State Historic Preservation Officer is listed in Part II of this addendum. Applicants may also contact city, county or other local historical societies for assistance, especially when determining if a place or property is eligible for listing on the register.

The following three scenarios describe how applicants can meet the permit eligibility criteria for protection of historic properties under this permit:

- (1) If historic properties are not identified in the path of an MS4's storm water and allowable non-storm water discharges or where construction activities are planned to install BMPs to control such discharges (e.g., diversion channels or retention ponds), then the applicant has met the NHPA eligibility criteria in Part 1.6 of this permit.
- (2) If historic properties are identified but it is determined that they will not be affected by the discharges or construction of BMPs to control the discharge, the applicant has met the NHPA eligibility criteria in Part 1.6 of this permit.
- (3) If historic properties are identified in the path of an MS4's storm water and allowable non-storm water discharges or where construction activities are planned to install BMPs to control such discharges and it is determined that there is the potential to adversely affect the property, the applicant can still meet the NHPA eligibility criteria under Part 1.6 of this permit, if he/she obtains and complies with a written agreement with the State Historic Preservation Officer which outlines measures the applicant will follow to mitigate or prevent those adverse effects.

The contents of such a written agreement must be included in the MS4's Storm Water Management Program.

In situations where an agreement cannot be reached between an applicant and the State Historic Preservation Officer, applicants should contact the Advisory Council on Historic Preservation (ACHP) listed in Part III of this Addendum for assistance. If you cannot reach agreement with the ACHP's assistance on measures to mitigate or prevent adverse effects and the likely adverse effects



cannot be otherwise addressed through meeting the other criteria of Part 1.6, then you are not eligible for coverage under this general permit. You must seek coverage under an individual permit.

The term "adverse effects" includes, but is not limited to, damage, deterioration, alteration, or destruction of the historic property or place. EPA encourages applicants to contact the State Historic Preservation Officer as soon as possible in the event of a potential adverse effect to a historic property.

Applicants are reminded that they must comply with applicable State and local laws concerning the protection of historic properties and places.

### **I. Internet Information on the National Register of Historic Places**

The National Register of Historic Places is the Nation's official list of cultural resources worthy of preservation. Authorized under the National Historic Preservation Act of 1966, the National Register is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect our historic and archeological resources. Properties listed in the Register include districts, sites, buildings, structures, and objects that are significant in American history, architecture, archeology, engineering, and culture. The National Register is administered by the National Park Service, which is part of the U.S. Department of the Interior.

An electronic listing of the "National Register of Historic Places," as maintained by the National Park Service, can be accessed on the Internet at: <http://www.cr.nps.gov/nr>

### **II. State Historic Preservation Officers (SHPO)**

#### **Colorado**

Ms. Georgianna Contiguglia, SHPO  
Colorado Historical Society  
1300 Broadway  
Denver, CO 80203  
Phone: 303-866-3395  
Fax: 303-866-2711  
Email: [oahp@chs.state.co.us](mailto:oahp@chs.state.co.us)  
Internet: <http://www.coloradohistory-oahp.org/>

Deputy: Susan Collins  
Phone: 303-866-2736  
Email: [susan.collins@chs.state.co.us](mailto:susan.collins@chs.state.co.us)

### **III. Advisory Council on Historic Preservation**

The Advisory Council on Historic Preservation (ACHP) is an independent Federal agency that promotes the preservation, enhancement, and productive use of our Nation's historic resources and advises the President and Congress on national historic preservation policy.

The goal of the National Historic Preservation Act (NHPA), which established ACHP in 1966, is to have Federal agencies act as responsible stewards of our Nation's resources when their actions affect historic properties. ACHP is the only entity with the legal responsibility to encourage Federal agencies to factor historic preservation into Federal project requirements.

As directed by NHPA, ACHP serves as the primary Federal policy advisor to the President and Congress; recommends administrative and legislative improvements for protecting our Nation's heritage; advocates full consideration of historic values in Federal decision making; and reviews Federal programs and policies to promote effectiveness, coordination, and consistency with national preservation policies.

#### **Main Office**

Advisory Council on Historic Preservation  
Old Post Office Building  
1100 Pennsylvania Avenue, NW, Suite 809  
Washington, DC 20004  
Phone: (202) 606-8503  
Fax: (202) 606-8647/8672  
E-mail: [achp@achp.gov](mailto:achp@achp.gov)  
Internet: <http://www.achp.gov/>

#### **Western Office**

Advisory Council on Historic Preservation  
12136 West Bayaud Avenue, Suite 330  
Lakewood, Colorado 80228  
Phone: (303) 969-5110  
Fax: (303) 969-5115