Compiled Comments for Construction General Permits

Comments received from:
American Electric Power (AEP)
Associated General Contractors of Indiana (AGCI)
Cheyenne Hoffa (CH)
City of Chesterton (COC)
City of Fort Wayne (FW)
City of Goshen (COG)
City of Indianapolis (COI)
Colby King (CK)
Deborah Hughes (DH)
Earth Works (EW)
Elkhart City (EC)
Indiana Association for Floodplain and Stormwater Management (INAFSM)
Indiana Builders Association (IBA)
Indiana Department of Transportation (INDOT)
Indiana Ready Mixed Concrete Association (IRMCA)
Jon Gotz (JG)
Lennar (Lennar)
Marc Walters (MW)
Mike Conquest (MC)
Moretz (Moretz)
Porter County (PC)
Pulte Group (Pulte)
Sherri Wilson (SW)
Southwestern Indiana Builders Association (SIBA)

1.2 Discharges Authorized/Covered by this Permit

Comment: Will borrow or spoil sites that are used for multiple different construction projects be permitted under this new Construction Stormwater National Pollutant Discharge Elimination System (NPDES) General Permit? (CK)

Response:

Yes, IDEM will permit the borrow and spoil sites under the new permit. These sites will be regulated as they are currently under 327 IAC 15-5. If these sites are associated with multiple projects, the borrow/spoil sites should have their own permit coverage. IDEM will require an Amendment – Continuation of Coverage if the sites are active upon issuing the new CSGP.

Comment: Will any current active spoil site that is being used for multiple projects, not be allowed to be renewed under the new permit? (CK)

Response:

Current sites associated with multiple projects should have their own permit coverage and would be required to file an Amendment – Continuation of Coverage.

Comment: Can the active site remain active until the existing rule 5 permit expires? (CK)
Response:
If the borrow/spoil site is active and currently has permit coverage, it is expected that the owner of the proejct site will file for an Amendment-Continue of Coverage. IDEM cannot continue coverage under 327 IAC 15-5 for projects that will continue to operate as 327 IAC 15-5 will be repealed. The new NOI is required to establish permit coverage under the new permit.

Comment: The list of discharges determined to not be a significant source of pollutants in Section 1.2(d) does not match the list of discharges in Section 1.2(d) of the Draft Municipal Separate Storm Sewer System General Permit (INPR04000). The commenter recommends revising one or both permits to ensure consistency. (FW)
Response:
The construction permit is limited to those activities that would typically be associated with active construction. The list associated with an active construction site is not required to match the current draft MS4 permit (INR040000). The MS4 permit is more comprehensive in scope and therefore covers a larger variety of activities that are commonly impacted by stormwater.

Comment: The release of water line flushing from new construction may contain high concentrations of chlorine far above the State water quality standards. The release of water from the flushing of a water line should be treated before it is released to the soil or a surface water/waters of the state, unless it is released to a sanitary sewer with the local jurisdictions' approval. (COG)
Response:
Discharges of potable water are usually short-term infrequent discharges that with proper management are not expected to contain pollutants in concentrations that would cause or contribute to a violation of water quality standards. The typical pollutant of concern is chlorine. Discharges can be addressed using measures that promote de-chlorination by aeration, retention, dissipation, or treatment.

2.1 Permit Coverage

Comment: The meaning of the last sentence, "Municipal Separate Storm Sewer System (MS4) stormwater ordinances will be considered to have the same authority as this permit," is not clear. MS4 permits normally go through a hearing and public comment period where the regulated community has an opportunity to revise and comment on draft regulations. Does this sentence grant an MS4 any different authority than what they already have? Does the Construction General Permit (CGP) become incorporated into the MS4 permit or vise versa? The statement that the MS4 stormwater ordinances will be considered to have the same authority as this permit should either be clarified as to its intent or removed from the Draft CGP. (Lennar)

Response:

This permit applies to all projects that meet the requirements in Section 2.1. Projects that occur in a designated municipal separate storm sewer system (MS4) jurisdictional area and are regulated by the MS4 entity must also comply with all appropriate MS4 ordinances and regulations related to stormwater discharges. The local MS4s will be required to update their local ordinances to at least meet the minimum requirements of the Construction Stormwater General Permit (CSGP). IDEM has modified the language in the CSGP and removed "Municipal Separate Storm Sewer System (MS4) stormwater ordinances will be considered to have the same authority as this permit,"

2.2 Exclusion from Permit Coverage

Comment: Will the exclusion for the installation and maintenance of agricultural drainage tile apply to the reconstruction of county regulated drains? In rural areas, the largest part of a regulated drain was installed and will be reconstructed on land used for agriculture. In some cases, one or more agricultural landowners will reconstruct a regulated drain on their land with the consent of a county drainage board. In other cases, one or more landowners will grant funds to a county drainage board to reconstruct a regulated drain on their agricultural land. IC 36-9-27-34(b) of the drainage code defines reconstruction. (JG)

Response:

The permit does include a provision that the installation and maintenance of agricultural drainage tile is considered an agricultural activity and therefore exempt under the new permit. However, this Section has been modified to clarify the reference is the permit is for subsurface drainage. The maintenance of a surface regulated drain is based on the work being performed. For example, if the capacity and pre-maintenance dimensions of the of the surface regulated drain are increased, permit coverage may be required.

Comment: This section exempts coverage under the construction stormwater general permit "ditch maintenance activities performed on a regulated drain by a county drainage board." Under IC 36-9-27-20, a county drainage board is authorized to transfer jurisdiction over regulated drains contained entirely within the boundaries of a municipality to that municipality if the municipality accepts jurisdiction. The commenter recommends adding language to Section 2.2 to clarify that this exemption will also apply to a municipality with respect to regulated drains over which the municipality has acquired jurisdiction in accordance with IC 36-9-27-20. (FW)

Response:

This item has been clarified in the new permit. Section 36-9-27-20 - Drains located in municipalities or sanitary districts; relinquishment of jurisdiction by board - "A board may, by resolution, relinquish its jurisdiction over ditches and drains located in a municipality or a sanitary district, if that jurisdiction is accepted by the municipality or sanitary district." Ind. Code § 36-9-27-20.

Comment: The word ditch isn't defined in IC 36-9-27. I've heard the word ditch used for both open drains and tiled drains. It may be better to use the words "periodic maintenance" instead of "ditch maintenance" as in IC 36-9-27-34(c). The word "channel" in Appendix B (18) also suggests an open drain. It could be removed without materially changing the definition. (JG)

Response:

The definition for "Ditch Maintenance" will not be modified.

2.3 Waivers and Special Conditions

Comment: There are instances where contractors cannot strictly comply with the Permit due to extreme weather events that cannot be managed by otherwise adequate best management practices, or due to unsafe site conditions or other "act of God" situations. The draft permit should grant contractors more time (*e.g.*, up to 72 hours) to inspect areas that have become inaccessible through no fault of the contractors. Also, the Permit should include a waiver that applies when compliance is not achievable due to temporary events beyond the contractor's control, such as an "act of God." (AGCI)

Response:

The comment is related to the self-monitoring program and is not applicable to this Section of the permit "Eligibility for Permit Coverage". This Section of the permit allows for emergency situations and a process for after-the-fact permits. Section 3.6 (a)(1) does allow suspension of inspections for areas considered to be unsafe as long as the reason is documented in the self-monitoring report.

Comment: In Section 2.3 on waivers and special provisions, the draft permit does not clearly address unsafe site conditions and extreme weather systems. Permittees are challenged to remain compliant during extreme weather events, national disasters and pandemics. Our intent is to comply, but sites could be inaccessible and inactive due to weather extremes.

Extreme weather systems result in stormwater runoff events that cannot be managed by temporary soil erosion, sediment control, and storm water best management practices (BMP), even when adequate BMPs are properly installed and maintained. Compliance with the draft permit and local ordinances cannot be maintained during extreme runoff events (i.e. 3-inch rainfall occurring simultaneously with a 5-inch snowpack and frozen soil).

IDEM should include language like the Illinois CGP (Part IV.D.4): Areas inaccessible due to flooding or other unsafe site conditions shall be inspected within 72 hours of being accessible. Also include a forgiveness clause or waiver that can be applied by permittees when good cause exists, such as an act of God, labor strike, or flood (per the United States Environmental Protection Agency's (U.S. EPA) Stormwater NPDES Permit Writers' Manual, 2010). (Pulte)

Response:

The comment is related to the self-monitoring program and is not applicable to this Section of the permit "Eligibility for Permit Coverage". This Section of the permit allows for emergency situations and a process for after-the-fact permits. Section 3.6 (a)(1) does allow suspension of inspections for areas considered to be unsafe as long as the reason is documented in the self-monitoring report.

IDEM will provide additional guidance and has clarified the permit language include information on notification. Notification can be an email that describes the emergency condition sent to stormwat@idem.in.gov. An email may suffice for a MS4 provided the MS4 does not have a specific process defined for this activity.
In addition, IDEM is considering a form and/or an option on the Regulatory ePortal to achieve notification online.

Comment: What if a special condition project finishes before the 30-day requirement for Notice of Intent (NOI)? Is the project in good terms if IDEM knows the issue and managed correctly? What exactly is a preliminary notification, who specifically to contact and how? (EW)

Response:

The comment references submission of a NOI. A NOI must still be submitted to IDEM regardless of completion of the proejct. U.S. EPA requires permit coverage for all land-disturbing activities of one acre or more.

IDEM will provide additional guidance and has clarified the permit language include information on notification. Notification can be an email that describes the emergency condition sent to stormwat@idem.in.gov. An email may suffice for a MS4 provided the MS4 does not have a specific process defined for this activity. In addition, IDEM is considering a form and/or an option on the Regulatory ePortal to achieve notification online.

3.0 Performance Standards

Comment: This section states the stormwater pollution prevention plan (SWP3) will serve as a "guideline" for stormwater management but is not the only basis for implementation of stormwater measures at a project site. By calling the SWP3 a "guideline," the commenter is concerned that project site owners might argue it is not enforceable. In addition, the commenter is unclear on what other measures (apart from the SWP3) would govern stormwater measures form a project site. The commenter seeks clarification on the enforceability of SWP3s and examples of other stormwater authorities that might apply for project sites. (FW)

Response:

IDEM considers the SWP3 as a living document. IDEM anticipates that the SWP3 will be updated based on self-monitoring, regulatory inspections, and other activities that are not anticipated at the time of the plan development and review. IDEM, for that reason does not use the term approve when conducting a plan review but identifies the review to "meet the minimum requirements". IDEM places their primary emphasis on field performance and the reduction of pollutant discharges. Performance criteria is listed in Section 3.0 A MS4 may take an additional approach and require a more structured process for plan review and updates.

Comment: This section uses for the first time in this permit the term "trained individuals." This term is defined in Appendix B. However, the commenter believes the definition of this term is ambiguous and invites questions regarding who qualifies as a trained individual. In addition, the commenter notes that this term is used in different places throughout the permit for different types of activities. The commenter's concern is that the person overseeing SWP3 development, for example, may have different skills and training than an individual who is responsible for self-monitoring of construction stormwater activities on the project site. The commenter requests that this definition be revised to add specific certifications, degrees, licenses, or other requirements that are needed to qualify as a "trained individual." The commenter further requests consideration whether the same definition should be used throughout the permit for different types of activities. (FW)

Response:

IDEM will keep the definition in Appendix A but has added "Self-monitoring" to 3.0 (c). if we require certifications, licenses etc. we in essence will be setting up a certification requirement and that is not the intent. However, we do recognize certifications as a demonstration of a trained individual.

3.1 General Requirements

Comment: While the commenter fully supports the application of such better site design techniques during the site planning and design process, the commenter notes that those techniques named in the permit represent only a few of the many techniques (e.g., reducing road, driveway, and sidewalk lengths and widths, reducing setbacks and frontages, reducing parking lot and building footprints) that can be applied to help control and minimize the impacts of the land development process on site hydrology. The commenter would recommend that the permit be revised to at least identify the fact that there many other better site design techniques available for use during the site planning and design process. (PC)

Response:

IDEM agrees that there are many other design elements that could be incorporated into a project. However, the items listed in Section 3.1 under General Requirements are specific to each project that must be met to be in compliance with the CSGP. Items (1) and (2) are the specific criteria in the CSGP for which each permittee should strive to achieve. Soil compaction reduction, topsoil preservation and buffer preservation are required by U.S. EPA and are focused on activities that should be planned and implemented during construction.

The items listed in your comments are more appropriate for options that would be available to meet the water quality/quantity requirements of post-construction; especially where a MS4 has jurisdiction. These items are addressed in 3.2 (a)(9). In addition, Chapter 4 of the ISWQM contains planning principles and design considerations. IDEM also recommends that plan designers utilize other design manuals that specifically target post-construction options such as low impact development and green infrastructure.

Comment: The commenter believes use of the term "sediment-laden water" in this section creates confusion regarding the objective to minimize off-site sedimentation from project sites. The commenter also recommends avoiding use of the term "treated" if possible. The commenter suggests the following revision to address these concerns:

The permittee must implement ~~Sediment laden water which otherwise would flow from the project site must be treated with~~ sediment control measures appropriate to minimize **off-site** sedimentation **from the project site.** ~~to receiving waters and adjacent properties.~~ (FW)

Response:

IDEM believes the current language in the draft permit appropriately addresses the issue. The term off-site is not used due to the potential to have waters of the state or water of the US that are within the project boundaries. These areas must also be protected.

Managed has been inserted to replace treat.

Comment: Section 3.1(a)(2) should be revised to read as follows:
…natural features, including wetlands and sinkholes (karst features), must be protected with appropriate stormwater **management** and/or treatment measures to address pollutant discharges associated with stormwater run-off. (PC)
Response:
IDEM is in agreement and has added management.

Comment: In referring to Section 3.1(a)(5), soil and water conservation district (SWCD) SWP3 reviewers will need some guidance on the application of this standard. Building setbacks and drainage and utility easements are determined by local planning commissions/departments in accordance with local ordinances when a primary plat is approved. Usually this occurs before a SWP3 is prepared and submitted for review to the SWCD. Also, should the second sentence begin with the words "Periodic maintenance activities…" A landowner or a builder can petition a drainage board for consent to place a permanent structure within the right of way of a regulated drain. Someone might argue that the granting of consent is an activity of a drainage board. (JG)

Response:
Section 3.1(a)(5) is related to the natural buffer requirement. The sentence has not been modified because this requirement to preserve a buffer goes beyond project on a regulated drain. IDEM has exempted work performed by a county drainage board.

Comment: [Section 3.1(a)(5)(2)] is more restrictive than the current U.S. EPA general permit because it does not give developers and contractors the flexibility provided in the three (3) compliance alternatives identified in Appendix G of the current U.S. EPA general permit. As an example, Section 3.1(a)(5)(2) requires that natural buffers of less than fifty (50) feet be preserved in their entirety, while Appendix G provides the following acceptable alternatives:

> For any discharges to waters of the U.S. located within 50 feet of the site's earth disturbances, permittees must comply with one of the following alternatives:
>
> i. Provide and maintain a 50-foot undisturbed natural buffer; or
> ii. Provide and maintain an undisturbed natural buffer that is less than 50 feet and is supplemented by erosion and sediment controls that achieve, in combination, the sediment load reduction equivalent to a 50-foot undisturbed natural buffer; or
> iii. If infeasible to provide and maintain an undisturbed natural buffer of any size, implement erosion and sediment controls to achieve the sediment load reduction equivalent to a 50-foot undisturbed natural buffer.

IDEM should incorporate the acceptable alternatives in Appendix G to the current U.S. EPA general permit into IDEM's proposed Permit. (AGCI)
Response:
IDEM is not requiring buffers to be implemented or modified. Our objective in meeting this U.S. EPA requirement is to only preserve existing buffers. Our draft permit does meet the U.S. EPA CSGP with the exception of implementing buffers. Implementation of buffers (filter strip) is always an option of a stormwater quality measure.

IDEM has also eliminated the requirement to perform an assessment of the buffer for its ability to treat sediment loads. We believe the options we have included in the permit will reduce the justification requirements for sediment loading that the applicant would need to provide to IDEM and/or the MS4s.

In addition, item iii, as listed above and from the U.S. EPA CGP references infeasibility. IDEM is considering options that would be infeasible and this information will be provided in a guidance document. The commenter above does not mention that U.S. EPA also requires double the sediment control measure to meet this item. Several Region V states have implemented this option. IDEM believes that if a buffer is not required due to infeasibility, the appropriate sediment control measure should be used, and it is not a necessity to double the application of the measure.

IDEM will clarify this requirement in guidance that will further define the waters to be protected, the quality of the buffer, and the exclusions that would allow a buffer to be impacted. This document will also outline examples of infeasible.

Comment: How will the preservation of natural buffers be regulated? Who ultimately makes the decision whether natural buffer preservation is feasible or not? (EW)

Response:

The final decision related to buffers will be made by the regulating entity (IDEM and/or MS4). The guidance provided by IDEM will be the basis for decisions made by the plan designer as to whether the buffer will need to be preserved. Upon submittal of the construction plans and review this decision will be made. IDEM will also provide early coordination to help clarify in the early stages of planning.

Comment: The CGP should include a definition of "Waters of the State" for clarity and provide an exemption for manmade stormwater facilities such as road ditches, judicial ditches, county ditches, stormwater conveyance channels, storm drain inlets, and sediment basins. (Lennar)

Response:

This information has been addressed in guidance provided by IDEM.

Comment: In addition to being vague, these requirements [found at Section 3.1(a)(5)] do not appear to be imposed by the current U.S. EPA construction stormwater general permit and (in view of the existence and purpose of the buffers) their limited benefits are outweighed by the cost of implementing them. Section 3.1(a)(5) should be deleted or revised to follow U.S. EPA guidance. (AGCI)

Response:

IDEM did not include the buffer requirement in our original submittal of the CSGP to the U.S. EPA. Upon review, U.S. EPA required that Indiana add a provision for buffers. IDEM proposed that the focus on natural buffers would be related to preservation and not creation. IDEM will be finalizing a guidance document for the buffer requirement that will further clarify, with examples on preserving buffers including identification and where it is not feasible to maintain a buffer.

Comment: In Section 3.1(a)(5)(A) and (B) provides requirements for natural buffers. The draft CGP is a construction permit intended to temporarily regulate the quality of storm water runoff during construction activities. The proposed buffers impose a permanent pre-construction design requirement that results in unnecessary financial burdens that will negatively impact the financial feasibility of new residential projects. The draft permit does not clearly define a water resource or identify the types of constructed features and land cover that is allowed within a natural buffer at a final condition within a residential development setting. For example, can a turf grass rear yard of a single-family home exist within a 50' natural buffer, when the pre-construction land cover within the proposed 50' natural buffer was row-cropped and void of vegetation prior to the start of construction?

While the proposed buffers attempt to incorporate natural buffer requirements from the 2017 Federal CGP, the proposed text does not accurately incorporate "Compliance Alternatives and Exceptions" deemed acceptable by U.S. EPA found in Appendix G of the 2017 Federal CGP, nor is the draft permit buffer text consistent with Appendix G of the 2017 Federal CGP in providing methodology for establishing the following:

- Buffer width measurements/dimensions
- Buffer vegetation quality
- Buffer requirement exemptions
- Buffer performance

IDEM should define a natural buffer and water resource in Appendix B and revise Sections 3.1(a)(5)(A) and (B) to include the following text, per the 2017 Federal CGP:

Permittees should provide and maintain natural buffers **and/or equivalent erosion and sediment controls** when a **water of the U.S.** is located within 50 feet of the site's earth disturbances. (Pulte)

Response:

IDEM is not requiring buffers to be implemented or modified. Our objective in meeting this U.S. EPA requirement is to only preserve existing buffers. Our draft permit does meet the U.S. EPA CSGP with the exception of implementing buffers. Implementation of buffers (filter strip) is always an option of a stormwater quality measure.

IDEM has also eliminated the requirement to perform an assessment of the buffer for its ability to treat sediment loads. We believe the options we have included in the permit will reduce the justification requirements for sediment loading that the applicant would need to provide to IDEM and/or the MS4s.

In addition, the U.S. EPA CGP references infeasibility. IDEM is considering options that would be infeasible and this information will be provided in a guidance document. IDEM will clarify this requirement in guidance that will further define the waters to be protected, the quality of the buffer, and the exclusions that would allow a buffer to be impacted. This document will also outline examples of infeasible.

3.2 Design Requirements

Comment: The commenter would recommend that a definition be provided for the term "conveyance" used in Section 3.2(a)(5). (PC)

Response:
Conveyance has been added to Appendix B Definitions.

Comment: Will IDEM require the use of infiltration practices on soils with low to very low permeability (3/1(a)(3)? (COC)

Response:
This reference is related to protection of areas where infiltration has been chosen for post-construction run-off. It is important that these areas are protected during construction and not compacted or natural soil properties are altered. No, it is not IDEMs intent to require infiltration. If soils are not suitable infiltration would not be a measure that would be effective as a post-construction option.

Comment: Parcel size and distance to adjacent properties can vary greatly between construction projects. For example, an electric utility station may be located in a large agricultural field or on a parcel thousands of feet away from the adjacent property and it is not feasible to discharge run-off to the adjacent property. The commenter recognizes that the use of the term "adjacent property" may not imply an adjacent legal parcel; therefore, the commenter recommends the language is clarified and revised to:

Collected run-off leaving the project site must be either discharged directly into a well-defined, stable receiving conveyance or diffused and released ~~to adjacent property~~ without causing erosion at the point of discharge. (AEP)

Response:
The statement as written protects adjacent properties from excessive run-off that is not managed by the permittee. We have removed adjacent property.

Comment: The commenter believes that run-off should also not cause flooding. The commenter recommends the following revision to the section:

Collected run-off leaving the project site must be either discharged directly into a well-defined, stable receiving conveyance or diffused and released to adjacent property without causing erosion at the point of discharge **or flooding of the adjacent property.** (FW)

Response:
This can be addressed within a MS4 post-construction ordinance. The concern over flooding is also addressed in the draft permit with the addition of management of stormwater discharges related to quantity.

Comment: The commenter agrees with the objective [of section 3.2(a)(6)], the commenter notes that it can be very difficult to quantify the volume or rate of flow that will result in the erosion since erosive flows and grades vary depending on the discharge point conditions. The commenter is concerned this language sets up potential violations even if reasonable care is exercised when designing conveyance systems. To address this concern, the commenter recommends the following revision:

> Conveyance systems must be designed taking into consideration both peak flow and total volume and **must be** adequately protected so that their final gradients and resultant velocities **are unlikely to** ~~will not~~ cause erosion at the outlet or in the receiving channel **based on the known conditions of the discharge point at the time of design.** (FW)
>
> *Response:*
>
> *IDEM has modified this Section of the permit.*

Comment: SWCD SWP3 reviewers will need some guidance on the application of these standards [found at 3.2(a)]. Generally, the local government unit is responsible for reviewing and approving designs and calculations for conveyance systems and discharge controls. Many SWCD reviewers lack the expertise required to review these designs and calculations since Rule 5 did not address managing the quantity of stormwater run-off. (JG)

Response:

When an SWCD reviews plan on behalf of IDEM, the agency will provide training. There may be elements associated with a plan review that the reviewer may not be qualified to evaluate as the item may be associated with engineering design. In this situation the review of engineered element of the plans may need to be accepted as the burden of engineering design is the responsibility of the plan designer.

Comment: This requirement [found at Section 3.2(a)(7)] is counterintuitive to the practice of releasing the coolest water from a surface waterbody in an area with salmonid streams. The "must" withdraw water from the surface would:

a. Cause the release of warmer water to a receiving water; and
b. Prevent developers from installing dry bottom detention ponds/basins. (COC)

Response:

This item is related to managing stormwater releases during active construction. The use of a dry basin or pond is associated with the final land use which is directly related to post-construction discharges. Water temperature should be addressed in the MS4s post-construction ordinance if a specific MS4 believes they have releases to salmonid streams or have a concern over a specific project that has large, paved areas where temperature may be a concern as a pollutant.

Comment: At present, skimmers are the only option available to comply with [Section 3.2(a)(7)]. Skimmers are costly and difficult to maintain in our climate. IDEM should delete this requirement. In its place, IDEM should consult with industry regarding BMPs. (AGCI)

Response:

IDEM originally did not include this requirement in the draft permit. Upon completing the initial draft, IDEM received comments from the U.S. EPA and was required to include this requirement. IDEM has adjusted the language in the permit to allow alternatives when specific design modifications are met. IDEM has also updated the Sediment Basin Practice in the ISWQM, including options for discharging.

Comment: In Section 3.2 (a)(7) on sediment basins, the draft permit states sediment basins, where feasible, must withdraw water from the surface of the water column. The Indiana Surface Water Quality Management (INSWQM) does not provide specifications, details, methodology, or standards for this practice. It is assumed that a skimmer would be required on all sediment basins identified in the SWP3. It has been our experience that skimmers are costly, difficult to maintain in our climate and do not improve the overall effectiveness of sediment basins based on our construction schedules. If IDEM is considering changes to the sediment basin standard, this could drastically impact our dewatering operations, project schedules and budgets. IDEM should remove this text from the draft CGP and develop a new sediment basin BMP standard to be reviewed by the industry and included in the INSWQM. (Pulte)

Response:

IDEM has adjusted the language in the permit to allow alternatives when specific design modifications are considered. IDEM has also updated the Sediment Basin Practice, including options for discharging.

Comment: Please clarify this requirement [at Section 3.2(a)(8)]. Would this prevent a detention pond outlet pipe from directly discharging to a receiving water? In residential subdivisions, the requirement that storm water runoff be directed to vegetated areas for infiltration could cause flooding on an individual's property, particularly in areas where the soils are heavy with silt and clay with low to very low permeability. The commenter receives many complaints every year about flooding on private property with requests for storm water inlet installation for the relief of the flooding. (COC)

Response:

No this does not eliminate the use of basins or discharges from a basin as long as the outlets are stable, and the receiving stream is protected. This is a design requirement that is specific a project site. If the soils or site conditions are not appropriate for infiltration measures, the designer should not use infiltration as an option. The permit states "Where applicable".

Comment: **[**Section 3.2(a)(9)] is vague. It does not identify what the "post-construction measures" are nor does it identify objective standards with which contractors must comply. This should be deleted. (AGCI)

Response:

The design requirement is listed in items (A) and (B). IDEM has not identified the measures as these are site specific and must be chosen based on the pollutants, characteristics of the site, and the design standards. The contractor would not be expected to meet this requirement or select measures. These would be completed as part of the plan design and developed by an engineer since most of these measures would be associated with engineering principles.

Comment: In Section 3.2(a)(9)(C) on post-construction measures, the draft permit states utilize one or more post construction measures working in tandem to treat stormwater runoff and increasing overall efficiency of individual and specialized measures. This section is vague and appears to be a theoretical attempt to address storm water quality without clear design standards so that appropriate BMPs may be incorporated into our SWP3s. IDEM should remove this language from the draft CGP. (Pulte)

Response:

IDEM has not identified the measures as these are site specific and must be chosen based on the pollutants, characteristics of the site, and the design standards. Measures would be selected as part of the plan design and developed by an engineer since most of these measures would be associated with engineering principles. If multiple measures are required to achieve a reduction in pollutants, this item identifies the option to use multiple measures instead of one measure or plan design options such as low impact development.

Comment: The commenter notes the inclusion of Section 3.2(a)(9), which specifies that post-construction storm water management measures must be implemented to manage and treat storm water runoff from the development site. While the commenter fully agrees with the need for the implementation of post-construction stormwater management measures on development sites, the commenter does not agree with the inclusion of post-construction stormwater management criteria within the context of the construction stormwater general permit. Thesizing, design, and construction of effective post-construction stormwater management systems requires much more guidance and supporting information than can be provided within a few lines of theconstruction stormwater general permit. A number of other states have developed post-construction stormwater management standards that are applied statewide, and many others have developed detailed guidance manuals on the design of post-construction stormwater management practices. It is only within this type of a more fully developed context that the intent of the post-construction stormwater management criteria presented in the construction stormwater general permit, which is tomitigate the impacts of the land development process on stormwater runoff rates, volumes, and pollutant loads can hope to be achieved. (PC)

Response:

The advisory group recommended that the CSGP establish criteria to support the post-construction requirements that have been included in the permit. Post-construction must be considered during the development of the construction plans and must be incorporated as the proejct is built. The ISWQM does contain some general principles for post-construction that are in Chapters 4.0 and 8.0. However, IDEM does not dictate that the ISWQM be used as the only source. It is recommended the designer of the plan utilize other resource documents that are available to meet the criteria listed. In addition, many MS4s and local communities have developed their own requirements.

Comment: The commenter requests clarification on the term "peak events." It is not clear if this term implies peak flow rate, peak volume, or both… Sizing of permanent post-construction storm water controls should not be a one-size-fits-all requirement particularly for large, infrequent storm events in areas not prone to flooding…the commenter recommends the language in this section of the proposed rule be changed to:

> …When a local requirement does not exist the post-development discharge must not exceed the pre-development discharge based on the two-year, **24-hour and** ten-year, **24-hour** ~~and one-hundred year peak~~ **flow rate** events. **For activities proposed within 100-year regulated floodplains, the design shall demonstrate that proposed activities will not diminish the flood storage capacity.** (AEP)

Response:

IDEM consulted with engineers serving on the Advisory Group. This comment was further discussed with representatives of the Advisory Group. In 3.2 (a)(6), peak flow and total volume for conveyance systems are referred to. For example, when peak storm events are referenced in 3.2 (9)(A). Peak flow rate means "The maximum flow of stormwater during a storm event at a given point expressed in cubic feet per second (CFS).

Comment: The term "stormwater" is one word throughout this document except [in 3.2(a)(9)(A)]. (EC)

Comment: All references to "stormwater" are now one word except in Section 3.2(a)(9)(A) on page 9, where the word has been split into two words.

Response:

This change has been made throughout the permit.

Comment: The commenter would like to raise a concern about the inclusion of a requirement that the release rate generated bythe 2-YR storm event under post-development conditions not exceed that generated by the 2-YR storm event under pre-development conditions (Section 3.2(a)(9)(A)). While the commenter understands that the intent of this criterion may be to try and protect stream channels from channel downcutting and widening, the inclusion of this criterion may not achieve the intended results. By releasing the stormwater runoff generated by the 2-YR event, which is an approximation of the bankfull event – which largely determines the size and shape (i.e., morphology) of a stream channel, at the pre-development release rate, a stream will be exposed to its bankfull event for extended periods of time. While the magnitude of the bankfull event is maintained, the amount of time that, and therefore the frequency with which, a stream is exposed to such channel forming events is not, likely still resulting in increased downstream channel erosion. A more effective approach to channel protection is to reduce the volume of stormwater runoff released from development sites, especially during small storm events, up to and including the bankfull (i.e., approx. 2-YR) event. Such a runoff volume reduction approach has the benefit of reducing both the volume of and the frequency with which a stream sees its bankfull event. (PC)

Response:

This element was developed with several engineers that served on the advisory group. We acknowledge that there are alternative approaches to address this issue and as an MS4 alternatives may be pursued based on your local assessment and incorporated into the local ordinance to meet your MS4 commitments under the MS4 Permit. This section does not exclude anyone from doing a 2-year or less flow rate practice if they wish. From a

detention standpoint, 2-year calculations are typical and are used for most management practices, but there is nothing in the language from altering how that run-off is managed or requiring a specific way for it to be managed.

Comment: The commenter believes the term "treated" [Section 3.2(a)(9)(B)] implies and effluent limit at the discharge outfall for the MS4 entity. As a result, the commenter believes this language could be interpreted to place an obligation on the MS4 entity after the run-off has left the project site that does not otherwise exist. Accordingly, the commenter recommends avoiding use of this word, if possible. The commenter recommends the flowing revision:

> **Stormwater measures** ~~Run off from the project site~~ must be **implemented at the project site** ~~treated~~ to reduce pollutants **from run-off** that are expected to be associated with the final land use. To achieve pollutant reduction goals, measures must be selected and meet the requirements as established by ordinance or other regulatory mechanism. When a local requirement does not exist in the post-construction measures must be selected based on correct sizing to ~~treat~~ **address** the Water Quality Volume (WQv) or water quality flow rate to ensure compliance with 327 IAC 2-1-6(a)(1)(A-D) and 327 IAC 2-1.5-8(a) and (b)(1)(A-D).

Alternatively, the commenter suggests adding a definition for the term "treated" to clarify what types of measures are appropriate and to ensure understanding that implementation of those measures is the responsibility of the project-site owner. (FW)

Response:

IDEM has re-worded this Section to capture the comments provided. Specifically, "treated" has been replaced with alternative language.

Comment: In the second sentence [of Section 3.2(a)(9)(B)], the word "local" should be inserted before "ordinance." (EC)

Response:

The change has been made.

Comment: The commenter would recommend that a definition be provided for the terms "water quality volume (WQv)" and"water quality flow rate" used in Section 3.2(a)(9)(B). (PC)

Response:

Definitions have been added to Appendix B.

Comment: To maintain the current tense of the sentence [found at Section 3.2(a)(9)(C)], "increasing" should be replaced with "increase." (EC)

Response:

This change has been made.

Comment: Will IDEM require the use of infiltration practices on soils with low to very low permeability? (COC)

Response:

No, this is site specific and if soils are not conducive to infiltration, this approach of stormwater management should not be used. Item 2) also states "when selected". IDEM has also inserted the word "may" to clarify LID and infiltration are options that should be considered.

Comment: The language in Section 3.2(a)(9)(D)(2) requiring pre-treatment of run-off implies an effluent limitation related to the stormwater run-off. Accordingly, the commenter requests that this language be deleted to state that the project site owner must implement measures to eliminate or reduce pollutants of concern. (FW)

Response:

Infiltration is a suitable measure that may be selected for post-construction run-off and management. However, if an infiltration measure is used, but the use of infiltration is not conducive to treating pollutants in the run-off an alternative measure may be required to pre-treat the run-off the effectively address the pollutants of concern.

Comment: The commenter recommends adding subsection 3) to Section 3.2(a)(9)(D) to state as follows:

3) Manufactured Water Quality Units (FW)

Response:

This Section is intended to supplement structural practices and emphasize the use of management strategies as part of planning. Therefore, Manufactured Water Quality Units have not been added.

Comment: Remove Section 3.2 (a) (9) (D) (1) from the draft CGP. Revise Section 3.2 (a) (9) (D) (2) as follows:

Infiltration measures (as defined in Chapter 8 of the INSWQM), when selected must take into consideration the pollutants, associated run-off and the potential to contaminate ground water resources (such as well-head protection areas). Where there is potential for contamination, the SWPPP shall contain a description of the BMPs that will be installed during construction and the rationale for their selection to reduce the pollutants of concern. (Pulte)

Response:

Chapters 4 and 8 of the ISWQM Manual does contain some general planning principles. IDEM does not claim that the manual is the only resource. This is identified in several locations in the permit. In Section 3.2(a)(2) IDEM provides the flexibility to use other manuals, guidance, etc. in lieu of the ISWQM. IDEN does not believe the additional language proposed and that the current language addresses the intent of the requirement.

Comment: [Section 3.2(a)(9)(D)] should be removed from the Draft CGP. The construction General Permit addresses discharges during construction and these are post construction requirements. Post construction design criteria should be addressed by local jurisdictions in accordance with their local criteria for plans and specifications. If this condition remains in the Draft CGP, the current wording "These strategies include but are not limited to" implies that options 1 and 2 must both be included before the permittee explores alternative options. It is recommended that Part 3.2(a)(9)(D) be revised to add "may" in the last sentence as follows: "These strategies **may** include, but are not limited to:" (Lennar)

Response:

With regard to the two strategies listed, IDEM has modified the Section to replace "must" with "may"

IDEM has made the decision to leave post-construction in the permit. If post-construction run-off is addressed, it must be achieved in the early planning stages and installed during construction and not after-the-fact. We do agree that this should be addressed by local jurisdictions and this is a requirement within a MS4. However outside of a MS4, local entities may not address stormwater quality and/or quantity of run-off. The decision to leave this option in the permit addresses those situations. If locally, one or more of these requirements are in place – the project design will default to those requirements.

Comment: As written, strategies such as low impact development, green infrastructure, and infiltration measures are required in addition to post construction treatment measures. Planned post-construction measures may adequately meet quality and quantity requirements, such that the requirement of additional strategies, GI and LID included, increase and possibly double installation, annual operation and maintenance, and inspection resourcing and expenses, placing an unnecessary burden on property owners and municipalities. In addition, the order of inclusion of such strategies being prior to other post-construction measure is too prescriptive. Inclusion of such strategies may best fall after and not prior to planned post construction treatment measures. Suggest that such strategies and measures, including green infrastructure, LID, and infiltration be recommended or where practicable but not required. (COI)

Response:

With regard to the two strategies listed, IDEM has modified the Section to replace "must" with "may"

Comment: [3.2(a)(9)(A)-(D)] includes several specific hydrologic and hydraulic terms that are not defined in Appendix B of the permit. If these terms will be covered by future guidance document(s) the guidance should be made available for review as soon as possible. Also, the wording of the first sentence in Section (D) is not clear. (INAFSM)

Response:

The Section establishes minimum standards to meet the post-construction requirement. Several terms referenced in the Section has been defined in Appendix B.

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Comment: Ordinances in many municipalities indirectly bar LID practices, so 3.2(a)(9)(1) should not be included in the Permit. In addition, in many parts of the State, the soil types will not support infiltration measures. IDEM should provide training to contractors and developers on other BMPs that will satisfy this requirement, which will take time. (AGCI)

Response:

This is site specific and if soils are not conducive to infiltration, this approach of stormwater management should not be used. Item 2) also states "when selected".

We have also inserted the word "may" to clarify LID and infiltration as options that should be considered, but not required.

3.3 Implementation Requirements

Comment: Please clarify "must be stabilized" [in Section 3.3a]. The assumption is this does not mean seeded and mulched, as this is not technically stabilizing of a slope. (COC)

Response:

Seeding is not the only method to stabilize areas and alternative methods are often selected based on the location and the characteristics of the area to be stabilized.

Comment: In Section 3.3(a), the commenter notes that the measures described in Subsection 3.3(a)(1)-(3) may prove difficult, or sometimes impossible, to achieve. Specifically, the commenter notes that certain stabilization efforts, even if timely implemented, may not achieve their desired results within 24 hours. The commenter requests deletion of the language requiring results to be obtained within 24 hours or requests a more reasonable timeframe to be substituted in its place. (FW)

Response

Seeding is not the only method to stabilize areas and alternative methods are often selected based on the location and the characteristics of the area to be stabilized within 24 hours. IDEM has taken this comment under consideration and while IDEM does believe it is feasible to achieve stabilization within 24 hours, we have modified the language and deleted items (1), (2), and (3).

Comment: IDEM should remove the 24-hour reference in Section 3.3(a)(2) or revise it as follows: "Basins shall discharge to a vegetated or otherwise stabilized area protected from erosion and 3.3(a)(3) as follows: Permanent energy dissipation shall be placed at discharge locations." The commenter is unaware of any U.S. EPA Region 5 state that has a time frame for installation within their CGP. Oftentimes, the contractor chosen for the installation of structures (outfalls and outlets) is not the same contractor who applies stabilization and energy dissipation. Additional grading, debris removal, seeding, utility relocation and other construction activities may be required prior to completion. (Pulte)

Response:

IDEM has taken this comment under consideration and while IDEM does believe it is feasible to achieve stabilization within 24 hours, we have modified the language and deleted items (1), (2), and (3).

Comment: IDEM should adopt a timeframe in which basin stabilization must be achieved, not to exceed U.S. EPA guidelines. Also due to trade coordination, product availability, and unforeseen circumstances, achieving stabilization will not often be achievable within 24 hours. For the sake of consistency and practicality, IDEM should adopt time frames provided elsewhere in the draft Permit or in U.S. EPA requirements (*e.g.*, complete within 7 or 14 days). (AGCI)

Response:

IDEM has taken this comment under consideration and while IDEM does believe it is feasible to achieve stabilization within 24 hours, we have modified the language and deleted items (1), (2), and (3).

Comment: In Section 3.4(a)(4)(A), the commenter seeks clarification that street sweeping is not considered a mechanical method. Alternatively, if IDEM considers street sweeping to be mechanical in nature, the commenter requests that additional language be added to Section 3.4(a)(4)(A) to clarify that street sweeping is allowed. The commenter also seeks clarification on why Section 3.4(a)(4)(C) is limited to public streets "that are open to traffic" as opposed to all public streets. (FW)

Response:

The permit does not exclude mechanical methods entirely but does exclude methods that will result in mobilization of dust. Typically, rotary brooms when used may result in mobilization of dust.

3.4(a)(4)(C) has been clarified. Tracking may occur on projects where a public street has been closed to traffic and there is not a threat of a discharge to occur or appropriate measures have been put into place. One example is a road project where public vehicles are prohibited therefore tracking may not be an issue in these situations.

Comment: Section 3.3(a)(4)(C) and street sweeping states sediment discharged or tracked onto public streets that are open to traffic must be removed as directed by a regulatory authority or at a minimum, removed by the end of the same day. Our permitted projects include a mixture of new residential land development and individual lot home construction. As a result, the definition of "public streets", or interpretation of the definition by local municipal officials and staff can have significant impacts on the implementation and expense of daily sediment removal. Municipal entities often include their definitions of "public" versus "private" streets with their ordinances or building codes. The most applicable Indiana Code that clearly defines this infrastructure can be found in Indiana Code 9, "Motor Vehicles", Article 13, "General Provisions and Definitions", Chapter 2, "Definitions". As part of the land development process, multiple activities often happen at once such as site grading, utility installation, road construction and the installation of storm and sanitary sewers. Partially constructed roads within a permitted complex that have the applicable subgrade and base course should not be subject to daily street sweeping until the final surface course is complete and accepted by the MS4 (Municipal Separate Storm Sewer System); these roads have minimal traffic and are within the construction boundaries of which the commenter has secured stormwater permit coverage.

There are no definitions in the draft CGP, Appendix B, for public and private roadways/streets. Since definitions of public and private streets already exists in Indiana Code

IC 9-13-2-175 (“Street or highway”) and IC 9-13-2-137 (“Private road”), these definitions should be incorporated into and added to Appendix B of the new permit. Additionally, IDEM should consider sediment discharged or tracked outside of the “permitted boundaries” onto public streets that are open to traffic must be removed by the end of the same day. (Pulte)

Comment: We recommend that sediment tracked onto a public street be removed by the end of the next day. Oftentimes, sites are not inspected until later in the afternoon and sediment can be tracked out when the last contractors are leaving a site around 5 pm, which does not allow for enough time for the site manager to order the sediment to be cleaned up the day it is tracked onto the public road. By allowing an extra day for this sediment to be removed, the site manager has the proper amount of time to order the street to be cleaned without causing a significant difference in how open traffic could be affected by the sediment on the public street. (Moretz)

Response:

IDEM has modified the language to include public streets that are open to traffic but clarified the Section by removing private streets and replacing the term with streets that are not exclusive to construction traffic.

IDEM has chosen to leave the permit as written which requires sediment to be removed by the end of the business day. This is consistent with the U.S. EPA CGP. Several commenters requested an additional day, however if a proejct is in compliance and implementing measures tracking should be minimal. Sediment onto to public roads can also create a safety hazard therefore the change will not be made.

Comment: There are many instances where development of infrastructure will be cost prohibitive if the project was phased. In such cases where it is not feasible to phase development, the operator and designer of the erosion and sediment controls develop their plan to include appropriatecontrols to manage stormwater discharges. It is recommended that “where applicable” be changed to “when feasible.” The sentence should read:

Phasing of construction activities must be used, ~~where applicable~~ **when feasible**, to minimize thefootprint of disturbed unstable areas. (Lennar)

Response:

Section 3.5(a) is related to phasing of a project. The process of phasing should be in the original set of plans but is also a project management tool. Therefore, IDEM agrees and has changed the language from “where applicable to “where feasible”.

Comment: The commenter would like to see additional language added to Section 3.3(a)(5) or Section 4.4 requiring updated SWP3s to be provided to the permit authority if project phasing is modified during the project. (FW)

Response:

Section 3.5(a) is related to phasing of a project. The process of phasing should be in the original set of plans but is also a project management tool. If phasing is altered during construction and the MS4 requires plan revision this can be addressed in the local ordinance and internal procedures of the MS4. Section 4.4 (a) outlines requirements for modification of the plan. The permit is set up to allow submittals at the discretion of the regulatory entity. The MS4 may alter this approach in the local ordinance or internal procedures.

Comment: How do you define a "stable" construction site access and how would you determine a construction site access to be "not effective"? (Moretz)

Response:

Stable construction access is based on performance. A stable ingress/egress point should reduce tracking onto roads. In addition to the Indiana Stormwater Quality Manual, other states, and local entities have standards and specifications that provide options for measures. IDEM does not limit the selection of measures to the ISWQM.

Effective measures are those that reduce tracking of sediment. It can be difficult to quantify what is an acceptable amount of tracking onto a road. IDEM will provide information in guidance and also for the regulating community (MS4s) with the objective of consistency.

Comment: [Section 3.3(a)(7)] states that a stabilized construction entrance is required at all site ingress and egress points. It is requested that this be modified to only state points of egress. There would be no trackout concerns and no need for a trackout control device at an access point that is solely used for ingress. (EW)

Response:

IDEM believes the language as written is appropriate. Unstable entrances, even if designated by the project site owner to only be used for entry (ingress) may be difficult to restrict for that purpose only.

Comment: [Section 3.3(a)(11)] says concrete/cementitious materials are considered clean fill and can be disposed of on-site.

a) What is meant by "disposed of on-site"? The commenter can understand if the hardened concrete/cementitious is broken up on-site and used for the construction drive or other gravel applications. However, the burying of construction debris on-site is not allowed locally as it is a costly headache for a property owner who may run into the material as they are digging during a future project.
b) Is there a specific depth the material must be buried below for it to be considered clean fill and to ensure it does not become a problem for a future property owner during subsequent projects requiring digging or excavation on the site. This would also include the impediment the solid concrete would create for tree and plant roots to grow around.
c) The allowance to bury the surplus concrete/cementitious material on-site is not acceptable in all areas, thus, we request it be made clear in the General Permit local requirements may differ. (COG)

Response:

IDEM does not require plastic concrete or hardened concrete to be disposed of in a wash out containment area or trash receptacles. The permit states that surplus concrete may be recycled or reused/disposed on-site. If a MS4 chooses they can restrict burying of material on-site.

Comment: In the last sentence [of Section 3.3(a)(11)], the material may be disposed **of** on-site. Currently it reads "on on-site." (EC)

Response:

The 'on" in the sentence has been removed and the sentence now reads "…may be reused, disposed of on-site, or recycled…".

Comment: Unhardened concrete scraped into small manageable piles or gumdrops should not/do not cause harm to the environment as long as they are left to harden. Anything that could have harmed the environment will have been locked in the matrix of the hardened pile of concrete. Therefore, this addition is good and appreciated. (MC)

Response:

It has been IDEM's approach with the current permit to allow this activity. The addition to the new CSGP clarifies this approach.

Comment: Surplus hardened or unhardened concrete, specifically unhardened being left on site still poses an environmental risk. We recommend further clarification in order to make sure this statement does not become a common problem on construction sites. The commenter recommends adding a clarifying statement for covered waste containers, as if containers are not full, they do not pose as great of a risk. We recommend language stating "must be covered when full and not in use." (Moretz)

Response:

IDEM does not believe surplus concrete hardened or in a plastic (unhardened) state poses a significant threat to water quality. When disposed of on the ground, the plastic concrete should be located in areas that when wetted through rain does not result in the discharge of solution into a water of the state or into a street. Refer to the next set of comments and responses related to waste containers and receptacles.

Comment: Automated or mechanical covers for large trash containers on construction sites are not readily available in the marketplace. For this reason and others, covering them daily is not feasible. Section 3.3(a)(10) serves the same purpose as Section 3.3(a)(11) and is less burdensome. IDEM should delete Section 3.3(a)(10) from the Permit. (AGCI)

Comment: It is requested that the requirement to cover trash receptacles be removed or rewritten. It is generally not feasible to cover solid waste bins in practice and the materials being discarded are substantial enough to not be a threat of becoming wind-blown. Perhaps only required trash bins to be covered where discarded materials may become airborne. (EW)

Comment: The City suggests deleting this language and simply requiring trash receptacles to be covered at the end of each day. (FW)

Comment: Requiring the permittees to cover containers when not in use and at the end of every day with no alternatives will be an undue cost burden to the industry. There are alternatives that wouldbe similarly efficient and more cost effective. A similarly effective means would include using secondary containment by placing containers behind the curb to minimize discharges to stormwater conveyances or only allowing wastes that would not create a pollutant discharge ifthey came in contact with stormwater to be placed in the containers. (cardboard, wood, brick, paper, etc.) To manage the windblown component, text could be added that states:

"Dumpsters should not be overfilled and if waste materials escape the container, they should be cleaned up immediately and a cover or other means of suppression should be

implementedsuch as covering blowable materials with heavier materials."

It is suggested that the Draft CGP replace "When disposed of in waste containers (trash receptacles) the receptacle must be covered when not in use and at the end of the day" with the following from the 2017 Federal Construction General Permit:

"Keep waste container lids closed when not in use and close lids at the end of the business day for those containers that are actively used throughout the day. For waste containers that do nothave lids, provide either (1) cover (e.g., a tarp, plastic sheeting, temporary roof) to minimize exposure of wastes to precipitation, or (2) a similarly effective means designed to minimize the discharge of pollutants (e.g., secondary containment)." (Lennar)

Comment: The language in Section 3.3(a)(11) requiring trash receptacles to be covered "when not in use" will be difficult to satisfy, particularly on construction sites where roll-off dumpsters are used. Since those types of dumpsters often do not come with lids, the project site owner must use a tarp or other type of covering to meet this requirement. The words "when not in use" suggests that a project site owner may have to cover and uncover the dumpster several times a day, which for many projects, would be impractical. This also presents issues for enforcement (e.g., what qualifies as "not in use" for purposes of this requirement). The commenter suggests deleting this language and simply requiring trash receptacles to be covered at the end of each day. (FW)

Comment: Section 3.3(a)(11) on construction and domestic waste states construction and domestic waste must be managed to prevent the discharge of pollutants and windblown debris. When disposed of in waste containers (trash receptacles) the receptacle must be covered when not in use and at the end of the day. Waste that is not disposed of in trash receptacles must be removed at the end of the day from the site and disposed of properly. This verbiage is U.S. EPA's attempt to implement the final Construction and Development Effluent Limitation Guidelines that resulted in over ten years of litigation and rulemaking. Unfortunately, the residential industry is unfairly impacted by these requirements due to the volume of trash receptables on permitted sites. Pulte could have a range of 350 to 500 30-yard dumpsters of which covers (specifically, tarps) could not be installed at the end of each workday. To the best of our knowledge a mechanically activated, solid cover is not provided by vendors in our region for 30-yard dumpsters. Additionally, the commenter is unaware of any U.S.U.S. EPA Region 5 State that has this language in their CGPs. IDEM should remove this text from the draft CGP and develop a waste management BMP standard to be reviewed by the industry and included in the INSWQM. (Pulte)

Response:

IDEM has re-evaluated this Section and has modified the permit. IDEM no longer requires trash receptacles to have covers. The language has been rewritten to place emphasis on the management of waste to reduce the discharge of pollutant and/or the blowing of debris. If construction waste is not managed, the responsible party will be required to implement appropriate measures which may include covering trash receptacles.

Comment: Based off the Indiana Stormwater Manual specifications, below-grade washout pits must have a liner. CGP [3.3 (a)(12)] should read that washouts require an approved liner, or "leak-proof" be defined as lined. (EW)

Response:

IDEM believes this is addressed in 3.3 (a)(12) which states "directed into leak proof containers or leak proof containment areas. The Indiana Stormwater Quality Manual provides a standard and speciation for this measure.

Comment: 3.3(a)(12) It is our opinion that straw bale constructed washouts no longer be considered appropriate as they often leak or fail. This is following the lead of INDOT no longer allowing the use of straw bale constructed washout pits. (IRMCA)

Response:

IDEM allows for many options to manage concrete wash out. These include both constructed and commercially available systems. While straw bale systems may not be the best option, IDEM has elected to not eliminate it.

Comment: Guidelines regarding the appropriate handling and disposal of mortar are not provided. Will regulatory authorities make note of potential non-compliances regarding mortar disposal/handling, as it is not explicitly documented in the CGP? (EW)

Response:

IDEM believes this is addressed in 3.3 (a)(12) which also now includes cementitious was water.

Comment: In Section 3.3(a)(13), the commenter suggests that an additional requirement be added to ensure that fertilizer is applied by a licensed applicator. The commenter recommends adding subsection (D) under (a)(13) to state as follows:

(D) Must be applied by a licensed fertilizer applicator. (FW)

Response:

It is not required that a licensed fertilizer applicator perform these activities.

IDEM contacted the Office of Indiana State Chemist (OISC) related to licensing and certification requirements for fertilizer applications. If nutrient/fertilizer applications are occurring for production agriculture, licensing and certification is required through OISC. If nutrient/fertilizer applications are occurring for turf management, licensing and certification is required through OISC. If nutrient/fertilizer applications are occurring for grass/turf seedings and establishments, licensing and certification are not required through OISC.

Comment: Saying fertilizer should not be applied before a rainfall event is very vague. A time period for fertilizer to not be applied before a rainfall should be stated. In looking at what other communities require a time period of 24 to 48-hours would be appropriate. The Southwest Florida Water Management District says 24 to 36-hours, Wisconsin Department of Natural Resources says 24- hours, and the Purdue University and the Office of Indiana State Chemist says 24-hours. Recommended Revision:

Avoid applying fertilizer 24-hours before events meeting the definition of a "measurable storm event" that could result in the discharge of nutrients. (COG)

Response:

This item has been revised to read "immediately prior to precipitation events that are anticipated to result in run-off from the application area".

Comment: A set time period before a rainfall event happens should be specified for fertilizer applications. Commonly, 24 hours is used due to challenges with forecasting too far in advance. (EC)

Response:

This item has been revised to read "immediately prior to precipitation events that are anticipated to result in run-off from the application area".

Comment: The commenter seeks clarification on how the items referenced in Section 3.3(a)(14)(A)-(B) are to be monitored and enforced. (FW)

Response:

This is a requirement that must be met by the permittee. The activities would be monitored by the permittee as part of the self-monitoring program. Compliance and enforcement should be addressed as part of an inspection and/or investigating a complaint. A MS4 also has an option to place language in the MS4 IDDE ordinance.

Comment: In Section 3.3(a)(15) use of the term "permittee" is ambiguous. Language should be added to this Section or to the Fact Sheet to clarify that the requirements apply to the project site owner and not the MS4 permittee. This issue arises in other places in the permit. Where this term is used, the commenter seeks guidance regarding whether the requirement applies to the MS4 permittee or the project site owner permittee. (FW)

Response:

The permittee used in the context of the CSGP is applicable to the individual or entity that has obtained permit coverage under the CSGP. The reference to permittee would not apply to the MS4 unless the MS4 (city, county etc.) is the entity that has obtained permit coverage. This would include the MS4 if it is a project that the MS4 owns/operates. The MS4 general permit will establish permit requirements for each MS4 related to the development and implementation of their overall program.

Permittee is defined in appendix B.

Comment: 3.3(a)(15) Informing personnel associated with the proejct of the terms and conditions of the permit and the SWP3 is great language to ensure good communication. (MC)

Response:

This language was added to emphasize coordination between those working on a construction site so there is a clear understanding of the permit requirements, content of the SWP3 and expectations of the overall permittee for the site.

Comment: Will IDEM be responsible for confirming that this requirement (3.3 (a)(15) is being met? This is too large a burden for an MS4 to assure that all entities/personnel are informed as required for the duration of a project of any size. (COC)

Response:

This is a standard that has been placed in the permit to require communication between those operating on a project site, especially where independent contractors are providing services to a permitted site. There have been compliance issues in the past that are associated with these activities.

This is not an item that IDEM will place a high level of emphasis on during an inspection as most of our effort will be performance based and placed on compliance with the overall permit and not on this specific item. If issues and violations occur on-site, it would be an option for IDEM to request proof that this requirement was met by reviewing the Proejct Management Log. A MS4 could approach this in the same manner.

Comment: In Section 3.3(a)(15) on informed personnel, IDEM should remove "utility contractors". The draft CGP does not require utility companies (gas, electric, phone, cable tv, water, etc.) to comply with the general conditions of a permittee's stormwater permit or our SWP3 when the permittee is an entity other than the utility company. Utility companies do not consider themselves a contractor or subcontractor, nor does the general construction industry. Utility companies operate independent of our construction schedule, compliance program, and budget. In most instances, permittees do not have operational control over the actions of a utility company; however, the commenters assume the compliance risk associated with a utility company's activities within their permitted limits, and the financial hardship associated with BMP damage and permit violations. As a result, the commenter cannot be held responsible for the actions of an entity of which the commenter does not have a contractual mechanism to educate and enforce compliance. (Pulte)

Response:

IDEM has removed utility contractors from the permit.

Comment: This appears to require training of a larger group of project participants than is required in Part 6.1 of the current U.S. EPA general permit, which requires training only of the following members of a "stormwater team":

1. Personnel who are responsible for the design, installation, maintenance, and/or repair of stormwater controls (including pollution prevention controls);
2. Personnel responsible for the application and storage of treatment chemicals (if applicable);
3. Personnel who are responsible for conducting inspections; and
4. Personnel who are responsible for taking corrective actions.

Section 3.3(a)(15) should be revised to follow the training standards in Part 6.1 of the current U.S. EPA general permit. (AGCI)

Response:

IDEM has modified this Section to remove utility contractors. In addition, the reference to training has been removed from the permit. The intent was to not require training, but notification of permit requirements to others operating on the proejct site that do not have permit coverage. While U.S. EPA has specific language for this item, they also require contractors to sign onto a permit which at this time is not required in Indiana.

Comment: [Section 3.3(a)(15)], in essence, requires the permittee to train, or confirm training in the requirements of the permit and the SWP3, and document training or contracts for all the specified persons in (A) through (E). This requirement is too broad and far reaching and will cause an undue time and cost burden for the permittees. The permittee/operator is responsible for compliance with permit conditions at the project and should be the entity providing "trained" stormwater management and oversight personnel. It would be more appropriate and cost efficient to require the operator's stormwater management team such as the operator's SWP3 developer, site manager responsible for stormwater compliance, BMP installers and maintenance firm, and BMP inspector to document their function specific training in the SWP3. Public utility companies that install main utility lines such as natural gas, telephone, electric andcable are not subcontractors to the permittee/operator and work independently. They are not under the control of the permittee/operator. Consequently, they should not be included as a participant in item "A" above. As written, this item implies that all of the personnel listed will be associated with each project. To accommodate the fact that the personnel associated with the project may vary from project-to-project, it is suggested that the word "may" be added to the sentence that reads "Personnel include but are not limited to:". It should read:

Personnel **may** include, but are not limited to: (Lennar)

Response:

IDEM has modified this Section to remove utility contractors based on a response from another commenter. In addition, the reference to training has been removed from the permit. The intent is to not require training, but notification of the permit requirements to others operating on the proejct site that do not have permit coverage. While U.S. EPA has specific language for this item, they also require contractors to sign onto a permit which at this time is not required in Indiana.

*"Personnel **may** include but are not limited to" has been added to the permit language.*

Comment: Section 3.3(a)(16) on the Notice of Intent (NOI) states that a notice must be posted near the main entrance of the project site which includes a copy of the completed NOI. When the NOI's were accepted by IDEM in paper form, the 2-page NOI application was easy to post near the main entrance of the site. A completed NOI print out from IDEM's e-portal system is 3-6 pages and sites with multiple permits would not have adequate space to post all the required pages. IDEM should reduce the content required to be posted or modify IDEM's e-portal software system to create a one-page summary of the NOI. (Pulte)

Response:

IDEM is developing a version of proejct information that will be generated that will be two to three pages in length. This document will also include the content that is currently contained in the Notice of sufficiency letter issued by IDEM.

Comment: When contractors apply for an NOI online, the approval document is 6 pages long, which is not feasible to post onsite. This document needs to be limited to 2 pages like the old paper NOI. (AGCI)

Response:

IDEM is developing a version of proejct information that will be generated that will be two to three pages in length. This document will also include the content that is currently contained in the Notice of sufficiency letter issued by IDEM.

Comment: The commenter recommends changing the formatting of the Project Posting Requirements, fewer references to further sections and just a concise list of exactly what is necessary so that something is not missed. The posting requirements, while intended to be flexible, are difficult to understand if not well versed in the understanding of regulatory language. While these requirements are very important, the commenter recommends clarifying language to prevent confusion on behalf of the permit holder. Section 3.3 also makes references to Section 3.7 (a)(2), Section 5.2 as well as 40 CFR 122.22. In other states, only the Coverage Letter or NOS is required to be posted with the stormwater contact for the site. The NOI is only the application and does not include the permit number, therefore new documents will have to be posted throughout the life of the project as sometimes there is a delay in when the Notice of Sufficiency (NOS) is received or posted on the IDEM website. Putting this information in the NOI section, since the majority of the information is housed there, can be an alternate way to make this clearer. (Moretz)

Response:

Section 3.3 (a)(16) is one of the performance requirements within Section 3.0. The references to the other Sections of the permit (3.7 and 5.2) are appropriate based on the content for those Sections. (16)(A)1) has been expanded to list the items that at a minimum must be posted at the proejct site.

The NOS letter does not include information related to the location of the SWP3 or the contact for the project that has been designated by the permittee.

3.4 Stabilization Requirements

Comment: It is not always feasible to stabilize portions of a planned, inactive project site by the end of the next business day. For example, electric utility projects are often dynamic causing unplanned schedule shifts that do not allow for seeding contractors to mobilize to the project site within one business day. Rule 5 Guidance for Construction Plan/Storm Water Pollution Plan Development states "Temporary or permanent surface stabilization is required on any bare or thinly vegetated area that is scheduled or likely to remain inactive for a period of 15 days or more." The commenter recommends this language from the existing Rule 5 guidance be retained in this section of the proposed regulation.

Stabilization should be limited to soils that are erodible (e.g., not frozen). Also, this should be increased from 7 days to 14 days to be consistent with EPA regulations.

(AEP)

Response:

The CSGP has been reworded to read:

Stabilization must be initiated by the end of the seventh day the area is left idle. ~~Temporary and/or permanent soil stabilization must be initiated by the end of the next business day upon temporarily or permanently ceasing land-disturbing activities on any portion of the project site that is, or is planned to be left idle for a period of seven (7) days.~~ The stabilization activity must be completed within fourteen (14) days after initiation.

IDEM believes this clarifies the intent of the stabilization requirement. With regard to language in 327 IAC 15-5 that references 15 days. This is inconsistent with the U.S. EPA CGP. The U.S. EPA CGP has several options for stabilization that are listed below:

(1) Sites of 5 acres or less or site greater than 5 acres where land disturbance is limited to 5 acres or less at anyone time: Stabilize immediately upon permanently ceasing construction activities or those areas that are inactive for 14 or more calendar days. Complete stabilization no later than 14 calendar days.

(2) Sites of 5 acres or more: Stabilize immediately upon permanently ceasing construction activities or those areas that are inactive for 14 or more calendar days. Complete stabilization no later than 7 calendar days.

(3) Sites that discharge to a 303(d) listed water or are within a TMDL: Complete stabilization as soon as practicable but no later than 7 calendar days. Practicable means: practicable means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

During meetings of the advisory group the discussion reading stabilization was to establish one standard for the state. The three options above were considered. IDEM consulted with U.S. EPA and determined seven (7) days to imitate stabilization would be acceptable when choosing one standard. This would eliminate a stabilization program based on discharges to a 303(d) listed water or a TMDL.

Identifying that stabilization should be limited to soils that are erodible (e.g., not frozen) is not consistent with the U.S. EPA CSGP or general principles of erosion and sediment control. Timeliness of stabilization in relation to frozen conditions has been addressed in the permit with the language "appropriate for the season"

Comment: The commenter notes that there are several reasons a job site may become idle for a period of seven days and that installing temporary and/or permanent stabilization measures during that time may not always be practicable. The commenter believes that the main objective of [Section 3.4(a)(1)] is preventing off-site sedimentation. Accordingly, the commenter recommends a revision to this section to provide additional flexibility when no off-site sedimentation is occurring. The commenter also recommends listing items such as matts/blankets as acceptable means of stabilization during cold weather, as follows:

1. Temporary and/or permanent soil stabilization must be initiated by the end of the next business day upon temporarily or permanently ceasing land-disturbing activities on any portion of the project site that is or is planned to be left idle for a period of seven (7) days **where off-site sedimentation has occurred or is likely to occur as a result of the land-disturbing activities**. Initiation of stabilization includes, but is not limited to, the seeding and/or planting of the exposed area and applying mulch or other temporary surface stabilization methods **such silt socks coir logs, matts and/or blankets** where appropriate. (FW)

Response:

The CSGP has been reworded to read:

Stabilization must be initiated by the end of the seventh day the area is left idle. ~~Temporary and/or permanent soil stabilization must be initiated by the end of the next business day upon temporarily or permanently ceasing land-disturbing activities on any portion of the project site that is, or is planned to be left idle for a period of seven (7) days.~~ The stabilization activity must be completed within fourteen (14) days after initiation. *IDEM believes this clarifies the intent of the stabilization requirement. With regard to language in 327 IAC 15-5 that references 15 days. Planning activities at a proejct site in conjunction with a stabilization program is critical and is often completed through phasing. Therefore, this Section of the permit will not be modified to place an emphasis on a stabilization program that is limited to areas that have resulted in or will likely result in off-site sedimentation.*

Temporary and permanent stabilization methods are clearly spelled out in the Indiana Stormwater Quality Manual and other guidance documents. Stabilization may include temporary/permanent seeding, frost seeding, and use of armament. Seeding may not also be an option and mulch alone is sufficient. To clarify, silt socks and/or coir logs are not a method of stabilization.

Comment: [Section 3.4(a)(1)] should be limited to soils that are erodible (e.g., not frozen). Also this should be increased from 7 days to 14 days to be consistent with U.S. EPA regulations. (AGCI)

Response:

The CSGP has been reworded to read:

Stabilization must be initiated by the end of the seventh day the area is left idle. ~~Temporary and/or permanent soil stabilization must be initiated by the end of the next business day upon temporarily or permanently ceasing land-disturbing activities on any portion of the project site that is, or is planned to be left idle for a period of seven (7) days.~~ The stabilization activity must be completed within fourteen (14) days after initiation.

IDEM believes this clarifies the intent of the stabilization requirement. With regard to language in 327 IAC 15-5 that references 15 days. This is inconsistent with the U.S. EPA CGP. The U.S. EPA CGP has several options for stabilization that are listed below:

(1) Sites of 5 acres or less or site greater than 5 acres where land disturbance is limited to 5 acres or less at anyone time: Stabilize immediately upon permanently ceasing construction activities or those areas that are inactive for 14 or more calendar days. Complete stabilization no later than 14 calendar days.

(2) Sites of 5 acres or more: Stabilize immediately upon permanently ceasing construction activities or those areas that are inactive for 14 or more calendar days. Complete stabilization no later than 7 calendar days.

(3) Sites that discharge to a 303(d) listed water or are within a TMDL: Complete stabilization as soon as practicable but no later than 7 calendar days. Practicable means: practicable means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

During meetings of the advisory group the discussion reading stabilization was to establish one standard for the state. The three options above were considered. IDEM consulted with U.S. EPA and determined seven (7) days to imitate stabilization would be acceptable when choosing one standard. This would eliminate a stabilization program based on discharges to a 303(d) listed water or a TMDL.

Identifying that stabilization should be limited to soils that are erodible (e.g., not frozen) is not consistent with the U.S. EPA CSGP or general principles of erosion and sediment control. Timeliness of stabilization in relation to frozen conditions has been addressed in the permit with the language "appropriate for the season"

Comment: In Section 3.4(a)(1) on temporary stabilization the draft permit language notes that temporary and/or permanent soil stabilization must be initiated by the end of the next business day upon temporarily or permanently ceasing land disturbing activities on any portion of the project site that is, or is planned to be left idle for a period of seven (7) days. The 2017 Federal CGP (2.2.14) requires a permittee to initiate installation of stabilization measures immediately on any areas of exposed soil where construction activities have permanently ceased or will be temporarily inactive for 14 or more calendar days. The U.S.U.S. EPA Region 5 states of Illinois and Minnesota and U.S.U.S. EPA Region 4 State of Kentucky allow 14 days where construction activities have ceased to apply temporary stabilization. IDEM should modify the draft permit language to reflect the 2017 Federal Construction General Permit, see section 2.2.14. (Pulte)

Response:

The CSGP has been reworded to read:

Stabilization must be initiated by the end of the seventh day the area is left idle. ~~Temporary and/or permanent soil stabilization must be initiated by the end of the next business day upon temporarily or permanently ceasing land disturbing activities on any portion of the project site that is, or is planned to be left idle for a period of seven (7) days.~~ The stabilization activity must be completed within fourteen (14) days after initiation.

IDEM believes this clarifies the intent of the stabilization requirement. With regard to language in 327 IAC 15-5 that references 15 days. This is inconsistent with the U.S. EPA CGP. The U.S. EPA CGP has several options for stabilization that are listed below:

(1) Sites of 5 acres or less or site greater than 5 acres where land disturbance is limited to 5 acres or less at anyone time: Stabilize immediately upon permanently ceasing construction activities or those areas that are inactive for 14 or more calendar days. Complete stabilization no later than 14 calendar days.

(2) Sites of 5 acres or more: Stabilize immediately upon permanently ceasing construction activities or those areas that are inactive for 14 or more calendar days. Complete stabilization no later than 7 calendar days.

(3) Sites that discharge to a 303(d) listed water or are within a TMDL: Complete stabilization as soon as practicable but no later than 7 calendar days. Practicable means: practicable means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

During meetings of the advisory group the discussion reading stabilization was to establish one standard for the state. The three options above were considered. IDEM consulted with U.S. EPA and determined seven (7) days to imitate stabilization would be acceptable when choosing one standard. This would eliminate a stabilization program based on discharges to a 303(d) listed water or a TMDL.

Comment: The commenter was unclear on what is meant by [Section 3.4(a)(2)] and seeks clarification or examples on when it might apply. (FW)

Response:

This exclusion would apply to areas such as building pads, roadbeds that are planned to have impervious surfaces. Once compacted, seeding into these areas will more than likely require the area to be re-compacted. IDEM believes this is a reasonable approach to address these issues and based on experience implementing 327 IAC 15-5.

Comment: Please clarify why the term "unpaved tillable areas" has been used in Section 3.4(b)(1). Tillable land istypically used to describe farmland that is capable of being productively farmed. (PC)

Response:

Tillable has been removed and changed to disturbed.

Comment: Because agricultural land-disturbing activities are excluded from permit coverage, it is unclear why land returning to agricultural production must be seeded upon completing land-disturbing activities. In the commenter's experience, owners of agricultural property do not want their properties seeded because it will be returning to production and the presence of stabilizing vegetation requires additional work on their part to do so. In addition, the process by which the inspecting authority may waive stabilization requirements is not defined. Existing Rule 5 allows for final stabilization to be met when land used for agricultural purposes is returned to its preconstruction agricultural use. Therefore, the commenter recommends this section be removed. If it is not removed, the commenter recommends the language be revised to:

Stabilization is completed in accordance with Section 3.4(a) as land-disturbance progresses. Land that is returned to agricultural production must be ~~temporarily or permanently seeded~~ **restored to pre-construction agricultural use** upon completing land-disturbing activities. Stabilization requirements may be waived ~~by the inspecting authority~~ if the project site does not pose a threat of discharging sediment. (AEP)

Response:

The work performed by a utility or other entity is not exempt from the permit. Appendix a contains criteria for power utility projects to calculate land disturbance and how this information would be used to determine if permit coverage is required. If the entity is required to have permit coverage – this element would be required.

The comment is similar to the language contained in 327 IAC 15-5. IDEM took a similar approach in the original draft permit. However, U.S. EPA commented that returning the land to pre-construction agricultural production did not meet the intent or was compliant with the federal Construction General Permit. IDEM believes leaving temporary and permanent in the language allows flexibility to the permittee to stabilize as per the request of the farmer. In discussions with U.S. EPA IDEM negotiated the language that is in the Draft Permit to allow the regulating entity to waive the stabilization requirement. IDEM will not make the recommended changes as the language allows the regulating authority to make these determinations and work with utility companies to resolve these issues.

Comment: We recommend adding the language "providing basic stabilization requirements are met" to the end of this section (b)(1)(B). Without this addition, areas that require native vegetation and/or special vegetative plantings could be left without any stabilization for extended periods of time. This could result in erosion and sedimentation onto critical areas of the site such as basins or swales. Adding this language would require these areas to be temporarily stabilized until the native vegetation and/or special vegetative plantings could occur. (Moretz)

Response:

The comment is related to achieving final stabilization as is in reference to stabilization that is associated with post-construction stormwater measures and/or mitigation. IDEM does not believe the addition of the proposed language adds value as the areas identified should not result in off-site sedimentation.

3.5 Special Provisions

Comment: Anionic polymers are commonly used in other states and can be an integral part of the BMP treatment train. The draft CGP language states use of anionic polymers are authorized for sediment control and use of polymers requires notification to IDEM or MS4 regulator. This language does not specify who and how to notify IDEM or the MS4s and for what purpose. Polymers have many applications on construction sites and a new standard should be created that reflects design considerations, testing and field installation. IDEM should modify Section 3.5(a) as follows: "Anionic polymers are authorized for sediment control and develop a polymer. Create a BMP standard to be reviewed by the industry and included in the INSWQM." (Pulte)

Response:

A standard is currently being developed for inclusion into the ISWQM. Indiana also recognizes that other states have standards and specification for the use of polymers and accepts those standards as the ISWQM is not the only source for information.

The U.S. EPA requires notification when polymers are used. The notification process is contained within the NOI form. Comments during the advisory group meetings and educational sessions over the last few years placed emphasis that the use of polymers at a site should be known by the regulating entity. The method of notification has been clarified in the draft CSGP to include email. IDEM is also exploring an option to notify the agency through the Regulatory ePortal. If polymers are specified in the SWP3, notification would not be required after the project starts.

Comment: The use of anionic polymers is a practice permitted in this draft permit and in the EPA Construction General Permit Part 2.2.13. Notification of use in this draft permit is required without a stated purpose. Instruction in the selection of the IDEM vs. the MS4 for reporting is not included. Direction for the use of such reported information by the receiving agency is not stated. Anionic polymers are noted to be non-toxic per the EPA Stormwater Best Management Practice, Polymer Flocculation publication. Neither EPA resource suggests reporting of the use of anionic flocculants. Unnecessary reporting is burdensome and costly to property owners and municipalities. Suggest removal of this notification of use requirement. (Moretz)

Response:

A standard is currently being developed for inclusion into the ISWQM. Indiana also recognizes that other states have standards and specification for the use of polymers and accepts those standards as the ISWQM is not the only source for information.

Comments during the advisory group meetings and educational sessions over the last few years placed emphasis that the use of polymers at a site should be known by the regulating entity. The method of notification has been clarified in the draft CSGP to include email. IDEM is also exploring an option to notify the agency through the Regulatory ePortal. If polymers are specified in the SWP3, notification would not be required after the project starts.

Comment: Will IDEM be responsible for assuring that all of this requirement [in Section 3.5(b)] is being met? Will IDEM be responsible to determine whether or not any additional permits will be required under this section? (COC)

Response:

IDEM will administer these activities in non-MS4 areas or for violations associated with a MS4 entity that has coverage under this permit. A MS4 would have responsibility to oversee clean-up when they determine a violation that has impacted a water of the state. With regard to other permits, the MS4 could simply place that burden on the violator. It is critical that the MS4 does not direct someone to operate in an area where they do not have jurisdiction or permission to take corrective action as some areas may require other state and federal permits to perform the work.

Comment: Please consider the addition of a statement to this section talking about the need to install temporary erosion and sediment control measures to ensure the discharge material does not impact additional areas.

Recommended Revision: "(4) Implementation of appropriate erosion and sediment control measures around the impacted area(s) to prevent to contain the discharges to be cleaned up." (COG)

Response:

Comment is related to 3.5(b). This basis of the CSGP is to take appropriate action to minimize the discharge of sediment through implementation of erosion and sediment control measures. IDEM does not believe it is necessary to repeat this principle by adding an item (4) under 3.5(b).

3.6 Monitoring and Project Management Requirements

Comment: The commenter believes it would be helpful if IDEM can provide a flow chart of the documentation requirements expected in the self-monitoring program or examples of satisfactory self-monitoring programs that have been implemented by other communities. (FW)

Response:

The self-monitoring program (SMP) is currently a requirement in 327 IAC 15-5. IDEM plans to develop a sample Self-monitoring form and will develop guidance related to implementation.

Comment: The commenter believes it would be helpful if IDEM can provide a sample evaluation form that meets the requirements of this Section 3.6. (FW)

Response:

IDEM is working on a self-monitoring form. This form will not be required but will provide an option to the permittee. MS4s may choose to develop their own or provide the IDEM form to permittees. The form will also be in a format that the MS4 may modify to meet their specific local requirements.

Comment: The commenter notes that the level of effort that would be needed to provide the written evaluations required in Section 3.6(a)(1)(A)-(C) is disproportionate to the benefit that would be obtained from those evaluations. Therefore, the commenter suggests deleting these requirements. If that is not possible, the commenter suggests deleting subparagraph (B) and simply requiring an evaluation anytime there is a rainfall event of one-half (0.50) inch or more. (FW)

Response:

IDEM will not delete this requirement. The current rule requires a written report and IDEM believes this requirement must remain as it is beneficial to management of a construction project. U.S. EPA also requires inspections to be documented in the CGP. IDEM has removed item (B).

Comment: If a permittee is required to change the basis for the SMP evaluations from a 0.5-inch rainfall to a 0.25-inch rainfall, it is unclear how long that requirement remains in effect. The commenters requests clarification as to whether an SMP evaluation must take place after each 0.25-inch rainfall for the remaining project duration, or until the SWP3 corrective action has been implemented. The commenter believes it would be appropriate for a permittee to return to conducting SMP evaluations based on 0.5-inch rainfall events after the successful implementation of corrective actions, and offer the following suggested language:

When there is failure to implement the SWP3 or initiate corrective action, **the regulating entity may direct the frequency to conduct an evaluation to be based on a one-quarter (0.25) inch of rainfall until the corrective action has been implemented.** ~~the SMP must be administered in accordance with (A) above. However, the frequency to conduct an evaluation, when directed by the regulating entity must be based on a one-quarter (0.25) inch of rainfall.~~ (AEP)

Response:

The Section that refers to a SMP being implemented based on a .25-inch rainfall event. IDEM has been removed this requirement from the permit.

Comment: The commenter recommends that rain inspections are removed from the inspection frequency. Third party companies are becoming more frequently used for inspections and BMP repair work. Regardless of whether inspections are performed by a third party or by an employee of the permittee, inspections and repair dates are typically scheduled in advance to allow for adequate time and focus to be allocated to the inspection and BMP maintenance process. It is extremely difficult to allow appropriate time for thorough inspections and repairs with rain inspections required. In order for proper resources and time to be allocated to performing a site inspection due to a rain event trigger, quality of the inspections as well as the repairs can suffer. The EPA allows in their permit to thoroughly inspect once a week and not after rain events. The State of Tennessee has chosen to go without rain event requirements and instead they require twice weekly inspections. With this frequency the inspections would be conducted before and after rain events but it is much easier to schedule. The State of South Carolina has chosen to not require rain inspections and to go with a calendar week inspection frequency. In speaking with South Carolina on why they chose not to put a rain inspection requirement, they said that a thorough inspection once a week was sufficient to them instead of trying to chase rain events which degrades the quality of work, which holds true whether the inspection is being conducted by a third party consultant or by a representative of the permittee permanently working at the subject permitted property.

If the rain inspection requirement is kept, it would be our recommendation to modify the frequency from "by the next business day" to once per calendar week. This would allow for a considerably more thorough inspection to take place while still keeping in compliance with the permit. (Moretz)

Response:

The U.S. EPA CGP has several options available for their self-monitoring requirement. The options are as follows and the permittee must choose one:

- *Option 1: Once every seven (7) calendar days.*
- *Options 2: Once every fourteen (14) calendar days and within 24 Hours of a .25-inch rainfall.*

Alternatively, if the proejct discharges to a 303(d) listed water or is within a TMDL, the frequency must be increased to seven (7) calendar days and within 24 Hours of a .25-inch rainfall.

Based on the alternatives in the U.S. EPA CGP, IDEM discussed options during the advisory group meetings. Based on the discussion, it was decided to have one standard in Indiana; especially for those situations where a proejct discharges to a 303(d) listed water or is within a TMDL. IDEM discussed this approach with U.S. EPA, and they were in agreement with IDEM's approach. The permit is now similar to what IDEM has required since 2003 with some modifications and clarification.

The requirement in the permit requires a minimum of one inspection per work week. Rain events of .50 inches or more require an inspection within 24 hours. In the event of multiple qualifying rain events, IDEM has added that no more than three inspections would be required during a work week. In addition, IDEM has added the option to conduct an inspection 24 hours prior to an anticipated rain event.

Comment: The current inspection schedule bases the inspection schedule on rain events. This a very unique approach that is not commonly used in CGPs throughout the country. BMP inspectors and BMP installation and repair firms normally schedule their work to service customers on a set schedule which is much more efficient than a variable schedule. Random rain event inspections will throw off their schedules and the permittees will more likely miss inspections because they are not on a regular set timeline. Rather than using a rain event inspection as a baseline, it is suggested that the BMP inspections should occur weekly. If a post storm inspection is conducted prior to the weekly inspection, the permittee should have the option to have the rain event count as the weekly inspection. Alternatively, the commenter suggests the permit include an option to schedule inspections once every two weeks and after a rain event of 0.5 inches or greater or as an alternative, once every week with no rain event inspections. (Lennar)

Response:

The U.S. EPA CGP has several options available for their self-monitoring requirement. The options are as follows and the permittee must choose one:

- *Option 1: Once every seven (7) calendar days.*
- *Options 2: Once every fourteen (14) calendar days and within 24 Hours of a .25-inch rainfall.*

Alternatively, if the proejct discharges to a 303(d) listed water or is within a TMDL, the frequency must be increased to seven (7) calendar days and within 24 Hours of a .25-inch rainfall.

Based on the alternatives in the U.S. EPA CGP, IDEM discussed options during the advisory group meetings. Based on the discussion, it was decided to have one standard in Indiana; especially for those situations where a proejct discharges to a 303(d) listed water or is within a TMDL. IDEM discussed this approach with U.S. EPA, and they were in agreement with IDEM's approach. The permit is now similar to what IDEM has required since 2003 with some modifications and clarification.

The requirement in the permit requires a minimum of one inspection per work week. Rain events of .50 inches or more require an inspection within 24 hours. In the event of multiple qualifying rain events, IDEM has added that no more than three inspections would be required during a work week. In addition, IDEM has added the option to conduct an inspection 24 hours prior to an anticipated rain event.

Comment: [3.6(a)(B)] is extremely difficult to understand and will cause widespread confusion in the industry when implemented. First, who is the regulated agency being referenced? Second, if there is a failure to implement the SWP3 or initiate a corrective action, IDEM can use their ability to enforce the CGP by issuing Notices of Violation or other enforcement vehicles. Requiring a regulating entity change the schedule for rain event inspections will be confusing tothe practitioners and will not remedy a permittees failure to implement the SWP3 or initiate acorrective action. IDEM should keep the inspection schedule as is in item 3.6(a)(1)(A) and delete 3.6 (a)(B) in its entirety. (Lennar)

Response:

The Section refers to a SMP being implemented based on a .25-inch rainfall. This requirement has been removed from the permit.

Comment: The commenter would recommend that IDEM provide additional guidance, such as an inspection form, to assist withthe evaluation of project sites by trained individuals and with the preparation of written evaluation reports that summarize the results of such evaluations, as detailed in Section 3.6(a). (PC)

Response:

IDEM is working on a self-monitoring form. This form will not be required but will provide an option to the permittee. MS4s may choose to develop their own or provide the IDEM form to permittees. The form will also be in a format that the MS4 may modify to meet their specific needs.

Comment: Pulte Group administers a self-monitoring program that includes much of the requirements in Section 3.6(a)(C) on monitoring and project management. The 2018 Indiana Climate Change Assessment report completed by Purdue University highlighted total annual precipitation, seasonal precipitation, storm intensity and extreme events are all expected to increase across the State of Indiana. Our observed weather patterns and field conditions are changing and so must inspection regimes. If our construction sites are frozen or covered in snow, there is little to observe in the field. IDEM should modify Section 3.6(a)(C) as follows: “At a minimum of one (1) time per month for areas within the project which are stabilized with permanent vegetative cover at seventy (70) percent density OR runoff is unlikely due to weather conditions (e.g. site is covered with snow, ice or the ground is frozen).” (Pulte)

Response:

IDEM chose to not allow inspections to be suspended during snow or frozen conditions as it would require additional documentation by the permittee. In addition, work will often continue during these time periods. IDEM has added that inspections may be suspended to once per month if all areas of the development are stable and only home building on individual building lots are occurring.

Comment: The duration and extent of repair or replacement work associated with a deficiency can vary. While the commenter agrees that repairs or replacement work should occur promptly, the commenter recommends that the language be revised to:

A timeline for which the corrective action will occur to remediate the discharge of pollutants. The established corrective action, at a minimum, must ~~occur~~ **be initiated:** (AEP)

Response:

This change has been made in the draft CSGP.

Comment: The commenter is concerned that the timeline for corrective action set forth in Section 3.6(a)(2)(G) may conflict with IC 13-18-27-18, as added by House Bill 1266 in the 2019 Legislative Session. That statute states that the enforcement authority must allow seventy-two hours for corrective action to take place. The commenter recommends that language be added to the permit to reconcile and/or clarify these two different timelines. (FW)

Response:

The language in HB 1266 relates to an MS4's ability to issue stop work orders when a measure that was in the SWP3 fails or is inadequate. IDEM has made a modification to the permit and has changed the following workday to 48 hours for the repair of a measure.

Comment: [3.6(a)(2)(G)] requires a timeline to be created on the written BMP inspection report when items #1and #2 already set forth the timeline for corrective actions. The commenter suggests IDEM eliminate the need for the permittee to include a timeline for a corrective action on the inspection report since it is already included in the Draft CGP. In the event the item cannot be completed within the timeline in (G), it is suggested that a requirement to document the reason it could not be completed and add the date it is anticipated to be completed be added to the Draft CGP. (Lennar)

Response:

Although the permit contains specific language on when corrective action will be required, it is important that this is documented in the self-monitoring report. This type of documentation will clearly communicate the actions and dates associated with each deficient item discovered by the team member performing self-monitoring which can then be provided to the individual performing the work.

IDEM will consider options when developing the self-monitoring form.

Comment: In Section 3.7(a)(2)(C), the commenter recommends the following revision:

*(C) The name of the construction project and a general location or if applicable an address **for the project**. (FW)*

Response:

This change has been made in the draft CSGP.

Comment: Section 3.6(a)(2)(D)-(H) exceed what is required by the current U.S. EPA general permit. The current self-monitoring standards should remain. (AGCI)

Response:

This item is specially related to the expectations that are required in a self-monitoring report. This information was contained in 327 IAC 15-5, but has been expanded in the new permit to include content of the report, standard observations for performance, and corrective actions and timelines. The timelines that have been added to the new permit were required by the U.S. EPA.

Comment: Again, the duration and extent of repair work associated with a deficiency may vary and could require special equipment or personnel to complete. Therefore, the commenter recommends that the language [found at Section 3.6(a)(2)(G)(1)] should be revised to:

> On the day the deficiency was discovered or when it is not practical to initiate on the discovery date, no later than **72 hours to initiate** the following workday for the repair of the measure. (AEP)

Response:

IDEM has changed the requirement to forty-eight hours for the repair of a measure to compensate for a SMP inspection that is conducted at the end of the day.

Comment: The commenter recommends changing language to say, "no later than the following week for the repair of a measure". The time frame to something that is more realistic for the way the work is completed. If an inspection is completed at the end of the day, then there is only one business day to get a vendor out to complete the work. Vendors do not always have this level of flexibility to complete repairs. (Moretz)

Response:

IDEM has changed the requirement to forty-eight hours for the repair of a measure to compensate for a SMP inspection that is conducted at the end of the day. Also is not unreasonable for contractors to have a surplus of materials for basic erosion and sediment control on-site.

U.S. EPA has language as the 'close of next business day" as was in the IDEM initial draft, however we have modified this to 48 hours.

Comment: Define "a new measure". Will this include replacing damaged mulch logs and silt fence or do those type of routine maintenance items refer to section 3.6(G)1? (Moretz)

Response:

A new measure is one that would include an alternative option that may be more effective in addressing the issue identified on- site.

Comment: With electronic copies being acceptable, can the entire SWP3 be electronic in order to save on resources and not have a physical copy on site? We recommend allowing the electronic SWP3, if it can be sent to the inspecting authority within forty-eight hours. (Moretz)

Response:

Yes, electronic files of project information are an acceptable format. The method of useability and project site management will be left to the permittee and not dictated by IDEM. However, it is important that the plan is available to those operating at a proejct site in a format that can be referenced and utilized to fully implement. A MS4 may require alternative methods, report types, and additional requirements.

3.7 Project Documentation Requirements

Comment: The commenter requests a definition for the term "ultimate receiving water." (FW)

Response:

This has been changed and ultimate removed.

Comment: The requirements of Section 3.7 (a)(2) must be posted with the NOI, however, (3)(A-C) also include requirements to be posted with the NOI.

Recommended Revision: "Appropriate documentation requirements contained in Section 3.7(a)(2) & (3)."

As a follow up to this requirement, what kind of proof of notification will an application be required to provide if the notice is not published in a local newspaper? (COG)

Response:

This Section is related to notification to the public. 3.7 (a)(2) is a list of what must be included in the public notification. Item (3) is a list of options that can be used to notify the public.

The notice that is posted on-site must remain on-site. If the option to post to a public website if chosen, a copy of an image of the posting is acceptable and must be part of the proejct management log. The newspaper ad is similar to 327 IAC 15-5, but must also be part of the proejct management log. The changes to notify the public will no longer be sent to IDEM with the NOI but kept on site. IDEM will require for the applicant to certify that one of the three options were implemented upon submittal of the NOI.

Comment: The commenter found the language regarding the notification requirements difficult to understand. Under Section 3.3 of the permit, it appears that signage at the job site is always required for notification purposes. However, Section 3.7(a)(3) seems to suggest that the notification requirement can be obtained through other means (e.g. by posting on a web site for governmental agencies or by posting in a newspaper if not a governmental agency). The commenter seeks clarification on the intent of this section and whose responsibility it is to ensure the notice requirements in Section 3.7(a)(3) are met. (FW)

Response:

The intent of the Section is to provide options in lieu of the newspaper ad that is required for all projects. Newspapers are becoming limited in local areas. Currently 327 IAC 15-5 requires a newspaper ad to be published and submitted with the Notice of Intent. These options allow a more flexible approach to notifying the public and still remail transparent.

The notification is a permit requirement and part of a compliance check when a MS4 or IDEM is performing an inspection.

Comment: Are the Public notification requirements different from the posting requirements? As a follow up to the comment about section 3.3, the commenter recommends clarification as to what is a posting requirement for the duration of the project and what needs to be posted as a notification. (Moretz)

Response:

Section 3.3 (a)(16) is one of the performance requirements within Section 3.0. The references to the other Sections of the permit (3.7 and 5.2) are appropriate based on the content for those Sections. 3.3 (a)(16)(A)1) has been expanded to list the items that at a minimum must be posted at the proejct site.

Commenter: Will IDEM be responsible to confirm that a project management log is created and maintained? Is IDEM requiring a certain format of this log? (COC)

Response:

This is a requirement of the CSGP and the MS4 will be required to adopt this minimum requirement into local ordinances. The MS4 would be expected to verify that the content of the log is maintained for those projects they regulate. If IDEM regulates the project (MS4 owned/operated and outside of a MS4) then we will make this part of our regulatory inspection or as needed request the information that is required to be part of the proejct management log.

We will not dictate a specific format and it is not expected that this will require a form. Conceptually, the log will be required to contain the information that appears in the CSGP.

The U. S. EPA CGP does not require a project management log, but the documentation that is required to be contained in the log by the CSGP is required to be retained on-site by the U.S. EPA CGP.

Commenter: This requirement [to maintain a project log] should be deleted from the Permit or be limited to current U.S. EPA requirements. This document will have to be created and maintaining it will be very time consuming for site supervisors who have many other project duties. The benefits of a log this detailed do not justify the costs. (AGCI)

Response:

The U. S. EPA CGP does not require a project management log, but the documentation that is required to be contained in the log by the CSGP is required to be retained on-site by the U.S. EPA CGP.

Commenter: [Section 3.7(b)(1)] suggests documentation of all offsite borrow areas, disposal areas and staging areas. Documentation should be limited to locations that are solely dedicated to the permitted site and not used for any other purpose but to service the permitted project. (See support activity 1.2 (c) as a qualifier for what should be documented). (Lennar)

Response:

The draft CSGP references only those borrow/disposal sites that are off-site under the operational control of the permittee for the primary proejct site. In order for the site to operate under the primary proejct site, the off-site area would need to be identified in the construction plans and the Notice of Intent. Clarification has been provided in 3.7 (b)(1) and Appendix A.

Commenter: The CGP designates that the SWP3 and other pertinent documents are to be "readily accessible". Does this mean that this documentation must be physically present on site? For example, could the on-site project sign contain a QR code that takes you to electronically updated versions of the plan and logs? (EW)

Response:

The information required by the proejct management log should be available within 48 hours if requested by the regulating authority. The option listed would meet the intent of this requirement. However, it is important that the plans should be available in a format that is accessible for those operating on the proejct site.

3.8 General Performance Standards Applicable to Individual Residential Building Sites within a Permitted Project Ara

Comment: [Section 3.8(a)] is currently listed as subsection "d". It should be "a." (EC)

Comment: [Section 3.8(a)] starts with (d) instead of (a). (INAFSM)

Response:

This has been corrected.

Commenter: On page 19, the permit suggests that the individual lot contractor is required to ensure appropriate erosion and sediment control requirements are in place on the individual lot. This raises a question regarding how to enforce this requirement when the individual lot contractor does not have its own SWP3 but is covered under the SWP3 for the larger development. This is particularly concerning for projects where the main SWP3 is terminated but there are one or more lots totaling less than 5 acres that are still under development (as allowed under Section 6.0). The commenter seeks clarification that it is the intent of this section that the individual lot contractor would be responsible for compliance with these permit requirements as to the individual lot. The commenter seeks further clarification regarding the legal authority for holding the individual lot contractor responsible for compliance with this permit, particularly in cases where there is no SWP3 in place. (FW)

Response:

IDEM does not allow the overall developer with permit coverage to terminate when individual building lots within the site are still active. This is the option for early termination, but this option is based on several factors with one of those related to the potential to impact to water quality.

The CSGP as originally drafted utilized the approach that was in 327 IAC 15-5. Since the builder was operating under the overall developer's permit and SWP3, IDEM was able to take action against individual builders.

Based on experience IDEM included in the CSGP that the regulatory authority can require lot operators within a permitted site to file an NOI regardless of the size of the lot. This would primarily be implemented based on violations. In addition, IDEM has added to the CSGP that an induvial lot builder operating within a permitted site is required to develop a SWP3 that must be kept on-site.

Many of the larger builders will often obtain their own permit coverage when operating within a permitted site. For those builders that do not obtain their own permit coverage we have added a requirement that the builder must sign a Construction Stormwater Residential Development Registration form that must be kept on-site.
Regardless of IDEM's approach, the MS4 may pursue a separate permit for each lot. This is common for many MS4s.

Comment: Self-Monitoring Program and inspections is not listed under section 3.8; we recommend further clarification on whether an individual residential building site would need to have inspections and a separate permit since they are not on the inspection reports completed by the permittee. (Moretz)

Response:

An individual lot operator is working under the permit of the larger project, we do not require self-monitoring on the lot or multiple lots. If we require the lot operator to obtain permit coverage self-monitoring would be required. The draft CSGP allows this option and would primarily be based on performance violations. MS4s may have different requirements for each lot.

The overall developer would be required to do self-monitoring and if they identify issues on a building lot should make the builder aware to take corrective action. In most situations, sediment being discharged off a building lot will be impacting infrastructure that the developer of the overall development has put in place and is responsible to operate and maintain.

Comment: [Section 3.8(d)(2)] needs clarification and review. Under the scenario where the overall developer sells individual lots, the responsibilities of the individual lot builder appear to be outlined but what are the responsibilities of the overall site developer in relation to the individual lot builder? Since the overall project developer has filed an NOI and obtained an authorization to discharge, will the overall lot builder be responsible for permit violations caused by the unpermitted individual lot builder? Additionally, how will IDEM enforce individual lot developer violations of a CGP against an entity that did not submit a NOI and agree to work in accordance with the CGP? The concept of not requiring individual residential lot builders within a larger common plan development or sale to obtain permit coverage, requiring the individual lot builders to work under the overall site developers SWP3, and including items in the CGP specific only to individual lot builders is flawed and should be revised in its entirety. Individual lot builders in a larger common plan development or sale should be required to submit an NOI to obtain discharge permit coverage and either share a common SWP3 with the consent of the overall project developer or develop their own SWP3. It is suggested IDEM review the small residential site SWP3 template published by the U.S. EPA. and incorporate it or a similar template for use by individual lots purchasers. (Lennar)

Response:

327 IAC 15-5 currently allows the option to operate under the original developer and IDEM currently has the authority to take compliance/enforcement action against a builder that is in violation. IDEM initially proposed to continue to utilize this process in the draft CSGP for which this comment was made. In discussions with U.S. EPA during the first review process this approach was agreed to by U.S. EPA. Many of the larger builders, especially those that operate at a national level obtain permit coverage for the lots they develop within a larger permitted site.

Taking into consideration the comment above, IDEM has proposed and incorporated into the CSGP a process that will require a builder operating within a larger site to develop a SWP3 specific to their building activities. Due to uniformity and size of most lots, the plan may be developed to cover multiple lots within a development. In lieu of filing a NOI, the builder may choose to complete a Construction Stormwater

Residential Development Registration form that must be kept on site. This process has been added to Appendix A. In addition, the draft CSGP already included a provision that IDEM may require a builder of one or more lots to obtain permit coverage based on violations.

IDEM will be reintroducing a DNR, division of Soil Conservation document for a standard lot plan.

Comment: The overall project permittee should not be responsible for the actions of other landowners or required to give other landowner permission for items contained in the CGP for which the other landowners should be responsible for. What is the rational for requiring the overall permittee to approve or disapprove of other actions of landowners and builders who are not under the overall project permittee's control? Requiring the overall permittee to authorize street washing should be removed. (Lennar)

Response:

This requirement was placed in the draft permit to provide a level of protection for the overall developer whether the lot operator had a permit or not. Experience has shown that builders and other contractors on a site using flushing will direct run-off to measures managed by the overall site owner which was not sufficient for the volume of run-off. The permission option was included for that reason. An option to address this issue is to rewrite as:

Sediment that is either tracked or discharged onto internal project site roads is removed by the end the same day. Clearing of sediment must not include flushing the area with water, ~~unless authorized by the permittee of the overall project site and the sediment is directed to an appropriate on-site sediment~~

4.1 Plan Content

Comment: Section 4.1 establishes requirements for post-construction SWP3s. Subsection 4.1 requires the inclusion of protective measures that will be implemented during active construction when the type of post-construction measures planned are susceptible to pollutants. This section seems more appropriate for the construction SWP3 since it will be too late to address active construction measures during the post-construction period. (FW)

Response:

The construction and post-construction are part of the overall SWP3 and are integrally connected. Post-construction measures must be selected during plan development. This item was placed under post-construction to alert the designer that when selecting a measure and determining an installation schedule consideration should be given to erosion and sediment control measures.

Comment: Remove the word "the" from before "both" in the first sentence [of Section 4.1]. (EC)

This has been corrected in the draft CSGP.

Comment: On the second line there is an extra "the" before the word "both" that should be deleted. (INAFSM)

Response:

This has been corrected in the draft CSGP.

Comment: Most, if not all, of the information requested in [4.1(a)(1)-(3),(10)] is more appropriate for a separate document and not a construction plan set. (INAFSM)

Response:

This is information that is currently in 327 IAC 15-5 and IDEM Agrees that this information would not be in the actual plan set but is typically provided in a separate document that is associated with a plan set.

Comment: Will there be additional guidance on when SWP3s need to be submitted. Is it 30 days based off 4.3(e)? (EW)

Response:

The construction plan including the SWP3 should be submitted no later 28 days prior to the planned start of the proejct. A MS4 may have other requirements/timelines for plan submittals that must be followed. The 28 days is the time allotted for IDEM to review plans. If IDEM finds the plan deficient the 28-day timeline restarts upon receipt of the new plan.

Comment: Is the post construction SWP3 a living document like the construction SWP3? What happens on construction sites that make onsite adjustments? Are contractors, the Indiana Department of Transportation (INDOT) or developers responsible for providing as-builts at a later date? This could affect INDOT funding due to change orders and the parties responsible for design and implementation. Federal Highway hasn't given guidance on if they'll [sic]. (INDOT)

Response:

The post-construction portion of the SWP3 should be identified early in the proejct and laid out as to how the permittee will address post-construction pollutants. This part of the plan is more definite that modifications that occur during construction due to the variability of activities including earthmoving etc.

Comment: The commenter would recommend that a note about the fact that the 28-day review timeline does not apply to local MS4s be included in Section 4.3(e). (PC)

Response:

The permit has been modified to address this.

Comment: The commenter notes that items contained in Sections 4.1(a)(3)(F)-(l) are dependent on the specific contractor's selected means and methods. Because the main project contractor and the contractor's means and methods are often not known at the time of the SWP3 development, the commenter proposes deletion of these subsections. (FW)

Response:

IDEM has reviewed this comment and agrees to remove "When known at the time of submittal, identification of other individuals or entities that will be associated with the project, including their name, affiliation, and contact information". The other items will remain as part of the content of a plan. These items are currently in 327 IAC 15-5 and are important for a plan reviewer to assess the overall effectiveness of the plan.

If a contractor has an alternative approach to sequencing or other activities occur that support the proejct, these modifications can be made to the construction plans. The soil properties required are not related to "means and methods".

Comment: If the items contained in Section 4.1(a)(3)(F)-(l) are not deleted as requested in the comment above, the commenter seeks clarification regarding whether the SWP3 plan must be revised if the general construction sequence changes during the project as discussed in Section 4.1(a)(3)(l). (FW)

Response:

The SWP3 is a living document that can be revised. In fact, IDEM's expectation is that revisions will be made as work progresses. The permit is asking for a general sequence of how work will be performed for work to begin. As site activities move forward the sequence can be modified.

Comment: The commenter notes that Section 4.1(A)(3)(N) and 4.1(A)(3)(O) reference TMDLs and the 303d list of impaired water bodies. The commenter seeks clarification on why this information is needed. (FW)

Response:

The U.S. EPA CGP requires this information. IDEM has elected to require this information for both plan content and the NOI.

Comment: SWP3 requires the identification and location of all wetlands, lakes, and water courses on or adjacent to the project site. Making the determination of a water course to be adjacent to the site is subjective. Can further guidelines be provided to make the determination of an "adjacent" water course more objectively based? (EW)

Response:

This is an observation by the plan preparer to determine what areas on or adjacent to the site will receive run-off from the proejct site and have the potential to be impacted.

Comment: When referring to the list of impaired waters, the document is usually called the 303(d) list. Parentheses need to be added around the d. (EC)

Response:

IDEM uses 303(d) as is in our Branding Standards – the change has been made.

Comment: [Section 4.1(a)(3)(G)] is a very broad request and could be interpreted differently by different persons. IDEM should define the titles, functions and/or types of individuals that are considered to be associated with the project. It is suggested to only include a contact list of those with SWP3 responsibility in the SWP3 log. These could be identified as the engineer of record, SWP3 developer if different, person responsible for SWP3 compliance at the development, the BMP inspection firm, and the BMP inspector or BMP inspection firm. (Lennar)

Response:

This item has been removed form the draft CSGP.

Comment: [In Section 4.1(a)(4)(H)] the term "run-off" should be changed to "Run-on." (Lennar)

Response:

IDEM did consider using the term "run-on", but other comments we received throughout developing the draft CSGP requested the change.

Comment: Sheet-flow runoff from stormwater is common and it would not be feasible or valuable to identify each instance of stormwater sheet-flow runoff leaving a project site. The commenter believes the intent of this permit condition is to identify the locations where concentrated stormwater and non-stormwater discharges will leave the project site, and request clarification as follows:

The locations of specific points where **concentrated** stormwater **discharges,** and non-stormwater discharges will leave the project site. (AEP)

Response:

Concentrated has been added to the draft CSGP.

Comment: Please clarify this requirement [found at Section 4.1 (a)(8)(B)(6)] and the level of detail IDEM is asking for construction traffic management. (COC)

Response:

This is specific to operations to reduce sediment tracking. Based on requirements elsewhere in the draft CSGP this item has been removed.

Comment: Is IDEM requiring written management measure in addition to performance requirements of Section 3.0 and maintenance standards required under 4.1(a)(8)(D)? (COC)

Response:

Section 3.0 is specific to performance standards at the project site and 4.1 is related to plan content. With regard to (a)(8)(D), there are specific measures that should be identified that require a higher level of monitoring and this item was placed in the plan content section so those measures can be identified.

Comment: Will IDEM determine the maintenance standards for every possible temporary storm water measure, including the corrective action threshold? If this requirement is kept in the rule, this standard and threshold should be consistent across all Indiana MS4s to avoid confusion and the all too popular "they don't make me do that" argument. (COC)

Response:

Maintenance standards are contained in the Indiana Stormwater Quality Manual or similar guidance documents that we will accept from other states. Proprietary measures will also have a maintenance standard assigned by the manufacturer.

Comment: [Section 4.1(a)(8)(D)] requires the SWP3 to require a threshold for when a BMP needs a corrective action, a contingency plan for corrective action, and/or replacement with alternative measures and a schedule for inspection based on the type of measure. Please define what a "contingency plan for corrective action" is. Additionally, in regard to a contingency plan or alternative measures, if a BMP is installed in accordance with the SWP3 is not working as intended, the trained site personnel who conduct the inspections need to evaluate the condition and determine if another BMP is needed. That may not be known until a BMP that was initially used fails and should be based on conditions in the field. Subsequently, predetermining an alternative BMP would serve no purpose and only be a paperwork exercise. The replacement BMPs used should be selected by the appropriate persons trained in stormwater management after they evaluate the cause of the failure and site conditions that led to the failure. The requirement to provide a contingency plan or alternative BMPs on the plan should be removed. (Lennar)

Response:

A contingency plan has been removed from the draft CSGP as has the language related a schedule for inspection based on the measure. The concept of identifying measures that may require more frequent monitoring has been left in the plan content Section.

Comment: Please clarify the meaning of the second sentence [of Section 4.1(8)(E)]. (COC)

Response:

The second sentence clarifies the concept of sequencing.

Comment: Please clarify the specificity of this requirement [at Section 4.1(8)(I)]. (COC)

Response:

When known materials are on-site, including construction products and waste, the construction plans should describe how these materials will or should be managed by those entities operating on the proejct site. This is an opportunity in the plan to describe the methods to be used and the availability of waste receptacles etc. that can be expected to be on-site.

Comment: If post construction BMP's are kept within the CGP then INDOT is asking for clarification on section (9) Post Construction SWP3. This is located on page 24 of 46. The way it is written, any project even with 1 sq ft of impervious will be subject to permanent stormwater BMPS. INDOT thinks there should be some clarity in the permit and additional guidance for transportation projects as linear projects have many factors such as construction methods and maintenance requirements vs standard commercial development. It currently does not state how much impervious surface will warrant post construction BMPs. Section C regarding residential development gives guidance with quantities. INDOT is proposing 10,000 square feet of impervious surface on transportation projects as the requirement for post construction BMPs. (INDOT)

Response:

IDEM has elected to keep the post-construction requirement in the CSGP. Members of the state legislative body have voiced concerns over post-construction stormwater run-off, especially targeted to volume of run-off and flooding. While the focus of the CSGP is based on quality of run-off, increased run-off can also be considered when evaluating measures that will satisfy the quality requirement.

Comment: SWCD SWP3 reviewers will need some guidance on the application of [Section 4.1(a)(10)]. Where there are local ordinances or requirements, the local unit is responsible for reviewing and approving the design of stormwater management measures. When there are no local requirements, SWCD reviewers may lack the training required to review and approve the design. (JG)

Response:

This item was added to clarify that the plans that are received meet the local requirements of a municipality and/or county. This is especially true for stormwater quantity as many communities have developed these requirements over the past 20 plus years. Requirements in the CSGP should not take precedent over the local requirements. IDEM will provide training to SWCDs, but also emphasize that many reviewers may not have the expertise or license to review at a level that is considered engineering.

If the SWCD is acting on behalf of IDEM, the intent of the plan review is to perform a review to determine if the plan meets the minimum requirements of the permit. Most SWCDs and IDEM and some MS4s for that matter do not have staff to evaluate engineering design and calculations. Those that do perform a review at this level would require a professional engineer or at least meet the requirements under the state license. The engineer developing the plans designs engineering aspects of the plan under their PE license.

Comment: The commenter requests clarification on who may sign post-construction operation and maintenance manuals in the context of this proposed permit and recommend post-construction storm water plans be signed by a site owner/operator. Additionally, the commenter recommends the language recognize that this section may also be required by a local entity and such manual and/or maintenance agreement should fulfill this requirement. (AEP)

Comment: Please clarification on who may sign post-construction operation and maintenance manuals in the context of this proposed permit and recommend post-construction storm water plans be signed by a site owner/operator. (FW)

Comment: Please clarify by whom the O&M manual must be signed. (COC)

Comment: The signature requirement is a new requirement of the Draft CGP. What is the purpose of a signature? Who is required to sign the plan? (Lennar)

Response:

The signature requirement has been removed from the draft CSGP.

Comment: Because a contractor's sequencing is dependent on the contractor's selected means and methods, the commenter requests deletion of Section 4.1(a)(10). (FW)

Response:

This is a current requirement in 327 IAC 15-5 and IDEM plans to keep this requirement. At a minimum, a general sequence must be provided. If the contractor believes this is not feasible, plan revisions may be made.

Comment: An operation and maintenance manual for post-construction stormwater measures is not specifically required by the current U.S. EPA general permit and should either be deleted from the Permit or limited to what is required by the current U.S. EPA general permit. (AGCI)

Response:

IDEM has incorporated post-construction into the new general permit. Post-construction is in the current Rule (327 IAC 15-5); however, the new permit clarifies and expands on the requirements.

Comment: The last sentence in the first paragraph under Section 4.1 Plan Content on page 20 is missing a word, which is bolded in the following text: "The SWP3 must **be** signed by…". (COG)

Response:

This correction has been made.

4.2 Plan Submittal

Comment: The commenter recommends adding language to Section 4.2 confirming that MS4 communities are authorized to self-permit in accordance with state law. (FW)

Comment: The commenter believes language should be added to Section 4.2(a)(1) confirming that MS4 communities can self-permit in accordance with state law. (FW)

Response:

To our knowledge there is no state law that allows for MS4s to self-regulate. IDEM will continue to request submission of Construction/SWP3 from MS4 entities as part of our obligation to provide oversight of construction projects that are owned/operated by a MS4.

4.3 Plan Review

Comment: Under Section 4.3(e), the commenter recommends adding language that if the plan is determined to be deficient even after the 28-day review period, the permit authority may still order work to stop until the deficiencies are resolved. (FW)

Response:

IDEM believes adding this provision in the permit would be in contradiction to HB 1266 and would not recommend the MS4 take this approach in their local ordinance. If work is in progress and there are plan deficiencies, the stop work order should be based on the requirements listed in HB 1266.

Comment: Twenty-eight days is a long time to wait and will unnecessarily delay projects. This time period should be reduced. (AGCI)

Response:

The 28-day requirement is the timeline that has been in effect since 2003. IDEM will not modify this timeline as it is consistent with the current Rule. However, current practice is that we make an initial review and if we determine a plan review will not be conducted will notify the plan submitter.

Comment: Are land disturbing activities able to begin even if SWCD/MS4s have not approved the SWP3 plan within the recommended 28 days, and the NOI application has been submitted to IDEM? (EW)

Response:

The NOI should not be submitted to IDEM until notification of plan review has been received. Based on the location of the project, the plan review will typically be completed by a MS4, SWCD, or IDEM. The timeline to complete a plan review is 28-days for plans submitted to IDEM and for MS4s is based on the local ordinance or the requirements in HB 1266. If the plan review timeline is exceeded the NOI may be submitted to IDEM. The NOI requires verification of plan review or documentation that the plan was delivered but not reviewed within the established timeline.

Comment: HB 1266 was passed in 2019 and has different language than this for review timeframe. The language from the bill needs to be used here. (EC)

Comment: The wording in the CGP draft also contradicts the timeframe in HB 1266 for review. (CH)

Comment: How does this section of the proposed permit comply with the requirements passed into law through House Bill 1266 in 2019, requiring the reviewing agency too respond within 10 business days? This will create confusion and require permittees to have to wait an extra two weeks before they can submit a NOI while the reviewing agency is out of compliance with Indiana Code. (COG)

Response:

IDEM has modified (underlined text) the CSGP, 4.3 (e) to read:

(e) When the project site representative does not receive notification <u>of plan review verification</u> within:

(1) <u>The review period as established by the MS4 a NOI may be submitted to IDEM provided documentation of the delivery date of the plan is included with the NOI submittal.</u>

(2) Twenty-eight (28) days after the plan is received by the department or a SWCD reviewing on behalf of the department, a NOI may be submitted <u>to IDEM</u>, provided documentation of the delivery date of the plan is included with the NOI submittal.

4.4 Plan Modification

Comment: It is very common for contractors to enter and leave a large project site as various construction phases take place. The commenter feels that a change in contractors does not justify a SWP3 modification as it is standard practice that new contractors entering construction projects receive SWP3 training as applicable. The commenter believes that the records of training new contractors should be sufficient SWP3 documentation to indicate the presence of new contractors, without modifying the SWP3. Therefore, the commenter recommends this section be removed from the final version of the permit or placed in Section 3.7. (AEP)

Response:

This item has been removed form the CSGP.

Comment: Section 4.4(a)(1) requires plan modification when "new individuals or entities" become active in construction activities on the project site. However, these terms and the requisite level of involvement that would trigger the need to update the plan are not defined. Accordingly, it is unclear if this requirement would apply any time the contractor brings a new employee or subcontractor on site or whether it is limited to certain key individuals/entities involved in the project. The commenter seeks clarification. (FW)

Response:

This item has been removed form the CSGP.

Comment: [Section 4.4(a)(3)] references a "stormwater assessment performance plan". The term "stormwater assessment performance plan is not used or defined in the Draft CGP. Please clarify what it is and how it applies. (Lennar)

Response:

This was an error in the draft permit and the item has been changed to self-monitoring program.

5.1 NOI Requirement

Comment: The commenter recommends giving the details of 40 CFR 122.22 instead of a reference, as this will help future permittees who don't have sophisticated knowledge of regulatory language to make sure correct steps are being followed to submit an NOI. (Moretz)

Response:

This reference to code can be looked up by the applicant to determine the correct signatory. It will be placed in guidance and/or the IDEM website to clarify.

5.2 NOI Content

Comment: [Section] 5.2(6)(H)(1) states that the latitude & longitude should be at the proposed entrance to the project for non-linear sites. It appears 4.1(a)(3)(C)(1) here should also say project entrance rather than the approximate center of the site. (EW)

Comment: Section 5.2 (6)(H)(1) requires that the NOI include the latitude and longitude of the proposed entrance to the project site. For consistency and to avoid any confusion on how navigate to the development, it is suggested that both the NOI and SWP3 document the latitude and longitude of the project entrance only. (Lennar)

Response:

The permit has been modified in both the Construction Plan content and Notice of Intent Sections to the entrance of the proejct or the beginning of the proejct for linear projects.

Comment: Total acreage claimed in the NOI must be consistent with the acreage identified in the construction/stormwater pollution prevention plan. Upon the addition of new sections, will the CGP require a complete resubmittal of the NOI, or will separate sections (within the same site) maintain their eligibility for independent NOIs? (EW)

Response:

This item has been updated (underlined text) to read:

(A) The total acreage of the project site. <u>This does not include future sections and/or phases that will be developed.</u>

(B) The number of acres to be involved in the construction activities and disturbed. The disturbed acreage claimed in the NOI must be consistent with the acreage identified in the construction/stormwater pollution prevention plan. <u>Permit coverage is only associated with the disturbed acreage and those areas where appropriate storm-water management measures are identified in the SWP3</u>.

As new Sections are added to a proejct, a new Notice of Intent will be required as will a plan review that covers the additional areas.

Comment: The commenter requests an explanation on why the information referenced in Sections 5.2(a)(8)-(9) is needed for the NOI. (FW)

Response:

Although we have developed the permit with specific requirements that do not have a two-tier approach for a project that is associated with a TMDL or a 303(d) listed water, we are still required to collect this data to understand the potential impacts the project may have if violations occur. U.S. EPA also required this data to be collected.

Comment: These requirements are very broad in nature and do not clearly define the waters that should be listed in the NOI. The Draft CGP should provide clarity with regards to the location of the TMDL or 303(d) listed water in relation to the location of the development. For example, "Identify discharges from the development that discharge directly to a receiving water with an established TMDL or is listed on the most current U.S. EPA 303(d) list." (Lennar)

Response:

This item will be clarified when the NOI forms and the Regulatory ePortal are updated. In addition, guidance will be developed to further clarify this item.

Comment: What constitutes a "significant" change in the context of this draft permit condition is unclear. Consistent with NOI Amendment requirements outlined in Section 5.5, the commenter recommends that changes are considered "significant" when the original boundaries of the project are expanded at one acre or above. (AEP)

Response:

This has been clarified in the draft CSGP to read:

1) The original boundaries of the project are not being expanded by one (1) acre or more. Expansion beyond one (1) acre or more at the time of renewal will require new permit coverage for the proejct expansion. ~~No significant changes have been made to the layout, footprint, design elements, drainage system, or scope of the plan.~~

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Comment: The commenter suggests that the required certification statement be built into the final NOI form for consistency among permittees. (AEP)

Comment: Will IDEM be providing the written certification form, or language in the NOI? (COC)

Response:

As part of the process to issue the new permit, IDEM will update the form and the online system (Regulatory ePortal) to include the certification statements.

Comment: The Draft CGP's Notice of Intent (NOi) requirements are set forth in Section 5.0. Section 5.2 sets forth a lengthy list of NOi requirements, including that the permittee certify that a stormwater pollution prevention plan (SWP3) "complies with the requirements in Section 3.0" of the permit. Draft CGP Section 3.0 has some unique and different mandates than the existing Rule 5 permit by rule, including, for example, a mandate to preserve a minimum of a 50 foot natural buffer if one existed prior to the project. There are alternative ways of protecting water quality, including many practices that already are contained in existing SWP3sunder the current permit. Absent an exemption, arguably SIBA members would have to alter existing SWP3s with significant economic impacts within the 90-day time period for applying for the new CGP once finalized.

It appears that the Agency has attempted to address these buffering and grandfathering issues,but SIBA is not convinced that the Draft CGP and related Fact Sheet provide a level of reassurance and specificity that SIBA members would require to protect against citizen suits or other federal, state, or local enforcement. In the Draft CGP, it appears that IDEM contemplates a single NOi process in Section 5.1 and 5.2. In Section 5.3, IDEM appears to introduce an alternative NOi process - an "NOi Continuation of Coverage" for projects already approved and operating under the existing permit by rule. That language implies that existing projects preserve their current authorizations through the entire existing permit term for each project (potentially up to 5 years for recently approved permits). However, it also asserts that permittees will "operate under the new general permit including all applicable performance requirements." That language could be read to imply, for example, the 50 footbuffer mandate must be implemented immediately, but such a result is not consistent with this possibleNOi alternative that IDEM appears to be proposing. Basically, IDEM's Proposed CGP is confusing. (IBA, SIBA)

Response:

The requirements for Notice of Intent includes information that was required by 327 IAC 15-5, but also several items that are pat of the U.S. EPA CGP and others that IDEM believes will assist in verifying the proejct information (i.e., reduced plat/proejct site map).

Initially, IDEM submitted the draft CSGP to U.S. EPA without the buffer requirement, however U.S. EPA required IDEM to insert language for this federal requirement.

Originally, the draft permit did not specify the performance-based requirements in Section 3.0 that would be required for existing projects to transition into the new CSGP. Based on comments, IDEM has listed the specific performance-based requirements that must be implemented upon submitting a "Amendment - Continuation of Coverage". These items are listed in Section 5.3 (b)(2).

The CSGP also clarifies that the plan is not required to be updated, but that specific procedural requirements may need to be updated to implement the requirements in the CSGP.

5.3 Deadlines for NOI Submittal

Comment: The "applicable performance requirements" are unclear. This suggests that a contractor will be required to modify the SWP3 to include (for example) stream buffers, which is impractical if the project design has already been approved by local authorities and is being constructed. (AGCI)

Response:

Originally, the draft permit did not specify the performance-based requirements in Section 3.0 that would be required for existing projects to transition into the new CSGP. Based on comments, IDEM has listed the specific performance-based requirements that must be implemented upon submitting a "Continuation of Coverage". These items are listed in Section 5.3 (b)(2).

The CSGP also clarifies that the plan is not required to be updated, but that specific procedural requirements may need to be updated to implement the requirements in the CSGP.

Comment: 5.3(b)(2) Transitioning from the current Rule 5 permit conditions to the new permit conditions of the Draft CGP are not clear. Additionally, changing from the current permit conditions to the new conditions in the Draft CGP for projects that are close to starting and existing projects "Overnight" is not feasible.

Current projects should not be required to comply with new permit conditions that require a change in project design or engineering and subsequent plan check and approval for items such as post construction SWPPPs, green infrastructure, buffers and so on. Current plans would need to be resubmitted for modifications to the local jurisdictions, the current SWP3s will need to be amended, SWP3s for new developments that are close to starting will need to be redeveloped, and those with SWP3 responsibility such as SWP3 developers, BMP inspectors and day-to-day SWP3 practitioners will need to be trained in the requirements of the new CGP. This will be a major statewide undertaking that will affect every permittee and significantly strain a limited amount of resources.

It is suggested that existing projects and projects that have already been submitted for plan approval with the local jurisdictions be allowed to operate under current Rule 5 permit conditions until their respective expiration dates.

If IDEM does not allow coverage for existing developments permitted under the Rule 5 General Permit to remain in effect until the end of its respective five-year term, the CGP should allow a "Ramp-Up" period to transition to the terms of the new CGP. It is suggested that a grace period of 18 months be included in the CGP before the new Draft CGP conditions go into effect for existing permitted projects and projects close to starting work. (Lennar)

Response:

IDEM must place all proejct under the new CSGP but has modified the permit to clarify what requirements will apply. It is not an option to allow for active projects to continue to operate under 327 IAC 15-5.

Originally, the draft permit did not specify the performance-based requirements in

Section 3.0 that would be required for existing projects to transition into the new CSGP. Based on comments, IDEM has listed the specific performance-based requirements that must be implemented upon submitting a "Continuation of Coverage". These items are listed in Section 5.3 (b)(2).

The CSGP also clarifies that the plan is not required to be updated, but that specific procedural requirements may need to be updated to implement the requirements in the CSGP.

IDEM has also added a 30-day timeline for a permittee applying for Continuation of Coverage to update procedures that are required by the CSGP.

Comment: Section 5.3(b)(2) on deadlines for a Notice of Intent submittal should be removed. Pulte Group has over 50 active permits and cannot possibly re-design a SWP3 in accordance with BMP standards that are not available for review, seek local approval, renegotiate subcontracts and implement a previously authorized project in compliance with the new draft CGP within 90 days. See our first comment on SWP3s. (Pulte)

Response:

The CSGP now clarifies that the plan is not required to be updated, but that specific procedural requirements may need to be updated to implement the requirements in the CSGP.

With regard to local approval, MS4 ordinances will likely not be updated when the CSGP goes into effect. The BMP standards mentioned in the comment will not be required. Originally, the draft permit did not specify the performance-based requirements in Section 3.0 that would be required for existing projects to transition into the new CSGP. Based on comments, IDEM has listed the specific performance-based requirements that must be implemented upon submitting a "Continuation of Coverage". These items are listed in Section 5.3 (b)(2).

If IDEM removes Section 5.3 (b)(2), the option for Continuation of Coverage, a new NOI would be required. A new NOI would require the plans, proof of publication and a fee. The Continuation of Coverage only requires the NOI. IDEM did pursue eliminating the NOI requirement, but U.S. EPA requires IDEM to obtain a NOI from all active permittees.

Comment: To initiate permit coverage under the CGP for an existing, permitted project, only a new completed NOI form should be required. (INAFSM)

Response:

The use of the option of an Amendment-Continuation of Coverage allows existing permit holders to submit basic information to meet the U.S. EPA requirements. This is also a method to differentiate between new submittals that will be received at the same time the Amendment-Continuation of Coverage applications are received. In addition, a new NOI would require all requirements contained in the CSGP to apply to all projects.

During this transition, if IDEM chose to have all NOIs to be submitted as new IDEM would be required to have a new proof of publication, fee, and plan submittal. The project would also be assigned a new permit number. IDEM believes this is a burden on the regulated community and will cause confusion.

5.4 NOI Renewal

Comment: The commenter disagrees with the change in permit end date of five years from the permit issuance. The current end date is very business friendly and is set based on the project start date, a very logical basis. The proposed change to a uniform end date is not business friendly and is not related to the project start date. This is not a logical basis for the permit end date. I request that the end date remain as five years from the date of issuance. (DH)

Response:

The CSGP option of an Amendment-Continuation of Coverage allows existing permit holders to submit basic information to meet the U.S. EPA requirements. This is also a method to differentiate between new submittals that will be received at the same time the Amendment-Continuation of Coverage applications are received. The implementation of the option of continuation of coverage addresses the comments concern as this process will not change the effective dates already established or the permit number. If a new NOI is required all requirements contained in the CSGP to apply and new effective dates would be established for all projects based on the date of the CSGP.

5.5 NOI Amendments

Commenter: The commenter agrees that current personnel information should be available; however, the commenter does not believe a change in personnel should require an amendment, but rather a notification to IDEM. Additionally, the commenter requests clarification on which project personnel must be identified in a Notice of Intent, and request that a change in project personnel may be updated in IDEM's ePortal. (AEP)

Response:

The language in the draft CSGP states that an amendment is required when proejct personnel change that are listed in the NOI. This would include the permittee's name (not the company name) and a proejct contact. The plan preparer and plan reviewer information would not require updates.

Commenter: A new NOI should not be required when a project is expanded by one acre or more. The current U.S. EPA general permit does not contain that requirement. This restriction is unnecessary and does not reduce soil erosion or improve water quality. It should be deleted. (AGCI)

Response:

This has always been IDEMs approach with the implementation of 327 IAC 15-5. Although this may not be in the U.S. EPA CGP, it has historically been used by IDEM to differentiate between minor alterations to a proejct and those projects that continue to add disturbed acreage of one acre or more. The basis for obtaining permit coverage is the one-acre threshold, therefor expansions of this acreage would require permit coverage. The filing of a new NOI is not an unreasonable but is consistent with the acreage threshold.

IDEM will not modify this requirement to ensure a site has NPDES permit coverage and does not continually expand as acres are added to the project site.

Commenter: The commenter also notes that Section 5.5(a)(4) appears to convey some of the same information as Section 5.5(a)(3). To avoid redundancy, the commenter suggests editing Section 5.5(a)(3) and removal of Section 5.5(a)(4). (AEP)

Response:

The two items are different as item (3) is related to the overall expansion of acreage and item (4) is related to expansions related to land disturbance.

5.7 NOI Review

Comment: This section states that if a NOI is determined to be deficient, land disturbance may not commence. It is unclear, however, how this will be enforced if the permit authority (e.g., the MS4 entity) is not notified of the deficiency. The City recommends adding language stating that IDEM will notify the permit authority if the NOI is determined to be deficient. (FW)

Response:

IDEM reviews NOIs for content and all required documents. Many of the deficiencies that are identified are minor and often resolved by IDEM through communication with the applicant and/or their representative. In most situations the deficiency may not be identified until the 48 hours has elapsed and the proejct may have already started. One of the more critical items that is tied directly to the responsibility of a MS4 is the plan review. If a plan review is missing and is the reason for the deficiency IDEM will contact the MS4.

Comment: We recommend further clarification on the statement "land disturbance may not commence". When the NOI is submitted, construction can begin in 48 hours even without the NOS from IDEM. If the NOI is under review and resubmitted, will construction be able to commence after the 48 hour period? (Moretz)

Comment: The last sentence in this section says if the NOI was found to be deficient then land disturbance may not commence, however, if 48-hours have passed then it is possible land disturbance and discharges have already begun. Thus, this sentence needs to be modified: "Upon notification that a NOI is deficient, land disturbance may not commence or must cease until the NOI is found to be sufficient." (COG)

Response:

The permittee would be able to begin their proejct 48 hours after submittal of the Notice of Intent (NOI). The NOI is a certification by the permittee that all requirements have been met. However, if the NOI is not reviewed by IDEM within the 48 hours, this should not delay the project starting. If the permittee is notified of a deficient NOI prior to commencing land disturbance this would be a violation. IDEM considered modifying the 48 hours (currently in 327 IAC 15-5) and allowing a review time for the NOI, however the decision was made to address this issue as we have in the past and not add additional review time to each NOI that is submitted to IDEM.

The suggestion to add that land disturbance must cease was not added to the CSGP as it implies that this is a stop work order. If the NOI is deficient IDEMs rationale is that the paperwork can be often corrected and have little to no bearing on activities at the proejct site. Deficiencies will often contain language that directs the permittee to place emphasis on erosion and sediment control. If a critical part of the NOI, such as a construction/SWP3 has not been reviewed, IDEM or the MS4 does have an option to initiate compliance.

6.2 NOT Content

Comment: The commenter believes it would be helpful if IDEM can provide an updated NOT form that contains these new requirements. (FW)

Response:

IDEM will update all applicable forms and the ePortal to reflect changes in the CSGP.

Comment: The inclusion of the phrase "will be eligible" does not make sense as Section 6.1 states the request for termination is to be submitted when permittable activities have ceased. Keeping this phrase in the final general permit will only lead to confusion.

Recommended Revision: "Date the site was eligible for termination." (COG)

Comment: There are cases where the exact date the project site is/will be eligible for termination is not known. The commenter requests the language be revised to state:

"Date **or estimated date** the site will be eligible or was eligible for termination." (AEP)

Response:

IDEM has revised the language to read: "Date the site was eligible for termination" A termination should not be submitted until the proejct meets the termination requirements and not in advance.

6.3 NOT Conditions

Comment: Please explain the use of the word "may" [in Section 6.3(c)]. (COC)
Response:
6.3 (c) is related to the functionality of post-construction measures and that they are maintained. "May" is used in this Section as there are several options listed that include permit coverage and/or a compliance plan when water quality standards are violated. This option will primarily apply to those projects where IDEM has regulatory authority. MS4s operating under the MS4GP are required to implement the post-construction minimum control measure which includes long term maintenance of post-construction measures.

6.4 Deadlines for NOT Submittal

Comment: The commenter seeks clarification on what is meant by Section 6.4(b)(2)(G) since many sites will have the potential to cause harm or threaten infrastructure integrity, adjacent properties, or water quality under the right circumstances. The commenter also seeks clarification on who is responsible for making this determination. (FW)
Response:
This option is currently in 327 IAC 15-5. The NOT Early Release is a certification to IDEM that the proejct is eligible for termination based on the criteria in 6.4 (b)(2)(G). If a proejct meets the criteria listed, but there is a concern that the remaining activities have the potential to cause harm or threaten infrastructure integrity, adjacent properties, or water quality the site would not be eligible for early release. Many MS4s require in their local ordinance that they first sign off on a project before the NOT is submitted. If a NOT is submitted in error and IDEM accepts it, the project may be in violation of the IDEM CSGP and/or the local ordinance. The MS4/IDEM may take enforcement action and IDEM may return the project to permit coverage.

In the new CSGP Idem has modified the language that will require a permittee operating within a MS4 to obtain verification that the project is eligible. IDEM has had concerns raised by MS4s that a proejct has been terminated and had not authorized the termination.

Comment: The commenter requests additional information regarding the scope and legal authority for the civil penalties that may be assessed if the permittee is determined to not be eligible for termination. (FW)
Response:
IDEM has a matrix to determine the level of noncompliance and civil penalties. Submitting a NOT when ineligible can be addressed through an enforcement action or by returning the proejct to permit coverage. A MS4 should evaluate their options under local policies and/or the local ordinance.

Comment: The term "each" used in [Section 6.4(b)(2)] implies that all sites will have all the conditions referenced in the sentence. Construction sites vary greatly and as such, all of the conditions that this item references will not apply to every project. This sentence should be changed to read:

…when ~~each of the following~~ **the applicable conditions below** are met. (Lennar)

Response:

IDEM chose to leave the language as is. The items listed specify those that are applicable to project types.

Comment: Thirty days' advance notice of a sale is too long, for two reasons. First, thirty days' notice for an existing project should not be necessary, in view of the notice required for an NOI submittal for a new project, which is only forty-eight hours. (See Section 5.3 of the draft Permit). Second, a significant number of sale transactions take less than thirty days, so a thirty day notice requirement would unnecessarily slow those transactions. In addition, this provision should not apply when the permitted acreage is reduced to remove those areas on which construction activities have ceased and have that been permanently stabilized.

In place of Section 6.4(b)(3)(A-E), IDEM should adopt a less formal Notice of Change of Information (COI) process, which is used by surrounding states, that can be submitted to notify IDEM of any significant changes to a project, such as the area covered. Under this process, the new owner must submit an NOI prior to acquiring the site. The original permittee must amend the SWP3 and submit a COI after the transfer (*e.g.*, within 7 days) to show that the transferred portion is no longer covered under the original permittee's NOI. (AGCI)

Response:

IDEM has modified the permit and removed the 30-day requirement. The language also acknowledges the use of an amendment or termination based on the sale of the property.

Comment: Section 6.4(b)(3) on change of ownership unnecessarily complicates the reduction in permitted acreage when portions of a site have been sold or transferred to a different entity. The draft language does not account for reduction in permitted acreage when a permittee has permanently stabilized portions of a site. Upon achieving "permanent stabilization" and cessation of "construction activities" (as defined by U.S. EPA), stormwater runoff as related to the conditions of draft CGP are no longer applicable.

A notice to IDEM thirty (30) days in advance of a transfer or sale is not consistent with the pace at which real-estate transactions occur in the development industry, nor is a 30 day review consistent with the initial 48-hour lead time with NOI submittals in Section 5.3 of the draft CGP. Furthermore, if a permit has already been issued for land associated with a sale or transfer of ownership, the necessary project reviews, site engineering and public notices associated with the permitted construction activities have already occurred.

Limiting the expansion of an existing permit to less than one (1) acre, per Section 5.5 of the draft CGP, imposes unnecessary restrictions on the permittee, is not consistent with the Federal CGP or similar State run Stormwater NPDES permit programs, and does not promote the protection of water quality.

The language provided below reflects permit guidance consistent with the Illinois CGP, Ohio CGP and Missouri Site Operating Permit MORA00000. IDEM should incorporate an optional NOI Change of Information (COI) process in the draft CGP. IDEM should replace and modify Sections 5.5 (a)(3-4), Section 6.4(b)(3)(A-E), Section 6.6(b)(3)(A), and Appendix A (a) of the draft CGP with the following text as noted below:

1. A NOI Change of Information (COI) shall be submitted to IDEM for any substantial modifications to the project such as: address changes, new contractors, area coverage (including transfer, sale, and permanent stabilization of individual residential lots), additional discharges to Waters of the United States, or other substantial modifications.
2. If the permittee sells or transfers any portion of the permitted site to an entity (excluding a homeowner), this land remains a part of the common sale and the new owner must obtain a permit prior to conducting any land disturbing activities. Therefore, the original permittee must amend the SWP3 and submit a COI to IDEM after the sale or transfer to show that the property has been sold and therefore no longer under the original permit jurisdiction. It is the sole responsibility of the new owner to obtain coverage under the draft CGP and maintain the appropriate BMPs necessary to protect water quality.
3. The new owner must submit a NOI as part of taking ownership of the acquired land. In scenarios where land was previously covered by an existing stormwater permit and the construction activities have been previously advertised under a public notice. (Pulte)

Response:

With regard to the reduction of permitted acreage as areas are stabilized, IDEM will not modify the NOI upon areas being stabilized or occupied. IDEM has reduced the inspection for these areas to monthly. If homes are built and occupied, self-monitoring of those lots may be suspended as there would be no active construction or future construction.

IDEM has modified the permit and removed the 30-day requirement. The language also acknowledges the use of an amendment or termination based on the sale of the property.

The commenter also requested and explanation why the expansion of a proejct is limited to less than one acre. This has always been IDEMs approach with the

implementation of 327 IAC 15-5. Although this may not be in the U.S. EPA CGP, it has historically been used by IDEM to differentiate between minor alterations to a proejct and those projects that continue to add disturbed acreage of one acre or more. The basis for obtaining permit coverage is the one-acre threshold, therefor expansions of this acreage would require permit coverage. The filing of a new NOI is not an unreasonable but is consistent with the acreage threshold.

IDEM will not modify this requirement to ensure a site has NPDES permit coverage and does not continually expand as acres are added to the project site.

7.2 Planned Changes in Project or Discharge

Comment: Section 7.2 states that, "The permittee must give notice to IDEM no later than thirty (30) days prior to the initiation of any physical alterations or additions to the permitted facility that may" have one of the results listed in Section 7.2(a)-(d). Similarly, Section 7.3 specifies instances in which prompt notification is required from a permittee to IDEM. The commenter requests clarification in the final permit on how, and to whom, these notifications should be provided. (AEP)

Response:

Notifications to meet Section 7.2 should be made to the IDEM Stormwater Program.

7.3 Other Information

Comment: The commenter believes language should be added to [Section 7.3] to require the permittee to notify the inspecting authority in addition to IDEM. This applies in cases where the MS4 entity is responsible for ensuring compliance with the construction stormwater general permit requirements. (FW)

Response:

The Notice of Intent is IDEM's application of permit coverage under the NPDES Program. If the proejct is regulated by a MS4, the MS4 should provide guidance or specific requirements into the ordinance where notifications are required. When a regulated entity modifies their coverage, the amended NOI should also be provided to the MS4.

7.4 Effect of Non-Compliance

Comment: Section 7.4 on the effect of noncompliance states all discharges must be consistent with the terms and conditions of this general permit. Any noncompliance constitutes a violation of applicable State and Federal laws, the Clean Water Act and IC 13 and is grounds for enforcement action, termination of coverage under the permit, requirement of an individual permit, and/or denial of permit coverage renewal.

When IDEM or the U.S. EPA determines that the performance standards contained in Section 3.0 of this general permit are not being met consistently, or that the discharge is causing or contributing to an excursion above any applicable water quality standard, the permittee may be notified by the commissioner in writing that an individual permit application is necessary.

The draft permit does not clearly define a "violation" or "discharge". For example, action items noted in an inspection report (that have not exceeded 7 days of discovery) such as silt fence repairs, inlet protection maintenance and erosion repairs that do not directly result in a discharge of sediment or other pollutants to a Waters of the United States or to a MS4 should not be considered a "violation" of the state general permit as this infrastructure remains the property of the permittee as part of the permittee's storm water management system.

It is understood that action items documented on an inspection report that directly contribute to a discharge of sediment or pollutants to a Waters of the United States shall be punishable contributing factors of the violation. Furthermore, it is understood that action items that are documented on an inspection report must be resolved per Section 3.6(a)(2)(G).

IDEM should clearly define a "violation" or "discharge" in Appendix B as an instance when sediment or other pollutants have discharged beyond the limits of a permitted construction activity into a Waters of the United States or MS4. IDEM should include text that action items noted in an inspection report (that have not exceeded 7 days of discovery) such as silt fence repairs, inlet protection maintenance and erosion repairs, that do not directly result in a discharge of sediment or other pollutants to a Waters of the United States or MS4, are permissible under the draft general permit and not punishable by a local jurisdiction.

The design phase is a critical phase for every one of our projects. Multiple meetings and plan reviews provide the opportunity to discuss standards, codes and ways to document requirements in plans. The INSWQM is an integral component as it sets the standard often referenced by municipal entities and it also describes the intent behind a best management practice. It is imperative that IDEM complete the revisions for the INSWQM, and our industry can provide meaningful input on the proposed and modified standards. (Pulte)

Response:

The basis of the CSGP is related to the discharge of pollutants, principally sediment from the proejct site. Projects are also evaluated based on the performance standards in Section 3.0. Failure to implement or meet one or more of the performance standards is considered a violation, but if the discharge of a pollutant is not associated with a discharge or a high potential to discharge, the level of severity of the violation and corrective action would be considered.

Measures have been developed for the ISWQM that are related to changes in the CSGP. IDEM does reference the ISWQM as a resource but does accept similar technical documents as viable resources.

7.5 Reporting Spills and Noncompliance

Comment: The commenter, as an MS4 entity, believes that a project site owner or contractor should also be required to notify the MS4 entity of the spill. The commenter recommends clarifying that the "permittee" in this case refers to the project site owner and that, in addition to reporting to IDEM, the project site owner must report to the MS4 entity that has jurisdiction over the project, if any. However, the commenter also believes it is important to note that the MS4 entity is not responsible for project site owner's non-compliance. (FW)

Response:

This is standard NPDES language, and an issue was discussed at the advisory work group meetings. IDEM will leave the language as written in the CSGP. IDEM does acknowledged that the induvial or entity that is operating under the CSGP and has filed a NOI with IDEM is the permittee and the responsible party. Failure to report an incident is the responsibility of IDEM to resolve through compliance and/or enforcement.

Appendix A: Clarification of land-disturbing activities and the applicability to obtain permit coverage

Comment: The commenter believes that what is said in Appendix A is that any residential subdivision of an acre or more must have an official, clearly marked, lined washout pit/area regardless of whether one person owns all of the lots or if the lots are sold off to separate owners in parcels of less than 1 acre. The commenter always thought that the intent was for a residential subdivision to have a "sacrificial lot" that was to be used as the concrete/cementitious washout/construction debris area for the entire subdivision and it would stay that way until all the other lots were developed, at which time that lot could then be developed. The commenter does not see much of that in northwest Indiana. Chute buckets and washout bags are of some benefit. They have their place and are great for pouring concrete in established subdivisions and urban areas. They do, however, have their shortcomings. Chute wash bucket system pumps often become plugged and inoperable. Washout bags are small, overflow and can easily be drained onto the soil. More importantly, neither the chute wash bucket, nor the washout bag addresses the washing of contractor tools and equipment. Official washout areas are the best answer wherever, whenever they can be used. The commenter hopes that they have interpreted the language in this section correctly. If they have interpreted this section correctly, they then hope that there are not exceptions that would allow something less than a full-fledged, official washout area. (MC)

Response:

The intent is that washout areas are to be provided where concrete work is associated with a proejct site. The CSGP in Section 3.0 states "Concrete or cementitious washout areas, where washout is permissible, must be identified for the site and the locations clearly posted. If a proejct site owner does not allow washout on the proejct site other alternatives may need to be pursued. For example, a builder may need to provide their own washout system on his/her individual lots.

Comment: Appendix A, item (a)(1) is confusing and contradicts Stormwater NPDES stormwater permitting requirements for land disturbances as defined in Section 2.1 and the 2017 federal Construction General Permit. Item (a)(1) applies to *"an individual residential lot"* in the first sentence and then to "*a lot or multiple lots within a project site*" in the next sentence. Does this item apply only to one lot or does it apply to multiple lots within a larger project? Appendix A Item (a)(1) also states a NOI for the individual lot is not be needed unless conditions in (A), (B), or (C) are initiated. The Draft CGP or fact sheet do not explain the rational for waiving NPDES stormwater discharge permit coverage for a parcel or parcels smaller than one acre in a larger common plan development. Additionally, in many cases, sales of developed lots are made after the authorization to discharge is issued. What is the mechanism or timing elements for IDEM to evaluate and require filing an NOI in accordance with items (A) (B) or (C)? Section (a) (1) requires the individual residential lot to comply with the SWP3 for the overall project. There are several liability items associated with this requirement. If the individual residential lot developer is not in compliance with the original SWP3, who will be liable for SWP3 related permit violations, the operator who filed the NOI or the individual developer? The overall SWP3 is the work product and property of the overall project developer and not the individual lot builder and may not address how the individual lot builder addresses permit conditions. State CGPs often encourage all entities with separate NOIs in one development to work under a common or shared SWP3 but that should be up to the entities due to the different ways operators approach stormwater compliance and liability concerns. It is suggested that the individual lot builders develop their own SWP3 or use a simplified template developed by the state that would incorporate stormwater related BMPs and other items that will need to be implemented on their lots from the plans approved by the local jurisdiction. There are also issues that need clarification in relation to waiving permit coverage for individual lots, or perhaps multiple lots, within a larger common plan development or sale as suggested in Amendment A (a)(1). How will IDEM be able to enforce the CGP if an entity has not filed a NOI for permit coverage? The overall lot developer that submitted the NOI and has permit coverage does not have control over the actions of the individual lot owner(s) and should not be liable for actions of other landowners. It is suggested that individual lot builders purchasing lots within a larger common plan development or sale obtain permit coverage. IDEM should consider developing a streamlined permitting process for such cases and implementing a small project SWP3 template that incorporates the items included in the draft CGP for individual lots purchased from a multi lot developer. Regardless, the individual lot purchasers should be responsible for their own permit compliance and SWP3. (Lennar)

Response:

327 IAC 15-5 currently allows the option to operate under the original developer and IDEM currently has the authority to take compliance/enforcement action against a builder that is in violation. IDEM initially proposed to continue to utilize this process in the draft CSGP for which this comment was made. In discussions with U.S. EPA during the first review process this approach was agreed to by U.S. EPA. Many of the larger builders, especially those that operate at a national level obtain permit coverage for the lots they develop within a larger permitted site.

Taking into consideration the comment above, IDEM has proposed and incorporated into the CSGP a process that will require a builder operating within a larger site to develop a SWP3 specific to their building activities. Due to uniformity and size of most lots, the plan may be developed to cover multiple lots within a development. In lieu of

filing a NOI, the builder may choose to complete a Construction Stormwater Residential Development Registration form that must be kept on site. This process has been added to Appendix A. In addition, the draft CSGP already included a provision that IDEM may require a builder of one or more lots to obtain permit coverage based on violations.

Comment: Appendix A (1), (2) and (4). An individual residential lot within a multi-lot project site with permit coverage is required to comply with the stormwater pollution prevention plan. The commenter agrees that lots within a multi-lot project are required to comply with the SWP3. (IRMCA)

Response:

Based on other comments, IDEM has added a requirement that individual residential lot(s) must have their own SWP3.

Comment: The commenter recognizes the requirement for off-site construction activities to obtain coverage; however, it is the responsibility of the off-site project owner/operator to obtain such coverage. (AEP)

Response:

This comment appears to be focused on Appendix A (3). To clarify this comment and the intent of the GSGP, if a local unit of government requires a developer to build an access road to a proejct site, the developer may incorporate this activity into the construction plans and the NOI. Alternatively, if a local unit of government builds the access road, the local unit of government would obtain permit coverage for the road, provided the disturbed acreage was one (1) acre or more.

Comment: Does [Appendix(a)(4)] require that each lot have an erosion and sediment control plan and/or specifications in addition to a storm water pollution prevention plan for the entire development. (COC)

Response:

This item is related to Residential Strip Developments and has been clarified. It now differentiates between an individual selling lots and the individual building on those lots. A SWP3 is now required.

Comment: Please provide additional guidance and examples on [Appendix A (a)(5)(D) and (E)] and when a permit would or would not be required. For example, if soil is taken by a contractor from a project site and piled on farmland, which will then be spread out by the farmer to fill in a low area, would this activity need to be identified in the project's SWP3 as a disposal location and the farmer file for permit coverage if an acre or more of land is disturbed? Or would the contractor not have to include it in the project management log and the farmer not have to apply for permit coverage because the low area being filled in is going to be actively farmed during the next growing season? These two sections are a bit vague. (COG)

Response:

In the example above the farmer would be required to obtain permit coverage, unless it is determined that the activity would be considered a normal farming practice (i.e., agricultural land leveling). The area would not be required to be included in the Construction/SWP3, but the site should be listed in the Proejct Management Log. This will establish a location where the fill materials are being transported.

Comment: The term "construction site run-off general permit" is not used in the draft or defined in the draft. Please define what this document is and how it applies to the Draft CGP. (Lennar)

Response:

This is the former name of 327 IAC 15-5 and was not addressed during updates to this permit. This has been changed in the CSGP.

Comment: What is the definition of an "off-road recreational commercial operation"? (COC)

Response:

This definition has been added to the CSGP. It means "an operation or facility that is designed for vehicular recreational use.

Appendix B: Definitions

Comment: The commenter believes that knowledge gained through years of experience is sufficiently valued and qualifies an individual to conduct inspections, sign the SWP3, etc. As such, the commenter recommends the definition be revised to:

"an individual who is trained and experienced in the principles of stormwater management, including erosion and sediment control ~~as is demonstrated by completion of coursework, state registration, professional certification, or annual training that enable~~ **enabling** the individual to make judgements regarding stormwater management, treatment, and monitoring. **This may include completion of coursework, state registration, professional certification, annual training, or similar qualifications"**. (AEP)

Response:

IDEM will leave the definition as written in the CSGP. This definition is also consistent with language in HB 1266.

Comment: It is suggested that IDEM modify the definition of "Run-off" to remove the words "as surface water" as the term "surface water" is traditionally defined as an above ground body of water and not as water flowing across the ground. (Lennar)

Response:

Surface water has been removed from the definition.

Comment: This definition [at Appendix B (46)] is confusing and should be replaced. It is suggested that IDEM use the U.S. EPA definition of run-on which states: "Run-On - sources of stormwater that drain from land located upslope or upstream from the regulated site in question." (Lennar)

Response:

The definition has been modified.

Comment: Please clarify if silvicultural activities associated with or driven by other types of development or utility work is exempt and considered "site preparation." (MW)

Response:

Activities associated with development, utilities, etc. would not be exempt from permit coverage.

General Comments

Comment: Several of the proposed regulations in the proposed Permit are vague and susceptible to interpretation. Those interpretations can vary depending on the local community or IDEM inspector charged with enforcing the regulations. (AGCI)

Response:

The permit that was reviewed and for which IDEM has received comments has been modified in an attempt to clarify language. In addition, IDEM is developing guidance for implementation of the CSGP and will continue to update that guidance as new items are brought to our attention. Although MS4s administer their local program based on an ordinance, IDEM works closely with MS4 entities with a goal of consistency. This coordination is achieved through training, professional organizations, and MS4 program audits.

Comment: In addition to the foregoing substantive comments, the commenter noted several minor typographical and/or formatting errors:

1. In Section 3.3(a)(4) (page 10), the commenter believes the word "or" between Public and Private should be changed to "and",
2. In Section 3.6(a)(1) (page 15), the comma after the word "be" should be deleted;
3. In Section 3.7(a)(3)(B) (page 17), the word "days" should be added after the word "calendar";
4. Section 3.8 (page 18) starts with subsection (d). This should be changed to (a). Also in Section 3.8, at the top of page 20, there is a citation to Section 3.0 4(b)(1). The commenter believes this should be changed to 3.4(b)(I);
5. In Section 4.1, line 2, the word "the" should be deleted before the word "both." (FW)

Response:

These changes have been made.

Comment: When is the anticipated start date for this new general permit? (SW)

Response:

The draft CSGP must ben resent to U.S. EPA for concurrence. This is primarily due to changes that were made by the Advisory Group and IDEM's review of the comments received. IDEM is required to public notice the final permit and also plans to hold a public meeting. This timeline will dictate when the CSGP will be effective.

Comment: Will there a grace period of time in order to submit for continuation of existing projects? (SW)

Response:

Upon notification to submit a NOI, the current permittee must submit a Continuation of Coverage within 90 days.

Comment: Our clients that have campus work are inquiring about consolidating their existing construction projects under the new general permit – would that be an option? (SW)

Response:

With our new online Regulatory ePortal the best way to transition would be to keep all permits as they are now. Construction projects are typically short term and as each is completed, they may be terminated. Consolidating the permits would not allow termination until the proejct in its entirety is complete. Consolidation of multiple projects with permit coverage into one would also result in additional work for the applicant and IDEM, system (data base management internal to IDEM and dataflow to US EPA) issues and more confusion as IDEM plans to keep the same permit numbers and expiration dates for individual projects.

Comment: Please clarify if the recent Indiana House Bill (HB) 1266 – Sediment and Erosion Control is not being included or considerations to its implications on reduced review timelines and thresholds within the Construction General Permit in place of the 28-day limit. (MW)

Response:

IDEM has kept the 28-day review time for projects outside of MS4s. Several changes have been made within the CSGP in reference to different requirements within a MS4.

Comment: Can consideration be given to allow for monthly inspection frequency over weekly if a. construction has ceased and b. the entire project area is stabilized/frozen and posing no risk to off-site sedimentation if not meeting vegetative cover? This applies to sites where construction ceases late fall, the site is stabilized, but still needing to monitor until the next growing season when it can vegetate. This is similar to neighboring states and is more reasonably burdensome in terms of continuing inspections after construction completion. (MW)

Response:

IDEM did include monthly inspections, but this is only associated with areas that have been permanently stabilized. IDEM considered a reduction in frequency during winter months, but activities often continue and is not usually suspended for long periods.

Comment: Thank you for adding the word "cementitious". The commenter has always felt that by merely saying concrete washout or concrete wash water, that a big target has been put only on ready-mixed concrete mixer trucks. This has bothered me because it is the cementitious material in concrete that is the cause of high pH and silt. The commenter is well aware of cementitious wash water being generated by a lot more construction activities and various equipment and machinery than by merely concrete mixer trucks. Concrete mixer trucks were being targeted for where and how they washed down at the same time the contractor the commenter just poured for was washing his tools and boots off in the middle of the street and the curb machine that our competitor just poured for was rinsing off on the unpaved road. By adding "cementitious" and by the definitions on page 42, Appendix B (5) and (7), you have cleared this up and made it fair for all users/generators of "concrete washout" and "cementitious wash water". (MC)

Response:

IDEM appreciates the input and collaboration provided by the concrete industry.

Comment: INDOT is questioning the Post Construction BMP requirements within in the draft Construction General Permit. INDOT feels these permanent BMP measures could affect areas outside of INDOT's MS4 jurisdiction should be addressed in the MS4 permit. Some of these areas are considered rural and would not have drainage ditches or adequate storm sewer infrastructure to implement post construction without the purchase of large amount of land. In our opinion, many of these rural areas don't meet the intent of the post construction BMP. INDOT would prefer that post construction BMP requirements stay under the MS4 GP in that they could help target the most efficient methods for stormwater and environmental impacts that are using state and tax payer funds. (INDOT)

Response:

IDEM has made the decision to leave post-construction in the permit. If post-construction run-off is addressed, it must be achieved in the early planning stages and installed during construction and not after-the-fact. As a requirement of the INDOT MS4, options should be adopted, or initiatives pursued to identify post-construction measures that are applicable to highway construction.

Comment: The commenter would like to know if a MS4 can be more stringent that Rule 5. (CH)

Response:

Yes, a MS4 can be more stringent. A requirement under the MS4 permit is that each MS4 characterize resource issues within their community and develop a local stormwater program.

Comment: Requiring the use of better site design techniques within the context of the construction stormwater general permit, as opposed to within the context of a comprehensive approach to construction & post- construction storm water management, breaks the natural synergy between the use of these techniques and their ability to help satisfy the post-construction storm water management criteria that may apply to a development site. One of the benefits of the use of such practices, when they are applied within the context of a comprehensive approach to stormwater management, is that they are "self-crediting", in that they can help significantly reduce post-construction stormwater runoff rates, volumes, and pollutant loads. In the way that such requirements are presented in the permit, this natural benefit of the use of better site design techniques is not made obvious to the permittee. The commenter would recommend that the permit be revised to at least identify this built in benefit of the use of better site design techniques on a development site. (PC)

Response:

IDEM agrees that there are many other design elements that could be incorporated into a project. However, the items listed in Section 3.1 under General Requirements are specific to projects that must be met to be in compliance with the CSGP. Items (1) and (2) are the basic purpose of the CSGP for which each permittee should strive to achieve. Soil compaction reduction, topsoil preservation and buffer preservation are required by U.S. EPA and are focused on activities that should be planned and pursued during construction.

The items listed in your comments are more appropriate for options that would be available to meet the water quality/quantity requirements of post-construction; especially where a MS4 has jurisdiction. These items are addressed in 3.2 (a)(9). In addition, Chapter 4 of the ISWQM contains planning principles and design considerations. IDEM also recommends that plan designers utilize other design manuals that specifically target post-construction options such as low impact development and green infrastructure.

Comment: The commenter would recommend that IDEM provide additional guidance, such as a reporting form, on the documentation required to confirm that personnel associated with a development project have been informed of the terms and conditions of the permit. (PC)

Response:

IDEM will consider a form or at a minimum guidance on methods to achieve this requirement.

Comment: The revised Best Management Practices (BMPs) and anticipated new standards that guide designers and contractors, contained in the Indiana Stormwater Quality Manual (INSWQM) were not available for review and as a result, the commenter is requesting that all text pertaining to new design criteria, construction BMPs and their implementation be removed from the draft permit until industry representatives have had a chance to provide input. (Pulte)

Response:

One of the primary practices that has been included in the CSGP is the use of dewatering devices that withdraw water form the top of the water column (skimmers). The use of skimmers was required to be included in the CSGP by U.S. EPA. A practice has been developed for skimmers in addition to modifications for other types of outlet structures. The other practice, that is optional is the use of polymers. IDEM has worked with engineers and other industry representatives in development of these standards Both of these draft standards will be posted to the IDEM website. The remainder of the erosion and sediment control practices in the ISWQM have not been updated as they are applicable and significant changes were not required. It is important to emphasize that IDEM does allow the use of similar manual and guidance documents for the development of the SWP3.

Comment: For Stormwater Pollution Prevention Plan (SWP3) updates, the draft permit does not clearly state whether existing SWP3s are required to be updated in accordance with the new CGP. The draft public notice states IDEM is considering bringing existing projects under the new permit, requiring a Notice of Intent - Continuation of Coverage, and allowing the project to retain its current expiration date. This language and approach are appropriate and should be expanded to include SWP3s. Existing SWP3s, which have been approved by local entities, should remain valid until the original permit expiration date. (Pulte)

Response:

IDEM has modified the language that will allow the existing construction/SWP3 to be applicable and will not require updates to the SWP3 or a formal review of the SWP3. However, there are performance-based requirements that have been identified in the CSGP that will require updates to procedures.

Comment: A chief concern for the commenter is the "grandfathering" of existing Rule 5 permits. For the purposes of these comments, the commenter is focused primarily on the critically important issues associated with how homebuilders, with existing approved projects covered by the Rule 5, will be transitioned into IDEM's soon to be finalized CGP. That process must ensure that such sites with existing permit coverage avoid unnecessary and onerous burdens. Currently, the commenter does not believe that IDEM's draft CGP, FactSheet, or notice provide a clear and reasonable pathway for existing permitted sites to easily transition into the new permit without exposure to new and unwarranted liabilities.

Our builders must obtain all sorts of permits and approvals, including for stormwater for active construction, before they finalize plans and initiate projects. The economics of those projects are in many cases already established and this revision of Rule 5 Permits mid-way into such projects will be very difficult. Those permits are built into the long-term viability of the projects. Unforeseen regulatory mandates can have significant impacts on ongoing projects and, at times, can halt projects. All active projects currently have approved Rule 5 plans and procedures in place that IDEM has previously determined fully protect the

environment. Therefore, IDEM should provide a process that properlygrandfathers existing approved projects into the new CGP over time that is fair and reasonable. (IBA, SIBA)

Response:

U.S. EPA requires all projects to submit a NOI to obtain permit coverage under the new CSGP. The option for Continuation of Coverage was discussed with U.S. EPA and they agreed to this approach. IDEM understands that an existing proejct cannot necessarily modify existing plans to accommodate some of the requirements in the new CSGP. Therefore, IDEM has modified the language that will allow the existing construction/SWP3 to remain applicable and will not require updates to the SWP3 or a formal review of the SWP3. However, there are performance-based requirements that have been identified in the CSGP that will require updates to procedures.

Comment: IDEM's draft Fact Sheet and public notice both contain the following statements: "IDEM is considering bringing existing projects under the new permit, requiring a Notice of Intent - Continuation of Coverage and allowing the project to retain their current expiration date." There is no collateral statement about making changes or complying with different standards contained in the Draft CGP. If that is in fact IDEM's plan -that project approved under the existing permit by rule can continue under the new permit uninterrupted and unchanged from their existing approvals – the commenter hopes that IDEM will provide additional reassurance and clarity directly within the final CGP.

The commenter is not contending that new projects should not comply with the additional mandates in thisrevised final CGP, but those mandates should not apply retroactively to existing, already approved projects. Because those previously approved projects currently meet technology and water quality- based requirements of the Stormwater NPDES program, there should not be any federal, state or local concerns associated with such an approach. (IBA, SIBA)

Response:

U.S. EPA requires all projects to submit a NOI to obtain permit coverage under the new CSGP. The option for Continuation of Coverage was discussed with U.S. EPA and they agreed to this approach. IDEM understands that an existing proejct cannot necessarily modify existing plans to accommodate some of the requirements in the new CSGP. Therefore, IDEM has modified the language that will allow the existing construction/SWP3 to remain applicable and will not require updates to the SWP3 or a formal review of the SWP3. However, there are performance-based requirements that have been identified in the CSGP that will require updates to procedures.

Comment: IDEM's Draft CGP fails to reference the industry's Construction and Development Effluent Limitations Guidelines (40 CFR Part 450) ("C&D ELGs"). The industry worked with the Environmental Protection Agency for almost fifteen years studying, developing, litigating, and finally reaching mutual agreement on the scope of those ELGs. Those ELGs represent the Best Available Technologies Economically Achievable ("BAT") and Best Conventional Technologies ("BCT") for addressing stormwater discharges from construction sites. No other technologies are considered to meet the Clean Water Act's BAT/BCT mandates. Any mandates in the Draft CGP relating to buffers, phasing, or other requirements that are inconsistent with the C&D ELGs must be justified purely on practices and requirements necessary to achieve local water quality needs to maintain or achieve designated uses. The commenter also notes that definitions in the Draft CGPmust be consistent with those same terms as defined in the C&D ELGs. (IBA, SIBA)

Response:

The Effluent Limitation Guidelines are contained within the CSGP. Although IDEM did not label the Section in the same manner, the requirements are in Section 3.0 of the CSGP and under the name Performance Standards.

IDEM went through an extensive process to take our initial draft permit, that was approved by the U.S. EPA, and held numerous meetings with an advisory group. The advisory group had representation of MS4s, Soil and Water Conservation Districts, industry organizations, and consultants. The performance standards outlined in the CSGP have been developed to streamline the implementation of the permit by reducing options for several of the requirements. This reduction eliminates documentation by the permittee and the level of confusion in implementation by a permittee as well as the regulatory authorities (i.e., IDEM and MS4s). Based on input from the advisory group and public comments, IDEM believes that the C&D ELGs have been addressed.

Comment: Another chief concern with this revised Rule 5 Draft CGP is a possible confusion about thevariance process for determining what is "infeasible". The commenter contends this needs further clarity. The commenter believes adoption of U.S. EPA's ELG described above may help resolve or clarify this concern. (SIBA)

Response:

Refer to the comment above. The CSGP, establishes requirements in Section 3.0 for which IDEM believes that the C&D ELGs have been addressed.

Comment: The commenter would like to propose to IDEM the concept of a model ordinance based on requirements in the new CGP be made available to local MS4's for adoption in their respectivejurisdictions. As well, MS4 appeal process also should be included in such a model ordinance. (IBA, SIBA)

Response:

The Purdue Local Technical Assistance Program (LTAP) has developed a sample ordinance based on the current draft of the CSGP. IDEM was given an opportunity to review this document and provide comments.

An appeal process for decisions made by a MS4 would be considered a local process and should be addressed at the local level. An appeal process was not built into the ordinance but will be discussed with LTAP. IDEM also works closely with and has open dialogue with MS4 communities in an effort to create more consistency.

Comment: A final minor concern is that this Draft CGP does not appear to allow tarping over construction site dumpsters, but only lids. The commenter believes this needs to be revised to allow either method for limiting adverse run-off. (SIBA)

Response:

Substantial changes have been made to the CSGP. The performance standard for this item is now based on the permittee managing the materials. If the waste materials are not managed, methods must be adopted that include covers, including tarps.