

## RESPONSIVENESS SUMMARY

### Introduction:

This is a summary of the comments received in response to proposed changes to chapter 567-64 of the Iowa Administrative Code which renew the storm water general permits and make changes to the general permits. The Notice of Intended Action (ARC 0118C) was published on May 16, 2012.

The amendments as proposed in the Notice would:

1. Re-adopt the storm water general permits nos. 1, 2 and 3 for another five year period to October 1, 2017.
2. Insert the provision in GP 1, 2 and 3 contained in subrule 567-61.2(1) of the Iowa Administrative Code that requires implementation of the provisions of the “Iowa Antidegradation Implementation Procedure” regarding discharges to Outstanding Iowa Waters and to Outstanding National Resource Waters.
3. Add a new provision in GP2 that stipulates both the previous and new owners are responsible for notifying the Department of the transfer of property covered by GP2 though the notification requirement is satisfied when one party makes the notification.
4. Add a new provision in GP 1, 2 and 3 that adds “uncontaminated groundwater” to the list of allowable non-storm water discharges covered under the general permits.
5. Reduce the amount of time allowed to make changes in the pollution prevention plan (PPP) after notification by the Department that changes are necessary from 7 days to 3 business days.
6. Add new provisions in GP2 that incorporate the requirements of 40 CFR (Code of Federal Regulations) 450 that include preservation of topsoil, minimizing soil compaction and other federally required provisions.
7. Incorporate minor textual changes to update and clarify wording of the general permits.

One public hearing was held in Des Moines on June 6, 2012. Written comments were received through June 6, 2012.

Four entities provided official written comments on the proposed changes. The responsiveness summary attempts to address all of the substantive comments received. The Department did not list every comment received, but sometimes merged common comments into a single comment. The Department did attempt to address every substantive comment received whether singly or combined with other, similar comments.

The Department’s response is written below each common or individual comment.

**GP2 Part I.B.2.D. Regarding the reiteration of subrule 567-61.2(1) of the Iowa Administrative Code.**

Comment:

If a project will have discharges to an Outstanding Iowa Water or an Outstanding National Resource Water, how will this be permitted?

Department's response:

If it may temporarily degrade an Outstanding National Resource Water or Outstanding State Resource Water the site will be required to obtain an individual NPDES permit. This measure is already present in the Iowa Administrative Code and its inclusion in GP2 is for the clarification and dissemination of the requirement.

**GP2 Part III.A.2. Regarding the addition of "uncontaminated groundwater" to the list of allowable non-storm water discharges.**

Comment:

Will there be a definition of "uncontaminated groundwater"?

Department's response:

A definition will be proposed to be added to GP2 as follows: "Uncontaminated groundwater" means water that is potable for humans, meets the narrative water quality standards in subrule 567-61.3(2) of the Iowa Administrative Code, contains no more than half the listed concentration of any pollutant in subrule 567-61.3(3) of the IAC, has a pH of 6.5-9.0 and is located in soil or rock strata.

**GP2 Part IV.B.3. Regarding the reduction of time allowed to make changes in the PPP after notification by the Department that changes are necessary from 7 days to 3 business days.**

Comment:

The State is creating a mandate that exceeds the federal EPA requirements. We strongly support maintaining the current 7 days which mirrors the amount of time the EPA provides under CGP [construction general permit] 7.4.2 (effective 2.16.12). Deadlines for SWPPP modifications in the NPDES guidelines for the states where the EPA is the permitting authority. Additionally, since the days are not defined as "working days", there is concern with needing to respond during recognized holidays. Four calendar days might be difficult to meet.

Department's response:

The original proposal was to reduce the time allowed from 7 to 3 days. The Department may have requirements more strict than contained in EPA's CGP. After discussions with stakeholders, the Department has changed the proposed requirement to 3 business days which seems to have been generally well-received by the construction community.

**GP2 Part IV.C. Regarding the requirement to expeditiously change the site map to include changes at the site.**

Comment:

This should be revised to state: “expeditiously change the site map or equivalent electronic information to include changes at the site.”.

Department’s response:

As Part IV.D.1.D. of the GP requires a site map to be included with the PPP, there is no electronic information equivalent to a site map unless it is a site map in electronic format. Any permittee whose site is authorized under the GP and does not have an electronic or paper site map is in violation of the GP requirements and subject to enforcement action by the Department, the Iowa Attorney General’s office and the U.S. EPA.

**GP2 Part IV.D.2.A.(2).(c). Regarding the requirement to preserve topsoil.**

Comment:

Due to the nature of linear projects, we anticipate some of the measures will often be infeasible. As such, we recommend including a definition of “infeasible” in Part VIII. A suggested definition for infeasible is “not technologically possible or not economically practical and achievable in light of best industry practices.”. This suggested definition is from the new EPA Construction General Permit.

Department’s response:

Words such as “infeasible”, “reasonable”, “practical”, “impracticable” and others are often used in regulatory language. The interpretation of these words is left to the regulatory agency and other government authorities. The definition quoted contains the word “practical” which would also require regulatory interpretation. The federal effluent limit guideline that requires these changes does not define the word “infeasible”.

Comment:

There may be instances where topsoil is obtained from offsite to meet the minimum 4 inch requirement. Examples could be in the Loess Hills where there could be different interpretations of what is and is not topsoil, and/or where an existing road is rebuilt on its current footprint and the old roadway template was not originally re-topsoiled and enough topsoil can’t be generated onsite to place 4 inches of topsoil everywhere. Topsoil would then likely be contractor-provided and obtained from private property.

Department’s response:

The concerns might be reduced by knowing that after discussions with stakeholder groups during the comment period, the proposed method of achieving topsoil preservation has been modified for sites where less than 4 inches of topsoil is in place prior to initiation of construction activities at the site. The proposal is now to allow less than 4 inches of topsoil if the site has less than 4 inches prior to the commencement of construction activities. For such sites, the depth of topsoil that must be in place after construction activities have ceased must be at least the depth that existed on the site prior to construction. Thus, little to no topsoil will need to be utilized that did not already exist at the site.

Comment:

We recommend the requirement for topsoil preservation be limited to areas in actively cultivated or rotated croplands and pastures, hayfields, residential areas to be revegetated and other areas at the landowner's or land managing agency's request.

Department's response:

The concerns are unfounded since the proposed requirement includes the following: "Topsoil shall be preserved at all construction sites unless land use precludes the practice."

Comment:

I am concerned about the language regarding compaction of the topsoil at the time the depth is measured. The word "compaction" can mean different things to different people. I request that the definition state soils shall be compacted in such a manner to reduce runoff and increase infiltration of storm water.

Department's response:

The suggested wording seems difficult to interpret with any degree of precision and consistency as it does not utilize any readily recognizable standard of performance. The proposed requirement includes the following: "The final topsoil depth is to be measured after the soil has been compacted in a fashion generally considered adequate for an established lawn and so that the expected settling that will occur after measurement will be minimal ... ". Should the topsoil not be compacted to a reasonable degree before measurement, the settling that will naturally occur over the following 1-2 years will compact the soil resulting in less than 4" remaining which will tend to leave a gap between the soil surface and the top surfaces of sidewalks and driveways.

**GP2 Part IV.D.4. Regarding the relaxation of the requirement to inspect all areas of a construction site and requiring inspections only on areas that are not stabilized with perennial vegetation.**

Comment:

This revision is not consistent with the definition in GP2 for final stabilization or with EPA's definitions of either stabilization or final stabilization.

Department's response:

There seems to be a bit of confusion regarding the meaning of the revision as it does not address final stabilization but, rather, areas requiring regular inspection. There were several more non-substantive comments regarding final stabilization from the same source.

Comment:

The last sentence in this revision is duplicative and unclear. It may be intended to be a clarification of the previous sentence, indicating that even if the vegetative requirements are met, the inspections must continue if erosion is present or there are other conditions warranting inspections.

Department's response:

The last sentence referenced is as follows: "Unless erosion is evident or other conditions warrant them, regular inspections are not required on areas that have been stabilized with a perennial, vegetative cover of sufficient density to preclude erosion."

The permit requires erosion issues be addressed by the permittee for the duration of the permit authorization. The mere presence of vegetation or other erosion controls is insufficient if the controls are ineffective. The referenced sentence was added to emphasize both the need to prevent erosion and that weekly inspections are not required on the described areas.

Comment:

It is requested that a reduced inspection schedule be provided for areas that have been (temporarily) stabilized but have not yet been finally stabilized with perennial vegetation, consistent with the EPA inspection requirements. Weekly inspections during the period between temporary and final stabilization add significant burden and expense compared to a more standard monthly inspection, particularly for remote, unmanned locations and no scientific rationale is provided for any incremental benefit from the weekly inspections.

Department's response:

The Department has proposed that no inspections be conducted between interim and final stabilization. Based upon the comment, it seems it may be desired by some to conduct monthly inspections during this period. If this is the case, these may be conducted both currently and under the proposed revision. If it is wished to have the Department require monthly inspections for all permittees during this period, the Department may certainly be petitioned for future rulemaking regarding the matter.

#### **GP2 Part VI.E. Regarding the requirement to provide information within three hours.**

Comment:

Since this section refers to any information the Department may request (not just the PPP), three hours is a very tight timeframe and should be extended. We recommend either the original "within a reasonable time" be kept or the current revision be changed to "three hours or a mutually agreed upon timeframe."

Department's response:

Part V.B. of GP2 already requires the pollution prevention plan be submitted within three hours of request. As all information regarding the site required to be kept by GP2 is contained in the PPP, this is not an additional requirement. It merely removes any confusion that may be caused by differing language in different parts of the permit.

#### **GP2 Part VIII. Regarding the definition of a construction site and definition of topsoil.**

Comment:

We see difficulty in applying the definition of "construction site" to the types of projects IDOT encounters. For example, a guardrail project spanning miles may not be contiguous, yet we currently have these types of projects covered by one permit. We also struggle with how to apply this definition to backslope or foreslope slide repair projects that could be separated by miles. To date, if these projects are

along the same road, in the same county or adjacent counties, and are let together, we have these covered under the same permit. With this revised definition, they would be separate sites. We also have concerns with this definition because not all areas of the site might be owned by IDOT (i.e., IDOT is only an easement holder). Because of these reasons, we recommend the last sentence be deleted. We also recommend that dedicated off-site borrow and fill/waste locations be included as part of a construction site.

Department's response:

The proposed definition is identical to the Department's current definition. It is being placed in the GP for clarity as hitherto the definition has not been codified. However, the Department will modify the definition by adding "or controls" after "owns" to include easements.

Comment:

We recommend revising the definition of "topsoil" to "...fertile, uppermost part of the soil in a particular area containing ...".

Department's response:

The proposed addition seems to add nothing to the actual definition. It should be noted that the proposed changes include a requirement that the type of topsoil at the site after final stabilization has been achieved for the permitted activity is to be similar to that which exists or existed in the general area of the site.

Comment:

We recommend that the requirement for topsoil preservation be limited to areas in actively cultivated or rotated croplands and pastures, hayfields, residential areas to be revegetated and other areas at the landowner's or land managing agency's request.

Department's response:

The proposed topsoil preservation requirement also clearly includes a statement that topsoil preservation is not required where land use precludes the practice. Thus, the proposed revision in the definition of topsoil is unnecessary.

Comment:

The topsoil preservation requirements appear to mandate that topsoil preservation be achieved through importation of topsoil and do not appear to allow for topsoil segregation as an alternative.

Department's response:

The requirement in no way specifies the sequence of events by which preservation is to be achieved.

**Miscellaneous comments:**

Comment:

It is recommended that the definition of final stabilization be revised to address that construction in agricultural land is stabilized upon restoration to preconstruction agricultural use.

Department's response:

Though it is unnecessary as once a site is returned to agricultural land it is no longer covered by the permit, the Department will revise the definition of final stabilization to clarify the matter.

Comment:

Will projects that already have permits be "grandfathered" or will they fall under the new permit?

Department's response:

As has always been the case in the past, the new requirements will apply to projects already permitted with the exception of the topsoil preservation requirement. Those projects initially permitted under the current (expiring 10/1/12) or earlier general permit will not be required to implement the topsoil preservation requirements for the duration of the current permit authorization coverage. Additional language shall be placed in Part IV.D.2.A.(2).(c). to clarify the matter.

Comment:

It is recommended that the inspection frequency include exceptions for unsafe conditions and periods with frozen conditions and now thawing.

Department's response:

The proposed wording provided does not address the conditions under which inspections are not necessary with sufficient specificity to require inspections when necessary and not require them when unnecessary.

Comment:

It is recommended that a site map not always be required to be included in the pollution prevention plan, that an equivalent project document be an acceptable substitute.

Department's response:

It has been the Department's experience that a site map necessary to sufficiently describe and subsequently understand the sediment and erosion controls intended to be implemented and extant on the site.

**Recommendations:**

It is recommended that the rules proposed in the original notice of intended action be modified to include the following additions. Items in blue were the proposed changes included with the Notice of Intended

Action. Items in blue and underlined were not included in the Notice of Intended Action. These changes are recommended after all comments made during the comment period and stakeholder input were assessed and are as follows:

In GP2, change the proposed final sentence in Part IV.B.3. from “Unless otherwise provided by the Department, the permittee shall have 4 days after such notification to make the necessary changes.” to “Unless otherwise provided by the Department, the permittee shall have 3 business days after such notification to make the necessary changes.”.

In GP2, add the following sentence to the end of proposed Part IV.D.2.A.(2).(c).

The topsoil preservation requirement described above shall be implemented for projects that have not received an authorization under this permit prior to October 1, 2012. The topsoil preservation requirements are not required to be implemented for projects that have been authorized prior to October 1, 2012. In residential and commercial developments, a plat is considered a project. For other large areas that have been authorized for multiple construction sites including those to be started at a future date such as those located at industrial facilities, military installations and universities, a new construction project not yet surveyed and platted out is considered a project. This stipulation is intended to be interpreted as requiring the topsoil preservation requirements on development plats and construction activities on other extended areas that may have several construction projects permitted under the same authorization to be implemented on those projects not yet surveyed and platted out prior to October 1, 2012 even if other plats and construction activities in the same development or other extended area were authorized prior to October 1, 2012.

Add or modify as indicated the following definitions in Part VIII. of GP2:

“*Uncontaminated groundwater*” means water that is potable for humans, meets the narrative water quality standards in subrule 567-61.3(2) of the Iowa Administrative Code, contains no more than half the listed concentration of any pollutant in subrule 567-61.3(3) of the IAC, has a pH of 6.5-9.0 and is located in soil or rock strata.

“*Construction site*” means a site or common plan of development or sale on which construction activity, including clearing, grading and excavating, results in soil disturbance. A construction site is considered one site if all areas of the site are contiguous with one another and one entity owns or controls all areas of the site.

“*Final Stabilization*” means that all soil disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% for the area has been established or equivalent stabilization measures have been employed or which has been returned to agricultural production.

In GP3, replace the following proposed paragraph in Part III.C.2.B.:

The owner or operator of a facility with a storm water discharge covered by this permit shall make plans available within three hours of being requested by the Department ~~upon request to the Department~~ or in the case of a storm water discharge associated with industrial activity which discharges through a ~~large or medium~~ municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system.

with the following:

The owner or operator of a staffed facility with a storm water discharge covered by this permit shall make plans available within three hour of being requested by the Department upon request to the Department or in the case of a storm water discharge associated with industrial activity which discharges through a large or medium-municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system. For an unstaffed facility, the owner or operator shall provide plans by the end of the business day following the request by the Department or the municipal operator of the municipal separate storm sewer system with an NPDES permit.

Add the following definition in Part VIII. of GP3:

“*Staffed facility*” means a facility at which one or more employees of the permittee are currently located.