

**STATE OF VERMONT
AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**GENERAL PERMIT 3-9020 (2006) FOR STORMWATER
RUNOFF FROM CONSTRUCTION SITES
AS AMENDED FEBRUARY 2008**

Effective September 13, 2006, Amended February 5, 2008

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PART 1: COVERAGE UNDER THIS PERMIT

1.1 Coverage Required

- A. Coverage under this permit must be obtained for stormwater discharges from construction activities that result in a total land disturbance of equal to or greater than one acre, where those discharges enter waters of the State or a conveyance leading to waters of the State, subject to the conditions set forth in this permit. This coverage includes construction activities when the disturbance is less than one acre, but is part of a larger “common plan of development”, if this larger common plan will ultimately result in the disturbance of one or more acres. A “common plan of development” is defined in Appendix C.
- B. Construction activities or portions of construction activities that have achieved final stabilization as of the effective date of this permit 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 Authorization of Projects After the Effective Date of this General Permit

- A. Projects Disturbing Greater than 1 Acre but Less than 5 Acres
 - 1. This general permit waives the requirement for submission of a Notice of Intent (NOI) during the first sixty (60) days after the effective date of this permit for projects that disturb one (1) or more acres but less than five (5) acres provided that these projects immediately implement the requirements of DEC’s *Low Risk Site Handbook for Erosion Prevention and Sediment Control* upon the effective date of this permit. This 60-day waiver does not apply to construction projects that disturb equal to or greater than five acres. If a project that qualifies for the waiver will not be completed within 60 days of the effective date of this general permit, a complete application for coverage shall be submitted prior to the end of the 60 day period. For purposes of this Subpart, a “complete project” means a project that has established final grades and established final cover of exposed areas (e.g. established permanent vegetation, paved roads).
- B. Projects Disturbing Equal to or Greater than 5 Acres
 - 1. Construction Activities Previously Authorized under DEC General Permit 3-9001 (2003)
 - a. All projects disturbing equal to or greater than 5 acres that have received coverage under DEC’s General Permit 3-9001 (2003) as of the effective date this general permit do not need to apply for coverage under this general permit. However, if the project will continue beyond the expiration date of its authorization to discharge under General Permit 3-9001 (2003), the permittee

shall apply for coverage under this general permit at least sixty (60) days prior to the expiration of the authorization.

2. Construction Activities that Have Not Received Coverage under DEC General Permit 3-9001 (2003)
 - a. If a project that will disturb equal to or greater than 5 acres has not obtained coverage under DEC's General Permit 3-9001 (2003) prior to the effective date of this permit, it must obtain coverage under this general permit prior to the commencement of construction activities. However, if an applicant has submitted an administratively and technically complete application for coverage under DEC's General Permit 3-9001 (2003) prior to the effective date of this permit, DEC will continue to process the application and issue coverage under General Permit 3-9001 (2003) if the project qualifies for such coverage.

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 in order to determine if the proposed activities constitute:

Low-risk construction activities: These construction projects are required to submit a NOI and apply DEC's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* 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 for low risk construction activities.

Moderate risk construction activities: These construction projects are required to prepare and submit a NOI and a site specific Erosion Prevention and Sediment Control Plan (EPSC Plan). EPSC Plans will be reviewed by DEC to ensure compliance with the terms and conditions of this permit prior to the issuance of an authorization to discharge.

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 Discharges Covered by this Permit

- A. Subject to compliance with the terms and conditions of this permit, this permit authorizes:
1. The discharge of pollutants in stormwater associated with large and small construction activity as defined in Appendix C;
 2. The discharge of pollutants in stormwater designated by the Secretary as needing a stormwater permit under 40 CFR Sections 122.26(a)(1)(v), 122.26(b)(15)(ii), 122.26(a)(9)(i)(C) or (D);
 3. Discharges composed of allowable discharges listed in Subparts 1.4.A.1 and 2 commingled with a discharge authorized by a different National Pollutant Discharge Elimination System (NPDES) permit and/or a discharge that does not require NPDES permit authorization;
 4. The discharge of pollutants in stormwater associated with support activities (e.g. 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; and
 5. Uncontaminated discharges from excavation dewatering activities.

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. Section 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 activities;
 4. Non-stormwater discharges, except those discharges as described in Subpart 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. Stormwater discharges from construction related activities when that discharge or activity are likely to jeopardize the continued existence of any State or federally listed threatened or endangered species or result in the destruction or adverse modification of critical habitat;
8. 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 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;
9. Discharges of pollutants of concern to waters for which there is a total maximum daily load (TMDL) established or approved by EPA unless the ESCP 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 discharge, the ESCP Plan must incorporate that allocation and include necessary steps to meet that allocation;
10. In a situation where an EPA-approved or established TMDL has specified 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 should 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 assumed 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;
11. Stormwater discharges from construction activities that are determined to require an individual construction permit in accordance with the risk scoring process in Appendix A to this permit or as determined by the Secretary in accordance with Condition 2 of Appendix D; and
12. Discharges from construction activities below high water mark. These discharges may require a stream alteration permit pursuant to Vermont's stream alteration program and/or a federal Section 404 Army Corps of Engineers permit.

1.6 Off-Site Support Activities

- A. Support activities (e.g. equipment staging areas, material storage areas, excavated material disposal areas and borrow areas) involving disturbance of one or more acres of land and support activities less than one acre that are part of a common plan of development require coverage under this permit. Support activities may obtain coverage as follows:
1. As a part of the same authorization to discharge issued for the construction project which will utilize the support activities; or
 2. As an independent authorization separate from the authorization for the construction project which will utilize the support activities; or
 3. As an amendment to an authorization to discharge for the construction project, with the owner of the land where the support activities will occur added as a co-permittee.
- B. Permit coverage is not required for support activities involving disturbance of less than one acre of land if such disturbance is not part of a common plan of development that requires permit coverage.

1.7 Permitting and Risk Scoring of Phased Projects

- A. A project may be permitted in phases under separate NOIs provided that each of phases is constructed independently. Phases are considered independent of one another if any of the following applies:
1. Each phase is constructed separately, with no construction of phases occurring simultaneously; or
 2. Phases do not share a common landowner or a common principal operator; or
 3. One of the phases is a support activity outside of a common plan of development.
- 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 CFR 122.44(s)) provide authority for DEC to recognize MS4 construction programs that meet or exceed DEC's construction program and to incorporate that program 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 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. An applicant for low risk construction activities shall prepare and submit a complete and accurate Notice of Intent. A NOI for low risk construction activities shall contain, at a minimum, the following:
1. Name of landowner(s) and principal operator(s) and contact information;
 2. Project location information, description of construction project, projected date of construction commencement and final stabilization; total acreage to be disturbed;
 3. A copy of a completed Appendix A showing the risk score for the project;
 4. Name(s) of receiving water(s); and
 5. Certification of accuracy of information submitted and certification relating to implementation of erosion prevention and sediment control measures in Low Risk Sites Handbook.
- B. The applicant(s) shall be the person who owns the property and the principal operator(s). For purposes of this permit, “principal operator” means all parties associated with the construction activity that meet either of the following two criteria:
1. The party has operational control over construction plans and specifications including, but not limited to, 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 (e.g., they are authorized to direct workers at a site to carry out activities required by the *Low Risk Site Handbook for Erosion Prevention and Sediment Control* or comply with other permit conditions).

- C. If the owner of the construction site obtains coverage under this general permit and the owner is not the principal operator or is not the sole principal operator, then all principal operators shall obtain coverage as co-permittees in accordance with Subpart 7.2 prior to the commencement of construction activities.

2.2 Submitting Notice of Intent and Fee

- A. The applicant for coverage for low risk construction activities shall submit an NOI in hard copy, or, if available, through an electronic NOI system.
- B. The NOI form and instructions are available at www.vtwaterquality.org/stormwater.htm. The applicant shall submit the NOI and necessary attachments to the address listed in Subpart 2.2.C. of this permit. If available, these may be submitted through an electronic NOI system.
- C. At the same time that the applicant submits the NOI, 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
Water Quality Division
Building 10 North, 103 South Main Street
Waterbury, Vermont 05671-0408

Applicants may elect to pay the fee through an electronic NOI system, if available.

- D. The Secretary reserves the right to return an application that is incomplete or inaccurate or does not meet the requirements of this permit.
- E. The Secretary may require an applicant to submit additional information that the Secretary considers necessary in order 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 sixty (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.
- F. A completed NOI and all necessary attachments should be filed at least sixty (60) days 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

- A. Any person who files a NOI shall at the same time provide a copy of the completed NOI form and a completed Appendix A form to the municipal clerk for posting in the municipality in which the discharge is to be located. If the project and the related discharge(s) are located in different municipalities, than the completed NOI and Appendix A shall be filed with the municipal clerk in each municipality.
- B. If the Secretary issues an authorization to discharge under this permit and the Secretary later determines that the applicant failed to provide notice to the municipal clerk in accordance with Subpart 2.3.A of this permit, the Secretary may revoke the permit in accordance with Condition 5 of Appendix D and/or may take any appropriate enforcement action in accordance with Part 11 of this permit.
- C. For a period of ten (10) days following receipt and posting of a NOI on DEC's stormwater website, the Secretary shall provide an opportunity for written comments regarding whether the NOI and all necessary attachments comply with the terms and conditions of this permit.
- D. Any interested person should file comments with the Secretary during the 10-day notice period. Should the Secretary extend or reopen the public comment period, the Secretary will so notify the applicant and those persons who file comments or a letter of interest.
- E. The Secretary may extend the public comment period if additional information is requested pursuant to Subpart 2.2.E of this permit.

2.4 Authorization to Discharge

- A. A person who files a 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 project shall be valid for a period of two (2) years.
- C. Each completed NOI and Appendix A is incorporated by reference and included in the terms of this general permit, and each permittee shall undertake its construction activities in accordance with the NOI and Appendix A, as a condition of this permit. Failure to comply with the NOI and Appendix A shall be deemed a violation of this permit and subject to enforcement action.

2.5 Limitations on Land Disturbance for Low Risk Construction Activities

- A. A project shall not be considered low risk if it will involve disturbance of greater than seven (7) acres at any one time.
- B. For low risk construction activities, all areas of disturbance must have temporary or final stabilization within 21 days of the initial disturbance, unless a shorter duration is selected in the completion of Appendix A. After this time, any disturbance in the area must be stabilized at the end of each work day. The following exceptions apply:
 - 1. Stabilization is not required if work is to continue in the area within the next 24 hours and there is no precipitation forecast for the next 24 hours.
 - 2. Stabilization is not required if the work is occurring in a self-contained excavation (i.e. no outlet) with a depth of 2 feet or greater (e.g. house foundation excavation, utility trenches).

2.6 Recording Authorization to Discharge in Local Land Records

In the case of phased residential or commercial subdivisions, the permittee shall file a one page notice of the issuance of an authorization to discharge under this general permit in the local land records within fourteen (14) days of the issuance of the authorization. A one page notice form is available on-line at www.vtwaterquality.org. A copy of the recording shall be submitted to the Secretary within fourteen (14) days of the permittee's receipt of a copy of the recording from the local land records.

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. An applicant for a moderate risk construction project must prepare and submit a complete and accurate Notice of Intent (NOI). A NOI for moderate risk activities shall contain, at a minimum, the following:
 - 1. Name of owner(s) and principal operator(s) and contact information;
 - 2. Project location information, description of construction project, projected date of construction commencement and final stabilization; total acreage to be disturbed;
 - 3. A copy of a completed Appendix A showing the risk score for the project;

4. Name(s) of receiving water(s);
 5. If chosen, the name and contact information of the On-site Coordinator;
 6. Indication of whether the discharge is consistent with the requirements of any applicable TMDL;
 7. A copy of the EPSC Plan prepared in accordance with Part 4 and Appendix B to this permit; and
 8. Certification of accuracy of information submitted.
- B. The applicant(s) shall be the person who owns the property and the principal operator(s). For purposes of this permit, “principal operator” means all parties associated with the construction activity that meet either of the following two criteria:
1. The party has operational control over construction plans and specifications, including but not limited to 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 (e.g., they are authorized to direct workers at a site to carry out activities required by the ESCP Plan or comply with other permit conditions).
- C. If the owner of the construction site obtains coverage under this general permit and the owner is not the principal operator or is not the sole principal operator, then all principal operators shall obtain coverage as co-permittees in accordance with Subpart 7.2 prior to the commencement of construction activities.

3.2 Submittal of Notice of Intent and Fee

- A. The applicant for coverage for moderate risk construction activity shall submit a NOI and all necessary attachments in hard copy, or, if available, through an electronic NOI system.
- B. The NOI form and instructions are available at www.vtwaterquality.org/stormwater.htm. The applicant shall submit the NOI and necessary attachments to the address listed in Subpart 3.2.C of this permit. If available, these may be submitted through an electronic NOI system.
- C. At the same time that the applicant files the NOI, 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
Water Quality Division
Building 10 North, 103 South Main Street
Waterbury, Vermont 05671-0408

Applicants may elect to pay the fee through an electronic NOI system, if available.

- D. The Secretary reserves the right to return an application that is incomplete or inaccurate or does not meet the requirements of this permit and/or *The Vermont Standards and Specifications for Erosion Prevention and Sediment Control*.
- E. The Secretary may require an applicant to submit additional information that the Secretary considers necessary in order 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 sixty (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.
- F. A completed NOI and all necessary attachments should be filed at least sixty (60) days 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

- A. Any person who files a NOI shall at the same time provide a copy of the completed NOI form and a completed Appendix A to the municipal clerk for posting in the municipality in which the discharge is to be located. If the project and related discharge(s) are located in different municipalities, then the completed NOI and completed Appendix A shall be submitted to the municipal clerk in each municipality.
- B. If the Secretary issues an authorization to discharge under this permit and the Secretary later determines that the applicant failed to provide notice to the municipal clerk in accordance with Subpart 3.3.A of this permit, the Secretary may revoke the permit in accordance with Condition 5 of Appendix D and may take any appropriate enforcement action in accordance with Part 11 of this permit.
- C. The EPSC Plan that is filed with the NOI shall be made available for public review at the Department's offices during normal business hours.

- D. For a period of ten (10) days following receipt and posting of a NOI on DEC's stormwater website, the Secretary shall provide an opportunity for written comments regarding whether the NOI and all necessary attachments, including the EPSC Plan, comply with the terms and conditions of this permit.
- E. Any interested person should file comments with the Secretary during the 10-day notice period. Should the Secretary extend or reopen the public comment period, the Secretary will so notify the applicant and those persons who file comments.
- F. The Secretary may extend the public comment period if additional information is requested pursuant to Subpart 3.2.E of this permit.

3.4 Authorization to Discharge

- A. A person who files a 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. Each completed NOI and Appendix A is incorporated by reference and included in the terms of this general permit, and each permittee shall undertake its construction activities in accordance with the NOI and Appendix A, as a condition of this permit. Failure to comply with the NOI and Appendix A shall be deemed a violation of this permit and subject to enforcement action.
- C. An authorization to discharge for a moderate risk project shall be valid for a period of five (5) years.

3.5 Limitations on Land Disturbance for Moderate Risk Construction Activities

- A. For moderate risk construction activities, land disturbance at any one time is limited to 5 acres unless:
 - 1. A smaller disturbance limit is specified by the applicant in the completion of Appendix A, in which case the smaller limit applies; or
 - 2. A larger disturbance limit is included in a written authorization from the Secretary, in which case the larger limit applies. If the Secretary determines it is necessary to protect water quality, the Secretary may require applicants seeking coverage for projects as moderate risk to file an application for an Individual Discharge Permit if more than 5 acres of concurrent disturbance is planned.
- B. For moderate risk construction activities, all areas of disturbance must have temporary or final stabilization within 21 days of the initial disturbance, unless a shorter duration is selected in the completion of Appendix A. After this time, any disturbance in the area must be stabilized at the end of each work day. The following

exceptions apply:

1. Stabilization is not required if work is to continue in the area within the next 24 hours and there is no precipitation forecast for the next 24 hours.
2. Stabilization is not required if the work is occurring in a self-contained excavation (i.e. no outlet) with a depth of 2 feet or greater (e.g. house foundation excavation, utility trenches).”

3.6 Recording Authorization to Discharge in Local Land Records

In the case of phased multi-lot residential or commercial subdivisions, the permittee shall file a one page notice of the issuance of an authorization to discharge under this general permit in the local land records within fourteen (14) days of the issuance of the authorization. A one page notice form is available on-line at www.vtwaterquality.org. A copy of the recording shall be submitted to the Secretary within fourteen (14) days of the permittee’s receipt of a copy of the recording from the local land records.

PART 4: EROSION PREVENTION AND SEDIMENT CONTROL PLANS FOR MODERATE RISK CONSTRUCTION PROJECTS; ON- SITE PLAN CORDINATORS; WINTER CONSTRUCTION; RECORD-KEEPING

This Part describes how to prepare an EPSC Plan for moderate risk construction activities, and describes the On-Site Plan Coordinator, winter construction requirements and recordkeeping.

4.1 Erosion Prevention and Sediment Control Plan

- A. An EPSC Plan shall be prepared and submitted with the NOI for moderate risk construction activity. At least one EPSC Plan shall be developed for each moderate risk construction project authorized under this permit.
- B. A permittee is responsible for selecting, installing and implementing erosion prevention and sediment controls that minimize or eliminate pollutants in any stormwater discharge from the construction site in accordance with the requirements of this permit.
- C. Each EPSC Plan shall be developed in conformance with the most recent edition of *The Vermont Standards and Specifications for Erosion Prevention and Sediment Control* and shall contain, at a minimum, the items listed in Appendix B to 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. Each EPSC Plan shall be signed by the designer of the Plan.
- E. Each EPSC Plan shall be amended and updated in accordance with Subpart 4.4 of this permit.
- F. A permittee shall implement the EPSC Plan as written, including all amendments made in accordance with Subpart 4.4 of this permit, from the commencement of construction activity until final stabilization is complete.
- G. The goal of an EPSC Plan is to minimize the erosion of disturbed land and to minimize or eliminate the discharge of sediment to waters of the State through the implementation of appropriate erosion prevention and sediment control measures.
- H. Each EPSC Plan is incorporated by reference and included in the terms of this general permit, and each permittee shall implement the provisions of the EPSC Plan, and all amendments thereto, as a condition of this permit. Failure to comply with the EPSC Plan, and all amendments thereto, shall be deemed a violation of this permit and subject to enforcement.
- I. The permittee is responsible for ensuring that each contractor involved in land disturbance activities 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

- A. The permittee shall designate a person as the On-Site Plan Coordinator who shall be directly responsible for on-site implementation of the EPSC Plan. Such person shall be knowledgeable in the principles and practice of erosion and sediment controls and possess the skills to assess conditions at the construction site that could impact stormwater quality and to assess the effectiveness of all sediment and erosion control measures selected to control the quality of stormwater discharges from the construction activity.
- B. The On-Site Plan Coordinator shall have the authority to stop and/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 EPSC Plan shall indicate how frequently the On-Site Plan Coordinator will be on site to oversee implementation of the EPSC Plan and to monitor its effectiveness. The On-Site Plan Coordinator or his/her designee shall be on site on a daily basis during active construction. The On-Site Coordinator does not have to be the permit applicant.
- C. The name and daytime telephone number of the On-Site Plan Coordinator shall be provided on the NOI or be shall be filed in writing with DEC before the start of

construction if the On-Site Plan Coordinator 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 season (October 15th –April 15th) and the EPSC Plan does not identify erosion prevention and sediment control measures for use during the winter season, the permittee shall amend the EPSC Plan prior to performing any construction activities during the winter season. The amendment 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*. The permittee shall also notify the Secretary of the planned winter construction activity prior to the commencement of such activity, either on the original Notice of Intent, or by filing a Notice of Winter Construction form available at www.vtwaterquality.org/stormwater.htm. The Notice of Winter Construction shall be made a part of the EPSC Plan.

4.4 Recordkeeping – Updating EPSC Plan

- A. The following records shall be maintained on-site with the EPSC Plan:
1. Inspection reports prepared pursuant to Subpart 6.2.G;
 2. Summaries of Runoff, Discharges, Corrective Action and Sampling 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 7.2;
 6. Any Notices of Termination for portions of an on-going construction project; and
 7. Any amendments to the EPSC Plan required by this permit.

4.5 Availability of Documentation On-Site; Posting of Authorization

- A. A copy of the authorized EPSC Plan, and all amendments, co-permittee forms, inspections and all other required items described in Section 4.4 of this permit shall be 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 shall have a copy of the EPSC Plan and all amendments available 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 at the construction site.
- C. The permittee shall post a notice, provided by DEC, demonstrating the authorization under this permit. Generally, 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 pipeline project crosses a public road).
- D. EPSC Plans shall be made available upon request by DEC representatives. The copy of the EPSC Plan, and all amendments that is required to be kept on-site or locally available shall be made available, in its entirety, to DEC staff for review and copying at the time of an on-site inspection by such staff.

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

There are many site-specific changes that may occur over the life of a construction project. For example, the limits of the area of disturbance or the phasing of construction activities may need to be modified. This Part describes two categories of project change and the associated process that must be followed by the permittee.

5.1 "Major Changes" to a Project

- A. Authorized construction activities at Low Risk or Moderate Risk projects shall be rescored in accordance with Appendix A if there is a "major change" in the construction activities. A "major change" means a change in the construction activities that results in an increase in the risk to water quality, such that the risk category for the project changes from Low Risk to Moderate Risk, Low Risk to Requires Individual Permit, or Moderate Risk to Requires Individual Permit. Permittees are required to reevaluate the risk category of the project using Appendix A in advance of any change that:
 1. Increases areal extent of disturbed land that is open at any one time; or
 2. Increases the length of time that a given area will remain disturbed without temporary or final stabilization; or

3. Reduces the use or effectiveness of vegetated buffers between the construction project and the receiving waters; or
 4. Increases the area of disturbance on more erodible soils or steeper slopes.
- E. If, after rescoring, a project remains in the same risk category, the proposed changes are deemed minor and the permittee shall amend the EPSC Plan and maintain it on-site as required in Subsection 5.2.
- F. If, after reevaluating the risk category, a project moves from the low risk to moderate risk category, a new NOI and an EPSC Plan shall be submitted to the Secretary.
- G. If, after reevaluating the risk category, a project moves from the low or moderate risk categories to the category that requires an individual permit, then the permittee shall apply for an individual construction stormwater permit.
- H. Any major change to a project is not authorized until a new authorization under this permit or an individual permit is received from the Secretary. However, construction activities that were previously authorized may continue.

5.2 “Minor Changes” to a Project

- A. A “minor change” means a change in the construction activities on a Moderate Risk project that affects erosion prevention and sediment control and that does not result in an increase in the risk category of a project. Minor changes include, but are not limited to, changes in grading, limits of disturbance, erosion prevention and sediment control practices, construction sequence, and new construction in the winter period.
- B. The On-Site Coordinator is authorized to implement minor changes that involve substituting accepted interchangeable erosion prevention and sediment control practices, as detailed in the *Vermont Erosion Prevention and Sediment Control Field Guide*. The substitution of interchangeable practices shall be noted on the on-site EPSC Plan, and on any forms provided by the Secretary for logging such changes.
- C. For minor changes other than substitution of interchangeable practices from the *Vermont Erosion Prevention and Sediment Control Field Guide*, the permittee shall have the EPSC Plan modified to reflect the change by either the original designer, a professional engineer licensed in the State of Vermont or a Certified Professional in Erosion Prevention and Sediment Control. Such modification shall include a certification that the modified EPSC Plan meets the requirements of this general permit and DEC’s *The Vermont Standards and Specifications for Erosion Prevention and Sediment Control*. Minor changes involving non-interchangeable practices shall be noted on the on-site EPSC plan, and on any forms provided by the Secretary for logging such changes.

- D. Any minor change that involves earth disturbance substantially outside of the originally authorized limits of disturbance requires the submittal of a new NOI.

PART 6: INSPECTIONS, CORRECTIVE ACTION, COMPLIANCE WITH PERMIT FOR LOW RISK AND MODERATE RISK PROJECTS

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 and Corrective Action for Low Risk Projects

- A. Inspections and BMP maintenance for low risk construction activity shall be conducted in accordance with the *Low Risk Site Handbook for Erosion Prevention and Sediment Control*.
- B. A permittee is responsible for inspecting and maintaining erosion prevention and sediment controls that minimize or eliminate pollutants in any stormwater discharge from the construction site in accordance with the requirements of this permit.
- C. If visibly discolored stormwater runs off the construction site or runs off the construction site and discharges to waters of the State, the permittee shall take immediate corrective action. Corrective action is defined as immediate action to inspect and maintain existing BMPs and to install supplemental BMPs necessary to correct the discharge.
- D. If, after completing the actions required in Subpart 6.1.C above, there continues to be a discharge of sediment from the construction site to waters of the state, the permittee shall notify DEC by submitting a report within 72 hours of the discharge. The report shall be on a form provided by DEC.
- E. If there is a repeated or an ongoing sediment discharge to waters of the state, DEC may determine that the construction project risk category needs to be reevaluated in accordance with Appendix A and/or if alternative or additional BMPs must be implemented. The permittee shall take all corrective actions requested by DEC including, but not limited to, installing and implementing alternative or additional BMPs to correct the discharge.

6.2 General Inspection Requirements at Moderate Risk Sites

- A. A permittee is responsible for inspecting and maintaining erosion prevention and sediment controls that minimize or eliminate pollutants in the discharge in accordance with the requirements of this permit.
- B. Inspections shall be conducted at least once every seven (7) calendar days and as required in subpart 6.3.A.
- C. During the winter construction season (October 15th through April 15th), daily inspections shall be conducted of areas that have been disturbed and are not yet finally stabilized.
- D. Inspection frequency may be reduced to not less than one (1) per month if the entire site is temporarily stabilized. Inspections may be postponed indefinitely if the entire site is permanently stabilized.
- E. Inspections shall be conducted by, or under the direction of, the On-Site Plan Coordinator.
- F. Inspections shall include all areas of the site disturbed by construction activity and all discharge locations, including areas with temporary stabilization.
- G. An inspection report shall be completed for each inspection and signed by the On-Site Plan Coordinator or the person acting under the direction of the On-Site Plan Coordinator. At a minimum, each inspection report shall include:
 - 1. The inspection date;
 - 2. Names, titles, and qualifications of personnel making 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. A description of current weather information and a description of any runoff or discharges of visibly discolored stormwater to waters of the state occurring at the time of the inspection;
 - 5. Location(s) of runoff or discharges of visibly discolored stormwater to waters of the state from the construction site;
 - 6. Location(s) of BMPs that need to be maintained;

7. Location(s) of BMPs that failed to operate as designed or proved inadequate for a particular location;
 8. Location(s) where additional BMPs are needed that did not exist at the time of inspection;
 9. Any corrective action required including any necessary changes to the EPSC Plan and implementation dates;
 10. Description of areas that are currently disturbed and areas that have been stabilized since last inspection;
 11. A description of the soil conditions (e.g. dry, wet, saturated); and
 12. A certification that the construction activities are now in compliance with the EPSC Plan and this permit.
- 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 at Moderate Risk Sites

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

- A. Inspect for runoff of visibly discolored stormwater leaving the construction site. If there is runoff of visibly discolored stormwater from the construction site, the On-Site Plan Coordinator 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 1, the runoff of visibly discolored stormwater continues, the On-Site Plan Coordinator 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 On-Site Plan Coordinator shall supplement BMPs as necessary to correct the runoff 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 On-Site Plan Coordinator 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 On-Site Plan Coordinator 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 DEC.

2. If due to unexpected circumstances an On-Site Plan Coordinator 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 On-Site Plan Coordinator shall as soon as practicable evaluate the need for supplemental BMPs and install such BMPs as necessary to correct the discharge(s).

2. the On-Site Plan Coordinator shall, within 72 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 provided by the Secretary;
- b. Describe the cause, time and 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 On-Site Plan Coordinator shall again follow the inspection and sampling requirements in subpart 6.3.C. above. If the turbidity sample is less than 25 NTU then no further action is needed. If the turbidity sample is greater than 25 NTU, the On-Site Plan Coordinator shall immediately notify DEC's Stormwater Program. DEC may require the On-Site Plan

Coordinator to reevaluate existing BMPs and install supplemental BMPs as necessary to correct the discharge. At the Secretary's discretion, DEC may also require the On-Site Plan Coordinator 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

- A. If, based upon inspections or investigations by DEC representatives, it is determined that the EPSC Plan will not be sufficient to prevent discharges of visibly discolored stormwater from the construction site, the permittee shall modify the EPSC Plan as necessary to include additional or modified BMPs designed to correct problems identified. Revisions to the EPSC Plan shall be completed within seven (7) calendar days 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 contribute to a violation of Vermont's Water Quality Standards. If such a determination is made, the Secretary will require a permittee to:
 1. Amend the EPSC Plan to address adequately 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 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. The Secretary has the sole discretion to order a permittee pursuant to 10 V.S.A. Chapters 47 or 201 to immediately stop all ongoing construction and construction-related activities upon a finding that a discharge or potential discharge from such activities presents a current or potential threat of harm to the environment. The Secretary's stop work order may also require the permittee to take all actions to prevent or correct the discharge or potential discharge. Any appeal of the Secretary's action under this subpart shall not stay the effectiveness of this directive. 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. Each revised EPSC Plan prepared pursuant to this Part shall be 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 identify BMPs that are not operating effectively, maintenance shall be performed as soon as possible and before the next storm event to maintain the continued effectiveness of the measures. If implementing BMPs is impracticable before the next storm 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. If implementing BMPs is impracticable before the next storm event, then the affected area shall be stabilized temporarily until such time that the BMPs can be installed.

6.6. Presumption of Compliance

A. Compliance with water quality standards shall be presumed, unless site specific information demonstrates that a discharge causes or contributes to a violation of water quality standards, 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: TRANSFERS OF AUTHORIZATIONS, CO-PERMITTEES, TERMINATION AND COMMON PLANS OF DEVELOPMENT

As construction sites develop over time, changes in owners and operators may occur either for the entire site or portions of the site. Changes in ownership occur most frequently in common plans of development (e.g. subdivisions). 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 off 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 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 thirty (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 transfer; and
 4. A statement signed by the prospective permittee, stating that:
 - a. The conditions of the facility operation 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 permit; and
 - c. He/she has adequate funding or other means to effect compliance with all the terms of the permit.

7.2 Adding or Subtracting Co-Permittees on Low Risk and Moderate Risk Projects

- A. An owner or principal operator may 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 the terms and conditions of this permit and the EPSC Plan, if any.
- B. If the owner of the construction site obtains coverage under this general permit and the owner is not the principal operator or the sole principal operator, then all principal operators shall obtain coverage as co-permittees in accordance with this Subpart prior to the commencement of construction activities.
- C. An owner or principal operator may be terminated as a Co-Permittee by filing a Notice of Termination of Co-Permittee Status with the Secretary. The Co-Permittee shall only be terminated from the permit upon approval by the Secretary.
- D. The Notice of Addition of Co-Permittee form and the Notice of Termination of Co-Permittee Status form are available on-line at www.vtwaterquality.org/stormwater.htm.

7.3 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 project 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;
 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; or
 4. For residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner.
- 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.
- C. A NOT does not need to be filed to terminate permit coverage for low risk construction projects. An authorization to discharge for low risk projects will automatically terminate two years after the date of its issuance. If a low risk construction site has not achieved final stabilization two years after receiving an authorization to discharge then a new NOI shall be filed.

7.4 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.

7.5 Submitting a Notice of Termination

- A. A permittee shall submit a complete and accurate NOT, on a form provided by the Secretary. A copy of a NOT form is available on-line at www.vtwaterquality.org/stormwater.htm.

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 On-Site Plan Coordinator and by an authorized representative as defined in the signature requirements in Appendix D, and the name and title of that authorized representative; and
6. If the NOT is for only a portion of an ongoing construction project, a description of the portion of the site to which the NOT will apply.

7.6 Common Plans of Development

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 7.2 above; or
2. The new owner must obtain separate coverage under this 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.

PART 8: LEGAL AUTHORITIES

The 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 Rules, Chapter 13, the federal Clean Water Act, 33 U.S.C. §1251 et. seq., (hereafter CWA or the Act), and related federal regulations.

PART 9: 303(d) LISTED WATERS; TMDLS

If a receiving water is listed on Vermont's 303(d) list and is subject to an EPA-approved TMDL, the 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 listed on the 303(d) list as impaired due to sediment or stormwater, but is not subject to an approved TMDL, 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 provides extra protection for these waters since it automatically increases the risk score for construction activities discharging to stormwater and sediment impaired waters.

9.1 Discharges into State Waters with an Approved Total Maximum Daily Load

- A. An applicant for moderate risk construction activities is eligible for coverage under this permit for discharges of pollutants of concern to waters for which there is a total maximum daily load (TMDL) established or approved by EPA if the ESCP 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 ESCP Plan shall incorporate that allocation and include necessary steps to meet that allocation.

- B. In a situation where an EPA-approved or established TMDL has specified 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 for moderate-risk construction activities 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 (as determined by Appendix A), 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 on the EPA-approved State Vermont 303(d) List as Impaired Due to Sediment or Stormwater 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 on the EPA-approved State of Vermont 303(d) List as impaired due to sediment or stormwater 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 condition 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 on the EPA-approved State of Vermont 303(d) List as impaired due to sediment or stormwater and for which there is no approved TMDL, if the permittee complies with the terms and condition 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: ADDITIONAL PERMIT CONDITIONS

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

**PART 11: 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 pre-condition 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. Violations subject to enforcement action by the Secretary include, but are not limited to, the following:

1. Failure to apply for coverage under this general permit;
2. Failure to undertake construction activities as described in the NOI and in the project's Appendix A risk scoring;
3. Failure to obtain co-permittee status in accordance with Part 7 of this permit;
4. Failure to provide public notice of an NOI in accordance with this permit;
5. Failure to properly select, install and maintain BMPs in accordance with this permit, the EPSC Plan, if one is required, and the applicable DEC erosion prevention and sediment control manual;
6. Failure to amend the EPSC Plan as required by this permit;
7. Implementing a project change in violation of Part 5 of this permit;
8. Failure to take appropriate corrective action or submit corrective action reports in accordance with Part 6 of this permit; and
9. Failure to inspect or prepare inspection reports in accordance with Part 6 of this permit.

PART 12: APPEALS

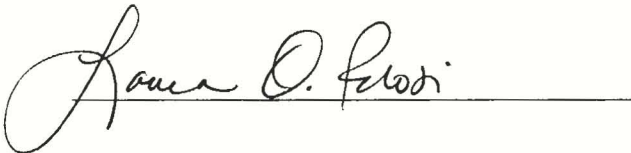
This permit may be appealed to the Vermont Environmental Court in accordance with 10 V.S.A. Section 220.

PART 13: EFFECTIVE DATE OF PERMIT AND PERMIT TERM

This permit shall become effective upon signing and shall expire five (5) years from the date of signing.

Signed this 5th day of February, 2008.

Laura Q. Pelosi, Commissioner
Department of Environmental Conservation



A handwritten signature in cursive script, reading "Laura Q. Pelosi", is written over a horizontal line.

APPENDIX A - RISK EVALUATION

Accurately answering the questions in this appendix will allow you to determine whether a proposed construction project is considered a Low Risk or Moderate Risk project, which defines the application and permit requirements that are applicable to your project.

The risk evaluation procedure 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 a project is not automatically categorized as Low Risk based upon the Basic Risk Evaluation, you must complete Part II, Detailed Risk Evaluation, to determine the risk category for your project. This part includes questions on more detailed aspects of the project.

Once the appropriate risk category has been determined, refer to Part III for the application requirements.

You should be aware that each completed Appendix A is incorporated by reference and included in the terms of this general permit, and each permittee shall undertake its construction activities in accordance with the completed Appendix A, as a condition of this permit. Failure to comply with the completed Appendix A shall be deemed a violation of this permit and subject to enforcement action.

APPENDIX A

Part I – Basic Risk Evaluation

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

Basic Risk Evaluation				
	Criteria	Answer	Score Direction	Enter Score
1.	Will the proposed independent project alone disturb more than 2 acres of land?	YES / NO	If YES, enter 1, if NO enter 0	___
2.	Is the project within a watershed impaired due to stormwater or sediment as specified on Part A of the Vermont 303(d) list?	YES / NO	If YES, enter 1, if NO enter 0	___
3.	Will the project have any stormwater discharges from the construction site to receiving water(s) that do not first pass through a 50 ft vegetated buffer area?	YES / NO	If YES, enter 1, if NO enter 0	___
4.	Will the project have disturbed earth in any one location for more than 14 consecutive calendar days without temporary or final stabilization?	YES / NO	If YES, enter 1, if NO enter 0	___
5.	Will the project have more than five acres of disturbed earth at any one time?	YES / NO	If YES, enter 1, if NO enter 0	___
Total Score for Low Risk Screen 2 (add score from questions 1-5)				___

If the Total Score for Basic Risk Evaluation is 0, the proposed project is eligible for coverage under this permit as a Low Risk project. Proceed to Part IV of Appendix A for a summary of the application requirements for Low Risk Projects. If not, proceed to Part II.

Criterion 1: Only include the disturbance planned for an independent project. For example, if a lot owner is only building on a single house lot in a residential subdivision, only consider the disturbance associated with that lot, not the entire common plan. Refer to Appendix C for definitions of independent project and disturbance.

Criterion 2: Refer to the following web page for a list of waters in these categories:
http://www.vtwaterquality.org/stormwater/html/sw_cgpeligibility.htm

Criterion 3: Refer to the Appendix C for the definition of vegetated buffer area.

Criterion 4: Refer to Appendix C for definitions of temporary and final stabilization.

Criterion 5: Refer to Appendix C for the definition of disturbed earth.

Part II – Detailed Risk Evaluation

For projects not automatically categorized as Low Risk in Part I, this Detailed Risk Evaluation must be completed to determine if a project is Low Risk, Moderate Risk, or requires an Individual Permit. 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 or pond or 50 feet (horizontal) upslope of any rivers or stream (perennial or seasonal)?	YES/ NO	If YES, enter 1, if NO enter 0	—
B.	Will the project have stormwater discharges by direct conveyance (tributary, channel, ditch, storm sewer, etc.) to a water of the state listed on the 303 (d) Part A list as being impaired by stormwater or sediment; a Class A Water; or an Outstanding Resource Water?	YES / NO	If YES, enter 1, if NO enter 0	—
C.	Will the project have more than five acres of disturbed earth at any one time?	YES/ NO	If YES, enter 1, if NO enter 0	—
D.	Will the project have disturbed earth in any one location for more than 14 consecutive calendar days without temporary or final stabilization?	YES/ NO	If YES, enter 1, if NO enter 0	—
E.	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	—
F.	Will the project include more than one acre of disturbance of soils with a high ($K > 0.36$) erodibility rating?	YES/ NO	If YES, enter 1, if NO enter 0	—
G.	Total Score for Risk Factors (add A through F)			—

Criterion A: Measure lake distance from mean water level, and stream or river distance from top of bank. Do not include disturbance for the installation of stormwater treatment facilities or road stream crossings if there are no reasonable alternative locations.

Criterion B: Refer to http://www.vtwaterquality.org/stormwater/htm/sw_cgpeeligibility.htm for the listing.

Criterion C: The maximum allowable for Low Risk Projects is 7 acres. **Moderate risk projects over 5 acres may be required to file an Individual Discharge Permit application if determined necessary by the Secretary.**

Criterion D: The maximum allowable for Low Risk Projects is 21 days. **Moderate risk projects over 21 days may be required to file an Individual Discharge Permit application if determined necessary by the Secretary.**

Criterion E: Include disturbance for the duration of the project, not at any one point in time. Slope determinations should be based on a site survey of the future disturbance area.

Criterion F: Include disturbance for the entire individual project, not at any one point in time. The Erosion Factor K, is a measure of the inherent erodibility of a soil type. Refer to NRCS soil maps for your county. If soils data is not available (e.g. if the site is built on assorted fill material), contact ANR for directions on evaluating soil erodibility.

Part II Continued – Detailed Risk Mitigation Factor Evaluation

Detailed Risk Evaluation – Identify Risk Mitigation Factors				
Criteria		Answer	Score Direction	Enter Score
H.	Will stormwater leaving the construction site pass through at least 50 feet of established vegetated buffer before entering a receiving water?	YES / NO	If YES, enter 1, if NO enter 0	___
I.	Will the project be limited to two acres or less of disturbed earth at any one time?	YES / NO	If YES, enter 1, if NO enter 0	___
J.	Will the project have a maximum of 7 consecutive days of disturbed earth exposure in any location before temporary or final stabilization is implemented?	YES/ NO	If YES, enter 1, if NO enter 0	___
K.	Will the project disturb less than two acres of soil with an erodibility higher than K=0.17?	YES/ NO	If YES, enter 1, if NO enter 0	___
L.	Will the project include less than two acres of disturbance on soil that is greater than 5% slope?	YES/ NO	If YES, enter 1, if NO enter 0	___
M.	Total Score for Risk Mitigation Factors (add H through L.)			___

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

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

Criterion J: Refer to Appendix C for definitions of temporary and final stabilization.

Criterion K: Include disturbance for the duration of the project, not at any one point in time. The Erosion Factor K, is a measure of the inherent erodibility of a soil type. Refer to NRCS soil maps available at USDA-NRCS District Offices. If soils data are not available (e.g. if the site is built on assorted fill material), contact DEC for directions on evaluating soil erodibility.

Criterion L: Include disturbance for the duration of the project, not at any one point in time. Slope determinations should be based on a site survey of the proposed disturbance area.

Total Risk Score		
N.	Moderate Risk Base Score	2
O.	Enter Score from Line G above (Risk Factor Total)	___
P.	Add lines N and O	___
Q.	Enter Score from Line M above (Risk Mitigation Factor Total)	___
R.	<u>OVERALL RISK SCORE:</u> Subtract line Q from line P	___

Part III– Interpreting the Detailed Risk Evaluation

OVERALL SCORE	Risk Category	Directions for Filing for Permits
<1	Low Risk	<p>The proposed project is eligible for the Construction General Permit as a Low Risk project provided that the requirements of Subpart 2 are met. If these requirements cannot be met, contact DEC to determine if the project should seek coverage as a Moderate Risk project or under an Individual Discharge Permit.</p> <p>Refer to Part IV of Appendix A for a summary of the application requirements for Low Risk projects.</p>
1-2	Moderate Risk	<p>The proposed project is eligible for the Construction General Permit as a Moderate Risk project provided that the requirements of Subpart 3 are met. If these requirements cannot be met, contact DEC to determine if the project should seek coverage as a Moderate Risk project or 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>
>2	Requires Individual Permit	<p>The proposed project is not eligible for coverage under the Construction General Permit, and therefore requires coverage under an Individual Discharge Permit. Please refer to Stormwater Section on the Water Quality Division website for more information: www.vtwaterquality.org/stormwater.htm.</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 DEC:

1. A completed Notice of Intent form for General Permit 3-9020;
2. A completed Appendix A;
3. The required processing fee.

To satisfy the public comment requirement, **applicants must file a copy of the completed Notice of Intent form, including a copy of Appendix A, with the municipal clerk in the municipalities where the project will occur prior to submitting this information to ANR. Details of the public notice process are in Part 2 of the general permit.**

2. Moderate Risk Projects

Projects that qualify as Moderate Risk are required to implement a site-specific Erosion Prevention and Sediment Control (EPSC) Plan that conforms to *The Vermont Standards and Specifications for Erosion Prevention and Sediment Control*. To obtain coverage under General Permit 3-9020 as a Moderate Risk project, applicants must submit the following to DEC:

1. A completed Notice of Intent form for General Permit 3-9020;
2. A completed Appendix A;
3. A site-specific EPSC Plan;
4. A certification by the plan preparer that the EPSC Plan conforms to *The Vermont Standards and Specifications for Erosion Prevention and Sediment Control*;
5. The required processing fee.

To satisfy the public comment requirement, **applicants must file a copy of the completed Notice of Intent form, including a copy of Appendix A, with the municipal clerk in the municipalities where the project will occur prior to submitting this information to ANR. Details of the public notice process are in Part 3 of the general permit.**

APPENDIX B - EROSION PREVENTION AND SEDIMENT CONTROL PLAN REQUIREMENTS

1. General Requirements

- A. An Erosion Prevention and Sediment Control (EPSC) Plan that meets the requirements of this permit must be submitted with a Notice of Intent for moderate risk projects. The goal of the EPSC Plan is to provide the On-Site Coordinator and construction site personnel with a thorough strategy tailored to the site conditions 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* (hereafter, “the Standards”), 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);
- c. The total acreage of anticipated earth disturbance;
- d. The intended sequence and timing of major project components that disturb soils at the site;
- e. The maximum concurrent earth disturbance (if any) used to score this project on Appendix A;
- f. The use of vegetated buffers, if any, used to score this project on Appendix A;
- g. The maximum duration for exposed soils at a given location before requiring temporary stabilization;
- h. The name of the receiving water(s), the number of discrete discharge points 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. For each distinct drainage area that includes 0.5 or more acres of proposed earth disturbance and that discharges to a separate location (whether through channelized flow, sheet or overland flow or artificial drainage) list:
 - (1) The contributing drainage area (in acres);
 - (2) A list of the soil types that will be disturbed, including the NRCS erodibility index (K) value from Natural Resources Conservation Service Soil Surveys of these soils, and the proposed area of disturbance of each type of soil;
 - (3) The average slope of the disturbed area;

- (4) The nature of the discharge location (vegetated buffer, storm sewer, waters of the state);
- j. The number of proposed stream crossings and whether a stream alteration permit is being obtained;
- k. The area of wetlands that will be impacted by the proposed activities, their type, and whether a Conditional Use Permit or Army Corps of Engineers permit is being obtained for wetland impacts;
- 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 or under a separate Notice of Intent); and
- m. A statement whether or not earth disturbing activities are anticipated during the winter construction season (October 15- April 15), the nature of these activities, and the area of disturbance associated with these activities.

2. Location Map

A USGS quadrangle map, a portion of a city or county map, or other map with enough detail to identify the location of the construction site, showing the boundaries of the proposed construction activities and identifying the receiving waters for stormwater from the construction site.

3. Pre-Construction Plan

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

- a. The limits of disturbance for the site, 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 (streams, ponds, wetlands, channels, gullies, etc.).
- d. Boundaries and labels of all sub-watersheds with more than 0.5 acres of proposed disturbance;
- e. Existing vegetation;
- f. Location of soil types corresponding to NRCS Soil Maps;
- g. All sediment control measures (silt fence, basins, etc.) to be installed ahead of primary earth disturbance activities;
- h. Limits of proposed disturbance and the method for demarcation in the field;
- i. Directions to complete installation of sediment control measures ahead of initiating the principal earthwork activities;
- j. Directions to complete stabilization of operational stormwater treatment practices (e.g. ponds, grassed lined swales) before directing runoff to them;
- k. Identified buffers or setbacks from water bodies and conveyances to water bodies, with directions for avoiding impacts in these areas;
- l. North arrow and scale;
- m. A legend for all EPSC measures and all other features (e.g. wetlands, streams, property lines, etc.) included on the plan; and
- n. 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 principal construction activities. These must be consistent with limits specified on the Notice of Intent (e.g. vegetated buffer, limited concurrent disturbance). It must include, where applicable:

- a. Property lines of the project;
- b. Boundaries and labels of all sub-watersheds with more than 0.5 acres of proposed disturbance, corresponding to the Project Description (for phased plans, modify for any phase where site drainage has been altered by construction activities);
- c. The proposed phase boundaries, 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);
- d. The limits of disturbance;
- e. Identified buffers or setbacks from water bodies and discrete conveyances to water bodies, with directions for avoiding impacts in these areas;
- f. Specific directions for limiting concurrent earth disturbance;
- g. Existing and planned contours;
- h. Location of all runoff control measures;
- i. 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;
- j. Consistent with Appendix A, directions for stabilization of a given area within a specified timeframe following initial disturbance: “All areas of disturbance must have temporary or final stabilization within __ days of the initial disturbance. After this time, any disturbance in the area must be stabilized at the end of each work day. The following exceptions apply: i) Stabilization is not required if work is to continue in the area within the next 24 hours and there is no precipitation forecast for the next 24 hours. ii) Stabilization is not required if the work is occurring in a self-contained excavation (i.e. no outlet) with a depth of 2 feet or greater (e.g. house foundation excavation, utility trenches).”
- k. Directions and location of practices employed for construction outside of the growing season (October 15- April 15), consistent with the Standards, if earthwork during this period is anticipated;
- l. The location of all existing and proposed structures (roads, utilities, buildings, drainage inlets, etc.);
- m. The location of all proposed stockpiles and directions for stabilizing and protecting stockpile areas consistent with the Standards;
- n. The location of all proposed staging areas;
- o. Directions for inspection frequency consistent with the permit;
- p. North arrow and scale;
- q. A legend for all EPSC measures included on the plan; and
- r. 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 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. 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.;
- e. Specifications for seed mixes, fertilization, and other soil amendments for areas to be stabilized with vegetation;
- f. Directions for completing seeding after April 15 and before September 15 for areas where final stabilization is through vegetation;
- g. Directions for inspection frequency consistent with the permit, including an indication of when inspections may be discontinued;
- h. A legend for all EPSC measures included on the plan;
- i. Date of last plan revision, name of plan designer, and name of plan; and
- j. 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, utility installations, except that:
 1. The Pre-Construction, Construction Plan, and Stabilization Plan may be combined into one plan.
 2. A Phasing Plan shall be developed in accordance with the Standards.
 3. The location of all staging areas away from the project shall be shown with appropriate EPSC measures and accompanying location map.

3. Certifications

1. The EPSC Plan shall contain the following certifications:
 - a. Certification Relating to the Accuracy of Information Submitted

I hereby 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.

_____*
Name of Preparer of EPSC Plan *

b. Certification Relating to Compliance with General Permit and *The Vermont Standards and Specifications for Erosion Prevention and Sediment Control*.

I hereby certify that this Erosion Prevention and Sediment Control Plan was prepared in conformance with the requirements of DEC's General Permit for Stormwater Runoff from Construction Sites (General Permit 3-9020 (2006)) and *The Vermont Standards and Specifications for Erosion Prevention and Sediment Control*. I also certify that I am knowledgeable in the principles and practices of erosion prevention and sediment control and possess the skills to assess conditions at the construction site that could impact stormwater quality and to assess the effectiveness of any sediment and erosion control measures selected to control the quality of stormwater discharges from the construction activity.

_____*
Name of Preparer of EPSC Plan *

* Signatures must conform to the signature requirements in Condition 15 in Appendix D.

APPENDIX C - DEFINITIONS

“Agency” means the Vermont Agency of Natural Resources.

“Applicant” means a person applying for permit coverage.

“Best Management Practices” (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the State.

“Commencement of Construction Activities” 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, but are not limited to, 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 the effective date of this permit 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 1 or more acres of land will be disturbed.

“Construction and Construction-related Activities” means all clearing, grading, excavation, and stockpiling activities that will result in the disturbance of one or more acres of land area. Earth disturbance that is a normal part of the long-term use or maintenance of a property is not covered by the construction general permit (e.g. mining operations, dirt road regrading, routine road resurfacing). For mining operations, “construction and construction-related activities” means the construction or exploration 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 or 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, but is not limited to, drainage swales, ditches, natural channels, and stormwater collection and distribution structures.

“CWA” means the Clean Water Act or the Federal Water Pollution Control Act, 33 U.S.C. section 1251 et seq.

“DEC” means the Vermont Department of Environmental Conservation.

“Disturbed earth” means any soil on a construction site or associated support activities (e.g. staging area, borrow area, disposal site for excess fill) that is exposed to the erosive effects of wind, rain, or runoff due to construction or construction related activities.

“Eligible” means qualified for authorization to discharge stormwater 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 the NPDES program.

“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 the use of gravel, riprap, gabions, or geotextiles) have been employed.

2. When background native vegetation will cover less than 100 percent of the ground (e.g., arid areas, beaches), the 70 percent coverage criteria is adjusted 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 in residential construction, final stabilization means that either:

a. The homebuilder has completed final stabilization as specified above, or

b. The homebuilder has established temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and informing the homeowner of the need for, and benefits of, final stabilization.

4. For construction projects 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. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to “water of the United States,” and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization criteria (1) or (2) above.

“General Permit Rules” means the October 7, 1991 Amendment to the Vermont Water Pollution Control Regulations, Chapter 13.

“Independent Project” means phases of a construction project where any of the following applies:

- i. Each phase is constructed separately, with no construction of phases overlapping in time; or
- ii. Phases do not share a common landowner nor a common principal operator; or
- iii. One of the phases is an off-site waste or borrow area that is completely separate from the main construction site.

“Large Construction Activity” is defined at 40 CFR §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 will disturb equal to or greater than five acres of land or will disturb less than five acres of total land area but is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than five acres. 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.

“Principal operator” for the purpose of this permit and in the context of stormwater associated with construction activity, means any party associated with a construction project that meets either of the following two criteria:

1. The party has operational control over construction plans and specifications including, but not limited to, 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 a EPSC Plan for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the EPSC Planner comply with other permit conditions).

“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.

“Project Area” means:

1. The areas on the construction site where stormwater discharges originate and flow toward the point of discharge into the receiving waters (including areas where excavation, site development, or other ground disturbance activities occur) and the immediate vicinity. (Example: 1. Where bald eagles nest in a tree that is on or bordering a construction site and could be disturbed by the construction activity or where grading causes stormwater to flow into a small wetland or other habitat that is on the site that contains listed species.)
2. The areas where stormwater discharges flow from the construction site to the point of discharge into receiving waters. (Example: Where stormwater flows into a ditch, swale,

or gully that leads to receiving waters and where listed species (such as amphibians) are found in the ditch, swale, or gully.)

3. The areas where stormwater from construction activities discharge into receiving waters and the areas in the immediate vicinity of the point of discharge. (Example: Where stormwater from construction activities discharges into a stream segment that is known to harbor listed aquatic species.)
4. The areas where stormwater BMPs will be constructed and operated, including any areas where stormwater flows to and from BMPs. (Example: Where a stormwater retention pond would be built.)
5. The areas upstream and /or downstream from construction activities discharges into a stream segment that may be affected by the said discharges. (Example: Where sediment discharged to a receiving stream settles downstream and impacts a breeding area of a listed aquatic species.)

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

“Small Construction Activity” is defined at 40 CFR §122.26(b)(15) and incorporated here by reference. A small construction activity includes clearing, grading, and excavating resulting in a land disturbance that will disturb equal to or greater than one (1) acre and less than five (5) acres of land or will disturb less than one (1) acre of total land area but is part of a larger common plan of development that will ultimately disturb equal to or greater than one (1) acre and less than five (5) 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” means stormwater runoff, snowmelt runoff, and surface runoff and drainage.

“Stormwater Discharge-Related Activities” as used in this permit, include: activities that cause, contribute to, or result in stormwater point source pollutant discharges, including but not limited to: excavation, site development, grading and other surface disturbance activities; and measures to control stormwater including the siting, construction and operation of BMPs to control, reduce or prevent stormwater pollution.

“Temporary Stabilization” means protecting soils in areas where additional soil disturbance activities 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. Section 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 lawns or any area of concentrated flow (e.g. ditches, swales).

“Waters of the State” 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.

APPENDIX D – ADDITIONAL PERMIT CONDITIONS

1. Continuation of the Expired General Permit

- A. If this permit is not reissued or replaced prior to its expiration date, it will be 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; or
 2. Submittal of a Notice of Termination; or
 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;
 - 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 for discharges covered by the general permit.

5. If necessary to implement a waste management strategy contained in any applicable basin plan.
 6. 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, an application form, 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.
- B. 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.
- C. Any permittee authorized by a general permit may request to be excluded from coverage of 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, 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 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 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 as either a low or moderate risk project based on a consideration of site specific factors, which modify the assessment of risk in addition to the factors currently evaluated in Appendix A.

4. Inclusion of Permit Requirements in Another NPDES Permit

- A. 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. Section 814 revoke or suspend, in whole or in part, authorization to discharge under a general permit for cause, including but not limited to:
 - 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 or local statutes, regulations or 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 CFR Part 110, 40 CFR Part 117 and 40 CFR Part 302 relating to spills or other releases of oils or

hazardous substances. This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

- B. If a release in excess of reportable quantities occurs, the permittee must modify the EPSC Plan required under Part 6 within 7 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 reoccurrence 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 and 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 accord with DEC's General Permit Rules Section 13.12.C.7.

10. *Historic Properties*

Each permittee must comply with any applicable state and local laws concerning the protection of historic properties and places.

11. *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.

12. *Reopener Clause*

If there is evidence indicating that the stormwater discharges authorized by this permit cause, 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/or requirements in accordance with Subpart 6.4.B of this permit.

13. 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 activity in order to maintain compliance with the conditions of this permit.

14. Duty to Mitigate

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

15. Signatory Requirements

A. All applications, including 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 where 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, including EPSC Plans, 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.”

APPENDIX E - THREATENED AND ENDANGERED SPECIES PROTECTION

You are eligible for coverage under this permit for the stormwater discharges from your construction related activities if the discharge or activity is not likely to jeopardize the continued existence of a State or federally listed threatened or endangered species or result in the destruction or adverse modification of critical habitat. In order to determine whether your construction activities will cause such jeopardy, thereby making you ineligible for coverage, the following process should be followed.

I. APPLICABLE CRITERIA FOR EVALUATING IMPACT OF CONSTRUCTION DISCHARGES

You should use the process outlined in Part II below to evaluate your project in light of one or more of the following six criteria (A-F):

Criterion A. No state or federally-listed threatened or endangered species or their federally-designated critical habitat are in the Project Area as defined in Appendix F; or

Criterion B. Formal consultation with the Fish and Wildlife Service under section 7 of the ESA has been undertaken and that consultation:

- i. Addressed the effects of the project's stormwater discharges and stormwater discharge-related activities on federally-listed threatened or endangered species and federally-designated critical habitat, and
- ii. The consultation resulted in either:
 - a. a biological opinion finding no jeopardy to federally-listed species or destruction/adverse modification of federally-designated critical habitat, or
 - b. written concurrence from the Service with a finding that the stormwater discharges and stormwater discharge related activities are not likely to adversely affect federally-listed species or federally-designated critical habitat; or

Criterion C. Informal consultation with the Fish and Wildlife Service under section 7 of the ESA has been undertaken and that consultation:

- i. Addressed the effects of the project's stormwater discharges and stormwater discharge-related activities on federally-listed threatened or endangered species and federally-designated critical habitat, and
- ii. The consultation resulted in either:
 - a. a biological opinion finding no jeopardy to federally-listed species or destruction/adverse modification of federally-designated critical habitat, or

b. written concurrence from the Service with a finding that the stormwater discharges and stormwater discharge related activities are not likely to adversely affect federally-listed species or federally-designated critical habitat; or

Criterion D. In the case that a state listed species is identified, the stormwater discharges and stormwater discharge related activities are authorized through the issuance of an Endangered and Threatened Species permit under 10 V.S.A. Section 5408 and that authorization addresses the effects of the stormwater discharges and stormwater discharge related activities on state-listed species. In the case that a federally listed species is identified, the stormwater discharges and stormwater discharge related activities are authorized through the issuance of a permit under section 10 of the ESA, and that authorization addresses the effects of the stormwater discharges and stormwater discharge-related activities on federally-listed species and federally-designated critical habitat; or

Criterion E. Stormwater discharges and storm water discharge-related activities are not likely to adversely affect any state or federally-listed threatened or endangered species or result in the destruction or adverse modification of state or federally-designated critical habitat; or

Criterion F. The project's stormwater discharges and stormwater discharge-related activities were already addressed in another permittee's determination, or in another permitting action, under Criteria A-E which included the construction activities and there is no reason to believe that state and federally-listed species or state and federally-designated critical habitat not considered in the prior determination or action may be present or located in the Project Area.

II. PROCESS TO FOLLOW TO ASSESS YOUR CONSTRUCTION DISCHARGES

You should follow this process to assess the potential effects of your stormwater discharges and stormwater related discharge activities on state and federally listed species and the critical habitat of any federally-listed species. When evaluating these potential effects, you should evaluate the entire Project Area, as that term is defined in Appendix D. Note that dischargers who meet Criterion B, C, D, or F because they have both a previously issued ESA section 10 permit and an Endangered and Threatened Species permit under 10 VSA section 5408 , a previously completed ESA section 7 consultation and consultation with the Vermont Department of Fish and Wildlife, or because their activities were already addressed in another discharger's determination, may proceed directly to Step Four.

Step One: Determine if Listed Threatened or Endangered Species and Federally Designated Critical Habitat are Present On or Near Your Construction Site.

You must first determine whether state or federally-listed species reside in the Project Area or if there is critical habitat in the Project Area. The Vermont Agency of Natural Resources maintains a web site showing the location of all State and Federally listed species in Vermont. If you know the location or the latitude and longitude of your facility, you can visit:

<http://www.anr.state.vt.us/site/html/maps.htm> and obtain the necessary information. If there are no listed species or habitat within the Project Area, you are eligible for coverage under this general permit. If there are listed species or critical habitat in your Project Area you should contact the Vermont Department of Fish and Wildlife and you will need to do one or more of the following: 1) conduct visual inspections; 2) conduct a formal biological survey (typically performed by

environmental consulting firms); or 3) if applicable, conduct an environmental assessment under the National Environmental Policy Act (NEPA).

Step Two: Determine if your Construction Related Stormwater Discharges Are Likely to Adversely Affect Listed Threatened or Endangered Species or Designated Critical Habitat

You should assess whether your construction related stormwater discharges or stormwater discharge related activities are likely to adversely affect listed threatened or endangered species or designated critical habitat. Potential adverse effects from construction related stormwater discharges include:

Hydrological. Stormwater discharges may cause siltation, sedimentation or induce other changes in receiving waters such as temperature, salinity or pH. These effects will vary with the amount of stormwater discharged and the volume and condition of the receiving water. Where a stormwater discharge constitutes a minute portion of the total volume of the receiving water, adverse hydrological effects are less likely. Construction activity itself may also alter drainage patterns on a site where construction occurs that can impact listed species or critical habitat.

Habitat. Site development, grading or other surface disturbances from construction activities, including storage of materials and the installation or placement of stormwater BMPs, may adversely affect listed species or their habitat. Stormwater may drain or inundate listed species habitat.

Toxicity. In some cases pollutants in stormwater may have toxic effects on listed species.

The scope of effects to consider will vary with each construction site. If you are having difficulty determining whether your project is likely to adversely affect listed species or critical habitat, or the State of Vermont Department of Fish and Wildlife or a Federal agency has already raised concerns with your discharge, you must contact the appropriate office for assistance. If adverse effects are not likely, you have satisfied Criterion E and can apply for coverage under the construction permit. If your stormwater discharge may adversely affect listed species or critical habitat, you must follow Step Three.

Step Three: Determine if Measures Can Be Implemented to Avoid Adverse Effects.

If you make a preliminary determination that adverse effects to listed species and/or critical habitat are likely to occur, you are still eligible for permit coverage if appropriate measures are undertaken to avoid or eliminate the likelihood of adverse effects prior to applying for construction permit coverage. These measures may be relatively simple, e.g., re-routing a stormwater discharge to bypass an area where species are located, relocating BMPs, or changing the “footprint” of the construction activity. If you cannot ascertain which measures to implement to avoid the likelihood of adverse effects, you must follow Step Four.

Step Four: Determine if Criterion B, C, D or F Can Be Met.

Where adverse effects are likely and you are uncertain about how to avoid or eliminate the likelihood of adverse effects, you must contact the Vermont Department of Fish and Wildlife and/or a Federal agency. However, you may still be eligible for construction permit coverage if likely adverse effects can be addressed follows:

- i. A consultation under ESA Section 7 has been performed for your construction activity (see Criteria B and C).
- ii. In the case that a State listed species is identified, an Endangered and Threatened Species permit under 10 VSA § 5408 has been issued (see Criterion D). Construction related stormwater discharges may be authorized by this construction permit if some activity is authorized through the issuance of a permit under 10 VSA § 5408 and that authorization addressed the effects of your stormwater discharges on state-listed species and any designated habitat.

In the case that a Federally listed species is identified, you must have both the Endangered and Threatened Species permit under 10 VSA § 5408 listed above and an incidental taking permit under Section 10 of the ESA that has been issued for your activity (see Criterion D). Construction related stormwater discharges may be authorized by this construction permit if some activity is authorized through the issuance of a permit under both 10 VSA § 5408 and section 10 of the ESA. These authorizations must address the effects of your stormwater discharges on state and federally-listed species and federally designated critical habitat. You must follow Fish and Wildlife Service procedures when applying for an ESA Section 10 permit (see 50 CFR §17.22(b)(1)). Application instructions for section 10 permits for Fish and Wildlife Service can be obtained by accessing the Service website (<http://www.fws.gov>) or by contacting the appropriate Service regional office.

- iii. In the case of a state-listed species you have coordinated your activities with the Vermont Department of Fish and Wildlife (see Criterion E). In the absence of any other conditions set forth in Step Four, you may still be covered under this construction permit if the Vermont Department of Fish and Wildlife provides a letter or memorandum concluding that the direct and indirect effects of your stormwater discharges will be unlikely to adversely affect listed species or to adversely modify designated critical habitat. If you adopt measures to avoid or eliminate adverse effects, per the Vermont Department of Fish and Wildlife requirements or recommendations, you must abide by those measures as a condition of coverage under this general permit.

In the case of a federally listed species, you must have coordinated your activities with the Vermont Department of Fish and Wildlife as stated above and you must have coordinated your activities with the appropriate Federal agency (see Criterion E). In the absence of any other conditions set forth in Step Four, you may still be covered under this construction permit if a Federal agency provides a letter or memorandum concluding that the direct and indirect effects of your stormwater discharges will be unlikely to adversely affect listed species or to adversely modify designated critical habitat. If you adopt measures to avoid or eliminate adverse effects, per the Service's requirements or recommendations, you must abide by those measures as a condition of coverage under this general permit.

- iv. You are covered under the compliance determination of another operator for the Project Area (see Criterion F). Your stormwater discharges were already addressed in another discharger's determination under Criteria A through E, which also

included your construction project and determined that state and federally listed endangered or threatened species or federally designated critical habitat would not be jeopardized. You must comply with any measures or controls upon which the other discharge determination under Criterion B, C, or D was based.

You must comply with any terms and conditions imposed under Criterion A through F to ensure that your stormwater discharges and stormwater discharge related activities are protective of listed species and/or federally-designated critical habitat. If the requirements cannot be met, then you may not be covered under this construction permit. In these instances, you may consider applying to DEC for an individual construction permit.