

**RESPONSE TO COMMENTS
FINAL PERMITTING DECISION**

Permit No.: ARR150000

Permit: Construction Stormwater General Permit

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The following are responses to comments received regarding the draft permit number above and are developed in accordance with regulations promulgated at 40 C.F.R. § 124.17(a) and (c), APC&EC Rule 8, Administrative Procedures, and A.C.A. 8-4-203(e)(2).

Introduction

The above permit was submitted for public comment on October 31, 2020. The public comment period ended on November 30, 2020. This document contains a summary of the comments that the Arkansas Department of Energy and Environment - Division of Environmental Quality (DEQ), Office of Water Quality received during public comment period. There were several similar issues raised throughout the comments; those are grouped together, with one response from the DEQ.

A summary of the changes can be found on the last page of this document.

The following people or organizations sent comments to the DEQ during the public notice. A total of 43 comments were raised by three (3) separate commenters.

	Commenter	# of Comments Raised
1.	Dane Schumacher	2
2.	Janet Paith	9
3.	EPA	32

Response to Comments

Comment 1 Regarding Section A: DEFINITIONS WITH INCLUDED COMMENTARY, “Losing Stream Segment”: Most losing streams will carry some flow after heavy, prolonged precipitation. However, even after very heavy rainfall, the flows of most losing stream decrease rapidly to zero within a few days after the precipitation ends. From the stand-point of hydrology, both losing streams and sinkholes can be thought of as the upstream ends or entry point of karst drainage systems.

(Source: Missouri Department of Natural Resources, “Gaining and Losing Streams”, December 2016)

<https://dnr.mo.gov/education/documents/losingstreams.pdf>

Losing streams are also discrete recharge zones. A losing stream is a surface stream that contributes water to the karst groundwater system in localized areas. In the Ozarks, almost every stream that lacks year-round flow has losing stream segments.

Losing streams valleys are important groundwater recharge zones in the Ozarks. Although valley areas represent about 10 percent of the land area, they are responsible for about 40 percent of the groundwater recharge to karst groundwater systems. **Protection of water quality in these valleys is critical for protection of groundwater quality in wells and springs. [Bold Emphasis Added]**

The typical losing stream in the Ozarks is a dry gravel stream bed, except for a few days or weeks after major rainfall. Many of the losing stream segments were once sinkholes that were filled with coarse stream gravel washed in during storm flows. Losing stream segments can move a few gallons to a few hundreds of gallons per minute of water from the surface stream into the groundwater system.

(Source: Tom Aley, “Karst Groundwater”, Missouri Conservationist Magazine, March 2000 Issue, Revised November 4, 2010)

This Comment suggests the Department add the following language to the definition of “losing stream segment”:

Losing Stream: A stream that loses water as it flows downstream. The water infiltrates into the ground recharging the local groundwater because the water table is below the bottom of the stream channel.

Additionally, the term “karst” and its definition should be added to Section A, which will provide contextual meaning to the term “losing stream segment”.

Karst: An area of limestone terrane characterized by sinkholes, coves, springs, and losing streams.

Water movement through karst terrain dictates the level of additional information to be collected, i.e. bore holes, aerial photographs, sinkhole maps, existing well data, identification of fracture traces, faults, springs, and seep before proceeding with Best Management Practices (BMP) design and construction. Additionally, an per Regulation 6.301 (D)-Implementation of Losing Stream Regulation- “stream studies for determining classification as a losing stream segment must be conducted during the critical low flow season, when stream flow is at least 1cfs and representative of seasonal flow. The Department shall determine the requirement for, and the content and level of detail of, stream studies, based on topography, geological data, file data, other discharges in area, stream flow, etc.”

DEQ's ARR150000 Draft Renewal Fact Sheet, Item #6, "Water Quality Requirements" states, "In accordance with 40 C.F.R. 122.44(d), the general permit must include any requirements necessary to achieve State Water Quality Standards as established under Section 303 of the Clean Water Act." Stormwater discharges associated with construction activity in karst drainage systems, particularly losing stream segments, warrant site specific considerations, investigations, and necessary requirements.

Given the complexity inherent to active karst areas and the fact that there is no single set of investigatory guidelines or BMPs that works for every location and/or construction site, stormwater discharges associated with construction site activity in karst drainage systems would be better monitored and regulated under a NPDES Individual Permit, rather than the General Permit, which is used for facilities with similar operations in similar geographic locations.

40 CFR 122.28(b)(3)(G)(4) provides the Director with clear regulatory authority to require facilities with stormwater discharges associated with construction activities in karst drainage systems, including small sites that are automatically covered and do not need to submit documents, i.e., NOI, SWPPP, to DEQ, to obtain a site specific NPDES Individual Permit.

Issuance of site specific NPDES Individual Permits for stormwater discharges associated with construction activity in karst drainage systems, including losing stream segments, would be better protective of AR waters of the State, especially those waterways designated as Extraordinary Resource Waters (ERWs), Natural and Scenic Waterways (NSWs), and Ecologically Sensitive Waterways (ESWs).

Response: Arkansas Department of Energy and Environment - Division of Environmental Quality (DEQ), Office of Water Quality incorporated the definition for a "Losing Stream Segment" into the Construction Stormwater General Permit (CGP) from APC&EC Rule 6.301 (B). Therefore, DEQ will not be adding the requested language to the definition in the CGP.

If the commenter would like the definition for a "Losing Stream Segment" changed, the commenter will need to follow APC&EC Rule 8.811 Procedures for Third-Party Rulemaking.

Also, since the term "Karst" is not used in the Construction Stormwater General Permit (ARR150000), DEQ does not need to add a definition for "Karst".

APC&EC Rule 6.301 is for effluent discharges to losing stream segments. This portion of the Rule is not applicable for construction stormwater discharges. Therefore, applicants seek coverage under the CGP will not be required to conduct a losing stream study in accordance with APC&EC Rule 6.301 (D).

The commenter has expressed potential concerns for discharges of construction stormwater into an area of the state which includes potential losing streams and/or sensitive aquatic species native to these areas. In accordance to Part I.B.11.G, discharges of construction stormwater into an area of the state which includes potential losing streams and/or sensitive aquatic species native to these areas are not eligible for coverage under this permit unless the permittee develops and certifies a Stormwater Pollution Prevention Plan (SWPPP) developed for the specific proposed construction site. The SWPPP must include additional BMPs developed for the site location and receiving stream as needed to prevent to the maximum extent possible exposure to precipitation and to stormwater of pollutants that could potentially impact water quality. In accordance with Part I.B.3, it is the responsibility of the permittee to prevent activity which may take or otherwise risk harm to endangered species. Please note that DEQ will be reviewing this information making an individual permitting process unwarranted. If the site will discharge to an area of the state which includes potential losing stream and/or sensitive aquatic species native to these areas, then DEQ may determine that additional requirements are necessary.

Comment 2 Regarding Section B. “Coverage Under This Permit”, 8. Posting Notice of Coverage (NOC): Regulation (Rule) 6.105 (G) states, “NPDES permits and permit application and all information contained in them are required by 40 C.F.R. 122.7 to be publicly available. No claim of confidentiality will be accepted hereunder for such material.”

EPA and many state permits require construction site operators to post a sign or other notice conspicuously near the main entrance of the construction site. Further, EPA’s permit requires that the sign contain a copy of the Notice of Intent (NOI), the location of the Storm Water Pollution Prevention Plan (SWPPP), and a contact person for viewing the SWPPP.

Similar transparency in regard to construction sites in karst drainage system would allow neighboring residents and landowners the opportunity to provide additional details related to karst features, i.e., caves, losing streams, seeps, sinkholes. Such public involvement might deter and/or offset any potential pollutants and/or violations as outlined in Regulation (Rule) 6.106 (A)(B)(C) as well as curtail subsequent legal challenges.

The issuance of NPDES Individual Permit for stormwater discharges associated with construction activity in karst drainage systems, including losing streams segments, regardless of size and/or acreage, would allow for greater transparency and oversight as records, including public notice, permit, SWPPP, geologic investigations, stream studies, Best Management Practices (BMPs), would be submitted to ADEQ for review as well as posted on DEQ’s public database.

Response: Pursuant to APC&EC Rule 6.105 (A) any information submitted to DEQ may be claimed as confidential by the submitter. Any such claim must be

asserted at the time of submission in accordance with the provisions of this section. If no claim is made at the time of submission, DEQ may make the information available to the public without further notice. DEQ makes all applications not deemed confidential available to the public. These applications can be found on DEQ website at the link below:

<http://www.adeg.state.ar.us/home/pdssql/pds.aspx>

Pursuant to Part I.B.8, the Notice of Coverage (NOC) and the latest signed and certified SWPPP must be posted at the site. Please note, this permit does not provide the public with any right to trespass on a construction site for any reason, including inspection of a site; nor does this permit require that the permittee allow members of the public access to a construction site.

Comment 3 Update AR CGP Natural Buffer Zone (Sec B #14 and Sec A G 2.b) per 2017 EPA NPDES General Permit 2.2.1 with Appendix G - Buffer Requirements. EPA has 50 feet undisturbed natural buffer requirement. Also, do not allow stormwater discharge storm pipe inside the natural buffer unless reasonable exemption.

Response: The Department of Energy and Environment – Division of Environmental Quality is authorized by the Environmental Protection Agency to implement elements of the Clean Water Act and National Pollutant Discharge Elimination System (NPDES). DEQ may develop NPDES permits for facilities located in the State of Arkansas in accordance with regulations established in 40 CFR Subchapter D – Water Programs as well as various others applicable state or federal rules. The individual authority of Arkansas’ approved program allows that Arkansas individual or general permits may establish permit conditions with certain differences from EPA’s permits as long as applicable state and federal rules are met, such as the stormwater standards established by 40 CFR 122.26.

DEQ recognizes differences in Arkansas’ CGP and EPA’s CGP. However, Section G.2.1.2 of Appendix G of the EPA’s CGP does allow for less than a 50 foot buffer with supplemental erosion and sediment controls that achieve the sediment load reduction. Therefore, DEQ will not change the 25-foot buffer requirement.

Comment 4 Update AR CGP SWPPP Sec A 3 per 2017 EPA NPDES General Permit SWPPP Modifications 7.4.2 and 7.4.3 and Appendix I, Part I.11.b. Follow the approved SWPPP unless it fails or has immediate pending failure. No BMP substitutions are to be allowed by contractor before project begins.

This portion of the comment was added after the comment period has ended.

Part II. A. 3. Add to end of paragraph. “If BMP specification detail fails, then obtain SWPPP designer BMP change approval.”

Response: The facilities SWPPPs are considered a live document and should be updated based on site conditions and the controls may be modified or additional controls may be added, as needed to protect waters of the state. The SWPPP and site map must be updated if there are any changes to the stormwater controls. The updated SWPPP and site map must be available at the site for DEQs review. Pursuant to Part I.B.3, the permittee is responsible for implementation of BMPs that will protect waters of the state.

Comment 5 Clarify AR CGP definitions Sec A #20 and #39 in permit. Please clarify definitions of Duly Authorized Representative, Cognizant Official, Responsible Official, Responsible Parties, and Operator. Define Responsible Official or remove. Add Cognizant official to Operator definition. NOI paperwork has signature lines labelled Responsible Official and Cognizant Official. Define. The Inspection Form signature line says Responsible or Cognizant Official. Part II. A. 4. B. references Responsible Parties. Please clarify each term.

Response: DEQ has added a definition for Responsible Official.

Comment 6 Update AR CGP Pollution Prevention Measures 13.D. 2 to state EPA CGP 2.3.3 e and f. Prevent stormwater exposure and wind from open trash containment. Keep sanitary waste away from inlets and anchored.

Response: See the Response to Comment 3 for a discussion of the allowable differences which may exist between the Arkansas CGP and the federal permit.

The CGP language in Part I.13.D.2 requires the permittee, at a minimum, to minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater. These requirements are protective of the waters of the State. Therefore, no additional requirements will be added to the permit.

Comment 7 Update AR CGP Soil Stabilization Sec B 13.B & Sec A G. 2. d & e to meet EPA CGP 2.2.14 Stabilization Deadlines. Sites over 5 acres have a shorter time frame to stabilize.

Response: See the Response to Comment 3 for a discussion of the allowable differences which may exist between the Arkansas CGP and the federal permit.

The EPA CGP and DEQ CGP for greater than five (5) acres require the same timeframe for soil stabilization practices to begin. Since the size of every site can vary, DEQ will not require a timeframe for the site to complete stabilization based on the size of the site. Pursuant to Part I.B.13.B, stabilization of disturbed areas must, at a minimum, be initiated immediately (unless weather conditions do not allow immediate initiation) whenever any clearing, grading, excavating or other

earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding fourteen (14) calendar days.

Comment 8 Add Sediment basin trap design to Sec A G.4.3.a.2 for drainage areas less than 5A. All traps are sized according to a design volume of 3,600 cubic feet per disturbed acre in the upstream drainage area. Confirm designed in plan review.

Response: DEQ has revised Part II.A.4.I.3.a.2 to include the design requirements and proper hydraulic design of the outlet.

Comment 9 Create a new NOI line item requirement that any existing permit over 5years old by same Operator must file NOT or provide a written explanation of how site is meeting permit compliance. Create new line item for NOI to state how much must topsoil must remain on site.

Response: Pursuant to Part II.A.1.C, all existing permittees covered on the 2016 CGP are required to update their plan as appropriate to come into compliance with the requirements by the effective date of the 2021 CGP.

A facility SWPPP is considered a live document and must be updated based on site conditions and the controls may be modified or additional controls may be added as needed to protect waters of the state. The SWPPP and site map must be updated if there are any changes to the stormwater controls. The updated SWPPP and site map must be available at the site for DEQs review. Pursuant to Part I.B.3, the permittee is responsible for implementation of BMPs that will protect waters of the state.

Comment 10 Update AR CGP 13 A.8 to meet EPA CGP 2.2.5 for stockpiles. Require enough topsoil be kept on site to cover disturbed areas during final stabilization. Add requirements about locating topsoil piles considering prevailing wind direction, residential development, pile height, and water availability.

Response: At this time DEQ has determined no reasonable basis to require the preserving of topsoil to cover the disturbed area. However, the CGP does require the site to reach final stabilization before the permittee can submit a Notice of Termination (NOT).

The CGP permit is written to protect waters of the State from stormwater contamination. This permit is not developed under authority to condition against prevailing wind effects on air contamination.

Comment 11 Update AR CGP Sec A. H Other Controls to meet EPA CGP 2.2.6 for dust. Require watering plans.

Response: See the response to Comment 3 for a discussion of the allowable differences which may exist between the Arkansas CGP and the federal permit.

Permittees covered by the CGP are required to protect waters of the State from construction stormwater runoff. The CGP makes it the permittees responsibility to implement any BMPs necessary to protect waters of the State. This permit is not developed under authority to condition against air contamination.

Comment 12 Lack of definitions and interchanging of various undefined terms cause confusion regarding coverage and compliance, and impact numerous requirements throughout the draft permit. Below are a few instances where this issue was noted, although identified throughout the draft permit:

Part I.A.5 defines “commencement of construction” similar to EPA’s definition, however does not include the other construction-related activities it refers to in this definition. Therefore, it is unclear whether all earth disturbances from other construction-related and/or support activities (on- and off-site) are required to be included in the total area of disturbance for permit coverage determination, and are subject to all permit and ELG requirements for compliance determination. Interchanging of “construction activity,” “construction site,” “site,” “facility,” and “project” ”discharge-related activities,” ”surface disturbance activities,” ”soil disturbing activities,” ”disturbed area,” at I.A.16. I.A.17, I.A.25, I.B (paragraph 1), I.B.1, I.B.2, I.B.6, I.B10, I.B.11 and throughout the draft permit, further confuses this issue.

Response: During the renewal process for the Construction Stormwater General Permit (ARR150000), DEQ submitted the draft permit to EPA on August 5, 2020. EPA conducted an initial review of the draft permit and made preliminary comments on the draft permit. During the final development of the draft permit, DEQ considered EPA’s preliminary comments and changed portions of the draft permit before submitting the draft permit to public notice on October 31, 2020. DEQ made corrections to the definition of “commencement of construction” based on EPA’s preliminary comments prior to submitting the draft permit to public notice.

Comment 13 Part I.A.15 defines “discharge of storm water associated with construction activity” similar to EPA’s “construction support activity” definition, however the “support activity” examples included at Part I.B.2.B differ from the Part I.A.15 definition. Additionally, the ”discharge-related activities” and ”disturbed area” definitions at I.A.16 and I.A.17 include varying combinations or portions of the Part I.A.15 definition and I.B.2.B examples, however no one definition clarifies all other construction-related and/or support activities (on- and off-site) which are required to be covered under this permit.

Response: During the renewal process for the Construction Stormwater General Permit (ARR150000), DEQ submitted the draft permit to EPA on August 5, 2020.

EPA conducted an initial review of the draft permit and made preliminary comments on the draft permit. During the final development of the draft permit, DEQ considered EPA's preliminary comments and changed portions of the draft permit before submitting the draft permit to public notice on October 31, 2020. DEQ removed the definition of "discharge of storm water associated with construction activity" since the phrase was not used in the Construction Stormwater General Permit (ARR150000) based on EPA's preliminary comments prior to submitting the draft permit to public notice.

DEQ did update Part I.B.2.B to include the supporting activities.

Comment 14 The draft permit also appears to utilize the various combination of definitions noted above to describe all construction activities and other construction-related/support activities requiring permit coverage, however neglects to provide definitions for the terms "construction activity" and "construction support activities" which are the primary terms used throughout the draft permit.

It would be beneficial modify these definitions to clarify that all earth disturbances related to the construction activities, including construction-related/support activities on- and off-site support activities (i.e. staging of equipment and materials, stockpiles, ect.), are to be included in the calculation of total land disturbance for permitting purposes, and comply with all permit requirements and NPDES regulations at 40 CFR 122.26 (a)(1), (a)(9), (b)(14) and b(15) per APCEC Regulation 6.104(A)(3).

Response: DEQ will include a definition for "Construction Activity" and Construction Support Activity", as shown below:

"Construction Activity" earth-disturbing activities, such as the clearing, grading, and excavation of land, and other construction-related activities (e.g., stockpiling of fill material; placement of raw materials at the site) that could lead to the generation of pollutants

"Construction Support Activity" a construction-related activity that specifically supports the construction activity and involves earth disturbance of pollutant-generating activities of its own, and can include, but not limited to, activities associated with concrete or asphalt batch plants, equipment staging yards, materials storage areas, excavated material disposal areas, and burrow areas.

Comment 15 Draft permit definitions inconsistent with CWA and/or EPA CGP definitions.

Part I.A.8 appears to provide the "construction site" definition as the land disturbance criterion for the draft permit. This definition does not include the less than one acre portion of the 122.26(b)(15)(i) regulatory language.

To ensure compliance with 40 CFR 122.26(b)(15)(i) and APCEC Regulation 6.104(A)(3), please modify the “construction site” definition to clarify that permit coverage is required for earth disturbances less than one acre which are part of a larger common plan of development or sale, and/or reference the large and small construction site definitions at 122.26.

Response: DEQ revised the definition for “construction site” to state the following:

is an area upon which one or more land disturbing construction activities occur that in total will disturb one acre or more of land, including areas that are part of a larger common plan of development or sale that may be less than one acre where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan such that the total disturbed area is one acre or more.

Comment 16 Part I.A.30 provides a definition of “large and medium municipal separate storm sewer system” which is inconsistent with the 122.26(b)(4) and 122.26(b)(7) federal regulatory definitions and APCEC Regulation 6.104(A)(3) Incorporation of the latest Federal Regulations which indicates ADEQ adopts “...line for line and word for word of the most current version...” of 40 CFR Subparts A, B, C and D of Part 122.

To ensure compliance with 40 CFR 122.26(b)(4), 122.26(b)(7) and APCEC Regulation 6.104(A)(3) regulatory definitions, please modify the “large and medium municipal separate storm sewer system” definition to accurately define each NPDES program definition.

Response: During the renewal process for the Construction Stormwater General Permit (ARR150000), DEQ submitted the draft permit to EPA on August 5, 2020. EPA conducted an initial review of the draft permit and made preliminary comments on the draft permit. During the final development of the draft permit, DEQ considered EPA’s preliminary comments and changed portions of the draft permit before submitting the draft permit to public notice on October 31, 2020. DEQ removed the definition of “large and medium municipal separate storm sewer system” since the phrase was not used in the Construction Stormwater General Permit (ARR150000) based on EPA’s preliminary comments prior to submitting the draft permit to public notice.

Comment 17 Part I.A.31 provides a definition of a “large construction site” which is similar to EPA’s large construction activity definition, however includes the language “...except operation that result in the disturbance of less than five acres of total land area...” which is in contradiction to the less than five acres portion of the 122.26(b)(14)(x) regulatory language as well as the 122.26(b)(15)(i) definition for small construction activity covered by the draft permit. Additionally, the I.A.31

definition includes a reference to partial waivers which are reserved by NPDES program regulations for small construction activities.

To ensure compliance with 40 CFR 122.26(b)(14)(x), 122.26(b)(15)(i) and APCEC Regulation 6.104(A)(3), please modify the “large construction site” definition to clarify that construction activities resulting in earth disturbances less than five acres regardless if part of a larger common plan of development or sale that ultimately disturbs five acres or more meets coverage requirements for this draft permit and do not qualify for small construction activity waivers.

Response: DEQ revised the definition of “large construction site” to remove the requested language.

Comment 18 Part I.A.32 provides a definition of “larger common plan of development” similar to EPA’s common plan of development or sale definition, however the final sentence states “Under 40 CFR 122.26(b)(2)(vi), smaller parts of a larger common plan of development are automatically authorized under this general permit and should follow the conditions of a site with automatic coverage set forth in this permit...” In addition to the inaccurate citation, this statement appears to imply construction activities causing earth disturbance less than five acres, if part of a larger common plan of development or sale that will ultimately disturb a total of 5 acres or greater, are not required to submit an NOI to obtain permit coverage which is inconsistent with Parts I.B.6.B (p.10) and II.A (p.2) of this draft permit.

To ensure compliance with the 40 CFR 122.26(b)(14)(x) definition of “large construction activity,” APCEC Regulation 6.104(A)(3), and Parts I.B.6. and II.A of this draft permit, please modify to clarify that in accordance with 122.28(b)(2)(v)-(vi), small construction activities as defined at 40 CFR 122.26(b)(15)(i) shall comply with permit requirements at Parts I.B.6.B and II.A. Additionally, the public notice of the general permit shall provide the reasons for not requiring a notice of intent as required by 40 CFR 122.28(b)(2)(v).

Response: During the renewal process for the Construction Stormwater General Permit (ARR150000), DEQ submitted the draft permit to EPA on August 5, 2020. EPA conducted an initial review of the draft permit and made preliminary comments on the draft permit. During the final development of the draft permit, DEQ considered EPA’s preliminary comments and changed portions of the draft permit before submitting the draft permit to public notice on October 31, 2020. DEQ made corrections to the definition of “larger common plan of development or sale” based on EPA’s preliminary recommendations prior to submitting the draft permit to public notice.

Comment 19 Part I.A.39 provides a definition of “operator/permittee” similar to EPA’s operator definition, however appears to exclude the operator criterion requiring “any party that has operational control of plans and specifications,

including the ability to make modifications to those plans and specifications.” EPA originated this language in the 1992 Baseline CGP and subsequently clarified its intent to cover all parties meeting either criteria in the 1998 CGP and later reissuances.

To ensure ADEQ’s “operator/permittee” definition is not less stringent than the 1992 Baseline CGP’s original intent for all entities requiring permit coverage, please modify the “operator/permittee” definition to clarify that any entity which meets either of the below criteria, meet the operator definition and must obtain permit coverage for stormwater discharges from construction activities causing earth disturbances defined in 40 CFR 122.26(b)(14)(x) and 122.26(b)(15)(i):

1. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
2. The party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions.

Response: DEQ has modified the “operator/permittee” definition to clarify which entity needs to obtain coverage, as shown below:

***“Operator”/“Permittee”** for the purpose of this permit and in the context of stormwater associated with construction activity, means any person(s), an individual, association, partnership, corporation, municipality, state or federal agency, associated with a construction project that has financial and operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; additionally, the Division may require any person(s), an individual, association, partnership, corporation, municipality, state or federal agency, associated with a construction project that has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions can be named as a co-permittee.*

Comment 20 Part I.A.51 provides a definition of a “small construction site” which is similar to the 122.26(b)(15)(i) small construction activity definition however excludes regulatory language specifying the conditions which meet the routine maintenance exclusion for permit coverage.

To ensure compliance with 40 CFR 122.26(b)(15)(i) and APCEC Regulation 6.104(A)(3), please modify the “small construction site” definition to clarify small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

Response: During the renewal process for the Construction Stormwater General Permit (ARR150000), DEQ submitted the draft permit to EPA on August 5, 2020.

EPA conducted an initial review of the draft permit and made preliminary comments on the draft permit. During the final development of the draft permit, DEQ considered EPA's preliminary comments and changed portions of the draft permit before submitting the draft permit to public notice on October 31, 2020. DEQ made corrections to the definition of "small construction site" based on EPA's preliminary recommendations prior to submitting the draft permit to public notice.

Comment 21 Introduction (p.8) – The first sentence of the paragraph states "This Construction General Permit (CGP) authorizes stormwater discharges from large and small construction activities that result in land disturbance equal to or greater than one acre" however neglects to include the less than one acre portion of the 122.26(b)(15)(i) regulatory language.

To ensure compliance with 40 CFR 122.26(b)(15)(i), APCEC Regulation 6.104(A)(3) and authorization for small construction activities disturbing less than one acre of land which are part of a larger common plan of development or sale which ultimately disturbs a total of one acre or greater may obtain permit coverage as required, please modify to clarify that construction activities resulting in earth disturbances less than one acre and part of a larger common plan of development or sale that ultimately disturbs one acre or greater must obtain CGP or other NPDES permit coverage to discharge stormwater to waters of the State.

Response: During the renewal process for the Construction Stormwater General Permit (ARR150000), DEQ submitted the draft permit to EPA on August 5, 2020. EPA conducted an initial review of the draft permit and made preliminary comments on the draft permit. During the final development of the draft permit, DEQ considered EPA's preliminary comments and changed portions of the draft permit before submitting the draft permit to public notice on October 31, 2020. DEQ made corrections to the Introduction based on EPA's preliminary recommendations prior to submitting the draft permit to public notice.

Comment 22 Eligibility, I.B.2, (p.8) The third sentence of the paragraph states "Operators may have to take certain actions to be eligible for coverage under this permit" however does not provide specific operator eligibility conditions.

To ensure all parties requiring permit coverage obtain CGP or other NPDES coverage, please modify the draft permit to provide clear, specific and enforceable operator eligibility conditions which clarify that all parties who meet the two-part criteria established in the 1992 Baseline CGP must obtain permit coverage to discharge stormwater to waters of the State.

Response: DEQ revised the third sentence of the paragraph to state the following:

Operators shall meet the requirements of Part I.B.6.A or Part I.B.6.B to be eligible for coverage under this permit.

Comment 23 Paragraph I.B.2.B.2 states, “The support activity is not a commercial operation serving multiple unrelated construction projects by different operators, and does not operate beyond the completion of the construction activity at the last construction project it supports:”

EPA originated this language in its 1998 CGP, and subsequently revised the language in its 2012 CGP to clarify its original intent. To ensure consistency with the original intent of the adopted 1998 CGP language, please modify paragraph I.B.2.B.2 to clarify its original intent of:

“The support activity is not a commercial operation, nor does it serve multiple unrelated construction projects; and, does not continue to operate beyond the completion of the construction activity at the project it supports...”

Response: DEQ made corrections to Part I.B.2.B.2 based on EPA’s recommendation.

Comment 24 The draft permit does not specify eligibility conditions or requirements for new sources, endangered and threatened species and its habitat, or preservation of areas registered as historic locations.

To ensure operators understand Arkansas requirements, please modify the draft permit to provide clear, specific and enforceable operator eligibility conditions.

Response: Pursuant to Part I.B.3, receipt of this general permit does not relieve any operator of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

Comment 25 Notice of Intent (NOI) Requirements, I.B.7 (p.10-11)Part I.B.7.A, paragraph 1, indicates large construction site operators must submit an NOI at least ten business days prior to the date coverage is desired however does not specify a date when DEQ will notify the operator that permit coverage is active. Additionally, the 10-business day NOI submission deadline is inconsistent with the 14 business day deadline specified in Part II.A.1.B of this draft permit.

To ensure compliance with 40 CFR 122.28(b)(2)(iii), please clarify the NOI submission deadline and the date (i.e. immediately after NOI submission, upon electronic receipt of NOC, etc.) the operator is authorized to discharge under the permit.

Response: During the renewal process for the Construction Stormwater General Permit (ARR150000), DEQ submitted the draft permit to EPA on August 5, 2020. EPA conducted an initial review of the draft permit and made preliminary comments on the draft permit. During the final development of the draft permit, DEQ considered EPA’s preliminary comments and changed portions of the draft

permit before submitting the draft permit to public notice on October 31, 2020. DEQ made corrections to Part I.B.7 based on EPA's preliminary recommendations prior to submitting the draft permit to public notice.

Comment 26 Part I.B.7.C states “...operators who submit a complete NOI...are authorized to discharge...ten business days after the NOI is deemed complete (which may not be the original submission date...” which appears to conflict with the I.B.6.B requirement to submit the NOI ten business days prior to the commencement of construction as well as the II.A.1.B 14 business day deadline.

To ensure commencement of construction activities may not begin until permit authorization is active, please modify language at Parts I.B.6.B, I.B.7 and II.A to clarify the date construction activities including support activities (i.e., staging materials, stockpiling soil, etc.) on and off the construction site may commence construction activities.

Response: During the renewal process for the Construction Stormwater General Permit (ARR150000), DEQ submitted the draft permit to EPA on August 5, 2020. EPA conducted an initial review of the draft permit and made preliminary comments on the draft permit. During the final development of the draft permit, DEQ considered EPA's preliminary comments and changed portions of the draft permit before submitting the draft permit to public notice on October 31, 2020. DEQ made corrections to Part I.B.7.C based on EPA's preliminary recommendations prior to submitting the draft permit to public notice.

Comment 27 Allowable Non-Stormwater Discharges, I.B.10 (p.12) Parts I.B.10.A.3, I.B.10.A.6 and I.B.10.A.7 identify allowable discharges of wash waters from vehicles, external buildings and uncontaminated pavements where detergents or other chemicals are not used however neglect to specify the prohibited discharge of soaps and solvents, and clarify that wash waters must be treated in a sediment basin or alternative control.

To ensure compliance with 40 CFR 450.21(d)(1) and 450.21 (e)(4), please modify Parts I.B.10.A.3, I.B.10.A.6 and I.B.10.A.7 to clarify soaps and solvents used in vehicle and equipment wash waters are prohibited discharges and shall be treated in a sediment basin or bmp control prior to discharge.

Response: During the renewal process for the Construction Stormwater General Permit (ARR150000), DEQ submitted the draft permit to EPA on August 5, 2020. EPA conducted an initial review of the draft permit and made preliminary comments on the draft permit. During the final development of the draft permit, DEQ considered EPA's preliminary comments and changed portions of the draft permit before submitting the draft permit to public notice on October 31, 2020. DEQ made corrections to I.B.10.A.3, I.B.10.A.6, and I.B.10.A.7 based on EPA's preliminary recommendations prior to submitting the draft permit to public notice.

Comment 28 Effluent Limitation Guidelines, I.B.13 (p.13-15), and II.A.4.2nd G.2.d(2) and e(2), (p.5-6) Part I.B.13.B identifies the soil stabilization ELGs however to specify a deadline to complete stabilization.

To ensure compliance with 40 CFR 450.21(b), please clarify the specific period of time by which stabilization must be completed following its initiation.

Response: DEQ revised Part I.B.13.B second to last sentence of the paragraph to state the following:

Stabilization must be completed within fourteen (14) calendar days.

Comment 29 Natural Buffer Zones, I.B.14 (p.15) Part I.B.14 identifies the natural buffer ELG around waters of the State however it does not require the regulation to direct stormwater to vegetated areas and maximize stormwater infiltration. Additionally, the allowable alternative means when maintaining a natural buffer is not feasible does not appear to be provided as an option.

To ensure compliance with 40 CFR 450.21(a)(6), please modify Part I.B.14 to clarify that the additional requirements of the natural buffer C&D ELG are required by operators.

Response: DEQ revised Part I.B.14 to state the following:

A natural buffer zone as stated below shall be maintained at all times and direct stormwater to vegetated areas and maximize stormwater infiltration to reduce pollutant discharges, unless infeasible.

Comment 30 Part I.B.14.A requires at least twenty-five feet of buffer zone when clearing and grading activities occur however the ELG does not limit the natural buffer zone to these two activities. Additionally, I.B.14.B states fifty feet of natural buffers may be required from established TMDL water bodies... which is inconsistent with the Part II.A.4.2nd G.2 (p.6) requirement of "...shall provide at least fifty feet..."

To ensure compliance with 40 CFR 450.10(a) and 450.21(a)(6), please modify Part I.B.14 to clarify the buffer requirement from TMDL water bodies and others identified in I.B.14.B, and that natural buffers are required around waters of the State when any construction activities occur including support activities (i.e., staging materials, stockpiling soil, etc.) on and off the construction site.

Response: During the renewal process for the Construction Stormwater General Permit (ARR150000), DEQ submitted the draft permit to EPA on August 5, 2020. EPA conducted an initial review of the draft permit and made preliminary comments on the draft permit. During the final development of the draft permit, DEQ considered EPA's preliminary comments and changed portions of the draft permit before submitting the draft permit to public notice on October 31, 2020.

DEQ made corrections to Part I.B.14.A based on EPA's preliminary recommendations prior to submitting the draft permit to public notice.

DEQ revised Part I.B.14.B to state the following

DEQ will require at least fifty (50) feet of natural buffer zone, as measured horizontally from the top of the bank to the disturbed area, from established TMDL water bodies, streams listed on the 303(d) list, an Extraordinary Resource Water (ERW), Ecologically Sensitive Waterbody (ESW), Natural and Scenic Waterway (NSW), or any other uses at the discretion of the Director.

Comment 31 Waivers from Permit Coverage, I.B.15 (p.15) Part I.B.15.C explains the availability of a waiver for small construction activities if an established or approved TMDL addresses the pollutant(s) of concern however neglects to include the operator certification requirement.

To ensure compliance with 40 CFR 122.26(b)(15)(i)(B), please modify Part I.B.15.C to clarify where operator may obtain more information on this waiver.

Response: DEQ revised Part I.B.15.C to include the operator's certification requirement in accordance to 40 C.F.R. 122.26(b)(15)(i)(B), which states the following:

The operator must certify to the Director that construction activity will take place, and storm water discharges will occur within the drainage area addressed by the TMDL or equivalent analysis.

Comment 32 Change in Operator, I.B.18 (p.17) This Part indicates when an operator of a construction project changes, permit coverage may be transferred to the new operator without submission of an NOI or updated SWPPP. Although this language may have been intended to address the automatic coverage situations for small construction activities, as written, it appears to also apply to operators of large construction activities required by this permit to submit NOIs. Name changes on individual permits require formal notice; the equivalent to general permits is a new NOI by new operators.

To ensure compliance with all permit conditions, please modify Part I.B.15.C to clarify that NOI only provide permit coverage for one operator therefore a new operator must submit a new NOI to obtain permit coverage before the previous operator submits a NOT.

Response: Pursuant to APC&EC Rule 8.212, an applicant for a transfer of a permit shall submit to DEQ a written request for transfer of the permit on a form provided by DEQ. Therefore, DEQ considers the permit transfer form in place of the NOI.

Comment 33 Maintenance, I.B.21 (p.17) This Part states “Determination of the acreage for disturbance does not typically include disturbance of routine maintenance activities on existing roads where the line and grade is not altered...”

To ensure compliance with 40 CFR 122.26(b)(15)(i) and APCEC Regulation 6.104(A)(3), please modify the draft permit to clarify that small construction activities do not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

Response: During the renewal process for the Construction Stormwater General Permit (ARR150000), DEQ submitted the draft permit to EPA on August 5, 2020. EPA conducted an initial review of the draft permit and made preliminary comments on the draft permit. During the final development of the draft permit, DEQ considered EPA’s preliminary comments and changed portions of the draft permit before submitting the draft permit to public notice on October 31, 2020. DEQ made corrections to Part I.B.21 based on EPA’s preliminary recommendations prior to submitting the draft permit to public notice.

Comment 34 Attainment of Water Quality Standards, I.B.23 (p.18), and Attainment of Water Quality Standards After Authorization, II.A.4.1st G.1 (p.4) Paragraph one, final sentence of I.B.23 states “...stormwater controls developed, implemented and updated to be considered stringent enough to ensure discharges do not cause or contribute to an excursion above any applicable water quality standard.” The final sentence of II.A.4.1st G.1 also neglects the reasonable potential requirements of 122.44(d)(1)(i).

To ensure compliance with 40 CFR 122.44(d)(1)(i) and APCEC Regulation 6.104(A)(3), please modify I.B.23 and II.A.4.1st G.1 to clarify discharges shall not cause, have the reasonable potential to cause, or contribute to an excursion above any water quality standard.

Response: During the renewal process for the Construction Stormwater General Permit (ARR150000), DEQ submitted the draft permit to EPA on August 5, 2020. EPA conducted an initial review of the draft permit and made preliminary comments on the draft permit. During the final development of the draft permit, DEQ considered EPA’s preliminary comments and changed portions of the draft permit before submitting the draft permit to public notice on October 31, 2020. DEQ made corrections to Part I.B.23 and Part II.A.4.G.1 based on EPA’s preliminary recommendations prior to submitting the draft permit to public notice.

Comment 35 Deadlines for Plan Preparation and Compliance, II.A.1 (p.2) The first paragraph of this section states “The operator shall prepare a SWPPP before permit coverage” which appears to conflict with the II.A.1.A requirement to “...completed prior to commencement of construction activities...”

To ensure operators of small construction activities understand when automatic coverage becomes active and when commencement of construction activities may begin, please modify A.1.A of this Section to clarify that the SWPPP must be developed prior to automatic coverage becoming active and commencement of construction activities including support activities (i.e., staging materials, stockpiling soil, etc.) on and off the construction site may begin.

Response: DEQ revised Part II.A.1.A to state the following:

The plan shall be completed prior to obtaining permit coverage and commencement of construction activities and updated as appropriate.

Comment 36 Part II.A.1.B indicates SWPPP update submittals during the construction process are required only if requested by the Director however Part I.B.6.C (p.10) states any request to increase the disturbed acreage shall be accompanied by an updated SWPPP. As previously noted, the fourteen-business day deadline to submit the completed plan and NOI also conflicts with the ten-day requirement at I.B.6.B.

To ensure operators of large construction activities understand when SWPPP updates must be submitted, please modify Parts II.A.1.B, I.B.6.B and I.B.6.C to clarify the specific plan update criteria and submission deadline.

Response: DEQ has revised Part II.A.1.B for the submittal of updates to the SWPPP in accordance with Part I.B.6.C.

During the renewal process for the Construction Stormwater General Permit (ARR150000), DEQ submitted the draft permit to EPA on August 5, 2020. EPA conducted an initial review of the draft permit and made preliminary comments on the draft permit. During the final development of the draft permit, DEQ considered EPA's preliminary comments and changed portions of the draft permit before submitting the draft permit to public notice on October 31, 2020. DEQ made corrections to the deadline to submit in Part II.A.1.B based on EPA's preliminary recommendations prior to submitting the draft permit to public notice.

Comment 37 Signature, SWPPP, Inspection Reports and Notice of Coverage (NOC), II.A.2 (p.2) Although the draft permit requires inspection reports be signed, maintained and made available upon request, this section does not appear to specify a deadline by which the inspection report shall be completed and attached to the SWPPP.

To ensure operators understand this compliance deadline, please modify the draft permit to include a specific time period following inspections by which the inspection report shall be completed and attached to the SWPPP.

Response: DEQ revised Part II.A.2.A to state the following:

The inspections frequency shall be conducted in accordance with Part II. A.4.N.1.

Comment 38 Keeping the SWPPP Current, II.A.3 (p.3) This section states “The SWPPP should also be modified if a determination has been made...that the discharges are causing or contributing to water quality violation...” which appears that the operator has a choice whether to update the SWPPP. Optional language such as “may, should, can, etc.” are also used throughout the sections of the SWPPP requirements and draft permit, i.e. Parts I.B (first paragraph), I.B.7.C, II.A.4.B, II.A.4.D-G, and etc.

To ensure operators understand stormwater controls included in the SWPPP and implemented on and off the construction site are required to be modified if the above-mentioned water quality violation is determined, please modify language at II.A.3 and similar “should, may, can, etc.” language throughout the draft permit to clarify these requirements are not optional.

Response: During the renewal process for the Construction Stormwater General Permit (ARR150000), DEQ submitted the draft permit to EPA on August 5, 2020. EPA conducted an initial review of the draft permit and made preliminary comments on the draft permit. During the final development of the draft permit, DEQ considered EPA’s preliminary comments and changed portions of the draft permit before submitting the draft permit to public notice on October 31, 2020. DEQ made corrections to Part II.A.3 based on EPA’s preliminary recommendations prior to submitting the draft permit to public notice.

Comment 39 The draft permit does not appear to require that the SWPPP include descriptions of all pollutant generating activities, spill prevention and response procedures, fertilizer application procedures, specific operation and maintenance procedures for implemented stormwater controls (i.e. dust minimization, inlet protection, etc.), corrective action procedures and reports,

Please modify Part II.A.4 to include descriptions and/or documentation of all items noted above.

Response: All items noted in Comment 39 are addressed by Part II.A.4 or other locations within the CGP.

Comment 40 Part II.A.4.B states “The SWPPP shall identify...all parties...responsible for particular services they provide...”

To ensure operators understand the particular services that need to be documented in the SWPPP, please modify II.A.4.B to clarify all entities/parties responsible for construction activities and/or support activities on and off the site which are necessary to demonstrate compliance with the draft permit must be documented in the SWPPP.

Response: During the renewal process for the Construction Stormwater General Permit (ARR150000), DEQ submitted the draft permit to EPA on August 5, 2020. EPA conducted an initial review of the draft permit and made preliminary comments on the draft permit. During the final development of the draft permit, DEQ considered EPA’s preliminary comments and changed portions of the draft permit before submitting the draft permit to public notice on October 31, 2020. DEQ made corrections to Part II.A.4.B based on EPA’s preliminary recommendations prior to submitting the draft permit to public notice.

Comment 41 Part II.A.4.2nd G.1.f states “Litter, construction debris, and construction chemicals exposed to stormwater shall be prevented from becoming a pollutant source...₂”

To ensure operator compliance with 40 CFR 450.21(d)(2) and Part I.B.13.D.2, II.A.4.2nd G.1.f, please modify the draft permit to clarify that all items included in the regulation must be prevented from exposure to precipitation and to stormwater.

Response: During the renewal process for the Construction Stormwater General Permit (ARR150000), DEQ submitted the draft permit to EPA on August 5, 2020. EPA conducted an initial review of the draft permit and made preliminary comments on the draft permit. During the final development of the draft permit, DEQ considered EPA’s preliminary comments and changed portions of the draft permit before submitting the draft permit to public notice on October 31, 2020. DEQ made corrections to Part II.A.4.I.1.f based on EPA’s preliminary recommendations prior to submitting the draft permit to public notice.

Comment 42 Part I.A.27 lists the definition of “infrastructure” prior to the I.A.28 definition of “impaired water” which is outside of the alphabetical order in which the list appears to have been developed.

Response: During the renewal process for the Construction Stormwater General Permit (ARR150000), DEQ submitted the draft permit to EPA on August 5, 2020. EPA conducted an initial review of the draft permit and made preliminary comments on the draft permit. During the final development of the draft permit, DEQ considered EPA’s preliminary comments and changed portions of the draft permit before submitting the draft permit to public notice on October 31, 2020. DEQ corrected the alphabetical order before public notification.

Comment 43 Part I.B Introduction, second sentence (p.8) states “This CGP also authorizes stormwater discharges from construction activities that result in a total land disturbance of less than five acres where the construction activity is included in a larger common plan, ... Because the sentence immediately before states this draft authorizes stormwater discharges from large and small construction activities and the Court of Appeals remand addressed this concern in 1992, it is not necessary to continue to include this language.”

Response: During the renewal process for the Construction Stormwater General Permit (ARR150000), DEQ submitted the draft permit to EPA on August 5, 2020. EPA conducted an initial review of the draft permit and made preliminary comments on the draft permit. During the final development of the draft permit, DEQ considered EPA's preliminary comments and changed portions of the draft permit before submitting the draft permit to public notice on October 31, 2020. DEQ made corrections to Part I.B based on EPA's preliminary recommendations prior to submitting the draft permit to public notice.

Part	Draft Permit (Strikethrough)	Final Permit (<i>Italic</i>)	Comment #
I.A.46	N/A	<i>"Responsible Official" is the authorized representative, as defined in Part II.B.9.A.</i>	5
II.A.4. I.3.a.2	For drainage locations serving an area less than ten (10) acres, sediment traps, silt fences, or equivalent sediment controls are required for all side slope and down slope boundaries of the construction area unless a sediment basin providing storage based on either the smaller of 3600 cubic feet per acre, or a size based on the run off volume of a 10 year, 24 hour storm is provided. (A rule of thumb is one square foot per acre for a spillway design.) However, in order to protect the waters of the State, the Director, at their discretion, may require a sediment basin for any drainage areas draining to a common point.	For drainage locations serving an area less than ten (10) acres, sediment traps, silt fences, or equivalent sediment controls are required for all side slope and down slope boundaries of the construction area unless a sediment basin providing storage based on either the smaller of 3600 cubic feet per acre, or a size based on the run off volume of a 10 year, 24 hour storm is provided. <i>Proper hydraulic design of the outlet is critical to achieving the desired performance of the basin. The outlet should be designed to drain the basin within twenty-four (24) to seventy-two (72) hours. (A rule of thumb is one square foot per acre for a spillway design.) The 24-hour limit is specified to provide adequate settling time; the seventy-two (72) hour limit is specified to mitigate vector control concerns. If a pipe outlet design is chosen for the outfall, then an emergency spillway is required.</i> However, in order to protect the waters of the State, the Director, at their discretion, may require a sediment basin for any drainage areas draining to a common point.	8
I.B.2.B	This permit also authorizes stormwater discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, materials storage areas, excavated material disposal areas, borrow areas) provided:	This permit also authorizes stormwater discharges from support activities (e.g., concrete or asphalt batch plants, <i>concrete truck washout</i> , fueling, equipment staging yards, materials storage areas, excavated material disposal areas, <i>stockpiles of top soil</i> , borrow areas) provided:	13
I.A.8	N/A	<i>"Construction Activity" earth-disturbing activities, such as the clearing, grading, and excavation of land, and other construction-related activities (e.g.,</i>	14

		<i>stockpiling of fill material; placement of raw materials at the site) that could lead to the generation of pollutants.</i>	
I.A.10	N/A	<u>"Construction Support Activity"</u> a construction-related activity that specifically supports the construction activity and involves earth disturbance of pollutant-generating activities of its own, and can include, but not limited to, activities associated with concrete or asphalt batch plants, equipment staging yards, materials storage areas, excavated material disposal areas, and burrow areas.	14
I.A.9	" <u>Construction Site</u> " is an area upon which one or more land disturbing construction activities occur that in total will disturb one acre or more of land, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan such that the total disturbed area is one acre or more.	<u>"Construction Site"</u> is an area upon which one or more land disturbing construction activities occur that in total will disturb one acre or more of land, including areas that are part of a larger common plan of development or sale <i>that may be less than one acre</i> where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan such that the total disturbed area is one acre or more.	15
I.A.30	" <u>Large Construction Site</u> " is a construction site in which construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or greater. (Please see Part I.B.15 for partial waivers.)	<u>"Large Construction Site"</u> is a construction site in which construction activity including clearing, grading and excavation. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or greater. (Please see Part I.B.15 for partial waivers.)	17
I.A.38	" <u>Operator</u> "/" <u>Permittee</u> " for the purpose of this permit and in the context of stormwater associated	<u>"Operator</u> "/" <u>Permittee</u> " for the purpose of this permit and in the context of stormwater associated	19

	with construction activity, means any person, (an individual, association, partnership, corporation, municipality, state or federal agency) has the primary management and ultimate decision making responsibility over the operation of a facility or activity. The operator is responsible for ensuring compliance with all applicable environmental regulations and conditions.	with construction activity, means any person(s),an individual, association, partnership, corporation, municipality, state or federal agency, <i>associated with a construction project that has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or any person(s),an individual, association, partnership, corporation, municipality, state or federal agency, associated with a construction project that has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions can be named as a co-permittee.</i>	
I.B.2	Operators may have to take certain actions to be eligible for coverage under this permit.	Operators <i>shall meet the requirements of Part I.B.6.A or Part I.B.6.B</i> to be eligible for coverage under this permit.	22
I.B.2.B .2	The support activity is not a commercial operation servi ng multiple unrelated construction projects by different operators, and does not operate beyond the completion of the construction activity at the last construction project it supports;	The support activity is not a commercial operation, <i>nor does it serve</i> multiple unrelated construction projects; and does not <i>continue to</i> operate beyond the completion of the construction activity at the project it supports;	23
I.B.13. B	Stabilization must be completed within a period of time determined by the permitting authority.	Stabilization must be completed within <i>fourteen (14) calendar days.</i>	28
I.B.14	A natural buffer zone as stated below shall be maintained at all times.	A natural buffer zone as stated below shall be maintained at all times <i>and direct stormwater to vegetated areas and maximize stormwater infiltration to reduce pollutant discharges, unless infeasible.</i>	29
I.B.14. B	DEQ will require up to fifty (50) feet of natural buffer zone, as measured horizontally from the top of the bank to the disturbed area, from established TMDL water bodies, streams listed on the 303(d) list, an Extraordinary Resource Water (ERW), Ecologically Sensitive Waterbody (ESW), Natural	DEQ will require <i>at least</i> fifty (50) feet of natural buffer zone, as measured horizontally from the top of the bank to the disturbed area, from established TMDL water bodies, streams listed on the 303(d) list, an Extraordinary Resource Water (ERW), Ecologically Sensitive Waterbody (ESW), Natural	30

	and Scenic Waterway (NSW), or any other uses at the discretion of the Director.	and Scenic Waterway (NSW), or any other uses at the discretion of the Director.	
I.B.15. C	N/A	<i>The operator must certify to the Director that construction activity will take place, and storm water discharges will occur within the drainage area addressed by the TMDL or equivalent analysis.</i>	31
II.A.1. A	The plan shall be completed prior to the commencement of construction activities and updated as appropriate.	The plan shall be completed prior to <i>obtaining permit coverage</i> and commencement of construction activities and updated as appropriate.	35
II.A.1. B	Submittals of updates to the plan during the construction process are required only if requested by the Director.	Submittals of updates to the plan during the construction process are required <i>in accordance with Part I.B.6.C</i> or if requested by the Director.	36
II.A.2. A	N/A	<i>The inspections frequency shall be conducted in accordance with Part II. A.4.N.1.</i>	37