

Responses to Comments Received on the Proposed Large Construction General Permit (LCGP) for Storm Water Discharges

In accordance with Chapter 2 of the Wyoming Water Quality Rules and Regulations, the State of Wyoming must prepare and advertise a public notice that describes the Wyoming Department of Environmental Quality's (WDEQ) intent to issue a Wyoming Pollutant Discharge Elimination System (WYPDES) permit. The State of Wyoming published a public notice in the Casper Star Tribune to renew the WYPDES large construction general permit (LCGP) for storm water discharges (for projects disturbing five or more acres) on June 16, 2006. The purpose of the public notice was to invite comments on the proposed general permit. The final date all comments were required to be submitted to WDEQ was July 17, 2006.

The WDEQ received comments from seven organizations; BP America Production Company (BP), CBM Associates, Inc. (CBMA), Kinder Morgan (KM), the U.S. Environmental Protection Agency (EPA), Williams Field Services (WFS), the Wyoming Department of Transportation (WYDOT) and Yates Petroleum Corporation (YPC). Below is a summary of comments received and the WDEQ's responses to those comments. WDEQ appreciates the time and effort that the submitting organizations put into their comments.

BP1 The permit organization has completely changed and permits operating under the current permit will be required to have revised storm water pollution prevention plans (SWPPPs) by November 1 or November 30, 2006. Please clarify the date as the appropriate date is not clear.

Response: *These dates are found in part 3.11 and refer to only to renewing coverage under the large construction general permit (LCGP). The current LCGP actually expires August 31, 2006. To allow enough time for permittees to renew their coverage and for WDEQ to process all the expected renewals the new permit allows for 90 days of automatic coverage under the new permit. The WDEQ will end coverage for any project that does not notify the agency that continued coverage is requested by October 31, 2006. (October 30 is the date in the draft permit and it should have been October 31. That date is changed to October 31 in the final permit.)*

The November 30th date refers to the last day of automatic coverage under the new permit. Any permit holder who has not renewed by that date will lose coverage. Projects that are not complete and "finally stabilized" may be subject to an enforcement action.

Permittees that still need coverage and renew their coverage will have 90 days from the effective date of their new authorization to revise their SWPPPs (see part 7.4). For example, a company that applies for renewal on October 1st and receives a new authorization that is effective October 15th will have 90 days from October 15th to revise their SWPPP to meet the new permit requirements.

BP2 BP urges the WDEQ to issue a notice regarding the SWPPP changes to the various industrial groups impacted.

Response: *A letter explaining the changes and deadlines will accompany each renewal mailing.*

BP3 1.3.5 This exclusion from the general permit should reference the alternative permits that might be required, such as a storm water permit associated with industrial activity.

Response: *WDEQ agrees that referring to specific permits may be helpful. The following language has been added to part 1.3.5 (new language underlined).*

“Storm water discharges associated with industrial activity must be covered under another WYPDES storm water permit such as the industrial general permit (IGP) or the mineral mining general permit (MMGP). In certain limited situations, such as where there is a potential discharge to a class 1 water, an individual storm water permit may be required.”

BP4 2.4 Suggest the use of the term “sales pitch” should be changed to “marketing information.”

Response: *WDEQ agrees and has made the change.*

BP5 3.11 *Continuation of coverage under a renewed permit:* This section should clearly state that in addition to submitting an NOI for coverage under this permit by October 30, 2006 the permittee must revise their SWPPP to comply with all the provisions of the new general permit. The date by which this is required is not clearly stated and should be clarified.

Response: *Revision of the SWPPP is covered in Part 7.4. It gives renewing permit holders 90 days from the date of their authorization under the new permit to revise their SWPPP to meet the new permit requirements. See response to BP 1 for additional details.*

Explanatory material with the renewal mailing will emphasize the requirement to revise current SWPPPs. To highlight the requirement in the permit italicized subtitles have been added to parts 7.4.1 and 7.4.2.

BP6 4.1 *Notice of Transfer:* Specifies that both parties must sign the transfer certification and submit same to DEQ within 7 days of the change of operator. This very short time frame may be difficult to achieve in the corporate business world. A more appropriate time frame would be 30 days. Further, it should be pointed out there may be time differences between contractually when the transfer occurs compared to physically turning over operation to a purchaser. It is recommended the change of operator occur when the “change of operator occurs contractually.”

Response: *WDEQ will change the time requirement to within 14 days of the transfer. That allows a 28 day window for submission of the transfer notice.*

The agency believes that it's current definition of a transfer is adequate. An operator is the organization or individual that has day-to-day supervision and control of the construction site. When that entity changes, whether a contractual change happens or not, the storm water permit needs to be transferred.

BP7 7.2 *Content:* This section is completely reorganized and the sections retitled. The changes are for the most part helpful as they add clarity and represent an improved discussion of the individual components of a SWPPP. However, there are some concerns. The permit requires that each item in section 7.2 be addressed in the plan and if a section is not applicable a "brief explanation of why" it is not required be included. The level of detail required by the draft permit will require substantially longer plans containing a large number of negative explanations.

Response: *The requirement to note why any particular section was not addressed in a facility SWPPP was introduced in 2002 when there were fewer sections. In the proposed permit sections describing the SWPPP requirements have been greatly expanded in number. WDEQ agrees that addressing each section not addressed in a facility SWPPP could be non-productive and has removed the requirement from part 7.2.*

The original intent of this requirement was to ensure that all potential pollutant sources were addressed. To maintain that goal the preceding paragraph (Part 7.1 has been modified as follows (new text underlined, omitted text in strikethrough):

"Prior to beginning construction activities, an operator shall prepare a "Storm Water Pollution Prevention Plan" (SWPPP) for the construction activity. The primary objective of the plan is to inventory pollutants which have potential to leave the construction site in storm water runoff, identify Best Management Practices (BMPs) which, when implemented, will eliminate or minimize pollutants in runoff leaving the permitted construction site and meet the terms and conditions of this permit."

BP8 7.2 *Content:* In addition, each of the required subsections would be easier to recognize if they were underlined or in some other way identified; for example "7.2.3.1.1 Erosion Prevention BMPs."

Response: *WDEQ has made formatting changes to call more attention to three-digit subheadings and four digit subheadings.*

BP9 7.2.3.4.2 *Bulk storage of petroleum products:* Requires at (b) a "description of

appropriate practices for addressing a spill including methods of handling and disposing of spilled products and contaminated soils.” Subparagraph (c) states a referenced Spill Prevention Control and Countermeasure (SPCC) plan “should” be attached. It is important to note that some company SPCC plans can be very voluminous to attach to a SWPPP. Consequently, it would be appropriate to instead allow permittees to provide information where the SPCC plan can be reviewed if requested by DEQ. Therefore, we believe the word “should” provides this type of flexibility.

Response: *WDEQ agrees.*

BP10

7.5 Plan Retention: This section has changed substantially and allows offsite maintenance of plans, amendments and records “when the project is shut down for the season or at the completion of construction.” 7.5.2 provides that if posting the offsite location of the SWPPP at the construction site is impractical due to remote location or the facility is impractically large for posting, the operator may send a brief letter to the DEQ specifying the SWPPP location. The entire section should be reorganized as *7.5 Plan Retention* with the following two sentences identified as 7.5.1, followed by 7.5.1 as 7.5.2, and 7.5.2 as 7.5.3, etc. All five of these reorganized subparagraphs qualify as appropriate reasons for written notification of the location of the plan. As proposed this is the beginning of a good change that addresses the concerns of a plan being required to be posted in remote locations within our field developments.

Response: *Part 7.5 still requires the SWPPP be onsite during active construction; when earth moving or building are actually occurring. Once active construction is complete (temporarily or permanently) is when the SWPPP can be kept offsite. Parts 7.5.1 and 7.5.2 address the time construction is not actively occurring.*

However, the WDEQ realizes in these large, field-wide projects only a few acres may actively be under construction at anyone time and it may not be practical to have the complete SWPPP, with amendments and inspection reports, on each smaller construction location. So the following text has been added to 7.5 to allow that only copies of the parts of a SWPPP relevant to the particular area under construction need be onsite (new text underlined).

“For field-wide authorizations in the oil and gas industry where relatively small, discreet disturbances occur periodically over a large area, operators may choose to keep only the portions of the SWPPP relevant to the current active construction area on that site, while the complete SWPPP remains at an off-site location.”

BP11

9.1.5 Provides clarity that individual areas covered by a SWPPP that achieve final stabilization before other areas covered by the same plan can be documented out of the active plan. This is helpful for field-wide SWPPPs and should be retained.

Response: *WDEQ agrees.*

BP12 9.1.6.1 This is a new section under *Records* that requires that storm water outfalls be observed to determine whether or not measurable quantities of sediment or other pollutants have been or are being transported offsite. This would require these outfalls be identified in the plan and then inspected regularly. Storm water outfall is a broad term that could mean any number of techniques. Therefore, we would recommend that a specific definition for a storm water outfall be included as guidance in this permit.

Response: *WDEQ agrees that storm water outfall is a very broad term. The agency prefers not to provide a specific definition in the permit, but will incorporate a discussion of storm water outfalls in the updated oil and gas guidance document.*

BP13 9.2 *Retention of Reports:* States that copies of inspection reports are to be maintained with the SWPPP at the construction site except when the project is shut down for the season. This should be changed to reflect authorized offsite locations for maintenance of the SWPPP.

Response: *WDEQ agrees with this comment. Language in 9.2 referring to an onsite location for the SWPPP has been struck.*

BP14 10.7.11 Describes the *Signatory Requirements* for a corporation and now includes “the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the overall operation of the facility from the which the discharge originates.” This is an improvement and should be retained.

Response: *WDEQ agrees.*

CBMA1 9.1.4 CBMA supports the new language granting flexibility to the operators to design inspection routines that differ from the monthly requirement. CBMA believes this change will allow operators to focus on implementing storm water pollution prevention Best Management Practices (BMPs) rather than time-consuming inspections. The inspections can further disturb the site soil, slow revegetation and, in some cases, are prohibited by landowners or wildlife stipulations.

Response: *WDEQ agrees that frequent inspections in certain situations can cause more harm than benefit. However, this provision should not be considered a “free pass” to avoid inspections, but an opportunity to develop an inspection program that will still allow for timely recognition of erosion and sedimentation issues while minimizing traffic on sensitive lands or on lands where access is limited.*

CBMA2 CBMA suggests that language clarifying that small coal bed methane well pads in rural areas are also eligible for the alternate inspection plans.

Response: *WDEQ recognizes that there may be access issues on some remote well locations, such to accommodate seasonal wildlife stipulations from land management agencies. To provide flexibility the text of 9.1.4 has been modified as follows (omitted text in strikethrough and added text underlined):*

“A permittee may submit an alternative inspection plan for long, narrow, linear construction projects such as pipeline or utility line installation, and ~~similar~~ other projects in remote areas where vehicle traffic is restricted or could compromise native vegetation or stabilization measures.”

This provision is expected to be narrowly applied to cases where access is not possible or when an applicant demonstrates that the required frequency of inspections will impair revegetation efforts.

KM1 We request that automatic authorization be granted to the applicant if the Administrator does not act on the application within 30 days. The draft permit stipulates that written authorization is required before permit coverage is granted (1.2.5). Although the permit requires the Administrator to notify the applicant of the approval or disapproval of coverage within 30 days of receipt of the permit (3.8), paragraph 1.2.5 removes the guarantee that this will be done.

Response: *This is not a change from previous construction general permits. The WYPDES program has never employed an automatic approval mechanism in its general permits (whether for storm water or wastewater) and will not incorporate such a provision in this permit. However, it is the intent of the WYPDES storm water program to continue the practice of processing complete NOIs in less than 30 days whenever possible.*

KM2 2.4 We request that the definition of “Common Plan of Development or Sale” be modified to prevent this definition being overly expansive; in particular, we request that the following are excluded from the definition of a common plan:

- Disturbances that are separated by ¼ mile or more and are therefore remote from one another.
- Activities that may be part of a plan but are conceptual in nature and therefore may not be constructed as imagined or may never be constructed.

Response: *When the WDEQ looked at developing a workable definition for common plan of development or sale a 1/4 mile threshold was considered. Because of increasing diffuse development occurring in the state, especially in rural subdivisions and in the oil and gas field, the 1/4 mile was deemed to be impractical and could arbitrarily result in a significant amount disturbance outside of the permitting process. The current definition, without the 1/4 threshold, will be retained.*

The entire projected disturbance should be permitted from the beginning.

However, the SWPPP can be developed to cover each projected phase as it occurs. For example, in a four phase project that will occur over four years, the initial SWPPP can be developed for phase 1 and then modified for subsequent phases. Under this model, if phase 4 is never built the project operator does not invest resources in a SWPPP modification for that part of the project. Also recall that areas of the project that are not yet disturbed do not require periodic inspections.

KM3

2.8 We request the following revisions to the definition of “Finally Stabilized:”
Revise the definition as follows (strikeout for text to be omitted and underline for added text): “vegetative cover for the area has been established on all disturbed ~~unpaved~~ areas ~~and areas~~ not covered by permanent structures or surfaced for final use.” This would cover paving, gravel covering, and commercial, industrial, or other areas that need to be maintained with bare ground for safety or for the proposed use. Include returning the land to agricultural use (cultivated or pasture) or landscaped as methods of final stabilization. In these instances, perennial vegetative cover is not necessarily appropriate.

Response: *Part 5.3.3 was added to the draft permit to address some of the unique needs found around production equipment in the oil and gas field. In crafting this language the DEQ consulted with staff from the Bureau of Land Management (BLM) to ensure consistency with their requirements. As a result, 5.3.3 allows minimal areas at producing wells to remain as bare ground for safety and access reasons. All other disturbed areas must be “finally stabilized” with vegetation, paving, structures or gravel. The WDEQ will consider equivalent permanent stabilization methods as requested.*

When the final use of an area is (or will be) cultivated land or the disturbance occurred in normally unvegetated areas such as beach areas, shale slopes or salt pans, then the 70% of background density may be calculated as 70% of 0%. That is, such land need only be returned to its normally unvegetated state to be considered “finally stabilized.” Care must be taken to not leave such lands more prone to erosion than they would have been prior to disturbance such as may occur with cut/fill slopes or improperly compacted trench fill.

KM4

2.8 Eliminate the requirement for use of “native background” vegetative cover. In some cases, native background vegetation (such as sage shrub) is slow to establish to the point of stabilization, and the introduction of other vegetation may accelerate stabilization. The type of vegetation used for stabilization should promote stabilization of the site, but should otherwise be left to the landowner’s discretion. Mandating “native background” vegetation exceeds the purpose, intent, and scope of the regulation.

Response: *The term “native background” is not used to require native plants be used to revegetate a disturbed area. Most adapted, perennial vegetation will work. Weed species, especially noxious weeds, should not be used. Native background is meant more as a “yardstick” on which to base the amount of*

cover the disturbed area must achieve to reach final stabilization. Native background could also be interpreted as "typical background" for a particular area, slope aspect, soil type, etc.

KM5 We request that Wyoming adopt the EPA's exemption for construction activities associated with the oil and gas industry.

Response: *WDEQ is not considering adopting the federal exemption at this time.*

KM6 2.20 We request that "Surface Waters of the State" be revised to exclude intermittent drainages and manmade canals and drainages, in light of the recent US Supreme Court ruling on the jurisdiction of the Clean Water Act, which is the foundation for this permit.

Response: *While the WYPDES program must meet minimum requirements in the federal Clean Water Act, it must also meet the requirements of the state Environmental Quality Act (EQA). "Waters of the state" ("All surface and groundwater, including waters associated with wetlands, within Wyoming.") comes from the EQA. Since that is the broader (or more stringent) definition that is the one used in the WYPDES program. "Surface waters of the state" are further defined in Chapter 1 of the Wyoming Water Quality Rules and Regulations to include "all perennial, intermittent and ephemeral defined drainages, lakes, reservoirs, and wetlands..." Because the state definition is not less stringent than the federal definition and the WYPDES program is a state program the WDEQ uses the state definition.*

KM7 We recommend that 4.2, under "Change of Operator", be revised as follows (strikeout for text to be omitted and underline for added text): "If the ~~personnel responsible for implementing the SWPPP~~ operator changes, the changes must be made to the SWPPP within 30 days of transfer of operational control."

Response: *This language refers to the individuals or positions who are responsible for ensuring the SWPPP is implemented. The language requiring a SWPPP administrator was inadvertently left out of Part 7.2 (SWPPP Contents) of the draft permit. Language requiring a SWPPP administrator has been added as Part 7.2.1 and subsequent sections have been renumbered accordingly. With this addition the language referencing "personnel" in Part 4.2 is appropriate.*

KM8 6.1 We request that fees be paid at the time of filing and for the current year, instead of using the current retroactive fee system.

- The payment of permit fees is a capital cost that can be charged to a project; paying fees from overhead has a negative financial effect on a company. With the current system, most fees end up being paid from expense instead of from capital.
- Additionally, the current system makes tracking fees difficult. For large companies with many permits in many states, it's difficult to track and confirm that a bill is legitimate for a permit that may have been terminated

over a year before (e.g., a project terminated July 1, 2006 will be billed during the last half of 2007).

Response: *While not specified in the permit, an applicant for any WYPDES permit may submit their annual fee with their application rather than wait for an invoice at the end of the state fiscal year. For an authorization held over several years, the WDEQ will invoice subsequent years at the end of each state fiscal year.*

The WDEQ has also recently begun sending a “courtesy” invoice with notification of an authorization transfer or termination. Permittees may choose to pay the invoice at the time of transfer or termination or they may wait until the normal billing cycle occurs after the end of the state fiscal year on June 30th.

KM9

7.2.2.5 We request that the requirement for the SWPPP map to indicate the locations of proposed or existing storm water controls be revised to require only the locations of major controls.

- It adds value to show major controls (such as a retention pond) or more intensely engineered controls (such as a grading design for water exclusion and retention). But requiring the map to show all the BMPs (e.g., where on a pipeline ROW will each segment of silt fencing go?) may not add value if the standards for placement of the BMPs are clearly specified elsewhere.
- On some projects, it may be relatively simple to show all of the controls and keep the map up to date. However, on other projects, such as a pipeline ROW, where the construction area continuously advances, it is more difficult to show where non-major controls are located and to keep it up to date.

Response: *WDEQ does not agree with this comment. Many projects in Wyoming never use engineered BMPs. In fact, most use primarily or only temporary controls such as silt fence, straw logs or erosion control matting. Requiring only major or engineered controls be mapped could result in most SWPPPs not indicating any erosion or sediment controls at all. This would make it difficult for the WDEQ to evaluate the likely effectiveness of a SWPPP.*

However, the agency recognizes that many construction sites are in daily flux and allows for a certain amount of disagreement between the SWPPP and on-the-ground practices. Part 7.3 requires the permit holder to modify their SWPPP when “a change in the design, construction, operation or maintenance that changes the potential for the discharge of pollutants to waters of the state.” Most of the time it makes little difference whether a silt fence is at one location or a hundred feet away at another location. It is not critical to document minor changes of BMPs that don’t significantly alter the potential for pollutants to leave the site.

Additionally, WDEQ has long allowed a menu-style approach to SWPPP design for moving construction sites like pipelines and well field development.

In a menu-style SWPPP “major controls” for sensitive areas (for example, a stream crossing) are documented, but the rest of the BMPs are selected from one or more menus. Generally, there will be a list of appropriate BMPs for fairly level terrain, another for moderate slopes, another for steep slopes and perhaps another for stream crossings. Then as the project progresses a construction supervisor selects and installs BMPs as appropriate for each location. Once construction is complete an operator should update the site SWPPP with the final BMPs left on site.

KM10

We recommend that other options be included for managing sediment laden water for construction site dewatering. We recommend that paragraph 7.2.3.2.b. be revised as follows (new text underlined):

“Pumped water that may be turbid or sediment laden must be discharged to a temporary or permanent sedimentation basin on the project site or discharged through filtration whenever possible.”

Response: *WDEQ agrees that, in some circumstances, filtration may be as effective or more effective than settling, especially with finer sediments. Parts 7.2.3.2 b and c have been combined to change the requirement to use settling basins to treating sediment laden water with appropriate BMPs. Part b now reads as follows (omitted text in strikethrough):*

b. *“Pumped water that may be turbid or sediment laden must be discharged to a temporary or permanent sedimentation basin on the project site whenever possible. ~~c. If the water cannot be discharged to a sedimentation basin prior to entering a surface water or storm sewer system, it must be~~ treated with appropriate BMPs, such that the discharge does not...”*

KM11

7.3 We recommend that the requirement be eliminated for retention of Amendments to the SWPPP; this requirement adds to the time and manpower requirements of compliance without advancing the purpose of the regulations. If this requirement cannot be completely eliminated, we strongly request that the requirement be revised to allow the current version of the SWPPP be available on site, but that the file documenting the amendments may be retained at the office where official files are maintained. Many construction activities, including pipeline construction, occur remotely from manned offices. The only place for keeping records on-site may be the contractor or the inspector’s truck. It adds no value to require the amendment record on site.

Response: *WDEQ agrees that Part 7.3 is more cumbersome than is necessary. The last sentences of 7.3 have been modified to read:*

“~~Amendments to~~ The most current version of the SWPPP must be retained on site and or located as described in Part 7.5. ~~The SWPPP~~ may be reviewed by the Administrator as described below.”

KM12 8.1 We request that you clarify that the discussion of the “Quality of Discharge” as follows:
“Construction activities shall not cause sStorm water discharges from construction sites to result in shall not cause pollution, contamination or degradation to waters of the state.”

Response: *WDEQ agrees that the permit regulates storm water discharges associated with construction activities rather than storm water discharges from the construction sites per se. Part 8.1 has been rephrased as follows:*

8.1 *Quality of discharge. Storm water discharges from associated with construction activities sites shall not cause pollution, contamination or degradation to waters of the state.*

KM13 We request that the sections defining “Visible or measurable erosion” be revised as follows:

8.3.1 *“Deposits of mud, dirt, sediment, or similar material....in any area...or into waters of the state by deliberate actions or as a result of water or wind erosion;...”* The inclusion of wind erosion exceeds the intent, purpose, and scope of the regulation.

8.3.2 *“Evidence of concentrated flows of water over unstabilized bare soils, turbid or sediment laden flows,”* to reflect that water can be channeled through or over areas of bare soil without causing visible or measurable erosion, if the soil is properly stabilized.

Response: 8.3.1 *The inclusion of wind-transported sediment does not exceed the intent or purpose of the Wyoming Environmental Quality Act or Chapter 2 of the Wyoming Water Quality Rules and Regulations. Wind-blown sediment may be regulated under this permit when it is deposited in a surface water of the state or in places where it may reach surface waters of the state as a result of a storm event (such as in or near road gutters or borrow ditches or on the lee side of a stream embankment).*

8.3.2 *The distinction between stabilized and unstabilized soils depends on whether or not the soil erodes as a result of a storm event. WDEQ considers “evidence of concentrated flows” on bare soils, even “stabilized bare soils,” to be an indication that the bare soil is not sufficiently stabilized to prevent erosion. The agency believes that the current language is adequate.*

KM14 9.1 We request that the self inspection frequency at active sites be revised to include the option for an alternative inspection schedule: performing weekly inspections and not having to do post-precipitation inspections. Allowing a choice between the two schedules allows an Operator to better plan his inspections and control his costs. EPA developed and incorporated a similar option in its latest CGP to provide Operators flexibility without reducing the protection provided. While section 9.1.4 does allow a permittee to submit an alternate inspection plan, it requires submittal of the SWPPP and a 30 day

review by the Administrator. Given that EPA has established & accepted this alternate inspection schedule, the permittee should not have to specifically apply for approval to use this schedule before being able to use it.

Response: *WDEQ agrees that this is a reasonable option for inspections on active construction sites. Part 9.1 has been modified as follows (new text underlined):*

9.1.1 *Active construction sites. During active construction inspections must be conducted in accordance with one of the two schedules listed below, unless the project has an alternate inspection schedule approved by the administrator. You must specify in your SWPPP which inspection schedule you will use.*

9.1.1.1 *During active construction, qualified personnel (provided by the permittee) shall inspect disturbed areas, control measures, and locations where vehicles enter or exit the site, at least once every 14 calendar days and within 24 hours of any precipitation and/or snow melt event which exceeds 0.5 inches. The permittee shall have the option of maintaining a rain gauge at their site or using the nearest National Weather Service precipitation gauge station. Any rain measurement shall be taken from an area within 10 miles of the construction project, OR*

9.1.1.2 *At least once every 7 days.*

KM15

We request that the requirements for Record keeping of inspection reports be revised as follows:

Paragraph 9.1.6.5 be revised as follows: “The date, ~~time~~, and inspector identity should also be recorded. This record shall be ~~signed~~ certified in accordance with Part 10.7 of the permit and made available to the Administrator upon request.”

The elimination of the time from the inspection is requested because it adds little or no value to record, but will require companies to revise all their standard inspection report forms.

The modification from “signed” to “certified” allows the responsible signer (or his duly authorized agent) to place a cover certification over a set of inspection records, rather than to certify each individual record. While this may not be significant for a responsible party with just one project ongoing, it is a significant issue for a responsible party managing multiple operational and construction sites spread out over much of the state.

Response: *WDEQ will remove “time” from Part 9.1.6.5. The word “signed” will not be replaced with “certified.” The term “signed” is consistent with Section 14 of Chapter 2 of the Wyoming Water Quality Rules and Regulations.*

KM16 9.2 We recommend that the requirement under “Retention of reports” for inspection reports to be retained with the SWPPP at the construction site be changed to allow that the inspection records may be retained at the office where official files are maintained. Many construction activities, including pipeline construction, occur remotely from manned offices. The only place for keeping records on-site may be the contractor or the inspector’s truck, and the space in there is limited.

Response: *This change has been made. See response to BP13.*

KM17 10.7.2 We request that the “Signatory requirements” for reports be revised as follows: “All reports required by the permit and other information requested by the Administrator shall be **signed certified** by a person described above or by a duly authorized representative of that person.” The modification from “signed” to “certified” allows the Responsible Corporate Officer (or his duly authorized agent) to place a cover certification over a set of inspection records, rather than to certify each individual record. While this may not be significant for a responsible party with just one permitted project, it is a significant issue for a responsible party managing multiple operational and construction sites spread out over much of the state.

Response: *The language found in Part 10.7 is taken directly from Section 14 of Chapter 2 of the Wyoming Water Quality Rules and Regulations (WQRR) and cannot be changed at the permit level.*

KM18 10.7.2.1 We request that the requirement for designation of a duly authorized representative be revised as follows “to be made in writing by a person described above **and submitted to the Administrator**.” Most reports are not submitted to the Administrator, and therefore the Administrator has no need to see the delegation. If reports are being submitted to the Administrator, the Administrator can easily request the delegation as part of the submittal. This requirement does not advance the purpose of the regulation, but does add administrative costs and difficulties.

Response: *See response to KM17.*

KM19 We request that the requirement under 10.7.3 be eliminated or clarified. This section refers to the delegation of authority in 10.7.2 and states “If an authorization under 10.7.2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part 10.7.2 must be submitted to the Administrator prior to or together with any reports, information or applications to be signed by an authorized representative.”

As we stated above, the requirement to routinely submit a delegation of authority to the Administrator does not advance the purpose of the regulation, but does add administrative costs and difficulties.

The requirement in 10.7.3 is not consistent with sections 10.7.1 and 10.7.2. It states that "reports, information or applications to be signed by an authorized representative." Section 10.7.1 specifically states that all permit applications are to be signed by the manager (or higher) and does not allow for his duly authorized representative to sign applications. Section 10.7.2 only deals with reports and not with applications.

This can be read to mean that a report must be recertified if it was certified at the time of generation by the individual or position authorized at the time of the report, but that person has now changed. If this is the intent, it would be duplicative and add little value. Further, the implication would be that the implementation of the SWPPP is not part of a corporate system and is dependent upon the personnel in place. The certification itself implies that the intent is for storm water compliance to be "a system designed to assure" compliance and accuracy. This requirement would therefore undermine the integration of a corporate system of compliance.

If the intent is solely that a delegation of authority be submitted with any reports or information requested by the Administrator and signed by a delegee not previously known to the Administrator, we request that this be clarified.

Response: *As discussed in the response to KM 17, the language in Part 10.7 is taken directly from Chapter 2 of the Wyoming WQRR and cannot be changed at the permit level. Part 10.7.3 means only that the letter to WDEQ authorizing specific individuals or positions should be updated as new individuals or positions come into positions where they will want or need to sign inspection reports or SWPPPs. This in no way means that reports signed by a person who has moved on to another position need to be re-signed by other authorized personnel.*

WDEQ acknowledges that it is cumbersome to frequently submit revised delegation letters. The agency recommends that companies use positions rather than individual names as much as possible and to include as many on the delegation list as would be likely to sign reports in the future. The agency also recommends that delegation letters, whenever practical, be noted to cover all storm water permits held by the company.

EPA1

2.18 The definition for "Storm Water Associated with Large Construction Activity," as stated in the permit, is limited to discharges from conveyances used for collecting and conveying storm water. While this definition is consistent with federal regulations at 40CFR§122.26(b), it is limiting in scope when pertaining to construction activities and may be detrimental to enforcing this permit where pollutants are being discharged from a site by sheet flow or through naturally formed gullies. The definition of storm water discharges should be expanded to include all storm water runoff from the site, whether or not such discharges are confined to a conveyance specifically designed for collecting and conveying storm water.

Response: *In reviewing this comment, it was found that the definition of storm water associated with large construction activity had not been updated to the current Chapter 2 (of the Wyoming WQRR) definition. Part 2.18 has been changed as follows to match the definition found in Section 6 (f) (i) of Chapter 2.*

"Storm Water Associated with Large Construction Activity means the discharge from construction activities, including clearing, grading, and excavating, that result in land disturbance of five or more acres of total land area. Large construction area also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger plan will ultimately disturb five acres or more." ~~any conveyance which is used for collecting and conveying storm water and which is directly related to a construction project including clearing, grading and excavation activities except operations that result in the disturbance of less than five acres of total land area which is not part of a larger common plan of development or sale.~~

This definition is consistent with Chapter 2 of the Wyoming Water Quality Rules and Regulations and cannot be changed at the permit level. However, the agency will elaborate on this definition in a guidance document to be developed this fall and in an updated version of its existing guidance to the oil and gas industry.

EPA2

As written, it may be very difficult for construction site operators to ensure that their discharges do not exceed applicable storm water load allocations as defined in TMDLs. To ensure that operators do not exceed applicable storm water load allocations, it would be advantageous to make available a list of water bodies with wasteload allocations for storm water and any associated TMDL provisions for construction site operators to reference.

Response: *The state of Wyoming does not currently have TMDLs that include waste load allocations for storm water. The WDEQ will provide a list of applicable TMDLs as they are developed.*

EPA3

Several of the requirements are described in Part 7 of the permit as provisions of the storm water pollution prevention plan (SWPPP). While the SWPPP is an enforceable part of the permit, it may be advantageous to include specific requirements which are only addressed in Part 7 as terms in Part 8 of the permit to ensure a more enforceable permit. For example, in Part 7.2.3.1.3, it is noted that the SWPPP must address temporary erosion protection, but Part 8 does not include a general provision that states that temporary erosion protection must be provided where work is not expected for 28 days or more.

Response: *WDEQ agrees that several provisions listed in Part 7.2 (SWPPP Contents) will be more visible if also listed in Part 8 (Additional Terms and Conditions). And as conditions of the permit, are appropriately listed in Part 8. Parts 7.2.3.1.3, 7.2.3.1.4 and 7.2.3.1.5, referring to temporary stabilization, BMP installation and minimum storm sizes, have been reproduced in Parts 8.9, 8.3 and 8.10, respectively.*

Part 7.2.3.2, construction site dewatering, has been moved to Part 8.8 and a reference to requirements in 8.8 has been incorporated as 7.2.3.2.

EPA4 A general provision could be added Part 8 which describes how sediment basins are maintained both during and post-construction. Sample language could read "Sediment basins must be designed to allow for removal of deposited material. Sediment must be removed from temporary sediment basins when the storage capacity has reached 50%. Trash and debris must be removed from around dewatering devices within 48 hours of a significant rainfall event."

Response: *The WDEQ prefers to address issues of BMP selection and maintenance through a companion guidance document which is under development.*

EPA5 A general provision could be added to Part 8 which addresses run-on and the need to divert upstream flows from around exposed areas of the site.

Response: *See response to EPA4.*

EPA6 The permit does not include specific provisions for oil and gas construction activities. Construction associated with oil and gas activities could make up a substantial portion of the permitted universe in the state of Wyoming. Therefore, it may be beneficial to include specific information in either the permit or permit fact sheet which addresses impacts or situations specific to oil and gas construction. Common concerns which could be addressed include how sites are permitted given multiple leases and interconnected access roads and common plans of development, provisions for maintenance of access roads using deicers or dust suppressants, and how well pads/roads are reclaimed within the context of this permit.

Response: *The WDEQ will update an existing guidance document that was specifically developed for the oil and gas industry. The guidance document will provide direction on determining what are covered activities in the oil and gas field, how to apply the concept of common plans of development, how to obtain coverage and how to maintain compliance. In addition, Part 5.3.3 of the permit contains a specific description of how "final stabilization" should be applied at producing oil or gas wells.*

EPA7 To ensure that local requirements are met for maintaining storm water post-construction controls, information could be included in the permit which specifically relates to requirements from regulated MS4s. Requirements from other agencies are mentioned in Part 8.9, but this language could be expanded to specifically mention Wyoming's regulated MS4s of Casper and Cheyenne and the need to meet local requirements for construction and long-term maintenance of post-construction BMPs.

Response: *Permit holders must comply with all other applicable regulations on their construction sites. The WDEQ does not see an advantage to singling out specific programs in specific communities.*

WYDOT1 3.6 - Projects disturbing more than 100 acres. DEQ is requiring **all** projects ≥ 100 acres disturbance to submit a written SWPPP plan with the notice of intent (NOI). This will affect a substantial number of WYDOT reconstruction projects where the contractor applies for the NOI (i.e., Lump Sum Storm Water Control). This could delay clearing and grubbing, construction start and significantly increase cost of this bid item to the state. Our recommendation would be to increase the acreage requirement for projects requiring SWPPP submittal to those disturbing over 150 acres. This would decrease the number of SWPPP plans that DEQ would be required to review to a more reasonable number. The 100 acre requirement may include more projects than DEQ can review with the permit allocated time constraints.

Response: *WDEQ doesn't expect submission of SWPPPs for large projects to delay processing unless the submitted SWPPP is clearly inadequate. The office review will generally be a regulatory review and will primarily consist of verifying that the SWPPP exists, that the required parts are there and that it looks on the surface to have appropriate BMPs for the site and proposed project. A detailed review will occur when a field inspection is conducted which is unrelated to issuing coverage under the LCGP.*

A SWPPP that is clearly inadequate may very well delay processing. However, since the new permit has a more detailed description of SWPPP requirements, developing an adequate SWPPP should be a fairly straightforward task.

WYDOT2 3.7 - Projects that may discharge to class 1 waters: This section requires submission of the NOI and SWPPP for projects that may discharge to class 1 waters 30 days prior to commencing construction activities. In section 3.9 it indicates that if an individual permit is required a minimum of 120 days is needed. Even though section 3.10 reserves the right for DEQ to provide coverage under the general permit if an individual permit is required, it seems like it would be better to require submission 120 days prior to construction for projects that may discharge to class 1 waters. This would allow adequate time if an individual permit is needed.

Response: *The WDEQ anticipates that the general permit is adequate for most construction projects with a potential to discharge to class 1 waters and has historically covered such projects under the general permit. The agency will continue its practice of reviewing SWPPPs from any project where there is a potential to discharge storm water to class 1 waters. Parts 3.9 and 3.10 are in the permit in the event some set of circumstances directs the agency to use an individual permit, not as a change in the agency policy of using general permits on class 1 waters.*

WYDOT3 7.2.2.7 - SWPPP Site Maps: Site maps will now be needed for concrete/hot plants, borrow areas and waste areas. This will present a problem with WYDOT prepared, pre-bid SWPPPs since the prime contractor determines

exact plant setup. Waste sites are sometimes determined upon actual construction dirt balance. See WYDOT1 above.

Response: *All pollutant sources on all projects have always been required to be addressed in the facility SWPPP. This is not a new requirement, but rather it's been more clearly described in the new permit. In the case of a pre-bid SWPPP a "to be determined" section may be incorporated into the SWPPP. The prime contractor would then modify the SWPPP to incorporate information on any unaddressed sites, such as waste areas, fuel depots, maintenance areas, borrow sites, etc. prior to the set up of these facilities.*

WYDOT4

7.2.3.2 - Construction site dewatering: DEQ now proposes to allow intermingling dewatering effluent with other storm water if it can document effluent is only storm water and "non-significant" ground water. This is non-workable in wet gravel pits which would require test holes and a complete hydrological study to prove only storm water sources. Recommend keeping previous simple test - "if dewatering effluent, then need a separate dewatering permit." Otherwise contractors will need consultants to know how to permit.

Response: *The following text has been incorporated into the permit as Part 8.8.4 to provide guidance in determining when ground water may be considered "non-significant."*

"Significant ground water. The general rule of thumb for determining what ground water is non-significant is as follows: If an operator is able to work in a trench or excavation without dewatering during dry weather and only needs to dewater because of a rain or snow melt event, then the ground water can be considered non-significant. If an operator is finding they must dewater even though there has been no precipitation, then a WYPDES wastewater permit (temporary or individual) is required. Any operator who is unsure of whether or not his ground water is non-significant should secure separate coverage under the WYPDES general permit for temporary discharges or an individual wastewater permit for the dewatering operation."

WYDOT5

7.2.3.2 - Construction site dewatering: Allowing construction site dewatering for storm water and minor amounts of ground water to be covered by the permit is a good idea. The permit draws a distinction between minor ground water and major ground water as a break point when determining if another discharge permit is required, but has no hard or rough numbers/criteria to determine minor from major. It is assumed that most WYDOT discharges would be minor for construction site dewatering, except possibly dewatering a wet gravel pit which might fall in the major category. Clarification in this section of what constitutes minor ground water would be helpful.

Response: *See response to WYDOT4.*

WFS 9.1.1.2 - "The permittee shall have the option of maintaining a rain gauge at their site or using the nearest National Weather Service precipitation gauge station. Any rain measurement shall be taken from an area within 10 miles of the construction project." WFS undertakes hundreds of well site construction projects every year under the large construction general permit. These numerous projects are located at well sites throughout Wyoming, predominantly in the southwestern and south-central portions of the state. Due to the remote locations of the project sites, it would be very burdensome and costly to setup and maintain rain gauges at each location as would be required under the proposed large general construction permit since the nearest National Weather Service precipitation gauge is located more than 10 miles from the project sites. As such, WFS requests that the Water Quality Division remove the requirement that any rain measurement be taken from an area within 10 miles of the construction project.

Response: *Rain gauges or National Weather Service data are required only for active construction sites. That is sites where earthwork or building are occurring. WDEQ assumes that personnel will be on location frequently and that reading a rain gauge should not add an excessive amount of work for those onsite individuals. This requirement does not apply to inactive sites where construction is complete (seasonally or permanently). Inactive sites have a different inspection schedule and no requirement to inspect in response to a precipitation event.*

Also see response to KM14 for an additional inspection schedule option for active construction sites that omits inspections in response to rain events.

YPC1 General Permits: The use of a general permit for this activity is very appropriate and Yates wishes to congratulate the Division for its use of a general permit in this case, as it allows efficient use of administrative resources and avoids complication.

Response: *WDEQ agrees.*

YPC2 Expansion of SWPPP Requirements: Yates appreciates that the general permit wishes to clarify the expectations that the Division has in the preparation of storm water pollution prevention plans. The Division has conducted education meetings in the past on SWPPPs and appears to have inserted some of the feedback received into the draft general permit.

Response: *The WDEQ makes every effort to be responsive to the needs of permit holders while continuing to protect surface water quality in Wyoming and meeting the requirements of Wyoming's water quality statutes and regulations.*

YPC3 7.5 Plan Retention: Since Yates is viewing this permit primarily from the perspective of oil and gas construction, we do deal with situations where the locations are remote and the facilities are impractically large, we appreciate

the opportunity to provide availability of the SWPPP at an offsite location. The permit provides a practical solution to this issue.

Response: See response to BP 10.

YPC4 3.6 SWPPPs with Disturbances Larger than 100 Acres: The Statement of Basis indicates that the draft general permit proposes to require the operator of any project that disturbs 100 acres or more submit the SWPPP with the NOI. Yates suggests that, in order to reduce administrative workload, an alternative might be considered by the Division. Yates suggests a review by the Division of the NOI, and if in the opinion of the reviewer a copy of the SWPPP should be sent to the Division, the operator would send that SWPPP to WYDEQ.

This would have the potential of reducing administrative workload for WYDEQ and the operator. In many cases, the storm water construction permits that will disturb these larger acreages might be oil and gas activities such as coal bed natural gas projects and there would not likely be a substantive difference between storm water and erosion control work between a project that disturbed 65 acres and one that disturbed 105 acres – the only differences might be simple longer roads, more reservoirs, longer pipelines and more well locations on a proposed NOI etc. Yates appreciates any consideration that the Division might give to this suggestion.

Response: See the response to WYDOT1.

YPC5 9.1.4 Opportunity to provide alternative inspection schedules: Yates appreciates the forward thinking inserted into this draft general permit in this area, allowing the operator to propose an alternative inspection schedule for authorized projects in remote areas with access restrictions etc.

Response: WDEQ agrees.