

## FACT SHEET STATEMENT OF BASIS

## 2013 RENEWAL OF THE UTAH CONSTRUCTION STORM WATER GENERAL PERMIT

## UPDES PERMIT No. UTRC00000

**GENERAL PERMIT INFORMATION:** This renewal permit (UTRC00000) serves as a replacement of the previous Storm Water General Permit for Construction Activities (CGP) issued on July 01, 2008 (UTR300000). The Utah CGP is a general permit to continue the streamlined permit coverage of typical construction activity for storm water discharges throughout the State of Utah except for within Indian country, of which in those areas the EPA is the permitting authority. Construction activity that does not anticipate the typical pollutants from normal construction activity (e.g., development of residential, commercial, or industrial sites; road and bridge construction, building construction, pipeline and other linear construction, landscaping, or other similar construction) may not be eligible for coverage under the CGP and may need to apply for an individual permit.

**BACKGROUND:** The State of Utah was granted primacy in the National Pollutant Discharge Elimination System (NPDES) program by the USEPA in 1987. Utah's program is known as the Utah Pollutant Discharge Elimination System (UPDES) Program. The storm water program is one part of the UPDES program and was first implemented in Utah during 1992. Utah began issuing CGP coverage in 1992 for sites disturbing greater than or equal to five acres in size, or less than five acres if part of a common plan of development or sale that was five acres or greater. This effort was referred to as Phase I. In 2002, phase II of the storm water program was implemented in Utah and the UPDES storm water program added a permit requirement for small construction sites, which are sites that are one to five acres, or less than an acre if part of a common plan of development or sale that is one acre or greater.

The Division of Water Quality (DWQ) presently handles most storm water permit coverages by issuing general permits, although it reserves the authority to issue individual permits as needed. Approximately 1500 to 2500 construction sites are covered under the CGP at any given time.

The CGP for the UPDES program started with a modified version of the early EPA CGP, and from there the Utah CGP has been re-modified every five years. The current revision of the Utah CGP started with the 2012 EPA permit which was overhauled in a major way and upgrade from the previous EPA CGP. It included the recently promulgated 40 Code of Federal Regulations 450 Construction and Development Point Source Category requirements. This EPA permit has much more detail and is a longer permit, and therefore much of the detail, the length, and the regulatory requirements have been transcribed into the Utah CGP.

**LEGAL PROCESS FOR PUBLIC DOCUMENTS:** UPDES permits are public legal documents and before issuance are required to have a 30-day comment period for input by the public and regulated community. This process is applicable to general permits since they are legal and binding. The Utah CGP for this issuance is aligned with the EPA in the fact that it contains several appendices. Some of

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these appendices are related enough to the permit and have conditions that compliment or continue the regulatory nature of the permit. The appendices of this nature are included with the body of the permit in the legal comment process. Appendices that are not included in the legal comment process are identified in the permit. The appendices that are not included in the comment period are included with the permit to provide information and aides for the permittee. They have no legally binding or regulatory reach. The permittee is not required to use the information within them. Because of this they are not included in the legal process and are not bound by the same restrictions regarding modifications and change. It is expected that these appendices may be changed if it is discovered that they can be presented in a better more helpful layout.

**DESCRIPTION OF DISCHARGE:** This permit covers discharges from construction activities as defined in Utah Administrative Code (UAC) R317-8-3.9 (6) (d) 10 (construction activity 5 acres or more) and R317-8-3.9(6) (e) 1 (construction activity 1 to 5 acres). Also, under the UAC R317-8-3.9(6)(e)2 any construction activity can be required to obtain a permit if designated by the Executive Secretary based on a potential contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the State.

Storm water discharges covered by this permit are discharges with potential for erosion from disturbed land, which may result in high sediment loads; with exposure to construction machinery and equipment; with exposure to all construction activities; and with exposure to construction materials.

This permit regulates storm water discharges only. Other discharges that may be allowed under this permit, providing water quality is not affected, are discharges from emergency fire-fighting activities; fire hydrant flushing; landscape irrigation; waters used to wash vehicles and equipment, provided that there is no discharge of soaps, solvents, or detergents used for such purposes; water used to control dusts; potable water sources including uncontaminated waterline flushing; routine external building wash down which does not use detergents, or that have received chemicals to alter pH ; pavement wash waters provided spills or leaks of toxic or hazardous materials have not occurred (unless all spill material has been removed) and where detergents (including Biodegradable soy bean oils and Biodegradable detergents) are not used; uncontaminated air conditioning condensate or compressor condensate; uncontaminated, non-turbid discharges of ground water (from natural sources) or spring water; and foundation or footing drains where flows are not contaminated with process materials such as solvents, contaminated ground water, or sediment from construction activity. A facility may have other permitted discharges at the site not covered by this Permit.

**PERMIT CONDITIONS:** The strategy used in this general permit has paralleled the EPA construction general permits from the beginning of the UPDES Storm Water Program and focuses on source control through the use of Best Management Practices (BMPs). This permit contains provisions that limits the discharge to storm water with some exceptions, that requires specific inspection requirements and frequencies, that specify what records shall be retained and for how long, and that a storm water pollution prevention plan (SWPPP) be developed and implemented on the construction site before a Notice of Intent (NOI ) permit application is submitted for coverage under the CGP. The focus of the permit is the SWPPP which covers the main points listed below:

- a. Responsible parties and contact information
- b. Site description
- b. Controls to reduce pollution
- c. Maintenance of control measures
- d. Self-Inspections
- e. Identification of and limits for Non-storm water discharges
- f. Certification and signature

This approach to permitting has been selected to maintain a degree of conformity with the storm water program used in other states and by the EPA, but also because it has already gone through a public notice process and the public has had a chance to see and respond to the contents of the permit as the 2012 EPA CGP. As stated the 2012 EPA CGP was used as the starting point in the initial development of this permit. There are some changes that were made, which will be discussed later in this document, to make it more applicable to Utah's unique characteristics.

**NUMBER ON THE PERMIT AND CONTINUING COVERAGE FROM THE PREVIOUS PERMIT:** The basic numbering for this permit (UTRC00000) was changed from the previous permit to create a greater distinction from industrial storm water permits. The first part of the number "UTR" is coordinated with a national numbering scheme, and assigned by the EPA for the purpose of being able to distinguish a permit located within Utah against permits located in other states, "R" indicating an industrial storm water permit (permits covering storm water from construction sites are considered industrial storm water permits). "C" has been added to replace the numeral that had been previously used to distinguish the permit from other industrial permits.

All construction site permit coverages issued under the previous Utah CGP are automatically continued under this permit with no action required by the permittee except to meet the differing requirements in the new permit by the timeline given in the new permit. Coverage that is continuing from the previous Utah CGP (UTR300000) to the new Utah CGP (UTRC00000) extends into and under the new Utah CGP and continues until the term purchased under the previous permit expires, the same as if there was no transition to new permit coverage. The permit coverage number continuing from the previous permit will not be changed to conform with the new numbering system in the renewed permit (UTRC00000). The numbers will be maintained as they were.

**PERMIT FEES:** Historically, during the life time of the previous CGP, fees were changed from a yearly prorating to a fee paid for a single year's worth of coverage, or annually. If construction activity at a site continues for longer than a year, then the coverage has to be renewed again for another year and for every continuing year of coverage needed. This fee system will continue under UTRC00000 (the new CGP). Currently the permit fee is \$150 paid annually as permit coverage is needed.

**ANTIDegradation Requirements for the CGP:** The antidegradation requirements for the Utah CGP can be found in UAC R317-2-3.5.b.3, which states that, *“An Anti-degradation Level II review is not required where (any of the following conditions apply): ...Water quality impacts will be temporary and related only to sediment or turbidity and fish spawning will not be impaired.”* Therefore, because the CGP relates to only temporary construction projects with sediment or turbidity constituents, a further antidegradation review is not required.

**Endangered Species Act (ESA) and National Historic Preservation Act (NHPA):** In the administration of the 2012 EPA CGP, the EPA is required to support the ESA and the NHPA, and other federal programs. DWQ does not have the same obligation to ensure ESA and NHPA compliance. Although permittees may have compliance requirements with the ESA, DWQ merely points out in the CGP that the permittee may have responsibilities to comply with the ESA and/or NHPA. All requirements in the EPA CGP for complying with the ESA and NHPA have been removed from the Utah CGP. A difference in the situation with the NHPA is that concerns brought out in the NHPA, which pertain to DWQ, are written into Utah law (Utah Code 9-8-404) that puts an obligation on DWQ. The Utah law requires that DWQ provide a written evaluation of any undertaking’s effect on historic properties, and allow the Utah State Historic Preservation Office (USHPO) a reasonable opportunity to comment on said effects. Undertakings are excavation activities that could interfere with historic properties discovered during the construction process. Requirements in the CGP such as the placement of silt fence and of sediment basins are storm water control measures that could be seen as undertakings by USHPO. The same Utah law has provisions where there can be an agreement worked out between the agencies (DWQ and USHPO) that will address this aspect of the law. DWQ and USHPO have agreed that “undertakings” caused by the UPDES CGP are minor, and are more insignificant when compared to the undertakings caused by the construction activity incurred by the project having to obtain the UPDES permit. Undertakings caused by the UPDES CGP are associated with construction activity of the project. USHPO has agreed that all undertakings caused by the project should be addressed by the project and not separately. Using this understanding, DWQ does not generate “undertakings” according to the Utah Code 9-8-404. DWQ has agreed to place a statement about DWQ undertakings, as said above, in Utah Administrative Code R317-8 during the next rule change.

**Separated Permit Coverage for Separated Construction Activity and Area:** The CGP allows contiguous construction activity to be covered under separated permit coverage. This applies to a project such as development of a common area which often devolves into different controlling entities in charge of independent projects such as different commercial retail buildings in a commercial development or individual home construction in a residential development. What begins under one permit may devolve into several distinct permits. Separate permit coverage does not preclude the fact that there may be a coordination requirement (between permittees of permit coverages with different tracking numbers) for smooth operation of the sites. This provision does not allow separate permit coverage of construction activity occurring in the same or overlapping area at the same time. If an

overall site development activity is occurring within the boundary of a lot with house building activity, the development activity and the house construction activity must be covered under one permit, and one must sign on as a co-permittee on the NOI for the other. If the construction area such as a house being built does not overlap development activities in near proximity during the construction process or the activities that occurred for development are concluded in the area where the housing construction is occurring, they may be covered under separate permit coverage. Often in this case where the development activity has concluded and vertical construction immediately commences, the permit coverage for the development will not require surface stabilization to terminate the permit since construction activity will immediately continue under a succeeding permit where a SWPPP continues as a plan for storm water control requiring monitoring and maintenance of storm water control measures.

The controlling factor in the single coverage for a specific area is the fact that in this permit, what is different from the previous permits is that an owner is required to sign on with the main operator, and that no longer will co-permittees sign on to the NOI. In this permit the permit coverage of a site follows the owner of the land or project (if the land is leased).

**STABILIZATION REQUIREMENTS:** Part 2.2 of the permit has requirements about stabilization. There is a discussion in one of the notes in the Utah CGP about the common inferences that dirt roads and other similarly surfaced areas are “unstabilized”. On that point, many regulatory documents infer that something is stabilized or not, but like so many real life situations, stabilization is not black and white. There are degrees to stabilization. In the case of roads, a person should recognize that (in most cases) improved dirt roads topped with road base and that are compacted are less prone to erosion than dirt roads that are constructed by simple grading with native soil.

A note on Page 19 of the EPA CGP says: For the purposes of this permit, “exposed portions of your site” means areas of exposed soil that are required to be stabilized. Note that EPA does not expect that temporary or permanent stabilization measures to be applied to areas that are intended to be left unvegetated or unstabilized following construction (e.g., dirt access roads, utility pole pads, areas being used for storage of vehicles, equipment, or materials). For clarification, in the Utah CGP (the same passage is included in the Utah CGP), a permittee cannot “intend” or plan to leave the entire site or significant portions of the site unstabilized based on the said passage, and be in compliance with the permit. There must be a viable purpose for leaving the area unstabilized and it must include at least a minimal attempt to reduce erosive potential (such as covering with compacted road base, garden mulch, and effort to promote vegetative growth in the succeeding months, or etc.).

The EPA has established that 70% of natural background vegetative cover is the standard that must be met by construction activity at conclusion of activities. Lesser degrees of stabilization are often seen in the natural setting throughout Utah more so than many other states. There are significant areas in Utah that have a natural 30% (or less) vegetative cover. Obviously 30% (or less) of vegetative cover is not as stabilized as 100% vegetative cover. Root mass of plants, which varies from within plant species, is another theoretical factor in stabilization (theoretical because a visual survey will not detect the extent

of root mass). In a State where there are significant areas where 30% (or less) vegetative cover is the best nature provides, stabilization is not as imperative as states that naturally have much higher percentages of vegetative cover. This condition coupled with the fact that because of the arid weather, there are fewer opportunities to erode, but a higher natural erosion rate for each event. Re-vegetation has been observed to take significantly more effort to achieve in an arid area than it does in a wetter area. Plants indigenous to arid areas do not seem to germinate and become established as readily as other areas without irrigation, which is not possible for many construction sites in Utah. Often re-vegetation does not occur for 3 to 4 or more years in arid areas. For these reasons the stabilization requirements in the Utah CGP are changed from the EPA CGP to fit the said conditions in the state.

**INSPECTION REQUIREMENTS:** The inspection requirements found in the Utah CGP are the same as in the EPA CGP except for the allowance for inspections to be reduced to monthly in arid and semi-arid areas. Two reasons for allowing a reduced frequency of inspection for arid areas are:

- 1) ) Inspections are required for storm water control measures after they are weathered from rain events to ensure they remain intact and capacity reserves remain so they function properly. Where there are no or few rain events there is less wear on control measures and there is less need for discovery of failure or maintenance problems.
- 2) With few or no storm events there is less need to have storm water control measures deployed at all. Pollutants at a construction site are mobilized by precipitation runoff. If there is no rainwater to transport pollutants there is no need for storm water control measures.

There are three reasons for not including the relaxed inspection schedule for arid and semi-arid areas. One is that storm water measures and controls are damaged as much or more by construction activity as they are from storm events and weather. Another reason is inspections are an important part of being prepared for storm events when they come. Although storm events are infrequent in arid and semi-arid areas, they can be very intense if or when they do occur. There is no area in Utah that gets 0.0 inches of rain each year. If storm water controls are not prepared to contain pollutants from lack of attention (no inspection for a month qualifies), an argument is why have them at all. If storm water controls are deployed, they should be checked periodically and ready for a storm at any time. A third reason for maintaining the weekly or bi-weekly inspection schedule is to maintain regularity about the inspection schedule. It is less confusing to expect to inspect at the same frequency consistently.

Although not allowing a relaxed inspection schedule for arid areas may be seen as being stricter than the EPA, DWQ balances this with less onerous paper work by reducing the reporting requirements, as compared to the EPA permit, for corrective action (Part 5 of the permit). The Utah CGP does this by reducing the requirements for length and details entered into a corrective action response and reducing a corrective action report to a corrective action log. The justification for this is that it is not difficult to

track corrective action with a simple log and to see when a site is operated well. Intricate details reported do not improve actual site preparedness.

**Inspection Prompt Remains at Half Inch of Rainfall.** The previous Utah CGP, like the 2010 EPA CGP, had two inspection schedules that a permittee could choose from as a permit compliance requirement. The inspection schedules are 1) the permittee must inspect the site every 7-days, 2) the permittee must inspect the site every 14 days and after every storm event that is 0.25 (or 0.5) inches or greater. In the EPA CGP the storm event criteria is 0.25 inches or greater, in the Utah CGP the storm event is 0.5 inches or greater. Utah storm events generally do not start producing runoff until after 0.25 inches of rainfall. The purpose of an inspection after a rain event is to ensure that storm water control measures remain effective. Considering a non-existent discharge or a very scant discharge, it would be unproductive to require an inspection after a 0.25 inch storm event, therefore the Utah CGP did not follow the EPA CGP in reducing the storm event criteria to prompt an inspection after a storm event of 0.25 inches or greater. In the Utah CGP the criteria that prompts an inspection in the 14 day inspection cycle (other than the 14<sup>th</sup> day) remains a storm event of 0.5 inches or greater.

**2009 REGULATOR CHANGES REQUIRED IN SUBSEQUENT PERMITS:** In December of 2009, the EPA issued final rules for construction activity that provides greater definition and detail to storm water controls required in this permit. These definitions and details are included in Part 2 of this permit. There are few changes from the EPA CGP in this permit except for the requirements for stabilization in arid and semi-arid areas. The changes to stabilization in the Utah CGP are allowed based on 40 CFR 450.21(b) where it says, "In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the permitting authority."

**OTHER SIGNIFICANT CHANGES:** There are several minor changes in wording and requirement details, more than was discussed above, but not significant in the deployment of overall objectives. All were done with the intent to maintain the purposes of the permit while reducing the regulatory burden to the permittee.

The EPA has a different system for identifying waters. The EPA uses what is called a Tier system. The State of Utah uses a similar system but instead of tiers they are called categories.

The EPA CGP manages construction dewatering within the CGP, while the Utah CGP defers management of construction dewatering to another permit specifically for construction dewatering.

The Utah CGP has unique requirements, different than the EPA CGP for qualifications for those responsible for inspection of a permitted site. The Utah CGP contains more specific guidelines for a qualified individual.

**PERMIT DURATION:** This permit is scheduled to be effective for a duration of five (5) years from date of permit issuance

This permit has been adapted from the EPA CGP and drafted by Harry Campbell, P.E., CPESC, Utah Division of Water Quality, October 30, 2013 and April 8, 2014 as revised.

**PUBLIC NOTICE INFORMATION**

Began: November 18, 2013

Ended: December 18, 2013

Public Notice Publication: Deseret News & Salt Lake Tribune

DWQ Provided Responses to the comments as received in Appendix I as attached and the CGP was modified accordingly.

**SECOND PUBLIC NOTICE**

Began: April 14, 2014

Ended: May 14, 2014

Public Notice Publication: Deseret News & Salt Lake Tribune

DWQ has Provided Responses to the comments as received in Appendix II as attached and the CGP does not require further changes at this time prior to issuance, however the CGP may be modified in the future to further address comments as received.



## **APPENDIX I Response to Public Notice (November 18, 2013 to December 18, 2013)**

### **Response to Comments for 2014 CGP**

#### **November 18 to December 18, 2013 Public Notice Period**

This document contains responses to comments made on the 2014 version of the UPDES CGP, public noticed for 30 days during November and December 2013. All comments received were sorted numerically according to the numbered outline in the permit, so that all comments submitted in reference to the same paragraph in the permit were considered simultaneously, giving equal consideration to each comment.

Most comments were directed at a particular paragraph in the CGP. There were three comments that were general in nature, affecting a theme or concept found in the permit. The General comments will be addressed first, then the line-by-line comments will be addressed in numerical order with respect to the outline numbering system in the permit, beginning at the start of the permit.

Dean Ayala of Jones and Associates Consulting Engineers appears to have submitted comments separately and combined with the Weber County Storm Water Coalition collective comments.

Responses to Dean Ayala comments are with the comments submitted from Weber County Storm Water Coalition. There is an unknown commenter from Weber County and Dean Ayala.

Others who have provided comments are USWAC, a group of mostly MS4 representatives that work in storm water (SW); there are a two city engineers (Tom Beesley of Riverton City, Bill Young of Logan City); there are others that work as city staff engineers or as inspectors for city SW staff (Todd Christensen, P.E., Bountiful City, Jerimie Thorne, of South Jordan City); Dean Ayala is associated with an engineering firm, but acts as a city engineer; there are comments from engineers who consult with private or municipal parties concerning the CGP (Paul Taylor of JUB Consulting Engineers, Ryan Dickson of Accena Group); and others who have submitted comments are Colleen Rathbone, Chief, Wastewater Unit, of Region VIII, EPA; and Utah Department of Transportation (UDOT).

DWQ has received comments from the Associated General Contractors (AGC), but they are not included in this response. DWQ elicited comments in the development of the CGP prior to the official public notice period. The AGC submitted comments during that time that have been reviewed and have been incorporated already into the CGP.

#### **GENERAL COMMENTS**

Comment by Bill Young: Are the "Notes" [found in the permit] binding or explanatory? There are regulatory requirements that are only listed in the notes, these requirements should be included in the CGP text. If they are explanatory, please separate them from the permit and include them as an appendix.

DWQ Response: DWQ has not concealed the development of the CGP. It purposely has been leaked at times all through the development process to get direction from stakeholders unofficially. One of the unofficial parties that have commented on the permit has been the Associated General Contractors (AGC). The AGC gave unofficial comments in a letter dated in May, 8 2013, and in that letter made comments about the "Italicized Notes...appearing throughout the permit". They said, "Please verify these notes are intended to remain in the final permit. The AGC maintains that these notes are very helpful in determining intent of the permit writer should any particular portion of the permit be subject

to interpretation during a compliance determination.” There have been other comments concerning the “Notes”, although not as well documented at the AGC comments. All have been positive.

The EPA initiated the idea of adding the “Notes”, it is presumed, for explanatory reasons. The negative side associated with the “Notes” is that they add to the length of the CGP. The CGP is very long already because of the EPA’s intent to add detail to better define expectation, however, the notes also give a deeper understanding for what is expected. Although it is an objective of DWQ to keep the permit as short and simple as possible, that objective seems to clash with EPA’s objective to include details to achieve greater clarification about expectation. From the unofficial input that has been received, it appears that the added clarification from inclusion of the notes is generally preferred.

Addressing your concern about the notes being regulatory, they are. They are in the permit and the permit is a regulatory document, hence the notes are regulatory. They may have originally been intended for explanation, but even if they are placed outside the permit body, in the Fact Sheet or Appendix, they help define the intent of the permit language and therefore they support proper compliance direction. Directly or indirectly they are regulatory. DWQ believes they should remain in the permit text.

Comment by Colleen R. L. Rathbone: It appears that the state of Utah, based on the rainfall intensity and annual precipitation maps in Appendix F, can be divided into two distinct physiographic provinces. As the construction stormwater program in Utah matures, it could be advantageous to develop specific requirements for these two distinct regions. For example, the mountainous (and correspondingly wetter areas) could have separate requirements which better incorporate the impacts from snowmelt and snowpack. Other states have found success in this approach such as the state of Washington, which defines separate stormwater management protocols for Eastern and Western Washington; two areas with distinctly different precipitation quantity and intensity patterns.

DWQ Response: DWQ appreciates the recognition from the EPA that Utah has the distinction of having large areas in the State that are arid and whose areas have intrinsic characteristics that warrant special considerations when it comes to storm water management. The comment suggested two areas of distinction. In practical application DWQ feels that it could be two or it could be three areas. Definitely the arid areas warrant different applications to storm water management than the wetter areas, but what is frustrating to DWQ regulators is the greatest population in Utah resides in what you could call the boundary area between wet and dry (the semi-arid areas).

As you may realize, when it comes to precipitation every year is different. Arid areas tend to maintain arid characteristics whether the year is wet or dry, while wetter areas conversely tend to maintain wetter characteristics no matter the weather tendency of the year. Ecosystems are a stabilizing factor to weather patterns and storm water management practices because of the density and types of vegetation present in an area. It does not change year to year like weather. Storm water management mitigation efforts have a lot to do with vegetative land cover and the type of ecosystem in an area. Contrary to the more constant nature of arid and wetter areas, semi-arid areas especially in areas of greater population, can display wet area characteristics one year (or certain times of the year) and arid area characteristics another year. The ecology factor does not play as strong a hand in the more populated areas because of the disruptive effect of a denser human community on the indigenous vegetation. The regulatory effort must be broad enough in these areas to address both situations. DWQ will attempt to address the differing areas as it relates to storm water management.

Comment by Weber County: Under the Common Plan of Development, I would like to see the definition changed as well as the SWPPP requirement. Change to something that if it has been vegetated for a while then the SWPPP would then not be required.

DWQ Response: What you are asking for is the case now. When construction activity stops for a period of time on a site, vegetation begins to return, even if it is not planned, if the soil is arable enough. This situation has happened at several development sites in the past four to five years during the slow economy. Lots did not sell after completion of a development. When weeds and grass grow enough to satisfy the 70% cover requirement in the permit, these sites can legally terminate permit coverage. Often these sites have not gone through the termination (NOT) process, so they were not officially terminated. That being the case they are subject to enforcement, but if they terminate after re-vegetation they can legally terminate the permit and walk away from the site.

When construction activity is resumed, permit coverage is required again, because the site remains a common plan of development or sale. The site remains a common plan of development or sale until the plan to subdivide land into lots and build on lots is completed. Once homes or other facilities are completed on each lot and sold or occupied (fulfilling the plan) along with stabilizing the soil surface, the common plan is completed and it no longer exists.

Comments by USWAC: In General, add MS4 or Regulatory agency in more places throughout the permit where appropriate, not just DEQ, and, add DEQ to the Appendix E as. "DEQ if not" category. Also, throughout all training sections, include "under staff direction" or the certified assigned person/inspector or administrator.

Also, in inspection requirement, it probably should be Name AND Position.

DWQ Response: DWQ has made many changes in the permit to include MS4 also, whenever DWQ has been mentioned in the permit. Appendix E has been modified to explain DWQ directly regulates all areas that are not regulated by MS4s (as it pertains to construction activity and storm water).

Concerning training (Section 6 of the permit), the permit identifies knowledge that needs to be had by different members of the construction staff. If that knowledge is not had, then proper training was not administered, which is enforceable. DWQ believes it is not necessary to put any more steps or requirements into training.

Section 4 of the permit covers inspection requirements. Section 4.1.7. lists what's required in an inspection report. Already name and title was required, but to clarify position was added in parenthesis.

Comment by USWAC: Termination of Permit procedures need work. Electronic v paper, there are loop holes. MS4s sometimes do not know if paper NOTs are filed. Can we close this gap?

DWQ Response: The termination requirements have been changed adding a requirement for the permittee to submit a paper NOT form to the MS4 of jurisdiction (for the MS4s listed in appendix E), at the same time as the permittee submits an electronic or paper form to DWQ (DWQ will provide a way for the permittee to print an NOT from the electronic form generated from the online data base).

#### COMMENTS ASSOCIATED WITH SPECIFIC PARAGRAPHS IN THE PERMIT

##### 1.1.1.a.

Comment by Paul Taylor: As this section is currently worded I can foresee potential enforcement issues. By allowing multiple operators it opens the door to finger pointing. The previous permit allowed for ONE singular point of contact. The Owner/Operator could and was encouraged to list subs or other operators/individuals who might have specific responsibilities delegated to them, but ultimately there

was one responsible party. I also foresee difficulties with utility companies that might be listed but won't be interested in officially signing on. I am concerned that there will be issues that a contractor will "pass on" to others and others will not be responsive. It could also become confusing or a problem if we have multiple permits for the same site.

Comment by Bill Young: This section is onerous and needs to provide more latitude to allow an operator to accept all responsibility for a project. To require permit coverage for every operator working under a general contractor or primary operator of a site will be burdensome. Ensuring permit coverage for each utility installer will be very difficult. This places added responsibility on the regulatory agency to verify and ensure SWPPP compliance. Instead of a single point of contact, there will be multiple contacts and it may be burdensome.

DWQ Response: DWQ changed the requirement for those who must sign on to the NOI to only the owner and the general contractor. DWQ believes that it is necessary to include at least, the owner and the general contractor because in the past, for most NOI's, only the general contractor signed and at the end of the project there was often the problem of the contractor leaving the job without stabilizing the project because he felt the contract did not include landscaping or stabilizing the soil. The owner needs to know and address the permit conditions for termination with the contractor. Some owners put the full burden of permit termination requirements on the contractor, forcing an unwary contractor to pay for the supplies and work that was not reimbursed in the contract or face penalties for not terminating the permit properly with site stabilization. Full landscaping is not a necessity, but stabilization of soil is. With both the owner and the general contractor signed on the NOI it creates a more equitable negotiating platform for parties facing permit termination that they may not have had the foresight to plan. With this change DWQ feels that more projects will be completed properly.

The option to have co-permittees sign on and share the responsibilities in the permit has been eliminated.

#### 1.1.1.a.ii.

Comment by USWAC: 1.1.1.a.ii states "...all (or each) operator(s) are required to obtain permit coverage." This seems to mean the 'significant operators' of the site, not all operators.

DWQ Response: There was confusion about which operators had to sign on the NOI. DWQ has changed the wording so that it is clearer that only the owner of a project and the general contractor of a project are the parties that must sign on the NOI.

#### 1.1.2.a.

Comment by USWAC: There is no definition for Common Plan of Development, can the old permit definition be used? (Add to Appendix A, Common plan of development or sale means a site where multiple separate and distinct construction activities may be taking place at different times on different schedules, but still under a single plan. Examples include: 1) phased projects and projects with multiple filings or lots, even if the separate phases or filings/lots will be under separate contract or by separate owners (e.g. a development where lots are sold to separate buildings); 2) a development plan that may be phased over multiple years, but is still under a consistent plan for long-term development; and 3) projects in a contiguous area that may be unrelated but still under the same contract, such as construction of a building extension and a new parking lot at the same facility. Washington State CGP.

Comment by Paul Taylor: Although this paragraph defines somewhat, what a common plan of development is I didn't see an "official" definition in the Appendix. I think this is a big enough issue/concern to have a formal definition found where all the other definitions are found.

Comment by Bill Young: Permit coverage is required for disturbances of less than 1-acre if part of a Common Plan of Development. The CGP implies that all construction activity is continuous. There are many cases, such as housing sub-divisions, where there is a substantial amount of time between phases of construction. Recommended text for this situation that was submitted by USWAC to the Division that would allow a site, after being stabilized, to be treated as less than one acre then placing responsibility to the regulatory agency to monitor construction activities and discharges.

Comment by Weber County: Please provide clarity on this item: I read it to mean that lots in a subdivision which have been built and re-vegetated and sold to other are not considered eligible because the sale will not result in a disturbance of 1 acre or more.

DWQ Response: DWQ has added a definition for Common Plan of Development or Sale into Appendix A of the CGP. The definition was taken from the Water Quality web site on the page with answers for frequent questions, but parts were deleted and more detail was added to that definition to show that for permitting purposes common plans are not "grandfathered in" and do not exist before October, 1992, and also the new definition includes when a "common plan" (short for Common Plan of Development or Sale) status expires. The Utah definition for Common Plan of Development or Sale is broad enough to include most variations included in the examples described in the Washington State definition (shown in the USWAC comment), but it is possible there may be sites that are included in the Washington State definition that do not fit the Utah CGP definition simply because the Utah definition says it must be "...a plan to subdivide a parcel of land into separate parts for separate sale...".

In response to Bill Young, DWQ heard the suggestion from USWAC a while ago when a committee in USWAC devised another definition and process for managing "common plans". In that suggestion, as you implied in your comment, "common plans" would have been viewed as expired after construction activity for the development was finished, the surface stabilized, and the permit for the development terminated. DWQ understood what the USWAC committee was proposing, but at the time decided against it. Earlier in the storm water program, until about 4 or 5 years ago, DWQ did look at "common plans" in that way and DWQ managed "common plans" and the building of homes within common plans (the building of homes in those "common plans" were viewed as less than an acre and because of that they did not need coverage under the CGP), according to that concept. Certain members of USWAC proposed that idea because it is presumed, they remembered how DWQ had managed "common plans" previously. In the early days of the storm water program, DWQ did not have the resources to oversight construction on every building site. Determining that "common plans" expired in that way was a method to lighten the load, so to speak, so that the program was more manageable to DWQ, but it was not written in definitions or rule. MS4s now, for the most part, do the oversight of construction sites within their jurisdiction. DWQ is able to manage the work load better at this time due to the help of MS4's. DWQ reviewed the "common plan" process a few years ago and determined that DWQ was not meeting the mandate they had been given from the EPA and changed the definition for "common plan", put it in writing, and made the process to what it is today.

DWQ is not opposed to changing the process for oversight of "common plans" and house building construction in the way that USWAC suggested, for MS4s that are now performing construction

oversight properly. Not all MS4s are doing that. However, from a legal point of view, If DWQ changes the definition of “common plans” so they expire before house construction is done, DWQ will essentially write off oversight on the majority of house construction from DWQ’s purview. Suddenly DWQ would have erased their oversight capability on a significant part of the storm water program. It is presumed that the EPA would have a problem with DWQ’s management of the storm water program if DWQ did that.

DWQ is open to the idea for the practical application of the idea USWAC suggested, but only for MS4s that are demonstrating they are conducting their programs properly. DWQ has not figured out how to do that without writing out the legal authority for DWQ to perform the mandated oversight for construction on the majority of house building as well. If USWAC can help DWQ and devise an idea or suggestion how that can be done DWQ will likely go along with it.

#### 1.1.4.a.

Comment by USWAC: “already covered by a different UPDES permit for the same area”. Please clarify this would be UPDES permits other than another CGP. It is likely there will be multiple CGPs for the same given area with multiple operators.

DWQ Response: DWQ believes that it will be clear enough that the reference is for other UPDES permits. DWQ changed the permit in response to another comment in the second note under 1.1.1. to clarify that “...Only one NOI permit application can provide coverage for one area.” NOI coverage is tied to the owner/leasee of a facility. If there is more than one owner, they are viewed by DWQ as the owner party, or one owner entity.

#### 1.1.5.

Comment by USWAC: Endangered Species Act & National Historic Preservation Act, will you be leaving these in the SWPPP template? Perhaps it should read, something such as... “you are responsible for ESA and NHPA program, but not require the documentation to be included in the SWPPP.

Comment by Paul Taylor: In Section 3.2 of the MS4 General Permit it requires MS4s to make efforts to comply with The Endangered Species Act as part of their SWMP. It feels a little bit like a double standard for the MS4s to “have to” make efforts while removing the “requirements” in the Construction Permit.

Comments by Bill Young: Removal of these requirements will cause a conflict with section 3.2 of the MS4 permit (UT 090000).

DWQ Response: The EPA is required by law as a federal agency to support other federal agencies. DWQ is not required to do likewise. DWQ should have figured this out earlier in the program that the oversight of ESA and NHPA did not filter down from the EPA. Many other states already do not reciprocate the EPA’s efforts to oversight the ESA and NHPA. DWQ does not intend to say that the ESA and NHPA should be ignored. All DWQ is doing is removing DWQs oversight of the federal Acts in DWQ documents. If there are serious violations of the ESA and NHPA noted during inspections by DWQ inspectors, DWQ inspectors will likely report the violations to the appropriate federal agencies. The CGP template will eventually be changed to where there will not be a section covering the ESA nor the NHPA.

It is presumed at this writing that the UPDES MS4 permit (UT090000) will eventually follow suit and remove the requirements in its section 3.2. regarding the ESA and NHPA.

#### 1.1.6.

Comment by USWAC: (see the USWAC comments made for 1.1.5. above).

Comments by Paul Taylor: In Section 3.2 of the MS4 General Permit it requires MS4s to make efforts to comply with The National Historic Preservation Act as part of their SWMP. It feels a little bit like a double standard for the MS4s to “have to” make efforts while removing the “requirements” in the Construction Permit.

Comments by Bill Young: (see Bill Young’s made comments for 1.1.5. above).

DWQ Response: (see DWQ’s response for 1.1.5. above).

#### 1.2.1.

Comments by USWAC: If emergency work is complete within 30 days of the event, no paperwork should be required, especially if the work is already completed. This seems to be paperwork for no reason.

Comments by Bill Young: Allow an exception to this requirement if all work is complete and the site is stabilized within 30-days.

Comments by Weber County: What’s the point after the fact? I agree a detailed report should be submitted but a submission of a SWPPP & NOI seems pointless.

Comments by Dean Ayala: The permit should not require a SWPPP and NOI after emergency related construction activities. The purpose of a SWPPP and NOI is to prevent pollution during construction activities. The procedures in Section 7.2.3, Page 39, would be adequate in most situations.

Comments by Todd Christensen: Section 1.2.1 addresses emergency-related construction activities. The requirement to submit a NOI – and therefore complete a Storm Water Pollution Prevention Plan (SWPPP) by 30 days after the activities have started seems way too late to worry about following a pollution prevention plan. To me, it seems more appropriate to have a waiver for emergency-related activities. Also, the section refers to “Table 1” which I could not find in the permit. Finally, there appears to be a typo in the section: “...and accurate...” should read “...an accurate”

DWQ Response: DWQ does not believe it wise to grant impunity to all emergency responses for violations of the water quality act. DWQ reserves the right to determine if there should be enforcement of water quality laws even for emergency situations. Granted, there can be situations where other factors change the priority of water quality issues. Rather than remove all accountability for emergency responses DWQ requires a written summation of the emergency responses completed within 30-days. Emergency responses that continue beyond 30-days must file an NOI and produce a SWPPP by the 30th day. Of course the other requirements for coverage under the CGP still apply. If the emergency related activity disturbs less than an acre, it is not required to procure permit coverage.

#### 1.2.3.

Comments by USWAC: we would like a more specific clarification of tributary to an impaired water and TMDL conflicts. Does this only apply to the water body itself or any sources connected to the waterbody upstream as well. Or just add another Appendix of 303d and truly affected areas?

Comments by Paul Taylor: The note accompanying this section seems to imply that the concern is “only” with the first surface water to which one discharges. In the situation where there may be a TMDL on a water body downstream of the “first surface water” this creates a bit of a problem. If an owner/operator does not follow the water further downstream they may meet the water quality standards associated with the “first surface water” but create an undue burden on whoever has responsibility for the water body that discharges into the impaired waters. In TMDL situations it seems

that responsibility needs to be shared with all who might ultimately affect the quality of the impaired water.

Comments by Bill Young: This alleviates any responsibility of a construction site operator to comply with TMDLs on downstream water bodies. What if there is a TMDL on the downstream waters after the “first surface water”? Which document controls?

Comments by Colleen Rathbone: Parts 1.2.3 and 3.3.2 define additional requirements for new sources which discharge to Category 1 Waters. These require increased inspection frequency and more rapid site stabilization. While these efforts will likely reduce pollutant discharges, we encourage DEQ to continue to develop erosion and sediment control requirements which are more specific and detailed in order to protect the most high quality waters in the state. These could include specifics on vegetative preservation, designs which require enhanced sediment removal efficiency such as those defined in Appendix D (Buffer Guidance), phasing of construction site disturbance, and topsoil/borrow management. These types of activities could be defined over time through the use of public-private-partnerships with construction site managers in an effort to create regionally specific and cost effective approaches which are specifically shown to effectively protect the most high quality waters in the state of Utah.

DWQ Response: As a point of explanation, high quality waters (categories 1 & 2), are defined in the regulations at UAC R317-2-12. Basically category 1 waters are all waters within forest service boundaries, but with a list of exceptions, also found in the regulations. Category 2 waters are only Deer Creek (a tributary of Huntington Creek in Emery County), from the forest service boundary to 4800 feet upstream; and electric lake. The terms “limited” and “temporary” used in paragraph 1.2.3. are taken from UAC R317-2-3.2, the regulatory citation concerning the antidegradation policy for category 1 waters.

Regulatory references found for TMDLs are not directly related to the regulatory references found for high quality waters (high quality waters are high quality and usually headwaters where waters listed in TMDLs are impacted waters), but there are water bodies that can be described by both category 1 waters and TMDLs. Also, there are some TMDLs that are immediately downstream of high quality waters.

Concerning the issue of a TMDL downstream of a high quality water, this issue actually applies to any receiving water, not just a high quality water. To address this situation it will have to be monitored by the TMDL section at DWQ. This is a problem because construction permits come and go constantly and staff in DWQs TMDL section don't have the tools or time to constantly monitor the TMDL areas for active construction sites. Another way to address it is to have more construction SW permit oversight for areas upstream of TMDLs, but DWQ resources will not allow any more attention to this activity than what is presently had. A better option is to have DWQ upgrade the site which provides information to permittees to identify receiving waters (<http://wq.deq.utah.gov/>), so that when receiving waters are identified the web site will also call out TMDLs that are downstream. This also could be attached to the application process for SW CGP coverage so that DWQ knows construction permit coverages that are upstream from TMDLs. It is DWQs intent to do this.

DWQ believes that if permittees properly apply the new CGP, that should be enough to protect downstream TMDLs. Compliance monitoring will ensure compliance and focused compliance monitoring that could be available from the system upgrades talked about above could address the



issues surrounding CGP coverages and downstream TMDLs. It is something that is not available presently. DWQ is working on it.

One thing about a construction project under the CGP it is a temporary discharge, and not an ongoing issue for a TMDL.

Concerning the comments of Colleen Rathbone of the EPA, about continuing to develop sediment and erosion control requirements that are more specific and detailed, DWQ believes there may be a better way. There is a wide array of BMPs currently available, there are site and activity management oriented BMPs, there are BMPs that serve to stabilize, and there are treatment BMPs. Site to site the same old familiar BMPs tend to get used most. Sites vary greatly and projects do also. A BMP sometimes will have a place and use at a particular site and sometimes they won't. You can't write regulations that dictate how to most effectively control each site, to do so would cause the permit to rival the Denver Metropolitan area phone book and still miss the mark. Already for this round the CGP in Utah will go from 29 pages to over 70 pages. Better designers are needed. Yes, the regulations need to be improved and refined also, but not with more detail about application, maybe more detail and clarity about objective and concept. DWQ believes that training and oversight of regulators and construction personnel is the future not more regulations, specifics, and details about where and how. Proper and adequate oversight is very much needed by talented and experienced people in sediment and erosion control to point the construction industry in the right direction. DWQ suggests maybe training and licensing of construction sediment and erosion control specialists may be preferred. DWQ has contacts with MS4 associations and construction associations and helps to promote training programs through these associations. At the moment DWQ is not prepared to do licensing or certifications for sediment and erosion control designers for construction sites, but DWQ supports the Storm Water Advisory Committee as they are heading up progress in that direction. Not only is competence and expertise necessary for proper application of sediment and erosion (S & E) control concepts, but also knowing how to navigate the paper work and regulations associated with the CGP. Management of sediment and erosion control is coupled with design and management of the project. Some of the S & E control planning should be done while the project is in design. DWQ is more in support of certification and/or licensing so that the attention goes to the accumulation and application of expertise, knowledge, experience, and competence for S & E control management and having this start earlier in the planning process. DWQ believes the result will be better.

#### 1.3.3.b.

Comments by USWAC: typo. Replace "does it serve" with "does not serve"

Comments by Paul Taylor: I believe this is a typo. I believe "it" should be "not"

Comments by Bill Young: (text change) – The support activity does not serve multiple unrelated construction Projects

DWQ Response: The word "not" has been placed appropriately in the citation.

#### 1.3.4.

Comments by USWAC: We see problems with d, h, and j, plus this seems to be a municipal MS4 paragraph. Why not remove this section altogether. If not, at least add J-non turbid, with a definition and/or clarification of what that is. Please also clarify how j is different from l, and how this section correlates to 2.1.3.d (Please clarify in j where it "discharges" to, (e.g. storm drain, area within site perimeter, etc.) (j&k indicates no permit necessary for discharge but l says need a permit. Perception

may be that you use BMPs to treat the water, you need a permit, don't use BMPs – no permit. NOT what is trying to be said)

Comments by Tom Beesley: [Tom Beesley's comments are shown on a marked up copy of the permit. There are marks on b, c, d, h, and j.] Suggestions are made about adding "uncontaminated" to b., adding "non fertilization injection systems" to c., saying "This language opens the door to significant pollution sources" for d., saying "This language opens the door to significant pollution sources! Why have this at all" to "pavement wash water" in h., and providing a definition for "non-turbid" in j.

Comments by Paul Taylor: 1.3.4.d It seems that water used to wash vehicles and equipment should not be allowed even if there are no soaps, solvents, or detergents. The act of washing suggests that there are things present that "dirty" the vehicle or equipment. Won't these things also "dirty" the water (ie. Mud and dirt)?

1.3.4.h This paragraph seems to contradict itself. Pavement wash waters free of spills or leaks or detergents are acceptable, but can't be directly discharged? This feels confusing. Again, wash waters are being used to clean some undesirable materials from the pavement, but these undesirable things are "OK" for the waters of the US?

1.3.4.j The definition of non-turbid discharges given in Appendix A refers to "related water quality standards". How does one know if they meet these requirements when we don't know what or where these standards are defined?

Comments by Bill Young: 1.3.4.d Add – you are prohibited from directing sediment laden or turbid wash water directly into any surface water, storm drain inlet, or storm water conveyance.

1.3.4.h Add – "without an approved means to filter and remove pollutants and sediments."

1.3.4.j and Appendix A – Non Turbid – Section 1.3.4.j refers to non-turbid discharges. The Appendix A definition of "non-turbid" is vague. Clarify turbid related water quality standards, and limits.

DWQ Response: The insight on acceptable discharges elicited in this paragraph is warranted in the CGP for permittees involved in construction activity as well as it is for the MS4 permit. The protection of water quality is the object of, and the work that DWQ performs, but there are issues that take priority over or that must be balanced with the protection of water quality. Health and safety for the residents of Utah is sometimes one of them. The purpose of fire hydrant flushing is to maintain a required fire protection system so that it is operational and ready for use in the case of emergency. The pollution presented by this activity is considered negligible by the EPA because it is written in their words and from their CGP.

For paragraph c, it is not an objective of the CGP to determine and dictate types of irrigation that are acceptable. Landscape irrigation, in some instances, could cause a discharge of nutrients and maybe sediment from overwatering if it is not done properly. The proper management of fertilization and irrigation should not do so. The words "properly managed" is added to landscape irrigation.

For paragraph d, DWQ agrees that wash water from washing vehicles without proper controls or treatment should not be allowed to be discharged. This was missed in the development of this permit. In the previous permit, non-storm water discharges were required to have "appropriate pollution prevention measures for the non-storm water component(s) of the discharge." Section 7.2.8. has been modified with requirements (and a note of explanation) to treat non-storm water appropriately to remove pollutants before discharging.

The pollution potential for paragraph h, is addressed in the above paragraph.

The EPA had a definition for the term “non-turbid” that DWQ had transposed into the Utah CGP, however, due to the comments for section 1.3.4 DWQ has changed that definition. The previous definition was an EPA definition and it was (I suppose) tied to an EPA standard for water clarity. When DWQ uses the term “non-turbid” for water, we mean clear water with no silt or sediment present. It is a character description of the water. We are not referring to a standard.

DWQ has dealt with discharges from springs, footing drains, and construction dewatering. These discharges have their distinct characteristics about which DWQ could write many paragraphs here now. Unless there is more discussion that is desired, DWQ believes the permit deals with them appropriately with the modification that was done as described above.

1.4.

Comments by UDOT: This section states that a fee is required to obtain permit coverage. In the past, UDOT has not been required to pay fee for this permit. It seems unreasonable for one state agency to charge another state agency for permit coverage, since we are a “sister state agency” to DEQ/DWQ. UDOT senior leaders believe that we should be exempt from this permit fee, please have Amanda Smith contact Carlos Braceras or Shane Marshall to discuss this item.

Comments by Jerimie Thorne: The permit requires development of a SWPPP before an NOI is submitted to DWQ (Section 7.1.1); Currently DWQ is releasing NOIs without verifying that a SWPPP has been prepared. In effect, by doing this the DWQ is potentially putting the permit in violation at the point of issuance, thus creating an immediate action item for the enforcing jurisdiction/municipality whom hasn’t received any notification that a permit has been issued.

Therefore the enforcing municipality should be notified and approve all pending permits within their jurisdiction before permit issuance.

This can be accomplished through the DEQ’S electronic NOI system, following the same process that is in place for NOT closeouts in which, the enforcing jurisdiction/municipality gives final approval for close-out and now should be for issuance as well.

Comments by Paul Taylor: The fifth paragraph refers to those areas where a regulated MS4 exists, but gives no clarification of who oversees work outside of the regulated MS4s. It seems that maybe the DWQ should be listed in Appendix E for those areas not covered by the other entities listed.

Comments by Tom Beesley: [Tom Beesley’s comments are shown on a marked up copy of the permit. There are marks on the fifth paragraph saying “...or DEQ if not a regulated MS4?”.] Essentially Tom Beesley’s comments mirror Paul Taylors comments but they seem to say that the fifth paragraph should indicate, for areas not covered by an MS4, that DEQ oversees the construction work and permit compliance.

DWQ Response: Over the years in the oversight of UDOT projects, it has not been clear to DWQ if UDOT has been wanting to take full storm water permit responsibility or if they wish to put the full permit responsibility on the winner of a bid. Whichever UDOTs position is currently, DWQ is now taking steps to clarify that both the owner of a project and a general contractor have responsibility for permit compliance. It seems UDOT qualifies as owner and each project has a bid winner or general contractor. It seems UDOT can pay for the permit fee, require the general contractor to pay for the permit fee, or split the cost of the permit fee with the general contractor. All other permit holders are required to do the same. Also, in reference to fees, a memorandum was emailed to UDOT in late September or early

October, 2013 from the Attorney General assigned to DEQ, to UDOT that explains the legal basis for the fees DWQ charges UDOT. That document can be resent if UDOT requests.

DWQ charges the permit fee to allay the costs of permitting and overseeing compliance at construction activity. This cost is incurred whether it is on a private, federal, state, or local government related construction activity site. Therefore the fee is as applicable to UDOT as it is to other governmental agencies and the private sector.

Concerning Jerimie Thorne's comments, MS4s know as soon as DWQ knows when a new permit is issued in a particular area. The NOI process is automatic. MS4s already can view active permits within their jurisdiction as soon as they are issued. Most projects proposed within an MS4 must get a building permit to begin a construction project. Municipalities under a Municipal SW permit are required to review a construction project for SW concerns before the project commences. To do so they must catch the project in the planning or pre-construction stage and supply that review before the project applies for an NOI. By using the processes already within the MS4, MS4s may learn before DWQ who will apply and for where the next NOI will be coming.

Doing a process similar to the NOT process, where a report is produced, seems redundant since MS4s can already get a minute by minute list of active NOIs within their jurisdiction. DWQ could provide an email notification of when a new NOI is issued for MS4s. Thus far we have elected not to do so because DWQ and larger MS4s would be inundated with emails at times, and therefore this process would not be effective. It may, however, be a consideration for smaller MS4s. That action is something DWQ could do anytime and it is not tied to the issuance of this permit.

Concerning Paul Taylor and Tom Beesley's comments, DWQ has changed the fifth paragraph to make it clear that DWQ directly oversees construction activity in areas not within the jurisdiction of an MS4 that is covered under a municipal storm water permit.

#### 1.4.1.

Comments by USWAC: Section 1.4.1.; should clarify. "outside of MS4", or replace/add DEQ in the Appendix E, as one of the responsible entities if not within an MS4 jurisdiction.

Comments by Jerimie Thorne: Municipalities should have more access to in the listed electronic NOI system to change status of each permit within their Jurisdiction in order to efficiently manage the permits under their responsibility as required.

DWQ Response: In response to SWAC, DWQ believes that SWAC mistakenly marked their comment as 1.4.1. instead of 1.4. Nevertheless, two others had the same or similar comment (see above) and it has been addressed by changing the permit to incorporate the intent of the comments (including this one). In response to Jerimie Thorne, it is absolutely necessary for regulated MS4s to be able to access the data base and change a specific permit status from unconfirmed termination to confirmed termination after doing a final inspection on a permitted site. DWQ is aware that it would be good if regulated MS4s could make other changes to the status of some specific permits, such as permits that have languishing in the systems for a long time, that were there since before the on line system was changed giving MS4s access to it. DWQ may give MS4s that right at some time. DWQ has not at this point to ensure that DWQ can maintain security and control over the permitted universe in Utah. If an MS4 needs changes to a permit status that they cannot do themselves, they can call DWQ and request the changes. However, it may be possible to get greater control of the data base if an MS4 works through SWAC and makes the case, while including other MS4s, why it is necessary or important to allow MS4s more

control of permit status for permits in their jurisdiction. This can be done at any time, and is not tied to the issuance of this permit.

#### 1.4.2.

Comments by USWAC: Section 1.4.2. (and in reference to section 8.3) please add or change to the proper MS4 N.O.T. procedures, and not allow closure without it.

Comments by Paul Taylor: I would like to see one additional step added to the requirements for obtaining an NOT, it should be required that the permittee contact or otherwise notify the MS4. There still seems to be a disconnect here and it is difficult for the MS4 to get the permittee to respond once he has demobilized. It would help significantly if the permittee was "required" to coordinate or get a sign off from the MS4 before he can terminate. There is reference made in Section 8 to the need for a final inspection. It should be added to this section to be consistent.

DWQ Response: The permit was changed where another step was added to complete closure and to NOT the site. That step is to notify the MS4 (if the MS4 is a regulated Appendix E MS4), that a final inspection is needed. Also, an explanatory note was added.

#### 1.4.2.a.

Comments by Tom Beesley: [Tom Beesley's comments are shown on a marked up copy of the permit. There are marks on the a paragraph that say, "...and then a confirmation is required by the MS4 or DEQ if a non-MS4?].

WQ Response: Your comment has been addressed already as the comments for 1.4.2., which generally presented the same issue. The permit was modified to address that issue (see above).

#### 1.4.2.b.

Comments by UDOT: Sub-section 1.4.2(b) states that this permit must be renewed each year and a yearly permit fee be paid until the NOT is submitted. This is a significant change for all future permittees and will add to project costs with no apparent benefit.

DWQ Response: This process was instituted about 2 years ago, but was only now put in writing. The cost for the permit is the same (disregarding the incremental increase in the fee as it went from \$50/year to \$150/year over the last 20 years). There should be no increase in cost to the project because the permit has the same compliance requirements (except for the scheduled renewals to the permit) and there is no difference in cost to the permit, only that it is paid a year at a time rather than entirely at the beginning.

#### 1.4.3.

Comments by UDOT: We believe that current projects covered under the old permit should be allowed to finish based on the old permit conditions and requirements. The new permit will require additional storm-water controls depending on site characteristics, not just up-dating existing controls. The new permit will result in construction project change orders for current projects and will add to project costs.

DWQ Response: It is unfortunate that projects do not start and end with permits as they are renewed and as they get renewed again. DWQ is obligated to begin implementation of the effluent limitations and guidelines (ELGs), promulgated recently in 40 CFR 450, the Construction and Development Category. These ELG requirements are found in section 2 of the permit. DWQ can understand the trouble caused by changing the rules mid-project with a new permit. DWQ is constrained by federal requirements to renewed permits every 5 years, but it is unprecedented to issue a renewed permit and not have permittees transition over a period of time to the permit requirements. For these reasons DWQ

provided 6 months for permittees to transition to the new requirements. However, the permit does provide a waiver from complying with portions of section 2 as described in the note at the beginning of section 2.

#### 2.1.1.b.

Comments by USWAC: Have the Note: removed. It may be a conflict with Division of Occupational Licensing DOPL.

Comments by Bill Young: Note: "It is not required to have a P.E. stamp to approve, or design..." This goes back to the previous comment- if notes are not binding this needs to be added to the text. Also, this could conflict with State Law regarding requirements for an engineer seal/stamp.

Comments by Todd Christensen: Section 2.1.1 applies to all construction sites, and 2.1.1.b lists design requirements. This section has requirements for designing basins and channels using hydrology, hydraulics, and soil science. Elsewhere in the permit are requirements for designing wash water bins and calculating equivalent natural buffers. To me, these elements of design are engaging in the practice of engineering, yet the permit states in section 2.1.1 that the permit does not need to have a Professional Engineer's stamp or approval. I think that this is in conflict with the state's licensing act in Utah Code 58-22-301.

I understand that there are those who are not registered as Professional Engineers who are more competent at writing a SWPPP than some Professional Engineers who attempt to do so. However, my comment is not about that; it is about the possible conflict with state's licensing act.

Comments by Paul Taylor: Although I agree with the idea that it not be required to have a PE to approve or design a SWPPP, this may be in violation to the State licensing act since most, if not all, SWPPPs require the preparation of plans.

DWQ Response: Although it was the interest of DWQ to keep the permit and the SWPPP as simple as possible, it appears that the complexity of the entire storm water program regulating construction activity is getting more and more complex. DWQ recognizes that it is appropriate and necessary for a P.E. to be involved with most if not all SWPPPs, therefore , the permit language has been changed to reflect that.

#### 2.1.1.b.

Comments by Dean Ayala: Clarify what is meant by particle sizes expected. Does this mean geotechnical work will be needed?

DWQ Response: Particle size is one of the parameters engineers use to size a basin used for settling. It is always better to use the range of particulate sizes that are likely to be found in the drainage area that will flow through the basin. An analysis of the soil in the drainage area will help to determine what range of particulates that may be. This does fall into the realm of geotechnical work, but it does not need to involve an extensive or expensive geotechnical endeavor. For someone experienced in working with soils a visual and/or sensory assessment by looking at and feeling and/or handling the soil with hands will be all that is needed to categorize the soil so that a particulate range may be estimated.

#### 2.1.1.c.ii.

Comments by UDOT: We recommend deleting the term "install" in the first line and replacing with "be installed".

DWQ Response: Thank you for pointing out the grammatical error.

#### 2.1.1.d.

Comments by Tom Beesley: On a marked up version of the CGP in paragraphs 2.1.1.d.ii.2 &3, Tom crossed out all 7-day, and a “feasible” references and wrote, “...as required for effectiveness or as determined by inspector...putting 7 days in permit will make it difficult for MS4 to enforce when sooner maintenance is necessary (typical all places)”. Tom also wrote, “Section 3.5.3 of the old permit was good.”

Comments by USWAC (comment was for 2.1.1.b, but it fits better here): Commentor 1, ...“feasible”, “infeasible”, “time frames”, “7-days”, “next working day”, etc., many references throughout the permit: we think these decisions should be made by the inspector as they see proper for the project. The old permit in section 3.5.3 was better.

Remove all of the Notes:

Commentor 2, I believe time frames are beneficial, be specific on which inspector can make the decision, Construction Carl or the jurisdictional inspector?

I think the notes are beneficial.

Comments by Bill Young: Maintenance – in general, have the timeframes for correcting problems to be 7-days or as determined by the inspector [DWQ assumes this means the MS4 inspector].

Comment for 2.1.1.d.3 [DWQ assumes this should be 2.1.1.d.ii.3] Bill wrote, “The reference to “infeasible” in this section seems in conflict with the definition in Appendix A.

Comments by Dean Ayala: For 2.1.1.d.ii.1 to 3 “What is significant repair to erosion and sediment controls? The time frame to make the needed repairs should be left to the discretion of the inspector [DWQ assumes this means the MS4 inspector].

DWQ Response: The paragraph concerning maintenance of BMPs was replaced with a version of the paragraph 3.5.3 in the previous permit, with a phrase that allows DWQ and MS4 oversight inspectors to dictate timing or increased attention. The reference to infeasible and significant repairs has been eliminated. The change in the permit now allows the permittee latitude for determining how the maintenance problem will be addressed in the SWPPP, which an MS4s can require changes to in the SWPPP review process (e.g. the pre-design or pre-construction review meetings, or during an inspection). However, to be clear, the permit has been changed so that if the permittee does not specify a schedule or how timely maintenance will occur in the SWPPP for repairs, replacement, and maintenance; then it must be done immediately after a regular inspection. A paragraph was added in 7.2.12.e to alert the permittee as they are developing their SWPPP about this requirement.

2.1.2.

Comments by USWAC: Commenter 1; “surface water” is too vague.

Commenter 2; could reference waters of the state to help clarify or add definition to Appendix A – Surface Waters of the State include lakes, rivers, ponds, streams, inland waters, salt waters, and all other surface waters and water courses within the jurisdiction of the state of Utah. From Washington State CGP.

Comments by Dean Ayala: Some of the requirements found in the subsections should not be applied to “all sites”

DWQ Response: “Surface Water” was already defined in Appendix A, but the definition has been expanded for better clarification. Also, a sentence was added to 2.1.2.a. that defines surface waters that would be affected to be “only those that ...typically flow more than one month out of the year”.

2.1.2.a.(Note:)

Comment by Bill Young: Is this legal? Can a site operator legally discharge sediment laden storm water and non-stormwater discharges to a property that is not owned or operated by them? How will they legally maintain, inspect, and ensure that it is properly functioning if it is not under their operational control.

DWQ Response: The note says: "Areas that you do not own or that are otherwise outside your operational control may be considered areas of undisturbed natural buffer for purposes of compliance with this part." That means the permittee need not be concerned with the property because they do not own it or control it. They are allowed to neglect what condition the property is in because they have no legal right to go on it or change it. Anything they do has to be on the property that they own. They can assume that the other property qualifies as a natural buffer (even though it does not) and put their perimeter controls in, on their side of the property boundary, according to the requirements in 2.1.2.a. This does not give anyone rights to direct silt laden water over other properties, but people do have the right to direct storm water where it historically has gone provided the flow and quality characteristics are not changed. It is incumbent on the permittee, for liability issues related to the other property, to ensure that the flow and quality characteristics of storm water leaving their property remains constant or of better quality and/or a lower flow (depending on the flow and quality characteristics on the property before the project commenced). The permit pretty much requires the same.

2.1.2.a.i.

Comments by Bill Young: Owner/Operator would like consideration on reducing the buffer distance below 50 feet. Suggest 30 feet to remain in compliance with the Army Corps of Engineer's requirements for 404 permit coverage.

DWQ Response: In 40 CFR 450 the construction and development category says, "Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible." This law does not specify the width of natural buffer area, however the EPA in their CGP has established 50 feet as the width of the buffer. The Army Corps of Engineer' has established 30 feet as a buffer. The buffer requirements in the EPA CGP and required by the Army Corps of Engineers are for the same purpose, to protect water bodies, but for somewhat different intrusions. The buffer requirement in the EPA CGP is established specifically to protect a water body from the temporary construction disturbances of the soil surface. Although the temporary disturbance of the soil surface may be a factor in the 30 foot buffer required by the Army Corps of Engineers the main purpose of the buffer is the long term effects of permanent facilities constructed near a water body. Whether the buffer distances are based on professional judgment and observation or researched assessments of impacts to water bodies, it does not take a professional to observe the unique and positive characteristics of riparian zones untouched by human influence, particularly in arid Utah, and the value it provides to a water body. The 50 foot buffer in the EPA or Utah CGP does not put limitations on construction of facilities within 50 feet (that limitation is found in the Army Corps of Engineers requirements), only soil disturbance, and as you know, there are extra requirements to mitigate soil disturbance which intrude into the 50 foot buffer. Without a better basis DWQ wishes to establish the same standard that the EPA has selected to protect water bodies in Utah.

2.1.2.a.ii.1.



Comments by USWAC: Section 2.1.2.a.ii.1. seems to indicate for buffers less than 50 feet where double controls are implemented to meet the 50 foot buffer equivalent that BMP's must be in place prior to discharging to the buffer. Please clarify that the intent is to actually have triple controls.

Comments by Dean Ayala: In a normal situation where the 50' buffer zone can be maintained, clarify whether a natural buffer is a BMP or you need additional BMPs before or after natural buffers.

DWQ Response: There appears to be confusion over what the paragraph is requiring. The intent is not to have triple controls when the formula dictates double controls. The paragraph has been changed to say, "Where there is a concentrated storm water discharge leaving the site's disturbed area and crossing the natural buffer area (whether the buffer area is a full 50 feet (2.1.2.a.i.1) or less than 50 feet with additional BMPs (2.1.2.a.i.2)), the concentrated flow must have treatment or BMPs to minimize sediment transport, found in the area generating the flow and not just as it crosses the buffer area. Additionally, velocity dissipation devices must be used where erosion is caused by the flow as it crosses the buffer area;..."

The natural buffer areas prescribed in the permit are not meant to treat concentrated flows of storm water leaving a site. The best management of construction storm water is in the area where storm water falls on the site or immediately adjacent to it (which is why silt fence is used so much and not just for perimeter controls). A buffer zone does not treat a concentrated flow just as a silt fence does not treat a concentrated flow. There are BMPs that help to improve water quality in concentrated flows, such as check dams and settling basins, but many BMPs are ineffective for concentrated flows, and the best management of storm water is to protect it and treat it before it becomes concentrated and then prevent it from being erosive as it becomes concentrated.

#### 2.1.2.a.v.4.

Comments by Weber County: [DWQ has put this under 2.1.2.a.v.4. where it was initially given as a comment for 2.1.2.i.4. because it seems to questions the former. It appears to be a mistake in the identification of the position in the outline.] Please clarify. I read this as a small subdivision lot in a subdivision which will (in the future) disturb more than an acre, so if the disturbance has already occurred and has been re-vegetated, coverage is not required for the small residential lot. Correct?

DWQ Response: You are not correct. I am a little unsure of the exact scenario you are asking about, but I feel I can answer the question anyway. First, all construction that disturbs over an acre must get coverage under the CGP. This includes "common plans", and lots less than an acre in a common plan. This disturbance does not have to happen all at the same time. If a subdivision that is planned to cover exactly one acre is completed with roads and utilities, but not yet with homes, often it can be done without disturbing the entire acre, but as the homes are placed on the lots, usually the entire lot becomes disturbed. This can happen with less than an acre disturbances occurring in different areas of the development over time where one acre is never all disturbed at once, and re-vegetation happens in between. Each lot in that subdivision still needs to get coverage under the CGP because ultimately over an acre will be disturbed as the entire development is completed.

For a subdivision with small lots (which is what is currently happening in most subdivisions now) it is pretty safe to say that the entire area of the subdivision will eventually be disturbed. If the subdivision is made up of 5 acre lots it may be a different story. You could have a 20 acre subdivision planned but with 5 acre lots. It may be possible that the disturbance caused by installation of roads, utilities, and homes may not cause a disturbance of over an acre. The planned development would definitely disturb

the area for the road, utilities, and the foot print of the homes (and slightly greater than the footprint of the homes), but more than likely not the full 20 acres. It is possible in this case that neither the subdivision nor the lots would be required to get a permit because the ultimate disturbance for completion of the entire subdivision would not be over an acre. In this situation it may be difficult to determine ahead of time what the exact disturbance would be for completion of the common plan. It should not be hard to estimate.

#### 2.1.2.b.

Comments by USWAC: You must install sediment controls along those perimeter areas of your site that will receive storm water runoff/discharge from earth disturbing activities.

DWQ Response: DWQ disagrees. Almost every time you make a hard and fast rule there are times when it does not fit. Many permittees seem to think that silt fence must be applied everywhere. Non-structural controls are often better and don't have to be installed if they can be preserved on the site. DWQ is interested in the protection of water quality, not prescribed rules that must be adhered to even where they don't bring about protection of water quality. DWQ agrees that there are times when it seems prescribed rules are necessary to ensure that the right thing gets done, however, it is DWQ's experience for this paragraph that there are significant times when conditions are present where a perimeter control would not have to be or should not be deployed. DWQ does not support waste or what could be called a "cosmetic" deployment of BMPs. DWQ supports effective use and placement of BMPs. In DWQ's eyes it could be possible for a site to deploy many BMPs ineffectively where they would be just as much out of compliance as a site that had no BMPs.

#### 2.1.2.b.i.

Comment by Paul Taylor: Footnote 4 gives examples of perimeter control BMPs. All the examples are structural BMPs. It might be good to list one or two non-structural options like buffer zones, controlling site access, etc.

Comments by Bill Young: ...add vegetative buffer to this list. The notes imply that only structural BMP's are allowed. Please make reference to non-structural BMP's as being acceptable as well.

DWQ Response: DWQ has added a few more examples of perimeter controls.

#### 2.1.2.b.ii.

Comments by USWAC: Commenter 1 "...remove sediment before it has accumulated to maximum ½..." Many BMPs have different designs/specs. This section would be better if it required them to "add or meet the BMP requirements", or not be restrictive. It seems we are dictating ways and means here, which is best left to each site/program/design.

Commenter 2 ...very helpful if there was a baseline for removal

Comments by Tom Beesley: On a marked up copy of the public noticed CGP Tom circled "one-half" and wrote in "...or as necessary for effectiveness or per BMP specifications." He also said, "Be careful not to dictate ways and means."

Comments by Bill Young: ...add "or per manufacturer recommendations"

DWQ Response: The paragraph was changed to reflect the suggestions of the comments.

#### 2.1.2.c.ii.(footnote)

Comment by USWAC: ...recommend adding paving or chemical stabilization as examples of acceptable stabilizing techniques.

DWQ Response: DWQ believes that using paving (assuming asphalt or concrete) is obvious and not temporary. The problem comes before the permanent paving is installed. DWQ is not familiar with stabilizing track out areas using chemicals. Because of this DWQ is hesitant to suggest chemicals for this use.

#### 2.1.2.c.iv.

Comments by Paul Taylor: Here is another example of a time frame dictated in the permit that might best be assessed by the inspector. The permit allows the deficiency to be corrected by the end of the day or the end of the next working day if it occurs on a non-working day (how do you get track out on a non-working day?) In some cases waiting until the end of the day might cause issues. The inspector ought to be able to “cease and desist” if there is a major problem.

Comments by Tom Beesley: Why not make it simple and more effective...Remove any accumulated sediment at the end of each day or before a storm event or wet conditions whichever comes first.

Comments by Bill Young: ...remove the reference to non-working day. If track out occurs on a non-working day, it implies that there is work being performed thus not a “non-working” day.

DWQ Response: DWQ changed the paragraph to say, “you must remove deposited sediment before it accumulates significantly and is tracked beyond the immediate vicinity of the project (that may be several times a day or once a week, whatever that is required to control off site tracking).

#### 2.1.2.d. including the Note

Comments by Bill Young: Stockpiling – if material is hauled to another site for temporary storage, will that site need to be protected under the NOI, included in the SWPPP, and inspected as part of the project?

The note defines stockpiles as the storage for multiple days. This is too vague. Please define it.

DWQ Response: DWQ supposes that if another site is used for temporary storage of a stockpile it must fit the criteria in 1.3.3. A base station or complex for a construction company does not fit that criteria. It is possible a borrow/fill site would fit that criteria. If the off-site area and its related activity fits the criteria in 1.3.3, then the related construction activity that is off-site would have to be included in the SWPPP for the project site.

The note was expanded slightly to provide a more thorough understanding of how to view piles of dirt under the compliance requirements of the permit.

#### 2.1.2.d.i

Comments by USWAC: Please clarify why piles must be separated from other storm water controls implemented with 2.1? This seems to unnecessarily hamper BMP design.

DWQ Response: DWQ modified the paragraph to better explain the intent. The intent is to keep the stockpiles away from protected inlets, from within the required buffer zone adjacent to a water body, within perimeter controls but separated somewhat from them (to not have stockpiles positioned close to, such as, a silt fence used for a perimeter control). The reason is that stockpiles have the potential during precipitation events to cause heavier transport of sediment than many BMPs can handle.

Therefore if there is space somewhere on the site that allows a stockpile to be separated, then during a precipitation event if sediment transport occurs from the pile, the material transported off the stockpile has area to spread and attenuate before it encounters surrounding BMPs. This gives the surrounding BMPs a better chance to handle the heavier load.

#### 2.1.2.d.iii.

Comments by Bill Young: The reference to “practicable” is too vague. Does practicality apply to the amount stored (too little to cover or too large to cover?), does it apply to the cost to cover it, or does it apply to the amount of time the material is anticipated to remain onsite? As an operator, it could be argued that it is always impractical.

DWQ Response: A note has been added after the paragraph to further explain what is expected.

#### 2.1.2.d.v.

Comments by Bill Young: The reference to “infeasible” in this section seems in conflict with the definition in Appendix A.

DWQ Response: The paragraph has been modified. “Infeasible” has been replaced with “Where practicable”. This change does not mean that the importance of this issue should be diminished, but the oversight for this issue is from a different agency. DWQ supports DAQ, but DWQ’s primary focus is water quality. Provisions in the CGP must not divert the focus of DWQ inspectors from a water quality focus. DWQ inspectors can notify DAQ if air quality compliance is a problem at the site, but DWQ does not wish to divert many resources to protecting air quality. Also, added to the paragraph is more explanation on how the permittee can address the issue. There is no requirement in municipal UPDES SW permits to compel MS4s to enforce DAQ laws.

#### 2.1.2.f.

Comments by Paul Taylor: This paragraph seems to go too far. There are projects where the existing topsoil may not be adequate and new topsoil needs to be imported. This option does not appear to meet the requirements/exceptions listed. The permit should not dictate means and methods but only desired results. Preserving top soil is not the only method for providing topsoil adequate to reestablish vegetation.

Comments by Dean Ayala: The requirement that topsoil is to be preserved on “all sites” should be removed or revised. There are some projects where the intent of the project is to remove top soil due to project requirements.

Comments by Todd Christensen: Section 2.1.2.f. requires preservation of natural topsoil at the site. This requirement goes too far. Although it may be a good idea for some sites, it does little or nothing to protect the receiving waters.

DWQ Response: The requirement to preserve topsoil is also found in 40 CFR 450.21.a(7) (“Minimize soil compaction and, unless infeasible, preserve topsoil”). Because of the reference in 40 CFR 450.21 DWQ is obligated to leave the paragraph in, but it is written into the CGP with enough latitude and explanation surrounding it that DWQ can and will enforce only sound practices in relation to the objectives of a project.

#### 2.1.2.g.

Comments by USWAC: “...minimizing soil compaction is not required where the intended function of the area of the site dictates that it be compacted”. It seems this statement would better fit as a subsection g.iii.

Comments by Paul Taylor: This paragraph seems to go too far. There are some cases where soil compaction may be a desirable BMP. Some soils are less susceptible to erosion if they are compacted. Soil that is compacted can be loosened or scarified as part of the soil preparation process before reseeding. Although in many cases this BMP may be a great BMP it is not always the best way to do things and it should not be dictated by the permit.

Comments by Dean Ayala: The requirement that soil compaction is to be minimized on “all sites” should be removed or revised. There are some projects where soil compaction is necessary.

Comments by Todd Christensen: Section 2.1.2.g. requires minimizing soil compaction. This requirement also goes too far. This requirement does nothing to protect the receiving waters, and may actually add more risk to the receiving waters in cases where it would be appropriate to use compaction as a measure to minimize soil erosion.

DWQ Response: Minimizing compaction for construction and development is a federal law found in 40 CFR 450.21.a(7) (see the DWQ response to 2.1.2.f., above). As such, DWQ is obligated to retain this paragraph in the CGP. It is the opinion of DWQ that this is an example of having over prescriptive laws. DWQ has commented to the EPA about this problem already in this document. The intent for this law is good, but DWQ believes that it was not fully vetted before it was implemented. Also, it is regulation of an obvious concept that seems unnecessary for intelligent people. The paragraph in the CGP (taken from the EPA CGP) elaborates on what is clearly obvious about where you would not want to compact soil. It is Utah DWQ’s opinion that the more prescriptive storm water laws become for construction activity the more this kind of problem will arise, and the further regulations will wander from its objectives. Utah DWQ has suggested to the EPA that a better way to regulate is to require trained and qualified people to do the design, implementation, and oversight of storm water construction activity. If the EPA promulgated regulations for long term storm water management as they have suggested they would, this provision of the law would not be necessary.

Although the paragraph in the permit is written to allow for project objectives, the law does not allow compaction of soil (albeit it may only be temporary) to be used as a preventative measure for erosion.  
2.1.2.h.ii.

Comments by USWAC: Removing any accumulation of sediment may actually lead to the accelerated degradation of a BMP over time. See comments on 2.1.2.b.ii (or accessing a slope, etc. to install/maintain/remove BMPs may deteriorate the slope).

Comments by Tom Beesley: What if inspections are only performed once a month. Why not say “often enough to be effective”. Maintenance should not be dependent on the formal waiting on inspection report if we want SWPPPs to be effective.

DWQ Response: The paragraph has been changed to say, “Clean, or remove and replace, storm water protection measures as sediment accumulates, the filter becomes clogged, and/or performance is compromised. Inlet protection measures should be maintained in effective working conditions at all times, but particular attention must be given to prepare measures for a forecasted precipitation event.  
2.1.3.b.i.1.

Comments by Weber County: 2.1.3.a.i [DWQ assumes the reference should be 2.1.3.b.i.1] Talks about drainage requirements and makes reference to Appendix H and Appendix H is just the NOI and adds no new information to the design requirements. Please clarify this reference.

Comments by Paul Taylor: I believe this should be Appendix F

Comments by Tom Beesley: should be F

Comments by Dean Ayala: The previous General Permit listed the 10-year, 24-hour storm sedimentation basin volume as 3,600 cubic Feet. This General Permit lists the 2-year, 24-hour storm sedimentation basin volume as 3,600 cubic feet. Clarify freeboard requirements for sedimentation basins.

DWQ Response: Thank you for pointing out the reference to the incorrect Appendix.

In response to Dean Ayala, neither the earlier permit nor the later permit equated a 10-year, 24-hour; or a 2-year, 24-hour storm event to a sediment basin holding 3,600 cubic feet per acre drained. The choice was to either design for the specified storm event or design for a one inch storm event. A basin designed for holding 3,600 cubic feet per acre is nearly equivalent to a one inch storm event (actually 3,630 cubic feet is exactly a one inch storm event, 3,600 cubic feet is equal to a 0.992 inch storm event). The EPA initiated this storm water basin requirement for a sediment basin several years ago. They have never established freeboard requirements for storm water basins in storm water permits. The suspected reason is that storm water containments come in all sizes and places. Some may be very small (relatively speaking). Two feet is a common freeboard requirement for a large basin, but this is tied to other safety and integrity requirements and factors related to construction of a pond dyke (e.g., compaction, construction material, basin depth, pore pressure, and etc.). The need for detailed and thorough engineering on a pond is commensurate with the risk the permittee is taking deploying a pond. Factors that affect risk are location, lay, setting, size, and etc. Inherent in these factors is the potential for damage to life, property, or environment surrounding the pond in the event of a failure of the dyke. The permittee must understand the liability of basins. Neither the EPA nor DWQ has established regulations to control this kind of liability for the permittee. So far it seems it has been handled well enough by permittees and local oversight agencies. As of now, since there are no design standards for ponds (other than sizing), the entire liability for use of a storm water pond on a construction site is on the permittee for safety and integrity.

#### 2.1.3.b.i.2.

Comments by UDOT: Should floatable pollutants be included also? Suggested wording: "...in order to minimize the discharge of sediment and floatable pollutants, unless infeasible..."

DWQ Response: Thank you. Your suggestion is more definitive and has been incorporated into the permit.

#### 2.1.3.b.ii.

Comments by Bill Young: Text change- to require removal of sediments when the basin is ½ full. The current text implies that the basin needs only to be maintained at ½ full.

DWQ Response: DWQ has incorporated the concept of your comment into the text of the permit.

#### 2.1.3.c.

Comments by USWAC: Section c use of treatment chemicals, part vi and viii. There seems to be a reference needed for training on SPCC plans and perhaps partly added to the SWPPP. Page 37 training requirements do not reference them.

Comments by Jerimie Thorne: Use of Treatment Chemicals "must be approved by DWQ" in all cases"

Clarify and specify the approval process required by the DWQ, including contact personnel and required submittals.

Comments by Bill Young: Is the use of hydroseeding with tackifiers allowed without authorization from DWQ? Please revise to allow the local MS4 to authorize the use of treatment chemicals in the application of hydroseed and tackifiers. Change the text to require approval from the DWQ for the use of flocculants. Consider a separate permit for the use of use of specific chemicals identified by DWQ.

DWQ Response: The SPCC program is pretty much reserved for oils. This does not necessarily mean petroleum products, but all oils like animal fats, vegetable oils, etc. I am not sure that SPCC is a program

that would assist in the control of treatment chemicals, unless they would be classified as oils. It would be helpful for permittees to be familiar with the SPCC program and requirements, but not necessarily for handling and storing treatment chemicals. There are references to the SPCC program in section 7.2.11. of the permit.

In response to Jerimie Thorne and Bill Young, DWQs intent was to closely regulate cationic polymers and flocculants. Tackifiers, the chemicals in hydromulch , and other commonly used chemicals have been around and used in Utah long enough so that there is more information and experience about proper use and application. Cationic polymers and flocculants used in the treatment for control of sediment at construction sites has never been used in Utah as far as DWQ is aware. There is a potential for improper application which could result in fish kills if the chemicals are ever used in Utah. DWQ desires to prevent that scenario. For that reason the paragraph was changed to focus special DWQ controls on cationic polymers and flocculants and not other treatment chemicals that may be used on a construction site.

Concerning the approval process details, DWQ believes that the cases where DWQ will be involved in the review and approval for use of cationic polymers and flocculants will be infrequent enough that the exact step-by-step procedure of the approval process is not necessary to spell out at this time, and the person over this process would obviously be the construction storm water coordinator at DWQ.

#### 2.1.3.d.

Comments by USWAC: See comments on Section 1.3.4 (Please also clarify how j is different from l, and how this section correlates to 2.1.3.d)

DWQ Response: Water that has not been disturbed (e.g. with traffic through, construction activity in), generally has better quality. The Construction Dewatering/Hydrostatic Test permit is for water that has been heavily soiled from activities where there is water. It does not have to be ground water, it can be storm water that is heavily soiled. The Construction Dewatering permit does not rely on BMPs, it has numeric effluent limitations. This is the best way to handle heavily soiled water. It requires special treatment. It is the objective under a storm water permit that the permittee can avoid causing heavily soiled water by using BMPs. If storm water or any water becomes heavily soiled it requires treatment and numeric effluent limits are appropriate. A discharge as described in 1.3.4.j. is not necessarily soiled with construction activity.

#### 2.2.

Comments by Paul Taylor: A reference is made to annual rainfall of over 20 inches. Is this meant to be strictly rainfall or should it be changed to precipitation?

Comments by Tom Beesley: Tom Beesley circled "rainfall" and said, "Precipitation – what about snow?"

DWQ Response: The permit has been modified to say precipitation.

#### 2.2.1.b.i.

Comments by USWAC: Section 2.2.1.b.i. .."all activities" phrase, then goes on to say initially seed. This is not what you are trying to say, should be worded different to reference note 11 on that page.

Comments by Bill Young: The section, as written, does not require any actual seeding. It only requires the operator to complete all activities necessary to seed. Suggest using the text in section 2.2.3.a and b.

DWQ Response: DWQ does not agree with the comments. What is said in 2.2.1.b.i. is what is intended to be said. The note after the paragraph has been changed to help people understand the stages and

times in the process. “All activities necessary “to initially seed clearly includes seeding. It does not say all activities necessary in preparation to seed.

#### 2.2.2.a.ii.

Comments by Bill Young: The section, as written, does not require any actual seeding. It only requires the operator to complete all activities necessary to seed. Suggest using the text in section 2.2.3.a and b.

DWQ Response: See Response above (for 2.2.1.b.i.).

#### 2.2.4.(Note)

Comments by USWAC: Commenter 1: We think this should be removed. Commenter 2: I disagree, leave the notes.

DWQ Response: DWQ agrees that the note is not clear and not helpful. It has been removed.

#### 2.2.5. Note

Comments by Paul Taylor: The note associated with this paragraph seems to be cumbersome. It is three or four times larger than the paragraph itself. Maybe portions of this note should be added to the main body of the text rather than having a lengthy narrative that downplays the important aspects contained because they are “notes” not requirements.

DWQ Response: DWQ agrees. The note has been pared down to a short explanation about how this permit is changing course to try to better address stabilization in arid areas.

#### 2.2.5.

Comments by USWAC: 3-4 year time frame, how is this determined and when is the NOT complete on this type of permit?

Comments by Dean Ayala: Clarify how sites that take longer to stabilize should be addressed.

DWQ Response: Termination of a site in an arid and semi-arid area is complete when design for stabilization is made with consideration to slope, topsoil, borrow/fill, mulch, fertilizer, seed mix, and retention of establish vegetation is protected from natural weather patterns in the area for the period of time necessary to produce stabilization. This is done with the use of temporary and/or permanent erosion control measures (designed to protect from a reasonable potential of storm scour). The permit has been modified to make it more clear.

#### 2.2.5.a.ii.

Comments by Colleen Rathbone: Part 2.2.5.a.ii defines criteria for stabilization for sites located in semi-arid or drought stricken areas. We recognize the difficulty in establishing permanent vegetative cover in an environment with less precipitation. However, slow growth rates, a limited depth of top soil, and a slow rate of organic matter regeneration in arid climates necessitates an increased importance of managing vegetative cover. In lieu of circumventing permanent cover growth requirements, we encourage DEQ to develop vegetative management practices which can enhance vegetative growth in an arid climate such as topsoil retention, selective grading, and retention of native borrow material on-site.

DWQ Response: Even with selective grading, topsoil retention, and the use of indigenous fill/borrow material; growth rates are still longer than what is reasonable to hold construction in abeyance with an active permit in arid and semi-arid areas. Up to now DWQ has held up terminations on permits in semi-arid areas up to a year. There is a significant difference in the growth rate and the growth rate is longer for arid areas compared to semi-arid areas. DWQ has modified the paragraph to allow termination with



seeding planting and temporary surface protection, and a requirement for the owner address erosion if erosion occurs significantly before 3 years is over.

2.3.

Comments by Bill Young: Incorrect reference to Part 1.3.c. change the reference to 1.3.3.c. (Please verify).

DWQ Response: Thank you for the notification. The proper reference is 1.3.3., and it has been changed.

2.3.1.

Comments by USWAC: We feel this should be removed, and are conflicted with non-discharge, allowable discharge wording. Why have any exceptions mentioned? It will confuse people into thinking they can discharge these things, in most cases, they cannot. For instance: sanitary waste is not mentioned here.

Will sanitary be listed as item f? Then, are we missing other items, but if not listed as not- allowable, then they are allowable?

Comments by Paul Taylor: There is potential danger in listed prohibited discharges. If you don't include everything that is prohibited you might be allowing undesirable discharges by implication. If you leave this paragraph in I recommend that you consider including sanitary waste as a separate item. It could be included as a toxic or hazardous substance, but there is wording that specifically addresses sanitary waste later and it would be more clear to explicitly include it as a prohibited discharge.

Comments by Bill Young: Remove this list of Prohibited Discharges, it conflicts with a list of allowable non-stormwater discharges listed in section 1. It could be implied that if it is not listed as a prohibited discharge, then it would be allowed

Comments by Dean Ayala: A statement should be included with the prohibited discharges stating that the list is not comprehensive. Include a statement that the prohibited items include the items listed, but are not limited to the items listed.

Comments by Todd Christensen: I suggest removing section 2.3.1 on prohibited discharges. Section 1.3 lists allowed discharges, effectively indicating that other discharges are not allowed. Then, section 2.3.1 lists prohibited discharges which adds confusion...like the implication that if a type of discharge is not listed as prohibited then it is allowed.

DWQ Response: DWQ has become aware from the many comments about the problem with the paragraph, however, the listed discharges have a significant potential to happen at a construction site. They are listed because of their common occurrence and to make it clear to all that they are not acceptable. A statement has been added to the permit that this list for that reason and it is not a comprehensive list of prohibited discharges

2.3.2.a.ii.

Comments by USWAC: "7 calendar day, infeasible, etc" see note. Further reasoning is that many BMPs need quicker quicker times to prevent pollution, next day even. Let the inspector decide this; "or as directed by the inspector".

Comments by Bill Young: include "or as directed by the director".

Comments by Weber County: The language should be reviewed. It looks like if the inspector wants something done asap, that the operator can legally drag it out to 7 days regardless of an approaching storm or something making the repair more urgent than 7 days.

DWQ Response: The language of the paragraph has been changed adding, "...or as directed by the DWQ, MS4, or EPA oversight inspector."

2.3.3.a.iii.

Comments by USWAC: add "or equivalent measures"

DWQ Response: The passage provides direction. If equivalent measures are comparable DWQ feels it will be evident and will be allowed.

2.3.3.b.ii.2.

Comments by USWAC: add "such as tightly closed containers"

DWQ Response: The suggested phrase has been added to the citation.

2.3.3.c.iv. (footnote)

Comments by USWAC: Add the word "waste" to paints, solvents, etc. It is important to be able to distinguish "waste" under iv from "product" covered under I.

DWQ Response: The suggested change has been made.

2.3.3.c.vi.

Comments by SWAC: porta potties should be at least 10 feet from any conveyance of stormwater; inlets curbs gutters, etc. Or have a clear containment plan for tip overs and the like.

Comments by Paul Taylor: I think it is appropriate to provide a minimum distance from water conveyance systems for sanitary waste facilities. Quite often these are placed in the park strip right behind the curb and gutter so when we have extreme winds that are too strong for the anchoring system or when vandals tip them over they end up draining into the gutter. I recommend 7 to 10 feet minimum

Comments by Tom Beesley: Tom Beesley wrote, "Also a sufficient distance away from conveyance system or in secondary containment."

Comments by Dean Ayala: State that portable toilets should be placed away from catch basins and storm drainage structures.

DWQ Response: The paragraph has been modified to reflect the suggestions made in the comments above.

2.3.3.d.

Comments by Bill Young: Separate concrete disposal from other washout (paints, thinners etc.) and allow concrete washout to occur adjacent to areas where future concrete will be placed or per local ordinance.

DWQ Response: The paragraph has been modified to include the suggestions in the comment above.

2.3.3.d.iii.

Comments by USWAC: d.iii. should go back to the EPA definition, remove the 50 feet.

Comments by Paul Taylor: A minimum distance is given here of 50 feet. This feels like it is too far for some applications. For example, a concrete washout facility in a residential subdivision – if the concrete washout has to be at least 50 feet from the curb and gutter I am opening up the possibility that cement trucks will need to leave a clean paved road and drive across several feet of dirt to washout. Overspray for washing chutes results in mud that gets tracked out into the street. If I locate the washout to be within a chute length of the curb and gutter it is much easier to keep mud from being tracked into the streets.

Comments by Bill Young: Remove the 50 feet limitation and utilize the previous EPA definition.

Comments by Dean Ayala: Change wording to “Locate any washout or cleanout activities at least 50 feet (where practical) from surface waters and storm water inlets, etc.” At times it is not possible to locate a washout 50 feet away from on street drainage structures. If this rule stays the same it would make cement trucks enter the project site and possibly track more mud into the streets.

Comments by Todd Christensen: 2.3.3.d.iii. is ambiguous. Is the requirement intended to limit washout and cleanout activities to at least 50 feet from surface waters and inlets and even farther if practical or is it to limit those activities to 50 feet where practical and possibly further where practical?

DWQ Response: Storm water inlets and conveyances has been removed from the paragraph. Being 50 feet or more from a surface water body is not such a bad idea, but it compromises other aspects of storm water management at a construction site for example, if trucks must travel off paved roads to wash after delivery.

#### 2.3.4.

Comments by USWAC: Section 2.3.4 should include the Local Response team also.

Comments by Bill Young: Include notification of the local hazardous response personnel.

DWQ Response: All the numbers for local health departments or MS4 spill or hazardous waste release reporting numbers were not included in the permit, but the paragraph was modified to require reporting to local agencies.

#### 3.1.

Comments by Paul Taylor: This paragraph includes the sentence, “If at any time you become aware, or DWQ determines, that your discharge is not being controlled as necessary...” This sentence should also recognize the authority of the local MS4 and help the owner/operator respect that authority.

DWQ Response: The paragraph was modified to include, “(or a local inspector representing an MS4)”.

#### 3.2.

Comments by USWAC: the local MS4 needs to be added.

DWQ Response: DWQ does not see the need to have MS4s included in the paragraph. The paragraph does not mention DWQ, it is a discussion of a discharge to an impaired water.

#### 3.2.2.b.

Comments by USWAC: please clarify is this 7 days to initiate then an additional 7 days to complete?

DWQ Response: In sections 3.2.2.b. and 2.2.4 (referred to in section 3.2.2.b.), it says complete stabilization. That means that stabilization must be completed in 7 days.

#### 3.3.2.

Comment by Colleen Rathbone: Parts 1.2.3 and 3.3.2 define additional requirements for new sources which discharge to Category 1 Waters. These require increased inspection frequency and more rapid site stabilization. While these efforts will likely reduce pollutant discharges, we encourage DEQ to continue to develop erosion and sediment control requirements which are more specific and detailed in order to protect the most high quality waters in the state. These could include specifics on vegetative preservation, designs which require enhanced sediment removal efficiency such as those defined in Appendix D (Buffer Guidance), phasing of construction site disturbance, and topsoil/borrow management. These types of activities could be defined over time through the use of public-private-partnerships with construction site managers in an effort to create regionally specific and cost effective approaches which are specifically shown to effectively protect the most high quality waters in the state of Utah.

DWQ Response: Top soil preservation, vegetation preservation, phasing of construction, use of indigenous borrow and borrow/topsoil management, are good concepts that must be used when they can. With the variety of sites, projects, designs, and construction methods, specific BMPs may find use and be effective, and they may not. No matter how effective a BMP is, if it is not suitable for a particular project it cannot be used. DWQ believes that all afore mentioned BMPs are already stressed in the construction storm water program in Utah. As discussed already for the comments to section 1.2.3., DWQ believes that better training, experience, and competence for designers and regulators maybe with a certification or licensing program will cause effective use of BMPs that are suitable for a project. DWQ believes this is a better direction than more talk of good BMPs.

#### 4.1.1.

Comments by USWAC: we want this to be a mandatory requirement, and include they stay currently certified somehow.

Insert blue text into the statement "...limited to the following current qualifications that are subject to MS4 approval:"

Comments by Bill Young: Include that certifications must be current for "qualified person"

DWQ Response: The paragraph was changed to include the requirement to be currently certified. This is a mandatory requirement as it is in the permit. DWQ does not wish to limit qualifications to the listed certifications at this time. Qualifications may be more strict for a specific MS4. DWQ will work with USWAC to refine this as we go along.

#### 4.1.2.

Comment by USWAC: There is a loophole for inspecting, please close the windows for timing here.

DWQ Response: The only loophole that DWQ can deduce from the comment is if a rain event happens after working hours. "During normal business hours" has been removed from the permit. A rain event can happen anytime, the permittee does not need to be present when a rain event occurs. The permittee should know when a rain event causing 0.5 inches of rain occurs. They can do their inspections the next day or on Monday if it rains after hours on Friday.

#### 4.1.4.

Comments by Weber County: Where it talks about frozen conditions and when things start to thaw that inspections need to be resumed. I am not sure in our upper valley locations with a lot of snow on the ground if they will be able to do much of an inspection, or even fix issues if they do see them. I am not sure if this would matter or not.

Comments by USWAC: Thawing in the middle of winter can create huge offsite mud-tracking problems among others. Let the MS4 decide and/or the inspector.

Comments by Todd Christensen: Section 4.1.4. puts so many limits on reducing frequency of inspections for frozen conditions that it would make this reduction rarely-applicable. The duration for expected frozen conditions for three months in c.1) of said section should be changed to one month. This would be much more practical while adequately protecting receiving waters (considering these areas are also required to be stabilized per c.3).

Comments by Dean Ayala: The reduction in inspection frequency requirements should be changed. Very few places in Utah remain frozen continually for at least 3 months. Possibly look at modifying this time frame.

Comments by Bill Young: reduce 3 months to 30 days

DWQ Response: Concerning Weber County, as far as inspections go there is not much one can do if snow is deep. In that light, control measures should be put in place before heavy snow falls. The permit did not address that issue but due to your comments Sections 2.1.2.i. and 2.2.1.c. have been added to the permit addressing higher altitudes and heavy snow areas. The purpose of those sections is to have the permittee anticipate the coming of heavy snow and prepare with control measures that will be put in place before it snows, hence they should be functional when the snow melts.

Concerning USWAC comments, DWQ agrees. When thawing occurs in spring or temporarily in winter there can be huge mud tracking problems. This passage deals with frozen conditions. If thawing is occurring then the permittee is not off the hook for inspections and the passage does not apply. The MS4 and/or the MS4 inspector should make special demands to address the tracking problems. The passage applies to areas with extended frozen conditions. There are places in Utah where that happens. Concerning Todd Christensen, Dean Ayala, and Bill Young, DWQ agrees, the "3 months" criteria in the paragraph has been changed to "1month".

4.1.6.f.iii.

Comments by USWAC: The documenting on the BMP/SWPPP corrective action template (appendix L) may have to be adjusted to include function of BMP, etc.

DWQ Response: After the permit is issued DWQ will modify the SWPPP template to match the requirements in the permit. DWQ is waiting until the permit is final and there are no more changes that will be made to the permit before attempting to modify the template.

4.1.7.a. and b.

Comments by Jerimie Thorne: a. Include the UPDES permit number with the other required items in this section. b. Clarify the division's policy on the acceptability of electronic signatures.

DWQ Response: DWQ agrees the UPDES permit number must be included on an inspection report. The permit is modified to make that requirement.

DWQ does not have a set policy yet for electronic signatures. It has been considered and is still developing. As you know we use a concept involving electronic signatures in the NOI application process. DWQ needs to explore the issue better and find something that works in all cases. There is not a solid national president yet for electronic signatures like there is for handwritten signatures. So far the closest thing you could say about a policy on electronic signatures is if it is acceptable to us (at UPDES) and it is acceptable to you (the permitting public) then a process on an agreement like that could be had.

4.1.7.c.i.

Comments by Tom Beesley: Tom Beesley has indicated that he wants the requirements for electronic inspections to be stronger. He said, "...must be organized the way the SWPPP is organized."

DWQ Response: DWQ does not agree. The inspection report is a different report, it does not lend itself to being parallel with the SWPPP.

4.2.

Comments by USWAC: Section 4.2 Inspections there is concern that photos audio video may not be allowed if it is not specifically added here as part of the inspections, please clarify for us.

Another USWAC member wrote: Must abide by whatever requirements are set forth by the job/contractor, just like PPE, respect the contractor. If added to permit, it must be understood that even if it is written in the permit, per regulations not under contractor's control, they still might not be permitted. Example NSA

Comments by Bill Young: Add a section that states that photographs, video, surveys, measurements, and other forms of documentation are allowed.

Comments by Weber County: "...it talks about samples for compliance. Does the permit talk about the projects that will be required to take samples, or that we are required to take samples.

DWQ Response: DWQ has added a paragraph including activities such as photographing, videoing, surveying, measuring, or other related activities for documenting compliance. DWQ recognized in that paragraph that there are legitimate concerns that would be respected for confidentiality and security.  
5.2.

Comments by Tom Beesley: Tom Beesley has said, "Why not include, 'or as determined by inspector'". Tom Beesley also indicates that the note, where it says, "on the same day" (in reference to correcting a problem), is in conflict with other passages in the permit that give a definitive deadline such as 7-days. 5.2.1. and 2.3.2. say 7-days, which Tom believes will be ineffective many times.

Comments by Todd Christensen: There seems to be a conflict with Sections 5.2.1 and 2.2.1.d.ii relating to corrective actions. Section 5.2.1 allows 7 days for corrective actions – possibly even for minor problems. Section 2.2.1.d.ii may limit corrections to the close of the next working day. I suggest eliminating these altogether and allow the qualified inspector to set an appropriate limit for the corrective actions.

DWQ Response: It is the intent of DWQ to involve MS4s in permit oversight since it is in the MS4 permit that they do oversight, and it gives MS4s control in running their own program. At the same time DWQ wishes to give permittees that same opportunity to control their own destiny to a certain extent and not be dependent on an oversight authority for every step. Often permittees will face decisions without the convenience of having a DWQ or MS4 inspector present to guide them. Permittees must take responsibility for their permits. DWQ and MS4 inspectors are oversight authorities. They can't be present at all times instructing permittees at every turn. DWQ and MS4 inspectors have enforcement authority if a permittee does not perform as required by the permit.

DWQ agrees with the comments concerning the arbitrary and conflicting deadlines (the next working day and the 7-day deadline). DWQ has removed the deadlines and instead has placed a description of what is expected based on urgency or priority. This requires more judgment, but DWQ believes it is clear enough that there should not be many questions about how to act for what is expected.

5.3.

Comments by Paul Taylor: MS4 should be added. MS4s probably have more enforcement actions than DWQ. It is important for the permit to help establish this respect and authority, since the State is the one who established the MS4s as the local governing body.

Comments by Tom Beesley: Tom Beesley wrote, "Or MS4?", after the subtitle for section 5.3.

Comments by Bill Young: Include MS4 inspectors in this paragraph.

DWQ Response: "Or local MS4 inspectors" was added to the paragraph.

5.4.

Comments by Tom Beesley: Tom Beesley wrote, "Also for MS4s inspection reports", and "24-hours" was circled in 5.4.1.

Comments by Bill Young: The section makes it mandatory that a corrective action report log be used. Could this be modified to allow other methods to document deficiencies and corrective action such as inspection report entries, notes on the SWPPP maps, etc.

Comments by Dean Ayala: What is a significant repair to erosion and sediment controls? The time frame to make the needed repairs should be left to the discretion of the inspector.

DWQ Response: In response to Tom Beesley, the CGP is for regulating construction activity, not MS4s. MS4s are regulated in the MS4 permit. MS4s should have detailed and relevant information in their oversight reports. That is another program for MS4s. DWQ assumes the circled "24-hours" is an indication of Tom Beesley's discomfort with another arbitrary deadline. DWQ changed the "24-hours" to "a day or so". DWQ agrees that it is unreasonable to maintain many arbitrary hard and fast deadlines. Oversight should be concerned about the overall attentiveness and responsibility the permittee gives to compliance, and not be trying to "nickel and dime" the contractor for minor insignificant infractions of deadlines and such.

In response to Bill Young, the permit is modified so that corrective action is tracked by a report, log, inspection report, or other device.

In response to Dean Ayala, this part of the permit is not trying to control the corrective action response time, only to indicate a reasonable time to list a corrective action item. The purpose is, if the corrective action noting and tracking is not done systematically, it is likely it will be forgotten, missed, or overlooked.

#### 5.4.3.

Comments by USWAC: ...please clarify requirements to go back and sign/certify corrective action log every 4 to 6 weeks? [another in SWAC asked] Is there any specified time frame?

Comments by Ryan Dickson: The delegation letters already are implemented to allow field personnel to manage the SWPPP. This new item doesn't seem to fit with compliance efforts. Please advise why this new increased requirement is present. We have a concern about it.

Comments by Jerimie Thorne: clarify the division's policy on the acceptability of electronic signatures.

DWQ Response: Section 5.4.3. was in the EPA CGP and because it was, it was copied into the Utah CGP. It is a redundant step that takes the assurance that all corrective actions are being properly addressed to the highest level in the company. It is not an absolutely necessary step, therefore it has been removed. Oversight inspections usually cover that issue pretty well.

In response to Jerimie Thorne, see the DWQ response for 4.1.7.a. & b.

#### 6.

Comments by Bill Young: Requirements for training documentation varies throughout the permit language. Reference comments to section 7.2.13. Also, refer to section 2.1.3.vi. Recommend requiring all training to be documented. Also, consider combining all training requirements into a single section.

DWQ Response: DWQ feels that the permit addresses training appropriately. Section 7 (the section on the SWPPP requirements) requires documentation in the SWPPP for the training required in Section 6. Section 2 has special training requirements for projects that use treatment chemicals. The permit was modified in Section 7 to require documentation of all relevant training.

#### 7.1.1.

Comments by UDOT: The third note conflicts with page 6, Section 1.4.3.

Comments by Jerimie Thorne: Requirement to develop a SWPPP prior to submitting an NOI.

How does the DWQ verify that the SWPPP that is required has been completed before issuing the NOI? Or is this another mandate lapped upon the enforcing Municipality to figure out after the permit has been issued?

Comments by Paul Taylor: The third note gives March 1, 2014 as the deadline to meet the requirements of the new permit for an “existing” project. Section 1.4.3 gives existing projects 6 months to be updated. 6 months seems more reasonable given we are quite sure when the new permit will go into effect.

Comments by Bill Young: The third note- The mandate to meet the new permit requirements by March 1, 2014, conflicts with section 1.4.3 that allows 6 months to conform.

DWQ Response: The third note after section 7.1.1. has been changed to say existing projects have 6 months to adjust to compliance with this CGP. Thank you for your comments.

In response to Jerimie Thorne, this issue has been in effect since the inception of the construction storm water program. DWQ has the same problem as MS4s in enforcing that the SWPPP is prepared before the NOI is submitted. It does not seem to be a serious problem. For DWQ, if the SWPPP is not effective and at the site, at the commencement of construction activities, the permittee is issued a notice of violation. If the SWPPP was illegally prepared after the NOI submission but before commencement of construction activity, it only hurts the permittee by shortening the time of construction before the permit fee must be paid again. MS4s are required to review the SWPPP before they approved construction activity. The timing of SWPPP preparation (in relation to NOI submittals) is a requirement that DWQ has never enforced on, and as long as the SWPPP is sufficient and present at the commencement of construction activity, DWQ will probably never enforce on SWPPPs that are prepared after the NOI is submitted. There are more important things to worry about. The requirement for the SWPPP to be ready before submission of the NOI is another point to stress the importance of the SWPPP. 7.2.10.b.

Comments by USWAC: ...are tackifiers/soil stabilizers included as treatment chemicals, or does this section only refer to chemicals intended as flocculants?

Comments by Bill Young: See comments to Section 2.1.3.c. Is the use of hydroseeding with tackifiers allowed without authorization from DWQ? Please revise to allow the local MS4 to authorize the use of treatment chemicals in the application of hydroseed and tackifiers. Change the text to require approval from the DWQ for the use of flocculants. Consider a separate permit for the use of specific chemicals identified by DWQ.

DWQ Response: DWQs concern with chemicals was with cationic polymers and/or flocculants. DWQ is okay with the proper use of other chemicals such as tackifiers, soil stabilizers, fertilizers, and other chemicals commonly used in hydroseeding. All chemical applications must be done properly, but DWQs concern is with the chemicals that do not have a track record in Utah, but that do have the potential to cause fish kills. DWQ is referring to cationic polymers and/or flocculants. The section has been changed to say what DWQ originally intended to say.

7.2.13.

Comments by Bill Young: What documentation is required to be included with the SWPPP? If the SWPPP operator is not responsible for subcontractors but must ensure that they are informed of the requirements in the SWPPP, how is this to be documented? How often must personnel be trained? Is there a conflict with section 6?

DWQ Response: The operator can provide written documentation to the subcontractor of what is required and/or make it a contract requirement. It can be an informal training session covering SWPPP requirements pertaining to the subcontractor when the subcontractor is mobilized onto the site. This CGP is shifted from the EPA CGP. The EPA CGP required subcontractors to sign on as co-permittees.



This permit holds the operator and the owner responsible for what goes on at the site (at the request of many stakeholders). DWQ has attempted to make that conversion where the operator takes the responsibility and controls the subcontractors on the site. It may be difficult for the operator to control training for subcontractor crews, and therefore the operator is not required to document training for subcontractors, but they can write contracts that control the activities of subcontractors. Often it is understood or discussed verbally what a subcontractor is expected to do on a site, it is not common to write a special contract for each subcontractor, but it may be necessary in some cases.

Section 6 says nothing about how often crews need to be trained. It speaks to what they must know. If training is required to keep crews at that level of knowledge than reoccurring training must occur as determined by the permittee/operator.

#### 7.2.14.

Comments by USWAC: Section 7.2.14 UIC Class 5 Injection Wells. This should probably be taken out of this permit altogether, same as Endangered species and NHPA. I understand the source idea, but this still mostly is a Groundwater Permit Program, not as much stormwater Permit Program. 7.2.14.iii. conflicts with digging holes and therefore qualifying as needing a UIC class V permit. Also detention basins etc., if permanent, are not just stormwater, UIC class V seems more appropriate then. But not so much on temporary Construction sites.

Comments by Paul Taylor: It seems that this section could and should be reduced to iii. The first two sub paragraphs, French Drains and commercially manufactured chambers have concerns associated with them. French drains are typically much longer than they are deep and seem to contradict the definition of being deeper than the widest surface dimension. Foundation drains around basements can be considered as "French drains". There are literally hundreds of thousands of these in the State. Paragraph ii – why are commercially manufactured below grade units regulated when above ground retention/detention ponds are not? Both serve the same function and both operate in basically the same way. The primary difference is one is on the surface and one has two or three feet of fill over the top. Doesn't the definition in iii cover what needs to be covered?

Comments by Bill Young: Include local codes in this paragraph as well.

Comments by Dean Ayala: These requirements in these sections should be removed. French drains and manufactured detention vaults should not be categorized as Class 5 injection wells. This rule, if implemented, would discourage low impact development.

Comments by Weber County: By definition, French drains don't qualify as injection wells. I would question Section 7.2.14.ii as well.

Comments by Todd Christensen: Section 7.2.14.a.i. refers to "French drains" as underground injection wells. French drains, as the term is commonly used do not meet the definition of underground injection. I suggest that this be removed; everything necessary for this is actually included in 7.2.14.a.iii.

DWQ Response: This section was written by EPA and has been reviewed by the DWQ UIC Class V Well program coordinator. The three subparagraphs are classified as UIC Class V wells. I doubt that construction activity will often use a temporary UIC Class V well to dispose of storm water, but construction activity could install them as part of the permanent drainage system. These wells must be reported to DWQ. There is a form that must be filled out and submitted. There is also a fee when doing so. Reporting this could be the contractor, the owner, or if the site will be sold, the new owner. It is immaterial to DWQ who does this process, but it must be done.

DWQ is not willing to place local related requirements in the permit at this time, but will add language in the permit suggesting that the operator investigate if there are other local requirements

7.2.15.

Comments by Bill Young: Does this only apply to the first surface water to which the project discharges? Many MS4s have TMDL restrictions placed upon them for waters much further downstream than the first surface water where discharge from construction sites occur. Which requirement controls?

DWQ Response: At this point it means the first water body that the permittee discharges to. At some point in the future DWQ will provide information and ways for permittees to discover impaired waters downstream, and how they are impaired. At this point DWQ does not have a convenient way to do that, and therefore it is not expected.

7.2.16.

Comments by USWAC: Appropriate to add 1.2 to Part G.16 as duly authorized individuals may sign SWPPP plans

DWQ Response: DWQ has added 1.2 & 1.3 onto the reference to be more specific as suggested.

7.3.

Comments by Paul Taylor: MS4 should be added to the list in the last sentence of the first paragraph... but may not be withheld from DWQ, Utah DNR, EPA, or local regulating MS4

Comments by Bill Young: Include the MS4 in the allowable CBI listed organizations.

DWQ Response: The list has been changed in the last sentence to include MS4s.

7.4.1.

Comments by UDOT: For clarity, we believe that references to “local” entities should be changed to “the MS4”. Recommended wording is: c. If inspections or investigations by site staff, or by the MS4, state, or federal officials determine that SWPPP modifications are necessary for compliance with this permit; d. Where DWQ, or the EPA, or the MS4 determines it is necessary to impose additional requirements on your discharge, the following must be included in your SWPPP.

Comments by Paul Taylor: The last sentence in this paragraph should be stricken. Dates when activities are scheduled to occur on site make staging and implementation of BMPs make sense. If an inspector can see (by the anticipated schedule) that the contractor is prepping for the next stage it helps to put everything else he is doing into context. If the dates given are not close to what is actually happening it makes it more difficult to understand what is happening on the site, thus making it more difficult to enforce the regulations.

DWQ Response: DWQ made changes to the text similar to suggestions made by UDOT. DWQ removed the last sentence in a. of that paragraph.

7.4.4.

Comments by USWAC: Appendix G, Part G.16.1.3. should be changed to G.16.1.2. to reference “duly authorized” individuals.

DWQ Response: DWQ agrees, G.16.1.2 is a better citation for the person who is identified.

8.

Comments by Paul Taylor: The second paragraph states that, “This changes the status of your NOI from “Active” to “Unconfirmed Termination”. At this point it is acceptable for you to assume you qualify for termination of permit coverage.” This causes problems for the local MS4s. Often a contractor will demobilize at this point. If the MS4 has not yet verified that the site is stabilized a contractor should not

assume they qualify for termination. The final step should be final inspection and stabilization certification from the MS4 or State, whoever has jurisdiction.

DWQ Response: The paragraph has been changed to encourage the permittee to contact the MS4 or the State to do a final inspection.

#### 8.2.2.a. and Appendix M

Comment by Bill Young: Notice of Permit Transfer Requirements could be problematic with regard to title transfer and insurability. The Notice of Permit Transfer form seems vague. There is no requirement for signature of the original owner. Also, the form lacks any additional information as to what portion of the site is being transferred, if it is a partial transfer, new owner contact information, and if a new SWPPP is being developed or if it is covered under the original SWPPP (if original SWPPP, who has operational control and update responsibility), etc.

DWQ Response: The transfer form in Appendix M has been changed to include the information that has been suggested.

#### 8.3., 8.4., and 8.6.

Comments by Bill Young: Local MS4s are not notified when an electronic NOT is filed by an operator and it is difficult for the MS4 to know when and if a project has applied for NOT. Recommend a requirement stating that submitting a NOT is a violation of the permit if the Local authority has not performed and approved a final inspection.

DWQ Response: MS4s are already notified in a report process that must be accessed by the MS4, but now in addition to that the termination requirements have been changed where permittees must submit a paper NOT to the MS4 when they enter an NOT in the online data base system. DWQ will change the online system such that permittees will be able to be printed NOT from the online data base.

#### Appendix A "Common Plan of Development"

Comments by USWAC: Common Plan of Development definition is not defined.

Comment by Paul Taylor: It would be appropriate to include a definition of common plan of development with all the other definitions.

Comment by Bill Young: Include a a definition of a Common Plan of Development.

DWQ Response: DWQ has added a definition for "common plan of development".

#### Appendix A "Owner"

Comment by Paul Taylor: It would be helpful to include a definition for "owner".

Comment by Bill Young: There are several references to owner and owner/operator. Provide a definition of what an owner and owner/operator is and their associated responsibilities.

DWQ Response: The permit has modified the definition for operator and included a place for owner in the definitions to help clarify the terms "owner" and "operator" as used in the permit.

#### Appendix A "Operator"

Comments by USWAC: Owner vs Operator, Definition of responsible party?

Comment by Paul Taylor: The first bullet point talks about having operational control over construction plans and specifications including the ability to make modifications to those plans and specifications. It is not very often that the same individual or company has both operational control over plans and specifications and the ability to modify those plans. Once plans and specifications are stamped the engineer is the only one authorized to modify those plans and specifications and he usually does not have operational control of the plans. It might be easiest to simply remove this bullet point.

DWQ Response: DWQ thinks otherwise. The owner of a parcel of land and a project has control of what happens on a project. Granted, the owner has limitations in the form of requirements and laws that affect his control, but the owner is the only party that can decide on a plan and work towards the realization of that plan. Of course with the limitations on what is possible for the owner, the owner may be required to retain an engineer to change engineering that has been completed and stamped. The owner may have other requirements such as zoning and building approval from a local government. However, ultimately it is the owner that must exert the control to push a project, not the engineer, the local government, or any other entity.

In that sense an owner meets the requirements of an operator. A general contractor is the party that manages the project and has control over what happens on a site, but ultimately the owner directs the general contractor. The owner has ultimate control, and that being the case an owner must be signed on with a general contractor for every permit.

An operator is the party that manages or has control of a project site. As described above, the party that has day by day control of a site is the general contractor, but ultimately the owner controls the contractor. Both are considered operators. The permit definition has been modified somewhat to help clarify this position.

#### Appendix A "Surface Water" and "Receiving Water"

Comments by USWAC: "surface water", typo, 1.34 should be 5.9

Comments by Bill Young: ... reference to UAC R317-8-1.34 should read UAC R317-8-1.59

DWQ Response: The citation has been corrected, thank you.

#### Appendix A "Discharge" and "Discharge Point"

Comments by USWAC: Definitions ; 'Discharge' and 'Discharge Point' need modified definitions

Comments by Bill Young: The term is defined as a discharge of a pollutant. The use of the term discharge in the permit is not always consistent with this definition.

DWQ Response: The definition for discharge has been changed to include a discharge of storm water.

#### Appendix A "Turbidity"

Comment by USWAC: ...definition of turbidity should include units of measurement, i.e. NTUs

DWQ Response: NTUs has been included in the definition for turbidity.

#### Appendix D

Comments by EPA: The buffer guidance in Appendix D contains information which is not appropriate to the state of Utah. In order to reduce paperwork and provide additional clarity, efforts could be made to consolidate certain components of the Appendix D guidance. For example Tables D-2 through D-6 could be consolidated into one table based on one or two different areas of the State (e.g., using the values modeled for New Mexico).

DWQ Response: DWQ has adapted Appendix D to Utah conditions and has deleted all other unrelated information.

#### Appendix G Section 1.1.3

Comments by USWAC: ...should add ..."or Designee" for the signature of elected or agency authorized to do so.

DWQ Response: Under G-16.1.1 the paragraph (and subordinate paragraphs 1.1.3) are concerning signature of an NOI. The designee allowance does not apply to the NOI. The signature of a designee is allowed for "...All reports required by the Permit and other information requested by the Director...".

## Appendix L

Comments by Tom Beesley: Tom Beesley had comments about how to design the example inspection report

DWQ Response: The comments were included along with some of the options that were there initially.

## Appendix M

Comments by Bill Young: See comment for 8.2.2.a.

### OTHER CHANGES MADE TO THE PERMIT NOT PROMPTED BY COMMENTS

1.

Some paragraphs are added to help explain the purposes of the permit.

2.1.2.e.

“to the extent feasible” was removed from this paragraph. Although windblown dust does affect water quality, this issue is regulated by DAQ. The removal of the said phrase allows DWQ to include DAQ into the regulatory process and share the burden for controlling windblown dust. Also included at the end of the paragraph is, “(as required in your air quality permit for those that are required to have air quality permits)”.

2.2.2.

Many changes were made to try to outline the activities that are appropriate and the intensity of protection that is expected for stabilization and/or control of sediment transport in arid and semi-arid areas. It is ineffective to prescribe in a blanket way when weather can vary so greatly. The attempt is to require appropriate BMPs to control sediment transport when weather is likely, but to not waste money when there is little chance weather will affect sites.

2.3.3.a.i.

The paragraph was changed to require secondary containment of all stationary fuel tanks greater than 500 gallons.

**APPENDIX II** Response to Public Notice April 14 to May 14, 2014

Bill Young

Logan City Engineer

290 North 100 West

Logan, Utah 84321

Dear Mr. Young:

Subject:           Comments to the April/May 2014 Public Notice of the UPDES Permit No.  
                          UTRC00000, Construction General Storm Water Permit (CGP)

We received the comments you sent concerning the public noticed CGP, on May 14, 2014. Your comments are very significant. I will list your comments below.

1.1.2.a- Permit coverage is required for disturbance of less than 1-acre if part of a Common Plan of Development. The CGP implies that all construction activity is continuous. There are many cases, such as housing sub-divisions, where there is a substantial amount of time between phases of construction. Recommended text for this situation that was submitted by USWAC to the Division that would allow a site, after being stabilized, to be treated as less than one acre then placing responsibility to the regulatory agency to monitor construction activities and discharges. This was our comment from the initial draft review. In the City's opinion the revised draft CGP still does not adequately address this concern.

2.2.2.b- This paragraph talks about the requirement to initiate seed/planting or other stabilization efforts but does not specifically require this measure be implemented. Please strengthen language to be more specific.

Footnote 13, page 23- Geotextiles is identified as a method of final stabilization. Please add note similar to 2.2.4.a.ii.2 in which the geotextile material is scheduled to degrade/decompose and leave no liter without active maintenance until natural stabilization measures are established.

4.1.6- This section lists requirements for inspection which are not listed on the inspection form found in Appendix L.

7.2.5.c- This section refers to Par 2.1.2.a.i and the reference should be Part 2.1.2.

7.2.15- This requires signatures on the SWPPP Certification to be in accordance with Appendix G, Part G.16.1.2 and 1.3. Section 1.2 only refers to reports requested by the Executive Secretary or an authorized representative. Is the SWPPP considered to be a report or is it a standalone document as indicated by Appendix G.16.1. this should have a separate set of signature requirements similar to Part G.16.1.1 for the NOI.

2.2.4.a.ii.1- Is the owner/operator responsible to keep the NOI open and active (i.e. BMP's, inspections, reports, etc...) during the 3-3.5 years after project completion to ensure vegetation is established? If vegetation does not get established within the specified time fram. Who is responsible to re-establish the vegetation.

Appendix B- This appendix is not referenced any place in the CGP other than the Appendices. How and when is this to be applied to the NOI and SWPPP?

Appendix G.16.1.2- This section indicates that only authorized personnel can submit reports to the Director. This is assumed to include all inspection reports, SWPPP modifications, Amendments, changes, etc. The section allows delegation of authority to other individuals if authorized by owner/operator and the authorization is made in writing and submitted to the director. If additional personnel changes are made, additional delegation letters are trquired. In each case, delegation of authority must be submitted in writing to the Director;

How will local authority verify that proper notification to the Director has been made and accepted by the Division?

Is it the intent of the director to receive all the documents/reports referenced above.

Our discussion with Harry does not reflect the process that is described in the Construction General Permit.

SWPPP Template- The EPA's Template is designed to cover required information from the EPA's Construction General Permit (CGP). Utah DWQ currently references the EPA's SWPPP Template and it is widely used throughout the State to help operators develop SWPPP plans. Utah's CGP has included much of the content of the NPDES permit requirements, but has also instilled additional requirements that are not included in the NPDES SWPPP Template. It is hopeful that the Division will develop a template reflecting UPDES SWPPP requirements that will ensure compliance with Part 7.2 of the UPDES CGP.

DWQ appreciates the effort that was made to improve the CGP. The comments have merit.

Although the permit as it stands is good enough to serve as a regulatory control for storm water from construction sites without the incorporation of your comments, DWQ plans to incorporate many of your comments into the permit. DWQ will issue the CGP as it is on July 1, 2014. It will likely be from 2 to 4

months after the permit goes to public notice again. During the interim, DWQ will work with USWAC to refine and develop plans to address some of the comments that have been pointed out above.

If you have any questions with regards to this matter, please contact Harry Campbell of this office at (801) 536-4391 or by e-mail at [hcampbell@utah.gov](mailto:hcampbell@utah.gov).

#### Email Comments from Glenn Eurick of Kennecott

Glenn Eurick, Kennecott Copper: Rio Tinto Kennecott (Kennecott) manages storm water at operations in Salt Lake and Tooele Counties. It is the intent of this filing to identify a general, overarching issue with the proposed Construction General Permit (CGP) covering storm water discharges from construction-related activities.

In particular, Kennecott requests the Division recognize that the CGP does not apply to construction projects at mine sites since the permit was not developed with mining-related operations in mind. Construction-related activities at mine sites are, instead, covered under the individual UPDES permit for the site or the separate multi-sector general permit (MSGP). To the extent UDWQ imports storm water requirements into individual UPDES permits for mines, those requirements must consider the specific issues governing mine-related disturbance and storm water management.

Response: DWQ will not say that the CGP does not apply to construction projects at mine sites. Both mining activity and construction activity involve excavation and disturbance of soil. In many cases maybe the only distinction between mining activity and construction activity, during the excavation phase of each, is the purpose for the activity. Generally the CGP applies to construction activity and the multi-sector industrial storm water permit applies to industrial activity (including mining activity). The EPA structured it that way because, for the most part, they felt industrial activity is different enough from construction activity that construction activity warrants its own permit to call out the unique mitigating efforts related to construction activity. It is likely the EPA would not have made that distinction if they had been comparing only mining and construction activity. For some reason the EPA grouped mining with other industrial activity and construction by itself. UDWQ adopted the EPA method, because it seems to be a good way to manage permit activities. Using the CGP only for construction activity and the multi-sector permit for mining activity is a program formality and a management tool to focus the correct permit activities.

The main focus of DWQ is the protection of water quality. DWQ may overlook formalities if the protection of water quality is assured. Formalities make DWQs job easier.

For explanation in the beginning of the storm water program, the EPA has explained that in the case of a landfill, initial construction of the landfill site would be construction activity, but after the landfill is constructed and operational, constructing additional landfill cells would be covered under the industrial permit, under the sector for landfill activities.



Is building a parking lot, fuel or water tanks, or a building of some kind strictly construction activity when ultimately the structures are to be used for the mining activity. Generally DWQ looks at the immediate purpose for the excavation activity. Building a parking lot and the like (although ultimately for mining support) is construction activity. Does the EPA landfill example apply for the mining case. The distinction is not crystal clear. That being said, sometimes out of practicality, DWQ will vary from its normal process to allow a different process as long as it does not diminish from the protection of water quality.

Generally the CGP covers construction activity and the Multi-sector Industrial Storm Water Permit covers other industrial activity

