

**STATE OF VERMONT  
AGENCY OF NATURAL RESOURCES  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
NATIONAL POLLUTANT DISCHARGE ELIMINATION  
SYSTEM (NPDES)  
GENERAL PERMIT 3-9020 (2019) FOR STORMWATER  
RUNOFF FROM CONSTRUCTION SITES**

Effective MONTH, DAY, 2019

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## **PART 1: COVERAGE UNDER THIS PERMIT**

### **1.1 Coverage Required**

- A. Coverage under this general permit (also referred to throughout as “this permit”) must be obtained for:
1. Construction activities that result in a total earth disturbance of equal to or greater than one acre of land area;
  2. Construction activities that result in a total earth disturbance of less than one acre that are part of a larger “common plan of development” that will ultimately disturb equal to or greater than one acre of land area. A “common plan of development” is defined in Appendix C;
  3. For construction activities that result in a total earth disturbance of less than one acre, the discharge of stormwater designated by the Secretary or EPA Regional Administrator as needing a stormwater permit under the following provisions:
    - a. 40 C.F.R. § 122.26(a)(9)(i)(C), for a discharge that requires stormwater controls based on wasteload allocations that are part of TMDLs that address the pollutant(s) of concern; or
    - b. 40 C.F.R. § 122.26(a)(9)(i)(D), for a discharge, or category of discharges within a geographic area, that contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the States;
  4. Support activities (such as construction staging areas, material storage areas, excavated material disposal areas and borrow areas) in accordance with Subpart 1.6.
- B. Construction activities or portions of construction activities that have achieved final stabilization as of September 13, 2006 shall not be considered for purposes of determining what constitutes disturbance under a common plan of development that requires coverage under this permit.

### **1.2 Previously Authorized Projects**

- A. Projects Disturbing Equal to or Greater than One Acre
1. Construction Activities Previously Authorized under DEC General Permit 3-9020 (2006) as Amended February 2008:
    - a. All construction activities disturbing equal to or greater than one acre that have received coverage under DEC’s General Permit 3-9020 (2006) as Amended February 2008 as of the effective date of this general permit do not require coverage under this general permit provided their

authorization is not expired and they are in compliance with all terms and conditions of their existing authorization. If the project will continue beyond the expiration date of its authorization to discharge under General Permit 3-9020 (2006) as Amended February 2008, the permittee shall apply for coverage under this general permit at least 60 days prior to the expiration of the authorization.

### **1.3 Determining Permit Requirements**

- A. Prior to applying for permit coverage, a person with proposed construction activities shall answer the questions in Appendix A to determine if the proposed activities constitute:
1. Low risk construction activities: These construction projects are required to prepare and submit a Notice of Intent (NOI), Appendix A form, a topographic map, and site plan, and apply DEC's Low Risk Site Handbook for Erosion Prevention and Sediment Control and the terms and conditions of this permit during construction. DEC considers the Low Risk Site Handbook for Erosion Prevention and Sediment Control to be equivalent to an Erosion Prevention and Sediment Control Plan (EPSC Plan) for projects that qualify as low risk construction activity per a completed Appendix A.
  2. Moderate risk construction activities: These construction projects are required to prepare and submit an NOI, Appendix A form, a topographic map, and a site-specific Erosion Prevention and Sediment Control Plan (EPSC Plan). EPSC Plans shall be reviewed by DEC to ensure compliance with the terms and conditions of this permit prior to the issuance of an authorization to discharge. The EPSC Plan shall be designed in accordance with the Vermont Standards & Specifications for Erosion Prevention & Sediment Control and the terms and conditions of this permit.
  3. Construction activities requiring an individual permit: These construction projects are not eligible for coverage under this permit and must obtain an individual construction permit prior to the commencement of construction activities.

### **1.4 Stormwater and Non-Stormwater Discharges Covered by this Permit**

- A. Subject to compliance with the terms and conditions of this permit, including compliance with the Vermont Water Quality Standards, this permit authorizes:
1. The discharge of stormwater associated with large and small construction activity as defined in Appendix C;
  2. The discharge of stormwater designated by the Secretary as needing a stormwater permit under 40 C.F.R. §122.26(a)(9)(i)(C) or (D);

3. Discharges composed of allowable discharges listed in Subparts 1.4.A.1 and 1.4.A.2 commingled with:
  - a. a discharge authorized by a different National Pollutant Discharge Elimination System (NPDES) permit; or
  - b. a discharge that does not require NPDES permit authorization.
4. The discharge of stormwater associated with support activities (such as equipment staging areas, material storage areas, excavated material disposal areas and borrow areas) within a common plan of development or outside a common plan of development in accordance with Subpart 1.6; provided:
  - a. The support activity is directly related to the construction site required to have permit coverage for stormwater discharges;
  - b. The support activity is not a commercial operation, nor does it serve multiple unrelated construction projects; and
  - c. The support activity does not continue to operate beyond the completion of the construction activity it supports;
5. Stormwater and uncontaminated groundwater from construction dewatering activities managed and controlled by an effective best management practice (BMP) for reducing sediment laden stormwater discharges, and provided the discharge is managed in accordance with the terms and conditions of this permit; and
6. The discharge of stormwater where use of active stormwater treatments, including flocculants, is explicitly included in the EPSC Plan approved under a moderate risk authorization.

## **1.5 Limitations on Coverage**

- A. This permit does not authorize:
  1. Discharges of regulated stormwater runoff from impervious surfaces regulated pursuant to Vermont's stormwater statute (10 V.S.A. § 1264) and DEC's stormwater rules (Chapters 18 and 22 of DEC's Environmental Protection Rules);
  2. Discharges mixed with non-stormwater, except those discharges described in Subpart 1.4.A.3;
  3. Stormwater discharges not associated with construction activity;

4. Non-stormwater discharges, meaning discharges that do not originate from storm events, except those discharges as described in Subparts 1.4.A.3 and 1.4.A.5;
5. Any discharge from a federally owned facility;
6. Stormwater discharges associated with construction activity that are covered under an individual NPDES construction permit or an alternative individual or general NPDES permit that is at least as stringent as the requirements of this general permit;
7. Discharges that the Secretary, prior to authorization under this permit, determines will cause, have the reasonable potential to cause, or contribute to non-compliance with the Vermont Water Quality Standards. Where such a determination is made prior to authorization, the Secretary may determine that an individual construction stormwater permit application is necessary or the Secretary may authorize coverage under this permit for the discharge provided the applicant includes appropriate controls and implementation procedures in an EPSC Plan designed to ensure the discharge is in compliance with water quality standards;
8. Discharges of pollutants of concern to waters for which there is a total maximum daily load (TMDL) established or approved by EPA unless the applicant complies with Subpart 9.1 of this permit;
9. Stormwater discharges from construction activities that are determined to require an individual construction permit in accordance with the risk scoring process in Appendix A of this permit or as determined by the Secretary in accordance with Condition 2 of Appendix D;
10. Discharges from construction activities at or below ordinary highwater mark. These discharges may require stream alteration permit coverage pursuant to Vermont's Stream Alteration Program or a federal Section 404 Army Corps of Engineers permit or both;
11. Discharges from washout of concrete, unless managed by an appropriate control;
12. Discharges from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;
13. Discharges of fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
14. Discharges of soaps or solvents used in vehicle and equipment washing.



## **1.6 Support Activities**

- A. Support activities (such as construction staging areas, material storage areas, excavated material disposal areas and borrow areas) require coverage under this permit, with the exception of an off-site support activity that:
  - 1. Independently involves earth disturbance of less than 1 acre;
  - 2. Does not directly abut the project site; and
  - 3. Is located on a site owned by a party other than the project site owner or any of its affiliates;
  
- B. Support activities, except those identified as not needing permit coverage under Subpart 1.6.A of this permit, involving disturbance of one or more acres of earth and support activities involving disturbance of less than one acre that are part of a common plan of development require coverage under this permit and may obtain coverage as follows:
  - 1. As a part of the same authorization to discharge issued for the construction activity that will utilize the support activities;
  - 2. As an independent authorization separate from the authorization for the construction activity that will utilize the support activities; or
  - 3. As an amendment to an authorization to discharge for the construction activity that will utilize the support activities, with the owner of the land where the support activities will occur added as a co-permittee.

## **1.7 Permitting and Risk Scoring of Phased Projects**

- A. A project or projects within a common plan of development may be permitted in phases under separate NOIs provided that each phase is constructed independently. Phases are considered independent of one another if either of the following applies:
  - 1. Each phase is constructed separately, with no construction of phases occurring simultaneously, such that “final stabilization” as defined in Appendix C is achieved on one phase prior to the commencement of construction activity on a subsequent phase; or
  - 2. Phases do not share a common landowner or a common operator, or
  - 3. The phase is an off-site support activity that does not meet an exception in Subpart 1.6.

- B. When determining the risk category for an independent phase NOI, only the data applicable to that phase needs to be considered.

### **1.8 Qualifying Local Program**

- A. Federal stormwater regulations (40 C.F.R. § 122.44(s)) provide authority for DEC to recognize MS4 construction programs that meet or exceed DEC’s construction program and to incorporate such program(s) by reference in its general permit. In such a case, the local program is considered a “qualifying local program” and construction site operators’ compliance with the local requirements constitutes compliance with DEC’s construction permit requirements. DEC has yet to formally recognize any MS4 community as having a qualifying local construction permitting program. If, and when, DEC designates a qualifying local program, this general permit will be amended in accordance with Appendix D, Subpart 9, of this general permit to reflect that designation.

## **PART 2: AUTHORIZATION FOR DISCHARGES OF STORMWATER FROM LOW RISK CONSTRUCTION ACTIVITIES**

This Part describes the application and public notice requirements for low risk construction activities.

### **2.1 Permit Applicant**

- A. The applicant(s) shall be the landowner(s) and the operator(s). In the case of a municipal, state, or regional transportation or utility project crossing one or more properties, the applicant(s) shall be the municipal, state, or regional transportation or utility authority that controls the project site by ownership, easement, right-of-way, or legal access agreement. For purposes of this permit, “operator” means all parties associated with the construction activity, including sub-contractors, that meet either of the following two criteria:
  - 1. The party has operational control over construction plans and specifications including the ability to make modifications to those plans and specifications; or
  - 2. The party has continuous day-to-day operational control of those activities at a project that are necessary to ensure compliance with the Low Risk Site Handbook for Erosion Prevention and Sediment Control and other permit conditions
- B. An applicant for low risk construction activities shall prepare and submit a complete and accurate Notice of Intent (NOI) and all necessary attachments required by the Secretary. An application for low risk construction activities shall contain, at a minimum, the following:
  - 1. Notice of Intent including:
    - a. Name of applicant(s) and contact information;

- b. Project location information; description of construction activity; estimated projected date of construction commencement and final stabilization; total acreage to be disturbed;
- c. Name(s) of receiving water(s);
- d. Certification of accuracy of information submitted and certification relating to implementation of erosion prevention and sediment control measures in Low Risk Site Handbook for Erosion Prevention and Sediment Control;

- 2. A copy of a completed Appendix A on a form provided by the Secretary showing the risk score for the project;
  - 3. A location map, in the form of a topographic map or aerial image, providing sufficient information to determine the location of the project and the receiving water;
  - 4. A site plan drawn to scale, depicting property boundaries; proposed limits of earth disturbance, and vegetated buffers used in determining the risk score of the construction activity, and all waters of the State; and
  - 5. A check for all applicable application review and administrative processing fees based on the current fee schedule.
- C. If the owner of the construction site obtains coverage under this general permit and the owner is not the sole operator, then all operators shall obtain coverage as co-permittees in accordance with Subpart 7.3 prior to engaging in construction activities.
- D. Any authorization under this general permit shall be binding on every operator of the project, and every operator shall be subject to the enforcement provisions of this general permit, regardless of whether the operator obtained coverage as a co-permittee.

## **2.2 Submitting Notice of Intent and Fee**

- A. An applicant for coverage for low risk construction activities shall submit an NOI, including all of the requirements of Subpart 2.1.A, in electronic format per instructions provided by the Secretary, or, if available, shall submit through an electronic NOI system. If an electronic NOI system is not available, the applicant shall submit the NOI and necessary attachments to the mailing address listed on the Stormwater Program's website.
- B. At the same time that the applicant submits the NOI and necessary attachments, the applicant shall pay the applicable administrative processing and application review fee by submitting a check made out to the "State of Vermont" to the following address:

Vermont Agency of Natural Resources  
Department of Environmental Conservation  
Watershed Management Division  
1 National Life Drive  
Montpelier, Vermont 05620-3522

If an electronic NOI system is available, applicants shall submit all application materials, including applicable fees, through the electronic NOI system. The applicable fee schedule is available on the Stormwater Program's website.

- C. The Secretary reserves the right to return or deny an application that is incomplete or inaccurate or does not meet the requirements of this permit.
- D. The Secretary may require an applicant to submit additional information that the Secretary considers necessary to make a decision on the eligibility for, or the issuance or denial of, an authorization to discharge pursuant to this permit. The Secretary may deny an authorization to discharge pursuant to this permit if the additional information requested is not provided to the Secretary within 60 days of the Secretary's request or if any additional information submitted is inadequate for the Secretary to make a decision on the eligibility for, or the issuance or denial of, an authorization to discharge pursuant to this permit.
- E. A completed NOI and all necessary attachments shall be filed prior to commencement of construction activity. Construction activity shall not commence until an authorization to discharge is issued pursuant to this permit or an individual construction stormwater permit is issued.

### **2.3 Public Notice of NOI and Public Comments**

Public notice for the NOI and all attachments shall comply with the Type 4 public noticing requirements under 10 V.S.A. Chapter 170 and all rules adopted thereunder. Public notice of amendments shall also comply with the public noticing requirements for amendments under 10 V.S.A. Chapter 170 and the rules adopted thereunder.

### **2.4 Authorization to Discharge**

- A. A person who files a complete NOI shall only be authorized to discharge under the terms and conditions of this permit upon receipt of a written authorization to discharge from the Secretary.
- B. An authorization to discharge for a low risk activity shall be valid for a period not to exceed five years.
- C. Each project authorized under this general permit shall be operated and completed in accordance with the corresponding NOI and Appendix A on file with the Stormwater Program, subject to any conditions stated in the authorization. Failure to comply with the NOI and Appendix A, as conditioned by the

authorization, shall be deemed a violation of this permit and subject to enforcement action.

- D. Any changes to a project that are proposed after a permittee receives an authorization must be reviewed under Part 5 of this permit.

## **2.5 Limitations on Concurrent Earth Disturbance for Low Risk Construction Activities**

- A. For low risk construction activities, earth disturbance at any one time is limited to five acres unless a smaller disturbance limit is specified by the applicant in the Appendix A, in which case the smaller limit applies.
- B. For low risk construction activities, all areas of earth disturbance must have temporary or final stabilization within 14 days of the initial disturbance. After this time, disturbed areas must be temporarily or permanently stabilized in advance of any runoff producing event. A runoff producing event is an event that produces runoff from the construction site.
- C. Temporary stabilization is not required if the work is occurring in a self-contained excavation (i.e. no outlet) with a depth of two feet or greater (e.g. house foundation excavation, utility trenches). Areas of a construction site that drain to sediment basins are not considered eligible for this exemption, and the exemption applies only to the excavated area itself.

## **2.6 Requirement to Post a Notice of Your General Permit Coverage**

The permittee shall post a notice, provided by DEC, demonstrating the authorization under this permit (Notice of Authorization). The notice shall be placed near the construction entrance at a location visible to the public. If displaying near the main entrance is infeasible, the notice shall be posted in a local public building such as the town hall or public library. For linear projects, the notice shall be posted at a publicly accessible location near the active part of the construction project (e.g., where a utility project crosses a public road) or, in the event posting in a publicly accessible location near the active part of the project is infeasible, the permittee shall post in a local public building such as the municipal office or public library.

## **PART 3: AUTHORIZATION FOR DISCHARGES OF STORMWATER FROM MODERATE RISK CONSTRUCTION ACTIVITIES**

This Part describes the application and public notice requirements for moderate risk construction activities.

### 3.1 Permit Applicant

- A. The applicant(s) shall be the landowner(s) and the operator(s). In the case of a municipal, state, or regional transportation or utility project crossing one or more properties, the applicant(s) shall be the municipal, state or regional transportation or utility authority that controls the project site by ownership, easement, right-of-way, or legal access agreement. For purposes of this permit, “operator” means all parties associated with the construction activity, including sub-contractors, that meet either of the following two criteria:
1. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
  2. The party has continuous day-to-day operational control of those activities at a project that are necessary to ensure compliance with an Erosion Prevention and Sediment Control Plan (EPSC Plan) for the site or other permit conditions.
- B. An applicant for moderate risk construction activities shall prepare and submit a complete and accurate Notice of Intent (NOI) and all necessary attachments required by the Secretary. An application for moderate risk construction activities shall contain, at a minimum, the following:
1. Notice of Intent including:
    - a. Name of applicant(s) and contact information;
    - b. Project location information; description of construction activity; estimated projected date of construction commencement and final stabilization; total acreage to be disturbed;
    - c. Name(s) of receiving water(s);
    - d. If chosen, the name and contact information of the On-site Plan Coordinator; and
    - e. Certification of accuracy of information submitted
  2. A copy of a completed Appendix A on a form provided by the Secretary showing the risk score for the project;
  3. Project location map, in the form of a topographic map or aerial image, providing sufficient information to determine the location of the project and the receiving water;
  4. A copy of the EPSC Plan prepared in accordance with Part 4 and Appendix B of this permit; and
  5. A check for all applicable application review and administrative processing fees based on the current fee schedule.
- C. If the owner of the construction site obtains coverage under this general permit and the owner is not the operator or is not the sole operator, then all operators

shall obtain coverage as co-permittees in accordance with Subpart 7.3 prior to the commencement of construction activities.

- D. Any authorization under this general permit shall be binding on every operator of the project, and every operator shall be subject to the enforcement provisions of this general permit, regardless of whether the operator obtained coverage as a co-permittee.

### **3.2 Submitting Notice of Intent and Fee**

- A. An applicant for coverage for moderate risk construction activities shall submit an NOI, including all of the requirements of Subpart 3.1.A, in electronic format per instructions provided by the Secretary, or, if available, shall submit through an electronic NOI system. If an electronic NOI system is not available, the applicant shall submit the NOI and necessary attachments to the mailing address listed on the Stormwater Program's website.
- B. At the same time that the applicant submits the NOI and necessary attachments, the applicant shall pay the applicable administrative processing and application review fee by submitting a check made out to the "State of Vermont" to the following address:

Vermont Agency of Natural Resources  
Department of Environmental Conservation  
Watershed Management Division  
1 National Life Drive  
Montpelier, Vermont 05620-3522

If an electronic NOI system is available, applicants shall submit all application materials, including applicable fees, through the electronic NOI system. The applicable fee schedule is available on the Stormwater Program's website.

- C. The Secretary reserves the right to return or deny an application that is incomplete or inaccurate or does not meet the requirements of this permit and The Vermont Standards and Specifications for Erosion Prevention and Sediment Control.
- D. The Secretary may require an applicant to submit additional information that the Secretary considers necessary to make a decision on the eligibility for, or the issuance or denial of, an authorization to discharge pursuant to this permit. The Secretary may deny an authorization to discharge pursuant to this permit if the additional information requested is not provided to the Secretary within 60 days of the Secretary's request or if any additional information submitted is inadequate for the Secretary to make a decision on the eligibility for, or the issuance or denial of, an authorization to discharge pursuant to this permit.
- E. A completed NOI and all necessary attachments shall be filed prior to commencement of construction activity. Construction activity shall not

commence until an authorization to discharge is issued pursuant to this permit or an individual construction stormwater permit is issued.

### **3.3 Public Notice of NOI and Public Comments**

Public notice for the NOI and all attachments shall comply with the Type 4 public noticing requirements under 10 V.S.A. Chapter 170 and all rules adopted thereunder. Public notice of amendments shall also comply with the public noticing requirements for amendments under 10 V.S.A. Chapter 170 and the rules adopted thereunder.

### **3.4 Authorization to Discharge**

- A. A person who files a complete NOI shall only be authorized to discharge under the terms and conditions of this permit upon receipt of a written authorization to discharge from the Secretary.
- B. An authorization to discharge for a moderate risk activity shall be valid for a period of five years.
- C. Each project authorized under this general permit shall be operated and completed in accordance with the corresponding NOI and Appendix A on file with the Stormwater Program, subject to any conditions stated in the authorization. Failure to comply with the NOI and Appendix A, as conditioned by the authorization, shall be deemed a violation of this permit and subject to enforcement action.
- D. Any changes to a project that are proposed after a permittee receives an authorization must be reviewed under Part 5 of this permit.

### **3.5 Limitations on Concurrent Earth Disturbance for Moderate Risk Construction Activities**

- A. For moderate risk construction activities, earth disturbance at any one time is limited to five acres unless a smaller disturbance limit is specified by the applicant in the completion of Appendix A, in which case the smaller limit applies.
- B. For moderate risk construction all areas of earth disturbance must have temporary or final stabilization within 14 days of the initial disturbance. After this time, disturbed areas must be temporarily or permanently stabilized in advance of any runoff producing event. A runoff producing event is an event that produces runoff from the construction site.
- C. Temporary stabilization is not required if the work is occurring in a self-contained excavation (i.e. no outlet) with a depth of two feet or greater (e.g. house foundation excavation, utility trenches). Areas of a construction site that drain to



sediment basins are not considered eligible for this exemption, and the exemption applies only to the excavated area itself.

### **3.6 Requirement to Post a Notice of Your General Permit Coverage**

The permittee shall post a notice, provided by DEC, demonstrating the authorization under this permit (Notice of Authorization). The notice shall be placed near the construction entrance at a location visible to the public. If displaying near the main entrance is infeasible, the notice shall be posted in a local public building such as the town hall or public library. For linear projects, the notice shall be posted at a publicly accessible location near the active part of the construction project (e.g., where a utility project crosses a public road) or, in the event posting in a publicly accessible location near the active part of the project is infeasible, the permittee shall post in a local public building such as the municipal office or public library.

## **PART 4: EROSION PREVENTION AND SEDIMENT CONTROL PLANS FOR MODERATE RISK CONSTRUCTION ACTIVITIES; ON-SITE PLAN COORDINATORS; WINTER CONSTRUCTION FOR MODERATE RISK CONSTRUCTION ACTIVITIES; RECORD KEEPING FOR MODERATE RISK CONSTRUCTION ACTIVITIES**

This Part, applicable to moderate risk construction activities, describes the required EPSC Plan, the required On-Site Plan Coordinator (OSPC), the record keeping requirements, and the winter construction period requirements.

### **4.1 Erosion Prevention and Sediment Control (EPSC) Plan**

- A. An EPSC Plan shall be prepared and submitted with the NOI for a moderate risk construction activity.
- B. A permittee is responsible for selecting, installing, and implementing erosion prevention and sediment control best management practices in accordance with the requirements of this permit.
- C. The EPSC Plan shall be developed in conformance with The Vermont Standards and Specifications for Erosion Prevention and Sediment Control and shall contain, at a minimum, the items listed in Appendix B of this permit. The use of EPSC practices that are different from, or not included in, The Vermont Standards and Specifications for Erosion Prevention and Sediment Control, shall be evaluated by the Secretary on a case-by-case basis before the issuance or denial of an authorization to discharge under this permit.
- D. The EPSC Plan shall be amended and updated in accordance with Part 5 and Subpart 6.4 of this permit.

- E. A permittee shall implement the EPSC Plan as written, including all amendments or revisions made pursuant to Part 5 or Subpart 6.4, from the commencement of construction activity until final stabilization is complete.
- F. Each project involving moderate risk construction activity shall be operated and completed in accordance with the corresponding EPSC Plan and all amendments or revisions thereto.
- G. The permittee is responsible for ensuring that each contractor involved in construction activity is familiar with the terms and conditions of the EPSC Plan and that each contractor's activities are carried out in accordance with the EPSC Plan.

#### **4.2 On-Site Plan Coordinator (OSPC)**

- A. The permittee shall designate a person as the On-Site Plan Coordinator (OSPC) who shall be directly responsible for on-site implementation of the EPSC Plan. The OSPC does not have to be the permit applicant. Such person shall be knowledgeable in the principles and practice of erosion prevention and sediment control and possess the skills to assess conditions at the construction site that could impact stormwater quality and the effectiveness of all erosion prevention and sediment control measures selected to control the quality of stormwater discharges from the construction activity.
- B. The OSPC shall have the authority to stop or modify construction activities as necessary to comply with the EPSC Plan and the terms and conditions of this permit and shall be responsible for inspections and record keeping. The OSPC or his/her designee shall be on-site on a daily basis during active construction to oversee implementation of the EPSC Plan and to monitor its effectiveness. The EPSC Plan shall include the OSPC site inspection schedule.
- C. The name and daytime telephone number of the OSPC shall be provided on the NOI or shall be filed in writing with DEC before the start of construction if the OSPC has not been selected at the time the NOI is filed.

#### **4.3 Winter Construction**

- A. If a permittee plans to undertake construction activities during the winter construction period (October 15 – April 15), the NOI shall specify that winter construction is planned and the EPSC Plan shall identify erosion prevention and sediment control measures for use during the winter season consistent with The Vermont Standards and Specifications for Erosion Prevention and Sediment Control. If the EPSC Plan does not identify erosion prevention and sediment control measures for use during the winter construction period at the time of application and the permittee subsequently plans to undertake construction activities during the winter construction period, the permittee shall revise the EPSC Plan prior to performing any construction activities during the winter

construction period. The EPSC Plan revision shall specifically identify winter season erosion prevention and sediment control measures to be used consistent with The Vermont Standards and Specifications for Erosion Prevention and Sediment Control. If the permittee did not specify winter construction activity in their application, they shall file a Notice of Winter Construction form with the Stormwater Program. The form is available at the Stormwater Program web page. The Notice of Winter Construction shall be made a part of the EPSC Plan.

#### **4.4 Record Keeping**

- A. The following records shall be maintained on-site with the authorized EPSC Plan:
  - 1. Inspection reports prepared pursuant to Subpart 6.2.G;
  - 2. Discharge Reports prepared pursuant to Subpart 6.3;
  - 3. Any Notice of Winter Construction in accordance with Subpart 4.3;
  - 4. Any reports of releases of reportable quantities of oils or hazardous substances in accordance with Condition 7 of Appendix D;
  - 5. Notices of Addition or Removal of Co-Permittees submitted to the Secretary in accordance with Subpart 7.3;
  - 6. Any Notices of Termination for portions of an on-going construction project in accordance with Subpart 7.4; and
  - 7. Any amendments or revisions to the EPSC Plan required by this permit.

#### **4.5 Availability of Documentation On-Site**

- A. A copy of the authorized EPSC Plan and all other required items described in Subpart 4.4 of this permit shall be kept on-site during normal working hours from the date of commencement of construction activities to the date of final stabilization.
- B. The On-site Plan Coordinator (OSPC) shall maintain a copy of the EPSC Plan and all revisions made in accordance with Part 5 of this permit at a central location on-site for the use of all those identified as having responsibilities under the EPSC Plan whenever they are on the construction site. If an on-site location is unavailable to store the EPSC Plan when no personnel are present, notice of the plan's location shall be posted near the main entrance to the construction site.
- C. EPSC Plans and all items described in Subpart 4.4 of this permit shall be made available upon request by DEC representatives. The copy of the EPSC Plan and all items described in Subpart 4.4 required to be kept on-site or locally available shall be made available, in their entirety, to DEC representatives for review and copying at the time of an on-site inspection by such representatives.

## **PART 5: PROJECT CHANGES FOR LOW-RISK AND MODERATE RISK PROJECTS**

Any change that results in any of the conditions listed below requires amendment to the existing authorization. Changes not listed below require revision to the EPSC plan, which must be maintained on-site and up to date and reflective of on-site conditions. The permittee shall submit an application to amend its existing authorization under this permit or an individual permit in advance of any change that:

1. Increases the total or concurrent earth disturbance;
2. Shifts the limits of disturbance more than 200 feet from previously authorized limits of disturbance;
3. Decreases the effectiveness or length of vegetated buffers between the construction site and the receiving waters such that the risk score calculated in the Appendix A increases; or
4. Increases the slope or erodibility of soils within the limits of disturbance, such that the risk score calculated in the Appendix A increases.

Proposed changes subject to amendment are not authorized until an amended authorization to discharge is issued by the Secretary. Previously authorized construction activities may continue before an amended authorization to discharge is issued.

Use of interchangeable practices found in the Low Risk Site Handbook for Erosion Prevention and Sediment Control or the Vermont Standards and Specifications for Erosion Prevention and Sediment Control do not constitute a change that requires an amendment.

## **PART 6: INSPECTIONS, MAINTENANCE, CORRECTIVE ACTION, RECORD KEEPING, AND SAMPLING REQUIREMENTS**

This Part describes the permittee's responsibility to conduct inspections, sample discharges, and take corrective actions necessary to ensure compliance with this permit.

### **6.1 Inspections, Maintenance, Corrective Action, Record Keeping, and Reporting Requirements for Low Risk Projects**

- A. A permittee is responsible for inspecting and maintaining erosion prevention and sediment control measures in accordance with the requirements of this permit.
- B. Inspections and the maintenance of EPSC practices for low risk construction activities shall be conducted in accordance with the Low Risk Site Handbook for Erosion Prevention and Sediment Control.
- C. Inspections shall be conducted at least once every seven calendar days and as necessary to comply with the requirements of Subpart 6.1.

- D. During the winter construction period (October 15 through April 15), daily inspections shall be conducted of areas that have been disturbed and are not yet finally stabilized.
- E. If the entire site is temporarily stabilized, the inspection frequency may be reduced to not less than one per month. Inspections may be postponed indefinitely if the entire site is at final stabilization.
- F. Inspections shall be conducted and documented by or under the direction of the permittee.
- G. Inspection shall include all areas of the site disturbed by construction activity, the perimeter of the construction site, and all discharge locations, including areas with temporary stabilization.
- H. An inspection report shall be completed by the owner or operator and maintained on-site for each inspection and furnished for review by DEC representatives upon request. The report may be on a form provided by the Secretary or may be documented in a similar format proposed by the permittee. At a minimum, each inspection report shall include:
  - 1. The inspection date;
  - 2. Names and titles of personnel conducting the inspection;
  - 3. A general description of weather information for the period since the last inspection (or since commencement of construction activity if the first inspection), including a description of any precipitation, any runoff of visibly discolored stormwater from the construction site, and any discharges of visibly discolored stormwater from the construction site to waters of the State;
  - 4. Location(s) of runoff or discharges of visibly discolored stormwater to waters of the State from the construction site;
  - 5. Location(s) of BMPs that need to be maintained;
  - 6. Location(s) of BMPs that failed to operate as designed or proved inadequate for a particular location;
  - 7. Location(s) where additional BMPs are needed that did not exist at the time of inspection;
  - 8. Any corrective action required to conform with the Low Risk Site Handbook for Erosion Prevention and Sediment Control;

9. Description of areas that are currently disturbed and areas that have been stabilized since last inspection;
10. A description of the soil conditions (e.g. dry, wet, saturated); and
11. A certification that the construction activities are in compliance with the EPSC Plan and this permit, or, if a certification of compliance cannot be provided at the time of inspection, the inspection report shall specifically identify non-compliance with the EPSC Plan and provide a schedule and corrective actions required for achieving full compliance.
- I. If visibly discolored stormwater runs off the construction site or discharges to waters of the State, the permittee shall take immediate corrective action to inspect and maintain existing BMPs and to install supplemental BMPs necessary to minimize and prevent the discharge.
- J. If, after completing the actions required in Subpart 6.1.I above, there continues to be a discharge of discolored stormwater from the construction site to waters of the State, the permittee shall notify DEC by submitting a Discharge Report within 24 hours of discovering the discharge. The report shall be on a form available from the Stormwater Program.
- K. If there is a repeated or an ongoing sediment discharge to waters of the State, DEC may determine that the construction activity risk category needs to be reevaluated in accordance with Appendix A or that a different set of BMPs must be implemented, or both. The permittee shall take all corrective actions requested by DEC including installing and implementing alternative or additional BMPs to correct the discharge.
- L. The following records shall be maintained on-site with a copy of the Low Risk Site Handbook for Erosion Prevention and Sediment Control and shall be available upon request by DEC representatives:
1. Weekly inspection reports prepared pursuant to Subpart 6.1;
  2. Discharge Reports prepared pursuant to Subpart 6.1.J.;
  3. Any reports of releases of reportable quantities of oils or hazardous substances in accordance with Condition 7 of Appendix D; and
  4. Notices of Addition or Removal of Co-Permittees submitted to the Secretary in accordance with Subpart 7.3.

## **6.2 General Inspection Requirements for Moderate Risk Projects**

- A. A permittee is responsible for inspecting and maintaining erosion prevention and sediment control measures in accordance with the requirements of this permit.

- B. Inspections shall be conducted at least once every seven calendar days and as required in Subpart 6.3.A.
- C. During the winter construction period (October 15 through April 15), daily inspections shall be conducted of areas that have been disturbed and are not yet finally stabilized.
- D. If the entire site is temporarily stabilized, inspection frequency may be reduced to not less than one per month. Inspections may be postponed indefinitely if the entire site is at final stabilization.
- E. Inspections shall be conducted and documented by, or under the direction of, the On-Site Plan Coordinator (OSPC).
- F. Inspections shall include all areas of the site disturbed by construction activity, the perimeter of the construction site, and all discharge locations, including areas with temporary stabilization.
- G. An inspection report shall be completed for each inspection and signed by the OSPC or the person acting under the direction of the OSPC. The report may be on a form provided by the Secretary or may be documented in a similar format proposed by the permittee. Inspection reports shall be maintained on-site for each inspection and furnished for review by DEC representatives upon request. At a minimum, each inspection report shall include:
  - 1. The inspection date;
  - 2. Names and titles of personnel conducting the inspection;
  - 3. A general description of weather information for the period since the last inspection (or since commencement of construction activity if the first inspection), including a description of any precipitation, any runoff of visibly discolored stormwater from the construction site, and any discharges of visibly discolored stormwater from the construction site to waters of the State;
  - 4. Location(s) of runoff or discharges of visibly discolored stormwater to waters of the State from the construction site;
  - 5. Location(s) of BMPs that need to be maintained;
  - 6. Location(s) of BMPs that failed to operate as designed or proved inadequate for a particular location;
  - 7. Location(s) where additional BMPs are needed that did not exist at the time of inspection;

8. Any corrective action required including any necessary changes to the EPSC Plan and implementation dates;
  9. Description of areas that are currently disturbed and areas that have been stabilized since last inspection;
  10. A description of the soil conditions (e.g. dry, wet, saturated); and
  11. A certification that the construction activities are in compliance with the EPSC Plan and this permit, or, if a certification of compliance cannot be provided at the time of inspection, the inspection report shall specifically identify non-compliance with the EPSC Plan and provide a schedule and corrective actions required for achieving full compliance.
- H. A record of each inspection report and of any actions taken in accordance with this Subpart shall be maintained on-site with the EPSC Plan and shall be made available upon request by DEC representatives.

### **6.3 Discharge Inspection, Sampling, and Corrective Action Requirements for Moderate Risk Projects**

As soon as reasonably possible, during or after every rainfall event or snowmelt event which produces runoff from the construction site, the On-Site Plan Coordinator (OSPC) shall:

- A. Inspect for runoff of visibly discolored stormwater leaving the construction site, including from dewatering operations. If there is runoff of visibly discolored stormwater from the construction site, the OSPC shall as soon as practicable inspect and maintain BMPs for compliance with the approved EPSC Plan;
- B. If after inspecting and maintaining existing BMPs in accordance with Subpart 6.3.A, the runoff of visibly discolored stormwater continues, the OSPC shall determine whether such runoff of visibly discolored stormwater from the construction site is discharging to waters of the State. If the continuing runoff is not discharging to waters of the State, the OSPC shall supplement BMPs as necessary to minimize and prevent the runoff of visibly discolored stormwater and shall continue to inspect, maintain, and supplement BMPs;
- C. If the runoff of visibly discolored stormwater continues after taking the steps in Subpart 6.3.B and the runoff is discharging to waters of the State, the OSPC shall immediately evaluate the need for supplemental BMPs and install such BMPs as necessary to correct or eliminate the discharge. If after supplementing existing BMPs, the discharge of visibly discolored stormwater to waters of the State continues, then the OSPC shall sample the discharge as follows:



1. Samples shall be representative of the flow and characteristics of the discharge. Sampling shall be conducted in accordance with written guidance available from the Stormwater Program.
  2. If due to unexpected circumstances an OSPC or his/her designee is unable to sample during periods of runoff, the monitoring report shall include a brief explanation of such circumstances.
  3. Sampling is required at all points where visibly discolored stormwater runoff from disturbed areas that have not been finally stabilized discharges to waters of the State.
  4. All sampling points shall be identified on the EPSC Plan site map and be clearly marked in the field with a flag, tape, stake, or other visible marker.
- D. If the turbidity sample taken is 25 NTU or lower, no further sampling or action is required.
- E. If the turbidity sample taken is greater than 25 NTU:
1. The OSPC shall as soon as practicable evaluate the need for supplemental BMPs and install such BMPs as necessary to correct the discharge(s); and
  2. The OSPC shall, within 24 hours of first discovering the discharge(s), submit a written report about the discharge(s) and resulting corrective action to the Secretary. The report shall:
    - a. Be on a form available from the Stormwater Program;
    - b. Describe the cause, time, date, and location of the discharge(s);
    - c. Describe the status of construction and conformance with the EPSC Plan at the time of the discharge(s);
    - d. Detail the corrective action taken to stop the discharge(s), including a description of the actions taken, their location, and the time and date of the corrective action; and
    - e. Be copied and a copy retained on-site with the EPSC Plan.
  3. The EPSC Plan shall be updated within 72 hours to reflect the actions taken.
- F. After taking the actions required in Subpart 6.3.E.1 above, the OSPC shall again follow the inspection and sampling requirements in Subpart 6.3.C. above. If the turbidity sample is 25 NTU or lower, then no further action is needed. If the turbidity sample is greater than 25 NTU, the OSPC shall immediately notify the Stormwater Program. DEC may require the OSPC to reevaluate existing BMPs and install supplemental BMPs as necessary to correct the discharge. At the Secretary's discretion, DEC may also require the OSPC to continue sampling discharges when discharges are occurring until:

1. Turbidity is 25 NTU or lower; or
2. The discharge stops or is eliminated.

#### **6.4 Modifications to the EPSC Plan Identified as Needed by Inspections by DEC Representatives for Low and Moderate Risk Projects**

- A. If, based upon inspections or investigations by DEC representatives, the DEC representatives determine that the EPSC Plan will not be sufficient to prevent discharges of visibly discolored stormwater from the construction site to waters of the State, the permittee shall modify the EPSC Plan as necessary or as directed to include additional or modified BMPs designed to correct the problems identified. Revisions to the EPSC Plan shall be completed and implemented within 72 hours following the inspection or investigation.
- B. At any time after issuing an authorization to discharge, the Secretary may, in his or her sole discretion, determine that a stormwater discharge may cause, has reasonable potential to cause, or may contribute to a violation of the Vermont Water Quality Standards. If such a determination is made, the Secretary will require a permittee to:
  1. Revise the EPSC Plan to adequately address the identified water quality concerns;
  2. Submit valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining the Vermont Water Quality Standards; or
  3. Cease discharges of pollutants to surface waters from the construction activity and submit an application for an individual construction permit.
- C. Each revised EPSC Plan prepared pursuant to this Part shall be submitted to the Secretary and maintained on-site with the EPSC Plan.

#### **6.5 Maintenance of Erosion Prevention and Sediment Control Measures at Moderate Risk Sites**

- A. All erosion prevention and sediment control measures identified in the EPSC Plan shall be maintained in effective operating condition. If site inspections required by Subpart 6.2 or 6.3 identify BMPs that are not operating effectively, maintenance shall be performed as soon as possible and before the next storm event or melt event to maintain the continued effectiveness of the measures. If implementing BMPs is impracticable before the next storm event or melt event, then the affected area shall be stabilized temporarily until such time that the BMPs can be installed.
- B. If existing BMPs need to be modified or if additional BMPs are necessary for any reason, implementation shall be completed before the next storm event or melt

event. If implementing BMPs is impracticable before the next storm event or melt event, then the affected area shall be stabilized temporarily until such time that the BMPs can be installed.

## **6.6 Presumption of Compliance**

- A. Unless site specific information demonstrates that a discharge causes or contributes to a violation of water quality standards, compliance with the Vermont Water Quality Standards shall be presumed when the permittee is:
  - 1. In full compliance with all permit conditions; and
  - 2. Fully implementing stormwater BMPs as required by the permit.

## **PART 7: RENEWALS OF AUTHORIZATIONS, TRANSFERS OF AUTHORIZATIONS, CO-PERMITTEES, AND TERMINATION**

As construction sites develop over time, changes in owners and operators may occur either for the entire site or portions of the site. This Part provides flexibility for modifying, transferring, or terminating permit coverage as owners/operators change and specifically allows for partial termination of permit coverage. For example, if the developer of a subdivision sells an individual lot, the new individual lot owner may obtain permit coverage for its lot only, and the developer may then terminate its permit coverage for that lot.

## **7.1 Duty to Reapply and Continuation of Expired Authorizations**

- A. The permittee shall reapply for coverage prior to expiration if the project has not achieved final stabilization or if construction activities are expected after the expiration date of the authorization.
- B. When a permittee has submitted an administratively complete application for an activity of a continuing nature prior to the expiration of its existing authorization, the existing authorization shall not expire until the Secretary has made a final determination with respect to the application, and in case the application is denied or the terms of the new permit limited, until the last day for seeking review of the Secretary's decision or a later date fixed by order of the reviewing court. An "activity of a continuing nature" means an activity for which the permit sought authorizes the continued operation of a permitted activity but does not include a permit to construct a new, or the expansion of an existing, activity.

## **7.2 Transfer of an Authorization to Discharge**

- A. A transfer of an authorization to discharge may occur only in connection with the transfer of the entire construction site to a new owner.

- B. A Notice of Transfer must be submitted to the Secretary not later than 30 days after the transfer and shall include the following:
1. The name and address of the present permittee;
  2. The name and address of the prospective permittee;
  3. The proposed date of authorization transfer; and
  4. A statement signed by the prospective permittee, stating that:
    - a. The conditions of the project that contribute to or affect any discharge will not be materially different under the new ownership;
    - b. He/she has read and is familiar with the terms of the permit and agrees to comply with all the terms and conditions of the authorization and this permit; and
    - c. He/she has adequate funding or other means to effect compliance with all terms of the authorization and this permit.

### **7.3 Adding or Subtracting Co-Permittees on Low Risk and Moderate Risk Projects**

- A. An additional owner or operator shall be added as a co-permittee by filing a Notice of Addition of Co-Permittee with the Secretary. The co-permittee shall be subject to all terms and conditions of the permittee's authorization and this permit.
- B. An owner or operator may be terminated as a co-permittee by filing a Notice of Termination of Co-Permittee with the Secretary.
- C. The Notice of Addition of Co-Permittee form and the Notice of Termination of Co-Permittee form are available at the Stormwater Program web page.

### **7.4 Notice of Termination for Portions of an On-going Construction Site**

- A. A permittee may submit a Notice of Termination (NOT) for a portion of an on-going construction site in the following instances:
  1. When final stabilization has been achieved on the portion of the site for which termination is sought;
  2. When title to a portion of the construction site has been transferred to a new owner and the new owner has obtained coverage under this permit or an individual construction permit; or

3. When another operator has assumed control over the portion of the site for which termination is sought and the new operator has obtained coverage under this permit or an individual construction permit.
- B. To obtain a notice of termination for a portion of an on-going construction site, the permittee shall follow the requirements of Subpart 7.6 of this permit.

### **7.5 Notice of Termination for an Entire Construction Site**

- A. A permittee may submit a NOT for an entire construction site in the following instances:
1. Final stabilization has been achieved on the entire construction site for which the permittee is responsible;
  2. Another operator has assumed control over all areas of the site that have not been finally stabilized and has obtained coverage under this permit; or
  3. Coverage under an individual or alternative general NPDES permit has been obtained.
- B. To obtain a notice of termination for an entire construction site, the permittee shall follow the requirements of Subpart 7.6 of this permit.

### **7.6 Submitting a Notice of Termination**

- A. A permittee shall submit a complete and accurate NOT on a form available from the Stormwater Program.
- B. A NOT shall include, at a minimum, the following information:
1. The permit number for which termination is sought;
  2. The basis for submission of the NOT;
  3. The owner's and operator's name, address, and telephone number;
  4. The name of the project and address (or a description of location if no street address is available) of the construction site for which the notification is submitted;
  5. A certification statement signed and dated by the permittee indicating that the site meets the conditions in Parts 7.4 or 7.5 of this permit.
  6. If the NOT is for only a portion of an on-going construction site, a description of the portion of the site to which the NOT will apply.

## **7.7 Transfer of a Portion of a Site to a New Owner**

- A. If portions of a construction site are transferred to a new owner prior to final stabilization, then one of two different procedures must be followed:
1. The new owner must apply to be a co-permittee pursuant to Subpart 7.3 above; or
  2. The new owner must obtain separate coverage under this general permit or an individual permit for the transferred portion of the site and the original permittee must terminate coverage under this permit for that same portion pursuant to Subpart 7.4. In order for the new owner to obtain permit coverage, the transferred portion of the site must first be rescored in accordance with Appendix A and in accordance with Subpart 1.7 of this permit.

## **PART 8: LEGAL AUTHORITIES**

This permit is issued in accordance with the following state and federal laws and regulations: the Vermont Water Pollution Control statute, 10 V.S.A. Chapter 47, including Sections 1258, 1259, 1263 and 1264; the Vermont Water Pollution Control Permit Regulations and Amendment, Chapter 13; the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.*; and 40 C.F.R. Part 122 *et seq.* and related federal regulations.

## **PART 9: 303(D) LISTED WATERS; TMDLS**

If a receiving water is subject to an EPA-approved TMDL and therefore listed on the State of Vermont List of Priority Surface Waters Outside the Scope of Clean Water Act Section 303(d), Part D, a project's erosion prevention and sediment control measures must be consistent with any requirements specified in the TMDL as described in Subpart 9.1.

If a receiving water is impaired due to sediment, stormwater, or nutrients but is not subject to an approved TMDL and the receiving water is listed on the State of Vermont 303(d) List of Waters, Part A or the State of Vermont List of Priority Surface Waters Outside the Scope of Clean Water Act Section 303(d), Part B, both low risk and moderate risk construction activities discharging to the water are eligible for coverage provided that the activities meet the requirements of this permit. This conclusion is warranted given the integrated risk-based approach to site controls that is embodied in this permit. The risk scoring system considers extra protection for these waters by accounting for construction activities discharging to sediment, stormwater, or nutrient impaired waters.

## **9.1 Discharges into State Waters with Approved Total Maximum Daily Loads**

- A. An applicant for moderate risk construction activities is eligible for coverage under this permit for stormwater discharges of pollutants of concern to waters for which there is a total maximum daily load (TMDL) established or approved by EPA if the EPSC Plan incorporates measures or controls that are consistent with the requirements of such TMDL. If a specific wasteload allocation has been established in the TMDL that would apply to the construction discharge, the EPSC Plan shall incorporate that allocation and include necessary steps to meet that allocation.
- B. For moderate risk construction activities, if an EPA-approved or established TMDL has a general wasteload allocation applicable to construction stormwater discharges, but no specific requirements for construction sites have been identified in the TMDL, the permit applicant shall consult with the Secretary to confirm that adherence to an EPSC Plan that meets the requirements of this permit will be consistent with the approved TMDL. Where an EPA-approved or established TMDL has not specified a wasteload allocation applicable to construction stormwater discharges, but has not specifically excluded these discharges, adherence to an EPSC Plan that meets the requirements of this permit will be presumed to be consistent with the approved TMDL. If the EPA-approved or established TMDL specifically precludes such discharges, coverage under this permit is not allowed.
- C. For stormwater discharges associated with low risk construction activities, adherence to the erosion prevention and sediment control measures in DEC's Low Risk Site Handbook for Erosion Prevention and Sediment Control and compliance with all applicable terms and conditions of the permit shall be presumed to be consistent with any EPA-approved or established TMDL, with the following limitations:
  - 1. If an EPA-approved or established TMDL specifically precludes such discharges, coverage under this permit is not allowed; and
  - 2. If a specific wasteload allocation has been established in the TMDL that would apply to stormwater discharges from authorized construction activities, then the applicant for coverage for low risk construction activities shall prepare and submit an NOI and EPSC Plan in accordance with the requirements for moderate risk construction activities set out in this permit.

## **9.2 Discharges into State Waters that are Listed as Impaired Due to Sediment, Stormwater, or Nutrients and that do not have an Approved TMDL**

- A. An applicant for moderate risk construction activities is eligible for coverage under this permit for stormwater discharges from construction activities to waters

- of the State that are listed as impaired due to sediment, stormwater, or nutrients on the State of Vermont 303(d) List of Waters, Part A or the State of Vermont List of Priority Surface Waters Outside the Scope of Clean Water Act Section 303(d), Part B and for which there is no approved TMDL, if the EPSC Plan meets the requirements of this permit and the permittee complies with the terms and conditions of this permit and any authorization to discharge issued hereunder.
- B. An applicant for low risk construction activities is eligible for coverage under this permit for stormwater discharges from construction activities to waters of the State that are listed as impaired due to sediment, stormwater, or nutrients on the State of Vermont 303(d) List of Waters, Part A or the State of Vermont List of Priority Surface Waters Outside the Scope of Clean Water Act Section 303(d), Part B and for which there is no approved TMDL, if the permittee complies with the terms and conditions of this permit and any authorization to discharge issued hereunder.
- C. Notwithstanding Subparts 9.2.A and B, the Secretary reserves the right to require an individual construction stormwater permit for construction activities in accordance with Part 2 of Appendix D to this permit.

## **PART 10: ANTI-DEGRADATION**

This general permit is issued in accordance with the Department of Environmental Conservation's Anti-Degradation Policy and the Interim Anti-Degradation Implementation Procedure, dated October 12, 2010 (the Procedure).

Pursuant to Section IX of the Procedure, an individual Tier 2 analysis is not required for discharges seeking authorization under this general permit unless the Secretary determines based on credible and relevant information and best professional judgment that the discharge requires an individual Tier 2 analysis due to its potential impact. In any case where the Secretary determines an individual Tier 2 analysis is necessary, the applicant shall not be eligible for coverage under this general permit and shall be required to obtain coverage under an individual permit.

This general permit relies upon two manuals of best management practices: The Low Risk Site Handbook for Erosion Prevention and Sediment Control and the Vermont Standards and Specifications for Erosion Prevention and Sediment Control. These manuals take into account anti-degradation requirements, including consideration of the socioeconomic effects of requiring certain best management practices (BMPs). The Secretary has determined, through deployment of a BMP-based construction stormwater program for more than ten years and through two permit cycles of the Construction General Permit, that the BMPs included in the manuals are known to be sufficiently protective of waters, and that imposition of more stringent BMP requirements in these manuals would result in adverse economic impacts, borne statewide, that would be



unwarranted given the absence of information to suggest that more stringent controls are necessary.

For projects fully implementing the BMPs contained in these manuals, while in full compliance with an authorization issued under this general permit, the Secretary anticipates no lowering of water quality and the project permittees shall be presumed to meet the Anti-degradation Policy absent credible and relevant project or site-specific information rebutting the presumption.

## **PART 11: ADDITIONAL PERMIT CONDITIONS**

Additional permit conditions are contained in Appendix D of this permit.

## **PART 12: VIOLATION OF PERMIT REQUIREMENTS; ENFORCEMENT**

- A. This general permit contains eligibility restrictions as well as permit conditions and requirements. Certain actions may need to be taken to be eligible for coverage under this permit. In such cases, a permittee must continue to satisfy those eligibility provisions to maintain permit authorization. If the requirements that are a precondition to eligibility are not met, then resulting discharges constitute unpermitted discharges.
- B. A permittee shall comply with all terms and conditions of this permit. Any permit noncompliance constitutes a violation of 10 V.S.A. Chapter 47 and the federal Clean Water Act, and is grounds for an enforcement action, or suspension or revocation of the permittee's authorization to discharge under this permit.
- C. The Secretary may obtain a "stop work" order pursuant to 10 V.S.A. Chapters 47 and 201 when the Secretary determines that a violation exists. Such order may also require the permittee and any person involved in the construction activity to take all actions to prevent or correct the discharge or potential discharge. Any action taken by the Secretary pursuant to this Subpart shall not limit the Secretary's authority to pursue other enforcement actions pursuant to 10 V.S.A. Chapters 47 and 201.
- D. Violations of the terms and conditions of this permit are subject to civil and criminal penalties pursuant to 10 V.S.A. §§ 1274 and 1275 and administrative enforcement pursuant to 10 V.S.A. § 1272 and Chapters 201 and 211, and EPA retains authority to enforce violations of the Clean Water Act (CWA) pursuant to section 309 of the CWA. Penalties include:
  - 1. 10 V.S.A. § 1275(a) provides that:

Any person who violates any provision of this subchapter or who fails, neglects or refuses to obey or comply with any order or the terms of any permit issued in accordance with this subchapter, shall be fined not more than \$25,000.00 or be imprisoned not more than six months, or both. Each violation may be a separate offense, and, in the case of a continuing violation, each day's continuance may be deemed a separate offense.

2. 10 V.S.A. § 1275(b) provides that:

Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan, or other document filed or required to be maintained under this subchapter, or by any permit, rule, regulation or order issued under this subchapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this subchapter or by any permit, rule, regulation, or order issued under this subchapter, shall upon conviction, be punished by a fine of not more than \$10,000.00 or by imprisonment for not more than six months, or by both.

3. 10 V.S.A. § 8010(c) provides that:

(1) A penalty of not more than \$42,500.00 may be assessed for each determination of violation. In addition, if the Secretary determines that a violation is continuing, the Secretary may assess a penalty of not more than \$17,000.00 for each day the violation continues. The maximum amount of penalty assessed under this subsection shall not exceed \$170,000.00.

(2) In addition to any penalty assessed under subdivision (1) of this subsection, the Secretary may also recapture economic benefit resulting from a violation up to the \$170,000.00 maximum allowed under subdivision (1) of this subsection.

### **PART 13: APPEALS**

A. Pursuant to 10 V.S.A. Chapter 220, an aggrieved person shall not appeal this permit or an authorization under this permit unless the person submitted to the Secretary a written comment during the applicable public comment period or an oral comment at the public meeting conducted by the Secretary. Absent a determination of the Environmental judge to the contrary, an aggrieved person

may only appeal issues related to the person's comments to the Secretary as prescribed by 10 V.S.A. § 8504(d)(2).

Pursuant to 10 V.S.A. Chapter 220 and the Vermont Rules for Environmental Court Proceedings, any appeal of this permit or an authorization made pursuant to this permit, except for an appeal of a renewable energy plant as described in subpart (B) below, must be filed with the clerk of the Environmental Division of the Superior Court within 30 days of the date of the decision. The notice of appeal must specify the parties taking the appeal and the statutory provision under which each party claims party status; must designate the act or decision appealed from; must name the Environmental Division; and must be signed by the appellant or the appellant's attorney. In addition, the appeal must give the address or location and description of the property, project, or facility with which the appeal is concerned and the name of the applicant or any permit involved in the appeal. The appellant must also serve a copy of the notice of appeal in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. For further information, see the Vermont Rules for Environmental Court Proceedings.

- B. If the subject decision relates to a renewable energy plant for which a certificate of public good is required under 30 V.S.A. § 248, any appeal of such decision must be filed with the Vermont Public Utility Commission pursuant to 10 V.S.A. § 8506. Section 8506 does not apply to a facility that is subject to 10 V.S.A. § 1004 (dams before the Federal Energy Regulatory Commission), 10 V.S.A. § 1006 (certification of hydroelectric projects), or 10 V.S.A. Chapter 43 (dams). Any appeal under Section 8506 must be filed with the clerk of the Public Utility Commission within 30 days of the date of this decision; the appellant must file with the clerk an original and six copies of its appeal. The appellant shall provide notice of the filing of an appeal in accordance with 10 V.S.A. § 8504(c)(2) and shall also serve a copy of the notice of appeal on the Vermont Public Service Department. For further information, see the Rules and General Orders of the Public Utility Commission.

#### **PART 14: EFFECTIVE DATE OF PERMIT AND PERMIT TERM**

This permit shall become effective upon signing and shall expire five years from the date of signing.

Signed this      day of                      , 2019

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Emily Boedecker, Commissioner  
Department of Environmental Conservation

## APPENDIX A - RISK EVALUATION

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The Appendix A - Risk Evaluation considers the relative risk to water quality of a proposed construction activity and assigns a risk category based on the answers to a questionnaire. Accurately answering the questions in this appendix will allow you to determine whether a proposed construction project is eligible for coverage under the general permit as a Low Risk or Moderate Risk construction activity and which application and permit requirements apply to your project as a result. Projects that are not eligible for coverage under the general permit as a Low Risk or Moderate Risk construction activity must apply for an Individual Construction Stormwater Discharge Permit.

The Appendix A - Risk Evaluation consists of two parts. Part I is a Basic Risk Evaluation, which determines if a project is automatically categorized as Low Risk based upon the answers to a few basic questions. If your total score upon completion of Part I is equal to zero, the project is automatically categorized as a Low Risk construction activity, and you do not need to complete Part II - Detailed Risk Evaluation. If you choose to continue and complete Part II, despite scoring zero on Part I, an authorization under this permit will be conditioned to reflect the completed Part II evaluation.

If the completed Part I - Basic Risk Evaluation is not equal to zero, the project is not automatically categorized as a Low Risk construction activity, and you must complete Part II - Detailed Risk Evaluation, to determine the risk category for your project based upon a more detailed project evaluation. Part II includes questions on more detailed aspects of the project and is scored independently from Part I.

Once the risk category of the construction activity has been determined, refer to Appendix A – Part IV for the application requirements.

You should be aware that each completed Appendix A is incorporated by reference and included in the terms of an authorization under this general permit pursuant to Subparts 2.4.C. and 3.4.C., and each permittee shall undertake its construction activities in accordance with the completed Appendix A, as a condition of this permit.

**Note: Projects that propose active stormwater treatment are not eligible for coverage as a low risk project and will require coverage as a moderate risk project or under an Individual Permit, and projects that propose concurrent earth disturbance greater than 5 acres or a stabilization schedule greater than 14 days are not eligible for coverage under this general permit and will require coverage under an Individual Permit.**

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**APPENDIX A**

**Part I – Basic Risk Evaluation**

A project may automatically be categorized as a Low Risk construction activity based on project characteristics. Answer each question below to determine if a project is automatically categorized as a Low Risk construction activity. For definitions of terms used in the following questions (e.g. disturbance, vegetated buffer) refer to Appendix C. See instructions at the bottom of each page.

<b>Basic Risk Evaluation</b>				
<b>Criteria</b>		<b>Answer</b>	<b>Score Direction</b>	<b>Enter Score</b>
1.	Will the proposed project alone result in more than two acres of earth disturbance in total?	YES / NO	If YES, enter 1, if NO enter 0	___
2.	Is the project located within the watershed of a Class A Water or in the watershed of an Outstanding Resource Water?	YES / NO	If YES, enter 1, if NO enter 0	___
3.	Will the proposed project have earth disturbance within 100 ft. (horizontal) upslope of any lake, pond, wetland, river, or stream?	YES / NO	If YES, enter 1, if NO enter 0	___
4.	Will the project have any stormwater discharges from the construction site to receiving water(s) or a conveyance to a receiving water that do not first pass through a 50-ft. vegetated buffer?	YES / NO	If YES, enter 1, if NO enter 0	___
<b>Total Score for Low Risk Screen (add score from questions 1-4)</b>				___

If the Total Score for Basic Risk Evaluation is zero, you do not need to complete Part II, because the proposed activity is eligible for coverage under this permit as a Low Risk construction activity. Proceed to Part IV of Appendix A for a summary of the application requirements for Low Risk construction activities. If the total score is greater than zero, proceed to Part II and complete Part II - Detailed Risk Evaluation.

**Criterion 1:** Only include the disturbance planned for an independent project. Refer to Appendix C for definitions of independent project and disturbance. In addition, risk scoring must be completed in accordance with Subpart 1.7 of this permit. Refer to Appendix C for the definition of earth disturbance.

**Criterion 2:** Refer to the Watershed Management Division – Stormwater Program’s Construction Stormwater Discharge Permits web page for the most current lists of Class A and Outstanding Resource Waters.

**Criterion 3:** Measure lake distance from mean water level, stream or river distance from top of bank, and wetland distance from edge of wetland. Do not include disturbance for road stream crossings if there are no reasonable alternative locations. Consult with the Stormwater Program with any questions about these measurements.

**Criterion 4:** Refer to Appendix C for the definition of vegetated buffer.

## Part II – Detailed Risk Evaluation

If your score from Part I is greater than zero, you must complete Part II. This evaluation determines the risk category by weighing the balance of factors which contribute to and mitigate against the risk of a discharge of sediment from the construction project. Complete all questions in Part II for the independent project. For definitions of terms used in the evaluation, refer to Appendix C.

Detailed Risk Evaluation – Identify Risk Factors				
Criteria		Answer	Score Direction	Enter Score
A.	Will the proposed project have earth disturbance within 100 ft. (horizontal) upslope of any lake, pond, wetland, river, or stream?	YES / NO	If YES, enter 1, if NO enter 0	—
B.	Is the project located within the watershed of a Class A Water or in the watershed of an Outstanding Resource Water?	YES / NO	If YES, enter 1, if NO enter 0	—
C.	Will the project include more than one acre of disturbance on soil that is greater than 15% slope?	YES / NO	If YES, enter 1, if NO enter 0	—
D.	Will the project disturb more than one acre of soil with an erodibility rating greater than $K=0.36$ ?	YES / NO	If YES, enter 1, if NO enter 0	—
E.	<b>Total Score for Risk Factors (add A through D)</b>			—

**Criterion A:** Measure lake distance from mean water level, stream or river distance from top of bank, and wetland distance from edge of wetland. Do not include disturbance for road stream crossings if there are no reasonable alternative locations. Consult with the Stormwater Program if with any questions about these measurements.

**Criterion B:** Refer to the Watershed Management Division – Stormwater Program’s Construction Stormwater Discharge Permits web page for the most current lists of impaired waters (the State of Vermont 303(d) List of Waters and for lists of Class A and Outstanding Resource Waters.

**Criterion C:** Include disturbance for the duration of the project, not at any one point in time. Slope determinations are based on the existing and proposed contours of the disturbance areas.

**Criterion D:** Include disturbance for the entire individual project, not at any one point in time. Refer to NRCS soil data and calculate a depth-weighted average K factor based on the anticipated depth of excavation. If soils data is not available additional information related to the determination of K rating is available on the Stormwater Program website for construction stormwater permitting. Alternatively, an applicant may assume that the soils have  $K>0.36$  for purposes of risk evaluation.

## **Part II Continued – Detailed Risk Mitigation Factor Evaluation**

<b>Detailed Risk Evaluation – Identify Risk Mitigation Factors</b>				
<b>Criteria</b>		<b>Answer</b>	<b>Score Direction</b>	<b>Enter Score</b>
F.	Will stormwater from the construction site pass through at least 50-ft. of established vegetated buffer before entering a receiving water or conveyance to a receiving water?	YES / NO	If YES, enter 1, if NO enter 0	___
G.	Will the project be limited to two acres or less of earth disturbance at any one time?	YES / NO	If YES, enter 1, if NO enter 0	___
H.	Will the project remain at or below two acres of disturbance on slopes greater than 5%?	YES / NO	If YES, enter 1, if NO enter 0	___
I.	Will disturbance of soil with an erodibility rating greater than K=0.17 remain at or below two acres?	YES / NO	If YES, enter 1, if NO enter 0	___
J.	<b>Total Score for Risk Mitigation Factors (add F through I.)</b>			___

**Criterion F:** Refer to Appendix C for a definition of vegetated buffer.

**Criterion G:** Refer to Appendix C for a definition of earth disturbance.

**Criterion H:** Include disturbance for the duration of the project, not at any one point in time. Slope determinations are based on the existing and proposed contours of the disturbance areas.

**Criterion I:** Include disturbance for the duration of the project, not at any one point in time. Refer to NRCS soil data and calculate a depth-weighted average K factor based on the anticipated depth of excavation. If soils data are not available additional information related to the determination of K rating is available on the Stormwater Program website for construction stormwater permitting.

<b>Total Risk Score</b>		
K.	<b>Risk Base Score</b>	<b>2</b>
L.	<b>Risk Factor Total- enter Score from Line E above</b>	___
M.	<b>Add lines K and L</b>	___
N.	<b>Risk Mitigation Factor Total- enter Score from Line J above</b>	___
O.	<b><u>OVERALL RISK SCORE:</u> Subtract line N from line M</b>	___

## Part III – Interpreting the Detailed Risk Evaluation

<b>OVERALL SCORE</b>	<b>Risk Category</b>	<b>Directions for Filing Permit Application</b>
<b>0 or less</b>	Low Risk	<p>The proposed activity is eligible for the Construction General Permit as a Low Risk construction activity provided that the requirements of Subpart 2 are met. If these requirements cannot be met, contact DEC to determine if the project should seek general permit coverage as a Moderate Risk construction activity or seek permit coverage under an Individual Discharge Permit.</p> <p>Refer to Part IV of Appendix A for a summary of the application requirements for Low Risk construction activities.</p>
<b>1 or 2</b>	Moderate Risk	<p>The proposed activity is eligible for the Construction General Permit as a Moderate Risk construction activity provided that the requirements of Subpart 3 are met. If these requirements cannot be met, contact DEC to determine if the project should seek permit coverage under an Individual Discharge Permit.</p> <p>Refer to Part IV of Appendix A for a summary of the application requirements for Moderate Risk projects.</p>
<b>3 or higher</b>	Requires Individual Permit	<p>The proposed activity is not eligible for coverage under the Construction General Permit, and therefore requires coverage under an Individual Discharge Permit. Please refer to the Stormwater Program web page for more information.</p>



## **Part IV – Filing Directions**

### **1. Low Risk Projects**

Projects that qualify as Low Risk are required to implement the applicable practices detailed in the *Low Risk Site Handbook for Erosion Prevention and Sediment Control*. To obtain coverage under General Permit 3-9020 as a Low Risk project, applicants must submit the following to the Stormwater Program pursuant to Subpart 2.1 of this permit:

1. A completed Low Risk Notice of Intent (NOI) form for General Permit 3-9020;
2. A completed Appendix A on a form provided by the Secretary;
3. A location map, in the form of a topographic map or aerial image, providing sufficient information to determine the location of the project and the receiving water;
4. A site plan drawn to scale, depicting property boundaries, proposed limits of earth disturbance, proposed vegetated buffers used in determining the risk score of the project, all waters of the State, and any additional information required by the Secretary; and
5. The required processing fees.

### **2. Moderate Risk Projects**

Projects that qualify as Moderate Risk are required to prepare and implement a site-specific Erosion Prevention and Sediment Control Plan (EPSC Plan) that conforms to *The Vermont Standards and Specifications for Erosion Prevention and Sediment Control* (hereafter the “Standards”). To obtain coverage under General Permit 3-9020 as a Moderate Risk project, applicants must submit the following to the Stormwater Program pursuant to Subpart 3.1 of this permit:

1. A completed Moderate Risk Notice of Intent (NOI) form for General Permit 3-9020;
2. A completed Appendix A on a form provided by the Secretary;
3. A location map, in the form of a topographic map or aerial image, providing sufficient information to determine the location of the project and the receiving water;
4. A site-specific EPSC Plan that includes the information required in Appendix B; and
5. The required processing fees.

### **3. Projects Requiring Individual Discharge Permit**

Projects that do not qualify as Low or Moderate Risk are not eligible for coverage under General Permit 3-9020 and are required to obtain permit coverage under an individual discharge permit. Refer to the Stormwater Program web page for application requirements.

# APPENDIX B - EROSION PREVENTION AND SEDIMENT CONTROL PLAN REQUIREMENTS

## 1. General Requirements

An Erosion Prevention and Sediment Control Plan (EPSC Plan) that meets the requirements of this general permit must be submitted with a Notice of Intent (NOI) for moderate risk projects. The goal of the EPSC Plan is to provide the On-Site Plan Coordinator (OSPC) and construction site personnel with a thorough strategy tailored to the site and project for preventing erosion and containing eroded sediment on-site. The EPSC Plan must adhere to *The Vermont Standards and Specifications for Erosion Prevention and Sediment Control* (the Standards), and this permit, and must satisfy the requirements listed below. The Secretary may promulgate a standard EPSC Plan submission format.

Each EPSC Plan shall contain, at a minimum:

### 1. Project Description

An overview of the proposed project. This may be in narrative or point form, may include tables or figures, and must include:

- a. The type of project (e.g., residential subdivision, town road, commercial building, etc.);
- b. A description of the major project components and the anticipated earth disturbance associated with each (e.g. roads, utilities, number of buildings, etc.);
- c. The total acreage of proposed earth disturbance;
- d. The intended sequence and timing of major project components that disturb soils at the site;
- e. The proposed pollution prevention strategies that will minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater. Minimization of exposure is not required in cases where the exposure to precipitation and to stormwater will not result in a discharge of pollutants, or where exposure of a specific material or product poses little risk of stormwater contamination (such as final products and materials intended for outdoor use); and
- f. The maximum concurrent earth disturbance used to score this project in Appendix A;
- g. The use of vegetated buffers, if any, used to score this project in Appendix A;
- h. The name of the receiving water(s), the number of discrete discharge points where collected stormwater flows are discharged from the construction site to the receiving water(s), the proximity of the proposed earth-disturbing

activities to each of these discharge points, and a description of how stormwater flows from the construction site to the discharge point (e.g. vegetated swale, culvert, storm sewer). If no discrete discharge points, a description of the length, slope, and vegetative cover of the shortest overland flow path to receiving water from the limits of the proposed disturbance;

- i. The number of proposed stream crossings and whether a stream alteration permit is being obtained;
- j. The area of wetlands and wetland buffers that will be impacted by the proposed activities, their type, and whether a state wetlands permit or Army Corps of Engineers permit is being obtained for wetland impacts;
- k. A site-specific dewatering plan (if applicable) which shall include the minimum proposed distance to surface waters, a requirement that dewatering take place from the surface of any impoundments (unless infeasible), spoils disposal area (if applicable), detail/typical of dewatering structure, and any other aspect as so requested by the Secretary;
- l. The need for off-site waste or borrow areas, if any, the anticipated amount of borrow or waste material to be transported, the nature of the material, and how these will be permitted (i.e. permitted as a part of the current Notice of Intent (NOI) or under a separate NOI); and
- m. A statement about whether earth disturbing activities are anticipated during the winter construction period (October 15-April 15), the nature of these activities, the area of disturbance associated with these activities, and whether the EPSC Plan incorporates BMPs according to the Standards applicable to the winter construction period.
- n. A copy of the inspection form to be used by the OSPC in their weekly inspection (a copy of a form provided by the Secretary, if available, is sufficient if it will be utilized by the OSPC).

## 2. Location Map

A location map, in the form of a topographic map or aerial image, providing sufficient information to determine the location of the project and the receiving water;

## 3. Pre-Construction Plan / Existing Conditions

A map or maps of the proposed construction area and plan including the following information:

- a. The limits of the construction site including the proposed limits of disturbance, and the methods for their demarcation in the field;
- b. Existing contours based on site survey for the construction site and existing contours based on site survey or USGS topographical maps for the surrounding area 300 feet outside of the limits of disturbance;
- c. Existing water and drainage features (e.g. streams, ponds, wetlands, channels, gullies, etc.).
- d. Existing vegetation;

- e. Location of soil types corresponding to NRCS Soil Maps;
- f. All sediment control measures (e.g. silt fence, sediment or dewatering basins, etc.) to be installed ahead of primary earth disturbance activities;
- g. Directions to complete installation of sediment control measures ahead of initiating the principal earthwork activities;
- h. Directions to complete stabilization of operational stormwater treatment practices before directing runoff to them, unless utilized during construction as sediment control measures, in which case directions for ensuring these features are modified and stabilized as necessary prior to construction completion such that operational stormwater treatment practices will meet applicable design requirements for the treatment and control of post-construction stormwater runoff;
- i. Identified buffers or setbacks from water bodies and conveyances to water bodies, with directions for avoiding impacts in these areas;
- j. North arrow and scale;
- k. A legend for all EPSC measures and all other features (e.g. wetlands, streams, property lines, etc.) included on the plan; and
- l. Date of last plan revision, name of plan designer, and name of plan.

#### 4. Construction Plan

The Construction Plan shall include all information related to erosion prevention as well as sediment control measures to be implemented during the construction activity. These must be consistent with limits specified on the Notice of Intent and completed Appendix A (e.g. vegetated buffer, limited concurrent disturbance, stabilization schedule). It must include, where applicable:

- a. Property lines of the project;
- b. The proposed phase boundaries and sequencing of EPSC measures within each phase, the order of phases to be constructed, and the required items to complete before initiating the subsequent phase (e.g. complete stabilization of the prior phase);
- c. The limits of disturbance;
- d. Identified buffers or setbacks from water bodies and discrete conveyances to water bodies, with directions for avoiding impacts in these areas;
- e. Specific directions for limiting concurrent earth disturbance;
- f. Existing and proposed contours;
- g. Location of all erosion prevention measures;
- h. Location of all sediment control measures to be installed during the construction phase as well as sediment control measures implemented in the pre-construction phase;
- i. Construction details for each practice proposed, which shall include all applicable notes regarding the installation and maintenance of said practice;
- j. Consistent with the completed Appendix A, directions for stabilization of a given area within 14 days following initial disturbance: "All areas of earth disturbance must have temporary or final stabilization within 14 days of the initial disturbance. After this time, disturbed areas must be temporarily or

- permanently stabilized in advance of any runoff producing event.”;
- k. A plan for dewatering activities, if anticipated, including the location of dewatering discharges consistent with this permit;
  - l. Directions and location of practices employed for construction during the winter construction period (October 15-April 15), consistent with the Standards applicable to the winter construction period, if earthwork during this period is anticipated;
  - m. The location of all existing and proposed structures (roads, utilities, buildings, drainage inlets, etc.);
  - n. The location of all proposed stockpiles and directions for stabilizing and protecting stockpile areas consistent with the Standards;
  - o. The location of all proposed staging areas;
  - p. Directions for inspection frequency consistent with the permit;
  - q. North arrow and scale;
  - r. A legend for all EPSC measures and all other features (e.g. wetlands, streams, property lines, etc.) included on the plan; and
  - s. Date of last plan revision, name of plan designer, and name of plan.

## 5. Stabilization Plan

The Stabilization Plan shall convey to contractors all the information necessary to implement temporary and final stabilization for the entire construction site. It shall include the following, consistent with the Standards:

- a. Property lines of the project;
- b. Finish grade contours;
- c. The location of all structures, existing and proposed;
- d. Temporary stabilization measures required for all areas of disturbance consistent with the completed Appendix A,
- e. Final stabilization measures required for all areas of disturbance where structures are not installed, including areas requiring stone, rolled erosion control products, hydromulching, seeding and mulching, etc.;
- f. Specifications for seed mixes, fertilization, and other soil amendments for areas to be stabilized with vegetation;
- g. Directions for completing seeding after April 15 and before September 15 for areas where final stabilization is not scheduled to occur prior to the winter construction period;
- h. Directions to remove all temporary erosion and sediment control practices within 30 days of achieving final stabilization;
- i. Dewatering plan details, if dewatering is anticipated;
- j. Directions for inspection frequency consistent with the permit, including an indication of when inspections may be discontinued;
- k. A legend for all EPSC measures included on the plan;
- l. Date of last plan revision, name of plan designer, and name of plan; and
- m. North arrow and scale.

## **2. Special Requirements for Linear Projects**

- A. Requirements 1-5 in section 1 above also apply to linear projects such as roads, pipelines, and utility installations, except that:
1. The Pre-Construction Plan, Construction Plan, and Stabilization Plan may be combined into one plan.
  2. A Phasing Plan shall be developed in accordance with *The Vermont Standards and Specifications for Erosion Prevention and Sediment Control*.
  3. The location of all staging areas away from the project shall be shown with appropriate EPSC measures and accompanying location map.

## **APPENDIX C - DEFINITIONS**

“Active Stormwater Treatment” means the treatment of construction stormwater using chemical additions, including coagulants and flocculants.

“Agency” means the Vermont Agency of Natural Resources.

“Applicant” means a person or persons applying for permit coverage.

“Best management practice” or “BMP” means a schedule of activities, prohibitions or practices, maintenance procedures, green infrastructure, and other management practices to prevent or reduce water pollution.

“Borrow Area” means the area where materials are excavated for use as fill.

“Commencement of Construction Activity” means the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction-related activities (e.g. stockpiling of fill material).

“Common Plan of Development” means a development that is completed in phases or stages when such phases or stages share a common state or local permit related to the regulation of land use, the discharge of wastewater or a discharge to surface waters or groundwater, or a development designed with shared common infrastructure. Common plans include subdivisions, industrial and commercial parks, university and other campuses, and ski areas. Construction activities or portions of construction activities that have achieved final stabilization as of September 13, 2006 (effective date of previously issued Construction General Permit 3-9020 (2006)) shall not be considered for purposes of determining what constitutes disturbance under a common plan of development that requires coverage under this permit. Following completion of the common plan components on a parcel of land, any additional development of the parcel shall be considered as separate from the original common plan for the purposes of evaluating whether one or more acres of earth will be disturbed.

“Construction Activity” means all clearing, grading, excavation, and stockpiling activities that will result in the disturbance of one or more acres of land area or less than one acre of land area that is part of a common plan of development that will ultimately disturb equal to or greater than one acre of land area. Earth disturbance that is a normal part of the long-term use or maintenance of a property that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility is not covered by the construction general permit (e.g. mining operations, dirt road re-grading, routine road resurfacing, utility line maintenance/repair). For mining operations, “construction activity” means the construction, exploration, or reclamation phase, not the active mining phase.

“Construction Site” means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the

facility or activity, such as material and equipment staging areas and waste or borrow areas, and the area of earth disturbance directly associated with the permitted construction activity.

“Control Measure” as used in this permit, refers to any BMP or other method used to prevent or reduce the discharge of pollutants to waters of the State.

“Conveyance” as used in this permit, refers to any mode of transfer of stormwater, whether natural or man-made, from one location to another. This includes drainage swales, ditches, natural channels, and stormwater collection and distribution structures.

“DEC” means the Vermont Department of Environmental Conservation.

“Dewatering” means the act of draining rainwater or groundwater from building foundations, vaults, trenches, basins, or other areas that require draining.

“Discharge” means the placing, depositing, or emission of any wastes, directly or indirectly, into an injection well or into the waters of the State.

“Earth disturbance” means construction activities including clearing, grading, and excavating, but does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

“Eligible” means qualified for authorization to discharge under this general permit.

“Facility or activity” means any point source or any other facility or activity, including land or appurtenances thereto, that is subject to regulation under this Permit.

“Federal Facility” means any buildings, installations, structures, land, public works, equipment, aircraft, vessels, and other vehicles and property, owned by, or constructed or manufactured for the purpose of leasing to, the federal government.

“Final Stabilization” means that:

1. All soil disturbing activities at the site have been completed and either of the two following criteria are met:
  - a. a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70 percent of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or
  - b. equivalent final stabilization measures (such as pavement, cement, gravel, riprap, gabions, or geotextiles) have been employed.



2. When background native vegetation covers less than 100 percent of the ground (e.g., arid areas, beaches), the 70 percent coverage criteria is determined as follows: if the native vegetation covers 50 percent of the ground, 70 percent of 50 percent ( $0.70 \times 0.50 = 0.35$ ) would require 35 percent total cover for final stabilization. On a beach with no natural vegetation, no stabilization is required.

3. For individual lots for residential construction, final stabilization means that either:

a. The parcel has reached final stabilization as specified above, or

b. The parcel has established temporary stabilization through seeding and mulching in accordance with this permit, and established perimeter controls for the individual lot, prior to occupation of the home by the homeowner, and the operator has informed the homeowner of the need for, and benefits of, final stabilization.

4. For construction activity on land used for agricultural purposes (e.g., pipelines across crop or range land, staging areas for highway construction, etc.), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use when such land will be used again for agricultural purposes immediately following construction activity. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to 'waters of the state,' and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization criteria (1) and (2) above.

“Hazardous Substance” means those substances designated pursuant to 40 C.F.R. Part 116 and 40 C.F.R. Part 302.

“Large Construction Activity” means that activity defined at 40 C.F.R. § 122.26(b)(14)(x) and incorporated here by reference. A large construction activity includes clearing, grading, and excavating resulting in a land disturbance that is: (a) equal to or greater than five acres of total land area; or (b) less than five acres of total land area that is part of a larger common plan of development or sale that will ultimately disturb five acres or more. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site.

“Notice of Intent” or “NOI” means the form (electronic or paper) an applicant must submit when applying for an authorization for coverage under this general permit.

“Operator” means any party associated with a construction project, including sub-contractors, that meets either of the following two criteria:

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

“Permittee” means a person who has received an authorization pursuant this general permit.

“Person” means any individual, partnership, company, corporation, association, joint venture, trust, municipality, the state of Vermont or any agency, department or subdivision of the state, any federal agency, or any other legal or commercial entity.

“Point source” means any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.

“Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. (40 C.F.R. § 122.2)

“Pollution” means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water. (33 U.S.C. § 1362).

“Receiving Water” means “waters of the State”.

“Secretary” means the Secretary of the Agency of Natural Resources or the Secretary’s duly authorized representative.

“Small Construction Activity” means that activity defined at 40 C.F.R. § 122.26(b)(15) and incorporated here by reference. A small construction activity includes clearing, grading, and excavating resulting in a land disturbance that is: (a) equal to or greater than one acre and less than five acres of total land area; or (b) less than one acre of total land area that is part of a larger common plan of development that will ultimately disturb equal to or greater than one acre and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site.

“Stormwater” or “Stormwater Runoff” means stormwater runoff, snowmelt runoff, and surface runoff and drainage.

“Stormwater Program” means the Vermont Department of Environmental Conservation, Watershed Management Division’s Stormwater Management Program.

“Temporary Stabilization” means protecting soils from erosion by rainfall, runoff, or wind, with a surface cover, including, but not limited to, establishment of ground vegetation, application of mulch, rolled erosion control products, gravelling, or paving.

“Total Maximum Daily Load” or “TMDL” means the calculations and plan for meeting water quality standards approved by the U.S. Environmental Protection Agency (EPA) and prepared pursuant to 33 U.S.C. § 1313(d) and federal regulations adopted under that law.

“Vegetated Buffer” means any undisturbed area between a construction site and a receiving water that consists of a naturally vegetated ground surface (e.g. trees, shrubs, duff layer, grasses, and other ground plants). This does not include any area of concentrated flow (e.g. ditches, swales).

“Waters of the State” or “waters” means all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs, and all bodies of surface waters, artificial or natural, which are contained within, flow through, or border upon the state of Vermont or any portion of it.

“Winter Construction” means construction activity occurring during the period between October 15 and April 15.

## **APPENDIX D - ADDITIONAL PERMIT CONDITIONS**

### **1. Continuation of the Expired General Permit**

- A. If the Secretary has placed on public notice a draft general permit to replace this general permit, the current general permit shall be considered administratively continued and remain in force and effect. If a permittee was granted permit coverage prior to the expiration date, the permittee shall automatically remain covered by the continued permit until the earliest of:
1. Reissuance or replacement of this permit, at which time the permittee must comply with the conditions of the new permit to maintain authorization to discharge;
  2. Submittal of a Notice of Termination;
  3. Issuance of an individual permit for the project's discharges; or
  4. A formal permit decision by the Secretary to not reissue this general permit, at which time the permittee must seek coverage under an alternative general permit or an individual permit.

### **2. Requiring an Individual Permit**

- A. The Secretary may require a person with proposed construction activities to apply for an individual NPDES construction stormwater permit. Any interested person may petition the Secretary to take action under this paragraph. Cases where an individual permit may be required include the following:
1. The discharge(s) is a significant contributor of pollution as determined by the following factors:
    - a. the location of the discharge with respect to waters of the State;
    - b. the size of the discharge;
    - c. the quantity and nature of the pollutants reaching waters of the State and the impacts of the pollution on the receiving water; or
    - d. other relevant factors.
  2. The discharger is not in compliance with the terms and conditions of the general permit or does not qualify for a general permit.
  3. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of wastes applicable to the discharge.

4. Federal effluent limitation guidelines are promulgated, pursuant to 33 U.S.C. § 1314(b), for discharges covered by the general permit.
  5. If necessary to implement a waste management strategy contained in any applicable basin plan.
- B. If the Secretary finds that a permittee authorized by a general permit is required to apply for an individual permit, the Secretary shall so notify the permittee. This notice shall include a brief statement of the reasons for this decision, instructions for completing an application, a statement setting a time for the permittee to file the application, and a statement that on the effective date of the individual permit the general permit as it applied to the individual permittee shall automatically terminate. The Secretary may grant additional time upon request of the applicant.
  - C. When an individual permit is issued to a person otherwise subject to a general permit, the applicability of the general permit to the individual permittee is automatically terminated on the effective date of the individual permit.
  - D. Any permittee authorized by a general permit may request to be excluded from coverage under the general permit provided the permittee submits information supporting the request. If the Secretary finds that the terms and conditions of the general permit do not apply to the discharge, or that the discharge is more appropriately covered by an individual permit, the Secretary shall grant the request and shall so notify the permittee in writing of his/her decision. Upon receipt of such notification requiring coverage under an individual permit, the permittee shall submit to the Secretary an application for an individual permit. The applicability of the general permit is not terminated until the effective date of the individual permit.

### **3. Requiring Coverage under this General Permit**

- A. The Secretary may require any person applying for issuance of an individual permit to be subject to NPDES general permit coverage provided the Secretary finds the discharge complies with all conditions of the general permit and the discharge is more appropriately covered under the general permit.
- B. Any permittee subject to an individual permit and wishing to discharge subject to a general permit may file a notice on forms provided by the Secretary. Upon the request of the Secretary, any person who files a notice shall submit such additional information that may be necessary to enable the Secretary to authorize the discharge under the terms of a general permit. Each notice shall be accompanied by a fee as specified by the Secretary and established by law.
- C. Any permittee subject to an individual permit shall be authorized to discharge under the terms of a general permit upon:

1. the issuance of a notice by the Secretary authorizing the discharge under the terms of the general permit; and
  2. expiration or termination of the individual permit under which the permittee was previously authorized to discharge.
- D. The Secretary may require a person to obtain coverage under this general permit for either a low or moderate risk activity based on a consideration of site-specific factors, which modify the assessment of risk in addition to the factors evaluated in Appendix A.

#### **4. Inclusion of Permit Requirements in Another NPDES Permit**

The requirements of this general permit may be included in an alternative NPDES general permit or NPDES individual permit issued for a facility provided that the requirements of the alternative NPDES general permit or individual permit are at least as stringent as this permit. If the requirements of this general permit are included in an alternative general or individual NPDES permit, and a permittee obtains such coverage, then coverage under this permit is not required.

#### **5. Revocation of an Authorization to Discharge**

- A. The Secretary may, after notice and opportunity for public hearing pursuant to 3 V.S.A. § 814, revoke or suspend, in whole or in part, authorization to discharge under a general permit for cause, including:
1. Violation of any terms or conditions of the general permit;
  2. Obtaining a general permit by misrepresentation or failure to disclose fully all relevant facts;
  3. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge; and
  4. Violations of the Vermont Water Quality Standards.

#### **6. Limitations**

- A. This general permit conveys no vested rights or exclusive privileges. The general permit conveys no title to land nor authorizes any injury to public or private property. The general permit does not authorize infringement of any applicable federal, state, or local laws or regulations nor obviate the necessity of obtaining such additional permits as may be required.
- B. Nothing in this permit shall be construed as having relieved, modified, or in any manner affected the permittee's ongoing obligation to comply with all other federal, state, and local statutes, regulations, and directives applicable to the permittee in the

operation of its business, nor does it relieve the permittee of the obligation to obtain all necessary federal, state, and local permits.

## **7. Prohibitions**

- A. This permit does not relieve any person of the federal reporting requirements of 40 C.F.R. Part 110, 40 C.F.R. Part 117, and 40 C.F.R. Part 302 relating to spills or other releases of oils or hazardous substances. Nothing in this permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under 10 V.S.A. § 1281. This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.
- B. If a release of oil or hazardous substances in excess of reportable quantities occurs, the permittee must modify the EPSC Plan required under Part 6 within seven calendar days of knowledge of the release to: provide a description of the release, the circumstances leading to the release, and the date of the release. The EPSC Plan must identify measures to prevent the occurrence of such releases and to respond to such releases.
- C. Discharges of any material other than stormwater, such as vehicle and equipment maintenance spills, fuels, wash water, construction debris, oil, wet concrete (including washout water from concrete batch trucks or equipment used to mix concrete), and other substances, are prohibited.
- D. Sediments and other pollutants collected and removed in the course of treatment of stormwater runoff shall be disposed in a manner that will not result in the sediments and pollutants entering waters of the State.

## **8. Right of Entry**

A permittee shall allow the Secretary and his/her authorized representatives, at reasonable times, and upon presentation of credentials, to enter upon and inspect the property on which the construction activities are occurring, to sample any construction-related discharges, and to have access to and copy any records required to be kept pursuant to the permit.

## **9. Modification of General Permit**

After notice and opportunity for public hearing, this permit may be modified in accordance with the Vermont Water Pollution Control Permit Regulations (Amended), Section 13.12.C.7.

## **10. Retention of Records**

Copies of the EPSC Plan, all amendments thereto, and all documentation required by this permit, including records of all data used to complete the NOI to be covered by this

permit, must be retained for at least three years from the date that permit coverage expires or is terminated. This period may be extended by request of the Secretary at any time.

### **11. Reopener Clause**

If there is evidence indicating that the stormwater discharges authorized by this permit cause or have the reasonable potential to cause or contribute to a violation of the Vermont Water Quality Standards, a permittee that has obtained an authorization to discharge under this permit may be required to obtain an individual construction permit, or the Secretary may modify the authorization to discharge to include different limitations and requirements in accordance with Subpart 6.4.B. of this permit.

### **12. Need to Halt or Reduce Activity Not a Defense**

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

### **13. Duty to Mitigate**

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

### **14. Signatory Requirements**

A. All NOIs must be signed as follows:

1. For a corporation: By a responsible corporate officer. For the purpose of this Part, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided: the manager is authorized to make management decisions which govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
2. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or



3. For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this Part, a principal executive officer of a federal agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator of EPA).
- B. All reports required by this permit must be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
1. The authorization is made in writing by a person described above;
  2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and
  3. The signed and dated written authorization is included in the EPSC Plan. A copy must be submitted to DEC, if requested.
- C. Any person signing documents required under the terms of this permit must include the following certification:

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