Administrative Rules
GOVERNOR'S OFFICE PRECLEARANCE FORM

Agency:	**Department of Natural Resources / Environmental Protection Commission**
IAC Citation:	**IAC 567-Chapter 64, "Wastewater Construction and Operation Permits"**
Agency Contact:	**Joe Griffin, 281-7017, joe.griffin@dnr.iowa.gov**
Statutory Authority:	**455B.103A; 455B.105(3), 455B.173; 455B.186**
Preclearance Requested Review Deadline:	**3/28/12**

Purpose of Proposed Rule: Revisions to IAC 567-Chapter 64 are necessary to renew the storm water General Permits Nos. 1, 2 and 3 which expire on October 1, 2012. Subrule 567 IAC 64.3(7) stipulates that general permits are not to be issued for a period exceeding five years. Several minor changes for clarification are being made in the general permits. Substantive changes in General Permit No. 2 are required to implement recent changes in federal regulations published in the Federal Register, Volume 74, No. 229 (74 Fed. Reg. 63057) on December 1, 2009 and implemented in 40 CFR 450.21. Most of the measures in the Federal Register notice are already included in General Permit No. 2. The substantive change being made in General Permit No. 2 involves topsoil preservation at construction sites. The CFR now requires topsoil preservation at construction sites required to have a permit. Topsoil preservation has not been defined in the federal regulations. The regulation requires that one subject to the rule must "minimize soil compaction and, unless infeasible, preserve topsoil." 40 CFR 450.21(a)(7). This requirement may be interpreted to require the preservation of all topsoil at a construction site.

For the purpose of clarity and to discourage a more stringent interpretation by local officials or EPA, the Department has defined the preservation of topsoil as retaining a minimum of 4 inches of topsoil at construction sites when this is consistent with land use practices after construction has been completed. This depth was chosen after consultation with developers, city officials and the Statewide Urban Design and Standards manual which stipulates, among other things, design standards for city streets, driveways and sidewalks. The 4 inch topsoil depth is consistent with these standards and current development practices and will not impede the construction of these structures. The Department believes retention of this depth of topsoil satisfies the federal requirement to preserve topsoil.

Need for Proposed Rule: These changes are necessary to renew the storm water general permits and to implement the changes in federal regulations.

Summary of Informal Rulemaking Activities related to the Proposed Rule (e.g., stakeholder input):
The substantive changes in General Permit No. 2 were written after closely working with the affected groups. Meetings were held with both the Developers' Council and the Home Builders' Association of Greater Des Moines and subsequent consultations were made with their respective representatives. City officials, who will be required to implement the changes in certain cities, provided input regarding the feasibility and implementation of the changes.

Administrative Rules
JOBS IMPACT STATEMENT

1. BACKGROUND INFORMATION

Agency:	**Department of Natural Resources / Environmental Protection Commission**
IAC Citation:	**567-Chapter 64, "Wastewater Construction and Operation Permits"**
Agency Contact:	**Joe Griffin, 281-7017, joe.griffin@dnr.iowa.gov**
Statutory Authority:	**455B.103A, 455B.105(3), 455B.173, 455B.186**

Objective:	Revisions to IAC 567-Chapter 64 are necessary to renew the storm water general permits Nos. 1, 2 and 3 which expire on October 1, 2012. Subrule 567 IAC 64.3(7) stipulates that general permits are not to be issued for a period exceeding five years.
Summary:	In addition to the renewals, several minor changes for clarification are being made in the general permits. Substantive changes in General Permit No. 2 are required to implement recent changes in federal regulations published in the Federal Register, Volume 74, No. 229 (74 Fed. Reg. 63057) on December 1, 2009 and implemented in 40 CFR 450.21. The substantive change being made in General Permit No. 2 involves topsoil preservation at construction sites. The CFR now requires topsoil preservation at construction sites required to have a permit. Topsoil preservation has not been defined in the federal regulations. The regulation requires that one subject to the rule must "minimize soil compaction and, unless infeasible, preserve topsoil." 40 CFR 450.21(a)(7). This requirement may be interpreted to require the preservation of <u>all</u> topsoil at a construction site. For the purpose of clarity and to discourage a more stringent interpretation by local officials or EPA, the Department has defined the preservation of topsoil as retaining a minimum of 4 inches of topsoil at construction sites when this is consistent with land use practices after construction has been completed. This depth was chosen after consultation with developers, city officials and the Statewide Urban Design and Standards manual which stipulates, among other things, design standards for city streets, driveways and sidewalks. The 4 inch topsoil depth is consistent with these standards and current development practices and will not impede the construction of these structures. The Department believes retention of this depth of topsoil satisfies the federal requirement to preserve topsoil.

2. JOB IMPACT ANALYSIS

☐ *Fill in this box if impact meets these criteria:*
X No Job Impact on private sector jobs and employment opportunities in the State. The private sector stakeholders participating in this rulemaking have indicated to the DNR that there will not be a job impact related to this rulemaking. It is the belief of the DNR that because the construction and development companies already bring the property soil levels to grade with the sidewalks, streets and driveways there is not an additional jobs impact to the 4 inch topsoil requirement. The new requirement may change the type of soil used for grading but not the amount.

☐ *Fill in this box if impact meets either of these criteria:*
____ Positive Job Impact on private sector jobs and employment opportunities in the State. ____ Negative Job Impact on private sector jobs and employment opportunities in the State. Description and quantification of the nature of the impact the proposed rule will have on private sector jobs and employment opportunities: Explanation:
Categories of jobs and employment opportunities that are affected by the proposed rule:
Number of jobs or potential job opportunities:
Regions of the state affected:
Additional costs to the employer per employee due to the proposed rule: (if not possible to determine, write "Not Possible to Determine.")

3. COST-BENEFIT ANALYSIS

The Department has taken steps to minimize the adverse impact on jobs and the development of new employment opportunities before proposing a rule. See the following Cost-Benefit Analysis:

These rule changes have minimal or no effect on jobs and employment opportunities. The substantive change regarding topsoil retention can be achieved with minimal disruption in the current sequence of events that occur during development and construction. This change was written after closely working with the affected groups. Meetings were held with both the Developers' Council and the Home Builders' Association of Greater Des Moines and subsequent consultations made with their respective representatives. City officials, who will be required to implement the changes in certain cities, provided input regarding the feasibility and implementation of the changes.

4. FISCAL IMPACT

Please see the Fiscal Impact Statement for an identification and description of costs the Department anticipates state agencies, local governments, the public, and the regulated entities, including regulated businesses and self-employed individuals, will incur from implementing and complying with the proposed rule.

Administrative Rules
FISCAL IMPACT STATEMENT

Date: 12/30/11

Agency: Department of Natural Resources / Environmental Protection Commission
IAC Citation: 567-Chapter 64, "Wastewater Construction and Operation Permits"
Agency Contact: Joe Griffin, 281-7017, joe.griffin@dnr.iowa.gov

Summary of the Rule: Revisions to IAC 567-Chapter 64 are necessary to renew the storm water general permits Nos. 1, 2 and 3 which expire on October 1, 2012. Several minor changes for clarification are being made in the general permits. Substantive changes in General Permit No. 2 are required to implement recent changes in federal regulations published in the Federal Register, Volume 74, No. 229 (74 Fed. Reg. 63057) on December 1, 2009 and implemented in 40 CFR 450.21.

Fill in this box if the impact meets any of these criteria:

_X_ No Fiscal Impact to the State.
___ Fiscal Impact of less than $100,000 annually or $500,000 over 5 years.
___ Fiscal Impact cannot be determined.

Brief Explanation: No additional activity by state personnel will be required by these changes as the storm water program is already extant and the proposed changes will not increase the existing workload.

Fill in the form below if the impact meets this criteria:

___ Fiscal Impact of $100,000 annually or $500,000 over 5 years.

* Fill in the rest of the Fiscal Impact Statement form.

Impact Criteria: It is anticipated that no additional fiscal impact will be incurred by most of the changes in the general permits. The fiscal impact of the substantive and federally mandated change to preserve topsoil at construction sites is difficult to quantify but is anticipated to be minimal. Affected parties have expressed their opinion that any additional cost will be minimal.

Impact Criteria Explanation: The substantive change in the general permits, mandated by the United States Environmental Protection Agency, involves preserving the topsoil at construction sites. Topsoil preservation has not been defined in the federal regulations. For clarity, the Department has defined this as retaining a minimum of 4 inches of topsoil at construction sites when this is consistent with land use practices after construction has been completed. This depth was chosen after consultation with developers, city officials and the Statewide Urban Design and Standards manual which stipulates, among other things, design standards for city streets, driveways and sidewalks. The 4 inch topsoil depth is consistent with these standards and current development practices and will not impede the construction of these structures.

During development the topsoil is generally completely stripped off leaving only bare subsoil. The topsoil is then typically removed from the site and used for other purposes. With this requirement, a portion of the topsoil will be retained on the site and later redistributed to a minimum depth of 4 inches over the site.

The cost to remove the topsoil is reduced since a portion will not be removed which is possibly offset by the cost to redistribute that portion remaining. In some circumstances, the developer may receive revenue for the removed topsoil and in other circumstances will not. Thus, the extra or reduced cost for a site is difficult to quantify since it would vary depending on the specific circumstances of the site and the demand for topsoil in the area and distance to which it must be transported for use.

The Developers' Council has indicated that any extra costs that may be associated with the topsoil preservation requirement is generally acceptable to the development community.

ENVIRONMENTAL PROTECTION COMMISSION [567]

Notice of Intended Action

Pursuant to the authority of Iowa Code sections 455B.103A and 455B.105(3), the Environmental Protection Commission (Commission) hereby gives Notice of Intended Action to amend Chapter 567 - 64, "Wastewater Construction and Operation Permits" of the Iowa Administrative Code.

Amendments to Chapter 64 reissue General Permits Nos. 1, 2 and 3 which authorize the discharge of storm water. General Permits Nos. 1, 2 and 3 were issued in 2007 for a five-year duration and expire October 1, 2012. This action will renew all three, extending their coverage another five years to October 1, 2017. General permits for storm water discharges are required to be adopted as rules and are effective for no more than five years as specified in the Iowa Administrative Code. Rule language in Chapter 64 is being removed that was inserted in error several years ago. The wording was intended by the Commission to be inserted into General Permit No. 2 but was instead inserted into the Iowa Administrative Code.

Several minor changes for clarification are being made in the general permits. Substantive changes in General Permit No. 2 are required to implement recent changes in federal regulations published in the Federal Register (FR), Volume 74, No. 229 (74 Fed. Reg. 63057) on December 1, 2009 and implemented in 40 CFR 450.21. Most of the measures in the Federal Register notice are already included in General Permit No. 2. The substantive change being made in General Permit No. 2 involves topsoil preservation at construction sites. The Code of Federal Regulations as amended by the Federal Register notice now requires topsoil preservation at construction sites required to have a permit "unless infeasible". Topsoil preservation has not been defined in the federal regulations. For clarity, the Commission has defined this as retaining a minimum of 4 inches of topsoil at construction sites when this is consistent with land use

practices after construction has been completed. This depth was chosen after consultation with developers, city officials and the Statewide Urban Design and Standards manual which stipulates, among other things, design standards for city streets, driveways and sidewalks. The 4 inch topsoil depth is consistent with these standards and current development practices and will not impede the construction of these structures. The Commission believes retention of this depth of topsoil satisfies the federal requirement to preserve topsoil.

The fee structure of the current permits has been retained.

It is not the intent of the Commission that the textual changes in the general permits be adopted in the Iowa Administrative Code but that these changes be made in the general permits themselves which are adopted by reference into the Iowa Administrative Code.

After analysis and review of this rulemaking, no adverse impact on jobs has been found. The Department of Natural Resources reached out to the development and housing industry to narrowly tailor this rule to minimize any adverse impact on jobs and maximize any positive impact on jobs. Stakeholders believe there could be a savings for developers and homebuilders in many instances because companies can use existing topsoil on site. A copy of the Jobs Impact Statement is available upon request.

The rule amendments and related documents were submitted to the Governor's Office on January 11, 2012. The Department was notified on March 15, 2012, that the proposed rules had been cleared.

Copies of the proposed revised General Permit Nos. 1, 2 and 3 are available upon request from the Iowa Department of Natural Resources at the address or telephone number below.

Any interested party may make written comments on the proposed amendments on or before June 6, 2012. Written comments should be directed to the Storm Water Coordinator, Iowa Department of Natural Resources, 502 E. 9th Street, Des Moines, Iowa 50319; fax

(515)281-8895. People who wish to convey their views orally should contact the Storm Water Coordinator at (515)281-7017 or at the Department's offices on the fifth floor of the Wallace State Office Building located at 502 E. 9th St. in Des Moines.

A public hearing will be held June 6, 2012, 10:00 a.m. – 12:00 p.m., at the Wallace State Office Building in the 3rd floor conference rooms.

At the hearing, people will be asked to give their names and addresses for the record and to confine their remarks to the subjects of the amendments. Anyone who intends to attend the public hearings and has special requirements such as those related to mobility or hearing impairments should contact the Department to advise of any specific needs.

These amendments are intended to implement Iowa Code chapter 455B, division I.

The following amendment is proposed.

ITEM 1. Amend subrules 567--64.15(1), 64.15(2) and 64.15(3) as follows:

64.15(1) Storm Water Discharge Associated with Industrial Activity, NPDES General Permit No.1, effective October 1, 20~~07~~12, to October 1, 201~~2~~7. Facilities assigned Standard Industrial Classification 1442, 2951, or 3273, and those facilities assigned Standard Industrial Classification 1422 or 1423 which are engaged primarily in rock crushing are not eligible for coverage under General Permit No.1.

64.15(2) Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No.2, effective October 1, 20~~07~~12, to October 1, 201~~2~~7.

~~a. Part I, provision B, section 1, paragraph A of General Permit No.2 is amended to read as follows:~~

~~Except for discharges identified under Parts I.B.2. and I.B.3., this permit may authorize the discharge of storm water associated with industrial activity from construction sites, (those sites~~

~~or common plans of development or sale that will result in the disturbance of one or more acres of total land area),~~

~~b. Part VIII, under the definition: Storm water discharge associated with industrial activity, paragraph (x) of General Permit No.2 is amended to read as follows:~~

~~Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than one acre of total land area which is not part of a larger common plan of development or sale.~~

64.15(3) Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, Rock Crushing Plants, and Construction Sand and Gravel Facilities, NPDES General Permit No.3, effective October 1, 20~~07~~12, to October 1, 201~~2~~7. General Permit No.3 authorizes storm water discharges from facilities primarily engaged in manufacturing asphalt paving mixtures and which are classified under Standard Industrial Classification 2951, primarily engaged in manufacturing Portland cement concrete and which are classified under Standard Industrial Classification 3273, those facilities assigned Standard Industrial Classification 1422 or 1423 which are primarily engaged in the crushing, grinding or pulverizing of limestone or granite, and construction sand and gravel facilities which are classified under Standard Industrial Classification 1442. General Permit No.3 does not authorize the discharge of water resulting from dewatering activities at rock quarries.

_____
Date

_____
Roger Lande, Director