

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

12

DECISION

TOPIC

**Notice of Intended Action - Chapter 64 – Wastewater Construction and Operation
Permits**

The attached notice of intended action for changes to Chapter 64 “Wastewater Construction and Operation Permits” is being presented to the Environmental Protection Commission for decision. The amendment is intended to renew NPDES General Permit No. 5. This general permit authorizes wastewater discharges, excluding separate storm water discharges, from facilities primarily engaged in mining, quarrying, and further processing of dimension stone, crushed and broken limestone, and construction sand and gravel. The proposed rule would renew the general permit for another five years. NPDES General Permit No. 5 will expire July 17, 2006. The amendment will modify section 64.15(5) to include a new effective date of the general permit.

General permits are appropriate for operations that are similar in nature as to the pollutants involved and the treatment needed. Wastewater discharges from mining and quarrying operations contain similar types and amounts of pollutants. The reissuance of this general permit will benefit potential and existing permittees by reducing the amount of information required in a permit application, eliminating the public notice requirement, and reducing the time needed to obtain a permit. The department will benefit from reissuance of this general permit because of the reduced staff time needed to process the permit application.

John Warren, Environmental Specialist
NPDES Section
Water Quality Bureau
Environmental Services Division
January 27, 2006

ENVIRONMENTAL PROTECTION COMMISSION [567]

Notice of Intended Action

Pursuant to the authority of Iowa Code Section 455B.173 and 455B.105(11), the Environmental Protection Commission proposes to amend Chapter 64, "Wastewater Construction and Operation Permits", Iowa Administrative Code.

The amendments will, if approved, renew NPDES General Permit No. 5. Iowa Code subsection 455B.173.11 allows the Commission to adopt general permits that will cover numerous facilities to the extent they are representative of a class of facilities that can be identified and conditioned by a single permit. General Permit No. 5 was originally issued July 18, 2001 and will expire July 17, 2006. This action will renew General Permit No. 5, extending its coverage for another five years.

The primary water quality concerns with discharges from mining and quarrying operations relate to suspended solids and pH and; therefore, it is felt that limits in the general permit for these parameters and associated monitoring/reporting requirements will be protective of water quality. Total dissolved solids (TDS) and chloride are additional parameters of concern. Prior to obtaining coverage under the general permit each facility will be required to sample their discharge for these parameters. The sample results will be used to evaluate whether the discharge has the potential cause or contribute to a water quality standard violation for TDS and/or chloride. Under the terms of the general permit rule, the Department of Natural Resources could require an individual discharge permit if it was determined the general permit was not protective enough or would cause violations of state water quality standards.

Any interested party may make written comments on the proposed amendments on or before April 4, 2006. Written comments should be directed to John Warren, NPDES Section, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319; fax (515)281-8895; phone (515)242-6148; email john.warren@dnr.state.ia.us.

A public hearing will be held on April 4, 2006, at 1:00 p.m. in the Wallace State Office Building Auditorium, 502 East 9th Street, Des Moines, Iowa at which time comments may be presented orally or submitted in writing.

Anyone who plans to attend the public hearing and has special requirements such as hearing or mobility impairments should contact the department at the address or phone number listed above and advise of the special needs.

The following amendment is proposed.

567—64.15(5)

64.15(5) “Discharge from Mining and Processing Facilities,” NPDES General Permit No. 5, effective ~~July 18, 2001.~~
July 18, 2006.

Date

Jeffrey R. Vonk, Director

IOWA DEPARTMENT OF NATURAL RESOURCES
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
(NPDES)

GENERAL PERMIT NO. 5

EFFECTIVE DATE
~~**JULY 18, 2001 THROUGH JULY 17, 2006**~~
July 18, 2006 THROUGH July 17, 2011

FOR

MINING AND PROCESSING FACILITIES

GENERAL PERMIT #5 – MINING AND PROCESSING

PART I. COVERAGE UNDER THIS PERMIT

A. DISCHARGES COVERED UNDER THIS PERMIT.

This permit authorizes discharge of wash water, transport water, scrubber water used for air pollution control, water used for dust suppression, mine or quarry dewatering and non-contact cooling water used for cooling of crusher bearings, drills, saws, dryers, pumps and air compressors from facilities primarily engaged in mining or quarrying of Dimension Stone (SIC 1411), Crushed and Broken Limestone (SIC 1422), and Construction Sand and Gravel (SIC 1442):

Storm water associated with industrial activity that is discharged to an active mine or quarry, and is mixed with one or more sources of wastewater identified in the preceding paragraph, may be discharged under this permit. Separate storm water discharges, that is, storm water that is not discharged into an active mine or quarry before being discharged to a water of the state must be permitted under General Permits #2 or #3.

B. LIMITATIONS ON COVERAGE.

The following discharges are not authorized by this permit:

- domestic sewage whether treated or untreated.
- non-storm water discharges unless specifically identified in Part I.A. of this permit
- discharges from open dumps as defined under RCRA;
- the discharge of hazardous substances or oil resulting from an on-site spill.
- water used in air pollution control devices by asphalt and concrete manufacturing facilities.
- storm water discharges associated with industrial activity defined in Part V of this permit except those identified in Part I.A. of this permit.
- any discharge that the Department has shown to be or may reasonably be expected to be contributing to a violation of a water quality standard.

C. REQUIRING AN INDIVIDUAL PERMIT.

1. The Department may require any person authorized by this permit to discharge water to apply for and obtain an individual NPDES permit by notifying the permittee in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for the owner or operator to file the application, and a statement that on the effective date of the individual NPDES permit, coverage under this general permit shall automatically terminate. If an owner or operator fails to submit an individual NPDES permit application required by the Department under this paragraph, coverage of this general permit automatically is terminated at the end of the day specified for submittal of the individual NPDES application.
 2. Any person authorized to discharge under this permit may apply for an individual NPDES permit. In such cases, the discharger shall submit an individual application using DNR Form 1 and Form 2 in accordance with the requirements of subrule (567)--64.3(4) in the Iowa Administrative Code.
 3. **A.** When an individual NPDES permit is issued to a discharger covered under this general permit, the applicability of this general permit to the individual NPDES permittee is automatically terminated on the effective date of the individual NPDES permit.
B. When an individual NPDES permit is denied to a discharger otherwise subject to this permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Department.
- #### **D. AUTHORIZATION.**
1. A discharger must submit a Notice of Intent (NOI) in accordance with the requirements of Part II of this permit to be authorized to discharge under this general permit.

GENERAL PERMIT #5 – MINING AND PROCESSING

2. Unless notified by the Department to the contrary, dischargers who submit a Notice of Intent (NOI) in accordance with the requirements of Part II of this permit are authorized to discharge under the terms and conditions of this permit on the date the completed Notice of Intent was received by the Department or the date construction or operation is scheduled to begin as provided on Form 542-4006 (Notice of Intent) whichever is later. Upon review of the Notice of Intent, the Department may deny coverage under this permit and require submittal of an application for an individual NPDES permit.

PART II. NOTICE OF INTENT (NOI) REQUIREMENTS

A. DEADLINES FOR FILING A NOTICE OF INTENT.

1. Existing dischargers who intend to obtain coverage under this general permit shall submit to the Department, the Notice of Intent (NOI) specified in Part II.C. of this permit on or before ~~October 1, 2004~~ July 17, 2006.
2. For new discharges the NOI specified in Part II.C. of this permit shall be submitted to the Department at least 30 days prior to the commencement of discharge.

- B. FAILURE TO NOTIFY.** Dischargers who fail to submit either a Notice of Intent to be covered by a general permit or an application for an individual permit, and discharge pollutants to a water of the United States within Iowa, are in violation of the Clean Water Act and the Code of Iowa.

- C. CONTENTS OF THE NOTICE OF INTENT.** A complete Notice of Intent shall include the following:

A completed Notice of Intent (NOI) form, DNR Form 542-4006, signed in accordance with Standard Condition #22 of this permit. The information on the form shall include the following:

- A. Name, mailing address, and location of the site for which this notification is submitted. The location should be provided

as the 1/4 section, township, and range, the latitude and longitude, and the county in which the discharge is located.

- B. The owner's name, address and telephone number.

- C. The name, address and telephone number of any operator (contractor).

- D. The type of discharge (new or existing); whether or not the discharge is to a municipal separate storm sewer system; the date the discharge is to commence; the permit status of the discharge; the number of discharge points; the type of discharge; and the name of the receiving waters.

- E. A statement whether any existing quantitative data is available describing the concentration of pollutants in discharges.

- F. The results of analysis of at least one sample of the discharge for both total dissolved solids (TDS) and chloride. If a discharge is not occurring at the time of completing the NOI, sample results for TDS and chloride shall be submitted within sixty (60) days following the next discharge.

- G. The daily maximum flow discharged from each operation (in million gallons per day (mgd)).

- H. The applicable fees specified in Iowa Administrative Code 567—64.16(455B).

- D. WHERE TO SUBMIT.** A complete Notice of Intent must be submitted to the Department at the following address:

NPDES Section
Iowa Department of Natural Resources
Environmental Services Division
502 E. 9th Street
Des Moines, IA 50319-0034

- E. CONTINUING COVERAGE.** Any authorization to discharge under this permit is valid only through the permit expiration date. Coverage under this permit remains in effect beyond the expiration date only if the permittee:

GENERAL PERMIT #5 – MINING AND PROCESSING

1. Has filed a complete Notice of Intent to be covered by a subsequent general permit prior to the expiration of this permit; or,
2. Has filed a complete application for an individual NPDES permit in accordance with Iowa Administrative Code 567--64.3(4).

This continuing coverage remains in effect only until the department takes final action on the Notice of Intent or individual permit application. If this general permit is not reissued, the department will notify each discharger covered by this permit to apply for an individual NPDES permit according to the procedures identified in Iowa Administrative Code 567--64.3(4).

F. TRANSFER OF COVERAGE UNDER THIS PERMIT. Where the ownership of the facility changes, the Department must be notified of the title transfer within 30 days. If a discharge is covered by this general permit, the new owner(s) shall be subject to all terms and conditions of this general permit

G. NOTICE OF DISCONTINUATION.

1. Within 30 days after elimination of the wastewater discharge, the operator or owner of the facility shall submit a Notice of Discontinuation to the Department.
2. The Notice of Discontinuation shall contain the following information:
 - A. the name of the owner/operator to which the permit was issued;
 - B. the general permit number and permit authorization number;

- C. the date the discharge was eliminated.

PART III. NUMERIC EFFLUENT LIMITATIONS

Any discharge from mine dewatering activities or materials preparation at construction sand and gravel, dimension stone or crushed or broken stone mining facilities shall not exceed a maximum concentration for any day of 45 mg/l or a 30 day average of 30 mg/l Total Suspended Solids (TSS) nor shall the pH of the discharge be less than 6.0 or greater than 9.0. Dischargers subject to these numeric effluent limitations must be in compliance with these limits upon commencement of coverage and for the entire term of this permit.

PART IV. MONITORING AND REPORTING REQUIREMENTS

A. Monitoring Requirements. The following monitoring is required for facilities subject to the effluent limitations specified in Part III of this permit. For discharges resulting from quarry dewatering a representative sample shall be collected at least annually and shall be analyzed for total suspended solids and pH.

For discharges resulting from washing of material or a combination of wash water and quarry dewatering the discharge shall be sampled at least monthly for each month during which a discharge occurs and shall be analyzed for total suspended solids and pH.

B. Reporting. Permittees required to monitor are also required to submit signed copies of discharge monitoring results by January 15th each year for the previous calendar year.

C. Additional Notification. Facilities with at least one discharge through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must submit signed copies of discharge monitoring reports or results to the operator of the municipal separate storm sewer system upon request.

D. Retention of Records. The permittee shall retain a copy of the records of all monitoring information, copies of all reports required by this permit, and records of all data for the duration of the permit or for

GENERAL PERMIT #5 – MINING AND PROCESSING

a period of at least three years from the date of the measurement, report, inspection, etc.

PART V. DEFINITIONS

"**Bypass**" means the intentional diversion of waste streams from any portion of a treatment facility.

"**CWA**" or "**Clean Water Act**" means the Federal Water Pollution Control Act.

"**Department**" means the Iowa Department of Natural Resources.

"**Hazardous substance**" means any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant or that, in confinement, generates pressure through decomposition, heat, or other means. The following are examples of substances which, in sufficient quantity may be hazardous: acids; alkalis; explosives; fertilizers; heavy metals such as chromium, arsenic, mercury, lead and cadmium; industrial chemicals; paint thinners; paints; pesticides; petroleum products; poisons, radioactive materials; sludges; and organic solvents. "Hazardous substances" may include any hazardous waste identified or listed by the administrator of the United States Environmental Protection Agency under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, or any toxic pollutant listed under section 307 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous substance designated under section 311 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous material designated by the secretary of transportation under the Hazardous Materials Transportation Act (49 CFR 172.101). 455B.381(1), 1991 Code of Iowa

"**Large and Medium municipal separate storm sewer system**" means all municipal separate storm sewers that are either:

(i) located in an incorporated place with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census; or

(ii) located in the counties with unincorporated urbanized populations of 100,000 or more, except

municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or

(iii) owned or operated by a municipality other than those described in paragraph (i) or (ii) and that are designated by the Department as part of the large or medium municipal separate storm sewer system.

"**Municipality**" means a city, town, borough, county, parish, district, association, or other public body created by or under State law.

"**Storm water**" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"**Storm water discharge associated with industrial activity**" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR part 122. The term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR part 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally, State, or municipally owned or operated that meet the description of the facilities listed in the following paragraphs (i)-(xi) of this definition) include those facilities designated under 40 CFR

GENERAL PERMIT #5 – MINING AND PROCESSING

122.26(a)(1)(v). The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this definition;

(i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) of this definition);

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, 373;

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

(v) Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the

facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA;

(vi) facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-4225), 43, 44, 45 and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i)-(vii) or (ix)-(xi) of this definition are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR 503;

(x) Construction activity including clearing, grading and excavation activities except operations that result in the disturbance of less than five acres of total land. Construction activity also includes the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27,

GENERAL PERMIT #5 – MINING AND PROCESSING

283, 285, 30, 31 (except 311), 323, 34 (except 3441),
35, 36, 37 (except 373), 38, 39 and 4221-4225.

GENERAL PERMIT #5 – MINING AND PROCESSING

1. DEFINITIONS

- (a) 7 day average means the sum of the total daily discharges by mass, volume or concentration during a 7 consecutive day period, divided by the total number of days during the period that measurements were made. Four 7 consecutive day periods shall be used each month to calculate the 7-day average. The first 7-day period shall begin with the first day of the month.
- (b) 30 day average means the sum of the total daily discharges by mass, volume or concentration during a calendar month, divided by the total number of days during the month that measurements were made.
- (c) daily maximum means the total discharge by mass, volume or concentration during a twenty-four hour period.

2. DUTY TO COMPLY

You must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. Issuance of this permit does not relieve you of the responsibility to comply with all local, state and federal laws, ordinances, regulations or other legal requirements applying to the operation of your facility.
{See 40 CFR 122.41(a) and 567-64.7(4)(e) IAC}

3. DUTY TO REAPPLY

If you wish to continue to discharge after the expiration date of this permit you must file an application for reissuance at least 180 days prior to the expiration date of this permit.
{See 567-64.8(1) IAC}

4. NEED TO HALT OR REDUCE ACTIVITY

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
{See 40 CFR 122.41(c) and 567-64.7(5)(j) IAC}

5. DUTY TO MITIGATE

You shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.
{See 40 CFR 122.41(d) and 567-64.7(5)(i) IAC}

6. PROPERTY RIGHTS

This permit does not convey any property rights of any sort or any exclusive privileges.

7. TRANSFER OF TITLE

If title to your facility, or any part of it, is transferred the new owner shall be subject to this permit.
{See 567-64.14 IAC}

You are required to notify the new owner of the requirements of this permit in writing prior to any transfer of title. The Director shall be notified in writing within 30 days of the transfer

8. PROPER OPERATION AND MAINTENANCE

All facilities and control systems shall be operated as efficiently as possible and maintained in good working order. A sufficient number of staff, adequately trained and knowledgeable in the operation of your facility shall be retained at all times and adequate laboratory controls and appropriate quality assurance procedures shall be provided to maintain compliance with the conditions of this permit.
{See 40 CFR 122.41(e) and 567 64.7(5)(f) IAC}

9. DUTY TO PROVIDE INFORMATION

You must furnish to the Director, within a reasonable time, any information the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. You must also furnish to the Director, upon request, copies of any records required to be kept by this permit.

10. MAINTENANCE OF RECORDS

You are required to maintain records of your operation in accordance with 567-63.2 IAC.

11. PERMIT MODIFICATION, SUSPENSION OR REVOCATION

- (a) This permit may be modified, suspended, or revoked and reissued for cause including but not limited to those specified in 567-64.3(11) IAC.
- (b) This permit may be modified due to conditions or information on which this permit is based, including any new standard the department may adopt that would change the required effluent limits.
{See 567-64.3(11) IAC}
- (c) If a toxic pollutant is present in your discharge and more stringent standards for toxic pollutants are established under Section 307(a) of the Clean Water Act, this permit will be modified in accordance with the new standards.
{See 40 CFR 122.62(a)(6) and 567-64.7(5)(g) IAC}

The filing of a request for a permit modification, revocation or suspension, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

12. SEVERABILITY

The provisions of this permit are severable and if any provision or application of any provision to any circumstance is found to be invalid by this department or a court of law, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected by such finding.

GENERAL PERMIT #5 – MINING AND PROCESSING

13. INSPECTION OF PREMISES, RECORDS, EQUIPMENT, METHODS AND DISCHARGES

You are required to permit authorized personnel to:

- (a) Enter upon the premises where a regulated facility or activity is located or conducted or where records are kept under conditions of this permit.
- (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit.
- (c) Inspect, at reasonable times, any facilities, equipment, practices or operations regulated or required under this permit.
- (d) Sample or monitor, at reasonable times, for the purpose of assuring compliance or as otherwise authorized by the Clean Water Act.

14. TWENTY-FOUR HOUR REPORTING

You shall report any noncompliance that may endanger human health or the environment. Information shall be provided orally within 24 hours from the time you become aware of the circumstances. A written submission that includes a description of noncompliance and its cause; the period of noncompliance including exact dates and times, whether the noncompliance has been corrected or the anticipated time it is expected to continue; and the steps taken or planned to reduce, eliminate, and prevent a reoccurrence of the noncompliance must be provided within 5 days of the occurrence. The following instances of noncompliance must be reported within 24 hours of occurrence:

- (a) Any unanticipated bypass which exceeds any effluent limitation in the permit.
{See 40 CFR 122.41(l)(5)(ii)(A)}
- (b) Any upset which exceeds any effluent limitation in the permit.
{See 40 CFR 122.41(l)(5)(ii)(B)}
- (c) Any violation of a maximum daily discharge limit for any of the pollutants listed by the Director in the permit to be reported within 24 hours.
{See 40 CFR 122.41(l)(5)(ii)(C)}

15. OTHER NONCOMPLIANCE

You shall report all instances of noncompliance not reported under Condition #14 at the time monitoring reports are submitted.

16. ADMINISTRATIVE RULES

Rules of this Department which govern the operation of your facility in connection with this permit are published in Part 567 of the Iowa Administrative Code (IAC) in Chapters 60-65 and 121. Reference to the term “rule” in this permit means the designated provision of Part 567 of the Iowa Administrative Code.

17. NOTICE OF CHANGED CONDITIONS

You are required to report any changes in existing conditions or information on which this permit is based:

- (a) Facility expansions, production increases or process modifications which may result in new or increased discharges of pollutants must be reported to the Director in advance. If such discharges will exceed effluent limitations, your report must include an application for a new permit.
{See 567-64.7(5)(a) IAC}
- (b) If any modification of, addition to, or construction of a disposal system is to be made, you must first obtain a written permit from this Department.
{See 567-64.2 IAC}
- (c) If your facility is a publicly owned treatment works or otherwise may accept waste for treatment from industrial contributors see 567-64.3(5) IAC for further notice requirements.
- (d) You shall notify the Director as soon as you know or have reason to believe that any activity has occurred or will occur which would result in the discharge of any toxic pollutant which is not limited in this permit.
{See 40 CFR 122.42(a)}
- (e) No construction activity that will result in disturbance of one acre or more shall be initiated without first obtaining coverage under NPDES General Permit No. 2 for “Storm water discharge associated with construction activity”.

You must also notify the Director if you have begun or will begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application

18. OTHER INFORMATION

Where you become aware that you failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report, you must promptly submit such facts or information.

GENERAL PERMIT #5 – MINING AND PROCESSING

19. UPSET PROVISION

- (a) Definition - "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- (b) Effect of an upset. An upset constitutes an affirmative defense in an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph "c" of this condition are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- (c) Conditions necessary for demonstration of an upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:
- (1) An upset occurred and that the permittee can identify the cause(s) of the upset.
 - (2) The permitted facility was at the time being properly operated; and
 - (3) The permittee submitted notice of the upset to the Department in accordance with 40 CFR 122.41(i)(6)(ii)(B).
 - (4) The permittee complied with any remedial measures required by Item #5 of the Standard Conditions of this permit.
- (d) Burden of Proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

20. FAILURE TO SUBMIT FEES

This permit may be revoked, in whole or in part, if the appropriate permit fees are not submitted within thirty (30) days of the date of notification that such fees are due.

21. BYPASSES

- (a) Definition - Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
- (b) Prohibition of bypass, Bypass is prohibited and the department may take enforcement action against a permittee for bypass unless:

BYPASSES (Continued)

- (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance;
 - (3) The permittee submitted notices as required by paragraph "d" of this section.
- (c) The Director may approve an anticipated bypass after considering its adverse effects if the Director determines that it will meet the three conditions listed above.
- (d) Reporting bypasses. Bypasses shall be reported in accordance with 567-63.6 IAC.

22. SIGNATORY REQUIREMENTS

Applications, reports or other information submitted to the Department in connection with this permit must be signed and certified as required by 567-64.3(8) IAC.

23. USE OF CERTIFIED LABORATORIES

Effective October 1, 1996, analyses of wastewater, groundwater or sewage sludge that are required to be submitted to the department as a result of this permit must be performed by a laboratory certified by the State of Iowa. Routine, on-site monitoring for pH, temperature, dissolved oxygen, total residual chlorine and other pollutants that must be analyzed immediately upon sample collection, settleable solids, physical measurements, and operational monitoring tests specified in 567-63.3(4) are excluded from this requirement.

24. LEGAL AND FINANCIAL LIABILITY WAIVER

No legal or financial responsibility arising from the operation or maintenance of any disposal system or part thereof installed by the permittee to achieve compliance with this permit shall attach to the State of Iowa or the Iowa Department of Natural Resources.

GENERAL PERMIT #5 – MINING AND PROCESSING

**DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION
MEMORANDUM**

Date: February 1, 2006
Re: Fiscal Impact Analysis for General Permit #5

This document provides the projected costs associated with the proposed rule changes being addressed in the Notice of Intended Action, Chapter 64 – Wastewater Construction and Operation Permits. This rule-making effort is to renew NPDES General Permit #5, which authorizes wastewater discharges, excluding separate storm water discharges, from facilities primarily engaged in mining, quarrying, and further processing of dimension stone, crushed and broken limestone, and construction sand and gravel. The proposed rule would renew the general permit for another five years. There are approximately 400 facilities currently covered by this general permit.

The proposed NPDES General Permit #5 requires each facility to submit sample results for total dissolved solids (TDS) and chloride with their Notice of Intent in order to obtain coverage under General Permit #5. According to the University Hygienic Lab located in Ankeny, Iowa, both tests cost \$15 dollars each. Therefore, each facility will incur an expenditure of \$30 to complete the tests. This results in a total cost of \$12,000 for all 400 facilities combined.

The TDS and chloride data will then be used to determine whether the discharge has the potential to increase the in-stream concentration of TDS and/or chloride above a certain threshold level. Those facilities where it has been determined that their discharge will exceed either of threshold values will be required to conduct a whole effluent toxicity (WET) test, which is in accordance with the State's TDS standard. Depending on the amounts of TDS and/or chloride in the discharge and the type of stream the facility discharges into an acute or chronic WET test or both will be required. Cost estimates for acute tests plus ion analysis range from \$500 to \$900 and for chronic tests with ion analysis from \$1,600 to \$2,000 (estimates provided by UHL and from the working draft fiscal impact statement rationale used for the TDS standard rule making process).

It is anticipated that most, if not all, facilities required to conduct a WET test will only have to do the acute test. This is based on the fact that not all facilities will discharge to a designated stream and that it is not expected that the TDS concentrations discharged from these facilities will be high enough to warrant a chronic test. Those that discharge to non-designated or general use streams are only required to conduct an acute test. It should be mentioned that in anticipation of these new requirements, the mining and quarrying industry has voluntarily begun collecting TDS and chloride samples. Of those facilities, it has been shown that 50% will have to conduct an acute toxicity test because their TDS concentrations have exceeded the threshold value. Should this trend continue half the facilities will have to conduct toxicity testing. Therefore, we are looking at 200 facilities potentially conducting an acute WET test resulting in a cost ranging from \$100,000 to \$180,000. Add these figures to the \$12,000 calculated for sample analysis of TDS and chloride and the total cost to all facilities covered by the proposed permit ranges from \$112,000 to \$192,000. This expense will not be incurred on an annual basis.

GENERAL PERMIT #5 – MINING AND PROCESSING

Instead, the TDS and chloride testing and potential WET test will be required only once during the five year life of the permit. Under a worst-case scenario, all of the potentially 200 facilities having to conduct a chronic test, the total expense incurred would be \$412,000 (200 facilities times \$2,000 dollars per chronic test plus \$12,000). Therefore, I do not believe a fiscal impact statement is necessary for this rule making because the total cost over five years should be less than \$500,000.

GENERAL PERMIT #5 – MINING AND PROCESSING

Administrative Rule Fiscal Impact Statement

Date: 2/1/2006

Agency: Department of Natural Resources

IAC Citation: 567-64.15(5)

Agency Contact: John Warren

Summary of the Rule: The proposed change is to revise the effective date of NPDES General Permit #5 to July 18, 2006. In doing so, NPDES General Permit #5 will be renewed for another five year period. This general permit authorizes wastewater discharges, excluding separate storm water discharges, from facilities primarily engaged in mining, quarrying, and further processing of dimension stone, crushed and broken limestone, and construction sand and gravel.

Fill in this box if the impact meets these criteria:

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:

While the revisions to the general permit require that additional testing be completed, the testing will only need to be conducted once during the five year life of the permit and the total expense is estimated to range from \$112,000 to \$192,000. The fiscal impact, therefore, is expected to be less than \$500,000 over five years (please see attached memo for rationale behind the projected costs).

Fill in the form below if the impact does not fit the criteria above:

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

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

GENERAL PERMIT #5 – MINING AND PROCESSING

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY _____)</u>	<u>Year 2 (FY _____)</u>
Revenue by Each Source:		
GENERAL FUND		
FEDERAL FUNDS		
Other (specify)		
	_____	_____
TOTAL REVENUE		
Expenditures:		
GENERAL FUND		
FEDERAL FUNDS		
Other (specify)		
	_____	_____

GENERAL PERMIT #5 – MINING AND PROCESSING

TOTAL EXPENDITURES

NET IMPACT

___ This rule is required by State law or Federal mandate.
Please identify the state or federal law:

___ Funding has been provided for the rule change.
Please identify the amount provided and the funding source:

___ Funding has not been provided for the rule.
Please explain how the agency will pay for the rule change:

Fiscal impact to persons affected by the rule:

Fiscal impact to Counties or other Local Governments (required by Iowa Code 25B.6):

* If additional explanation is needed, please attach extra pages.

Agency Representative preparing estimate: John Warren
Telephone Number: 515-242-6148