



STATE OF ARIZONA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
WATER QUALITY DIVISION  
PHOENIX, ARIZONA 85012-2809

ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM  
GENERAL PERMIT FOR DISCHARGE FROM  
SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s)  
TO WATERS OF THE UNITED STATES

In compliance with the provisions of the Arizona Pollutant Discharge Elimination System program, (Arizona Revised Statutes, Title 49, Chapter 2, Article 3.1 and Arizona Administrative Code, Title 18, Chapter 9, Articles 9 and 10), this general permit authorizes discharges certified under this general permit from those locations specified throughout the state of Arizona to waters of the United States. These discharges shall be in accordance with the conditions of this general permit.

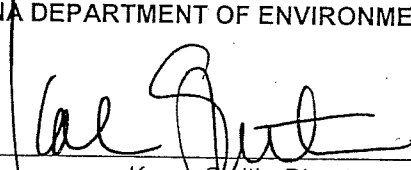
This permit only authorizes discharges from those operators of small municipal separate storm sewer systems in Arizona who submit a complete Notice of Intent in accordance with Parts III and V of this general permit and who comply with the permit requirements and conditions of Parts IV and VI. All discharges authorized by this general permit shall be consistent with the terms and conditions of this general permit.

This general permit becomes effective on December 19, 2002.

This general permit and the authorization to discharge expire at midnight, December 19, 2007.

Issued this 19<sup>th</sup> day of DEC. 2002.

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

  
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Karen Smith, Director  
Water Quality Division

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## **PART I. COVERAGE UNDER THIS GENERAL PERMIT**

- A. Permit Area. This permit covers the state of Arizona, except for Indian Country.
- B. Eligibility.
  - 1. This permit authorizes the discharge of stormwater from small municipal separate storm sewer systems (MS4s) provided that the permittee complies with all the requirements of this general permit and the MS4:
    - a. Is located fully or partially within an urbanized area as determined by the latest Decennial Census by the Bureau of Census, or
    - b. Is designated for permit authorization by the Department under R-18-9-A902(D)(1), R18-9-A902(D)(2), R-18-9-A902(E), and R18-9-A905(A)(1)(f) which incorporates 40 CFR 122.32.
- C. Non-Stormwater Discharges.
  - 1. The permittee shall prohibit all types of non-stormwater discharges into its MS4 unless the discharges are authorized by a separate NPDES or AZPDES permit or not prohibited under Part I, Section C.2 or are identified by the permittee as occasional incidental non-stormwater discharges under Part V, Section B.3.a.ii.
  - 2. The following categories of non-stormwater discharges (occurring within the jurisdiction of the permittee) are only prohibited if the discharges are identified as significant contributors of pollutants to or from the MS4. If any of the following categories of discharges are identified as a significant contributor, the permittee must address the category as an illicit discharge as specified in Part V, Section B.3:
    - a. Water line flushing,
    - b. Landscape irrigation,
    - c. Diverted stream flows,
    - d. Rising ground waters,
    - e. Uncontaminated ground water infiltration,
    - f. Uncontaminated pumped groundwater,
    - g. Discharges from potable water sources,
    - h. Foundation drains,
    - i. Air conditioning condensate,
    - j. Irrigation water,
    - k. Springs,
    - l. Water from crawl space pumps,
    - m. Footing drains,
    - n. Lawn watering,

- o. Individual residential car washing,
  - p. Discharges from riparian habitats and wetlands,
  - q. Dechlorinated swimming pool discharges,
  - r. Street wash water, and
  - s. Discharges or flows from emergency fire fighting activities.
- D. Limitations of Coverage. This general permit does not authorize:
1. Discharges mixed with sources of non-stormwater unless the non-stormwater discharges:
    - a. Comply with a separate NPDES or AZPDES permit, or
    - b. Are determined not to be a significant contributor of pollutants to waters of the United States;
  2. Stormwater discharges associated with industrial activity as defined in 40 CFR 122.26(b)(14)(i)-(ix) and (xi);
  3. Stormwater discharges associated with construction activity as defined in 40 CFR 122.26(b)(14)(x) or 40 CFR 122.26(b)(15);
  4. Stormwater discharges currently covered under another permit;
  5. Discharges to impaired waterbodies listed under section 303(d) of the Clean Water Act (CWA) if discharges from the MS4 contain, or may contain, pollutant(s) for which the waterbody is listed except:
    - a. If a TMDL has been established, and the stormwater management program (SWMP) is consistent with the requirements of the TMDL, including any wasteload allocation or load allocation in the TMDL. The SWMP must also identify BMPs the permittee will use to meet wasteload allocations or load allocations and include monitoring for associated pollutant(s); and
    - b. If a TMDL has not been established, and the SWMP includes a section describing how the program will control the discharge of 303(d) listed pollutants and ensure to the maximum extent practicable that discharges from the MS4 will not cause or contribute to exceedances of surface water quality standards. The SWMP must also identify BMPs the permittee will use to control discharges and include monitoring of their effectiveness;
  6. Discharges that do not comply with Arizona's anti-degradation rule (R18-11-107). The anti-degradation rule may be obtained from the Department's Phoenix office or from the Department's Web site.

## **PART II. AUTHORIZATION UNDER THIS GENERAL PERMIT**

- A. Application for Coverage.
1. An applicant seeking authorization to discharge under this general permit shall submit to the Department a complete notice of intent (NOI), in accordance with the deadlines in Part III, Section A. The NOI must include the information and attachments required by Part III,

Section B.

If the Department notifies an applicant (either directly, by public notice, or by making information available on the Internet) of other NOI options that become available at a later date, such as electronic submission of forms or information, the applicant may take advantage of those options to satisfy the NOI submittal requirements.

2. If an operator changes or a new operator is added after an NOI has been submitted, the permittee shall submit a new or revised NOI to the Department.
3. A discharger who submits a complete NOI and meets the eligibility requirements in Part I may discharge stormwater from a small MS4 under the terms and conditions of this general permit 30 days after the date the NOI is received by the Department. For the purposes of this permit, receipt is the day the fax was sent, the day the NOI was hand-delivered to the Department, or the day the Department signed certified mail containing the NOI. Submission of the NOI demonstrates the discharger's intent to be covered by this permit; it is not a determination by the Department that the discharger has met the eligibility requirements for the permit.
4. If the Department notifies the applicant of deficiencies or inadequacies in any portion of the NOI (including the stormwater management program), the applicant must correct the deficient or inadequate portions and submit a written statement to the Department certifying that appropriate changes have been made. The certification must be submitted within the time-frame specified by the Department and must specify how the NOI has been amended to address the identified concerns.

B. Terminating Coverage.

1. A permittee may terminate coverage under this general permit by submitting a notice of termination (NOT). Authorization to discharge terminates at midnight on the day the NOT is signed.
2. A permittee shall submit an NOT to the Department within 30 days after the permittee:
  - a. Ceases discharging stormwater from the MS4,
  - b. Ceases operations at the MS4, or
  - c. Transfers ownership of or responsibility for the facility to another operator.
3. The NOT form can be obtained from the Department and must include the following information:
  - a. Name, mailing address, and location of the MS4 for which the notification is submitted;
  - b. The name, address and telephone number of the operator addressed by the NOT;
  - c. The NPDES or AZPDES permit number for the MS4;
  - d. An indication of whether another operator has assumed responsibility for the MS4, the discharger has ceased operations at the MS4, or the stormwater discharges have been eliminated; and
  - e. The following certification:

*I certify under penalty of law that all stormwater discharges from the identified MS4 that are authorized by an AZPDES general permit have been eliminated, or that I am no longer the operator of the MS4, or that I have ceased operations at the MS4. I understand that by submitting this Notice of Termination I am no longer authorized to discharge stormwater under this general permit, and that discharging pollutants in stormwater to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by an AZPDES permit. I also understand that the submission of this Notice of Termination does not release an operator from liability for any violations of this permit or the Clean Water Act.*

- f. NOTs, signed in accordance with Part VI, Section L, must be sent to the Department at the following address:

Small MS4 NOT  
Surface Water Permits Unit (5415 B)  
Arizona Department of Environmental Quality  
1110 West Washington  
Phoenix, AZ 85007

### **PART III. NOTICE OF INTENT REQUIREMENTS**

A. Deadlines for Notification.

1. MS4s automatically designated under R18-9-A905(A)(1)(f) are required to submit an NOI and a stormwater management program or apply for an individual permit by March 10, 2003.
2. MS4s designated under R18-9-A902(D)(1), R18-9-A902(D)(2), or R18-9-A902(E) are required to submit an NOI and a stormwater management program within 180 days of notice (unless the Department provides additional time in the designation notice).
3. New MS4s and New Operators
  - a. For new MS4s within urbanized areas which commence discharges subsequent to March 10, 2003, the NOI must be submitted not later than 30 days prior to commencing discharges.
  - b. For new operators of an existing MS4, the NOI must be submitted not later than two days prior to taking operational control of the MS4.
4. If a late NOI is submitted, the authorization is only for discharges that occur after permit coverage is granted. The Department reserves the right to take appropriate enforcement actions for any unpermitted discharges.

B. Contents of Notice of Intent. An applicant eligible for coverage under this general permit shall submit an NOI to discharge under this general permit. The NOI shall contain the following information:

1. The name, mailing address, and telephone number of the municipal entity applying;
2. An indication of whether the applicant is a federal, state, or other public entity;
3. The urbanized area or core municipality (if not located in an urbanized area) where the small MS4 is located; the county(ies) where the small MS4 is located, and the latitude and longitude of the approximate center of the small MS4;
4. The name of the major receiving water(s) and an indication of whether any of the receiving

waters are on the latest CWA section 303(d) list of impaired waters. If the small MS4 discharges to any 303(d) listed waters, include a certification that the SWMP meets the requirements of Part I, Section D.5;

5. An indication of whether all or a portion of the small MS4 is located in Indian country;
6. If the applicant is relying on another governmental entity to satisfy one or more permit obligations (see Part V, Section D), the identity of that entity(ies) and the element(s) the entity(ies) will be implementing;
7. The name and work position or title of the contact person;
8. The signature of the certifying official, signed in accordance with the signatory requirements of Part VI, Section L; and
9. A stormwater management program (SWMP), including best management practices (BMPs) that will be implemented and the measurable goals for each of the stormwater minimum control measures specified in Part V, Section B., the month and year in which the applicant will start and fully implement each of the minimum control measures or the frequency of the action, and the name of the person(s) responsible for implementing or coordinating the SWMP.
10. The following certification:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. In addition I certify that the permittee will comply with all terms and conditions stipulated in General Permit No. AZG2002-002 issued by the Director.*

- C. Where to Submit. The applicant shall submit the signed NOI to the Department at the following address:

Small MS4 NOI  
Surface Water Permits Unit, 5415B  
Arizona Department of Environmental Quality  
1110 West Washington  
Phoenix, AZ 85007

- D. Co-Permittees Under a Single NOI.

Any small MS4 that meets the requirements of Part I of this general permit may choose to partner with another regulated MS4 to develop and implement a SWMP. The MS4s may also jointly submit one NOI. If responsibilities are being shared as provided in Part V, Section D, the SWMP must describe which permittees are responsible for implementing each of the minimum measures. All small MS4 permittees are subject to the provisions in Part V, Section E.

#### **PART IV. SPECIAL CONDITIONS**

Total Daily Maximum Loads (TMDLs) Allocations Established after Permit Issuance. If a TMDL is established for any waterbody into which the permittee discharges prior to the date that the permittee or applicant submits an NOI, and if that TMDL includes a wasteload allocation or load allocation for a parameter likely to be



discharged by the MS4, the permittee must meet the requirements of the TMDL and/or its associated implementation plan. If a TMDL is approved for any waterbody into which the permittee discharges after the date that the permittee or applicant submits an NOI, the Department may require revisions to the SWMP to ensure that the wasteload allocation, load allocation and/or the TMDL's associated implementation plan will be met. Monitoring of the discharges may also be required, as appropriate, to ensure compliance with the TMDL.

## **PART V. STORMWATER MANAGEMENT PROGRAM (SWMP)**

- A. General Requirements. An applicant shall develop, and a permittee shall implement, and enforce a SWMP designed to reduce the discharge of pollutants from a small MS4 to the maximum extent practicable (MEP) to protect water quality. The SWMP shall include management practices; control techniques; system, design, and engineering methods; and other provisions the Department determines appropriate for the control of pollutants.
1. A permittee must fully implement the SWMP, including its measurable goals, no later than December 19, 2007 (except as provided under Part V, Section A.2).
  2. If a permittee is required to obtain permit coverage after March 10, 2003, the permittee shall implement the SWMP, including its measurable goals, for the period between the date of authorization to discharge and the expiration date of this permit. For example, if the permittee was authorized to discharge under this permit on March 10, 2006 the measurable goals established in the SWMP for the period between 2006 and the expiration date of this general permit must be met.
  3. The SWMP shall address each of the minimum control measures of Part V, Section B and must include measurable goals, including interim milestones, for each BMP, including as appropriate, the months and years in which the MS4 will undertake the required actions and the frequency of the action. The name and title of the person or persons responsible for implementing the SWMP shall also be included.
  4. The permittee shall protect water quality by ensuring, to the maximum extent practicable, that no discharge shall cause or contribute to an exceedance of applicable water quality standard. To do so, the permittee shall fully implement all SWMP and permit requirements in accordance with the established time frames.
- B. Minimum control measures.
1. Public Education and Outreach on Stormwater Impacts. The permittee or applicant, as applicable, shall:
    - a. Implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impact of stormwater discharges on waterbodies and the steps that the public can take to reduce pollutants in stormwater runoff.;
    - b. Include the following information in the SWMP:
      - i. A description of the education program and outreach activities;
      - ii. A description of the methods for disseminating information;
      - iii. The target audiences and target pollutants and sources that the applicant will address in the program, and how they were selected;
      - iv. An estimation of the number of people with whom the applicant intends to communicate;

- v. A list of measurable goals for the public education and outreach program;
  - vi. Dates, in terms of months and years, by which the permittee will achieve specific measurable goals
  - vii. The name(s) and title(s) of the person(s) responsible for implementing and coordinating the education activities.
2. Public Involvement/Participation. The permittee or applicant, as applicable, shall:
- a. Develop and implement a plan to encourage public involvement and participation in the development and implementation of the SWMP;
  - b. Comply with state and local public notice requirements when implementing the public involvement/participation program.
  - c. Include the following information in the SWMP:
    - i. A description of the general plan for informing the public of involvement and participation opportunities;
    - ii. The types of activities for public involvement that the program will include and the target audiences;
    - iii. A description of the procedure for receiving and reviewing public comments;
    - iv. An explanation of how interested parties may access the SWMP and NOI;
    - v. A list of measurable goals for the public involvement/participation program;
    - vi. Dates, in terms of months and years, by which the permittee will achieve specific measurable goals and;
    - vii. The name(s) and title(s) of the person(s) responsible for implementing and coordinating the public involvement/participation activities.
3. Illicit Discharge Detection and Elimination. The permittee or applicant, as applicable, shall:
- a. Develop, implement, and enforce a program to detect and eliminate illicit discharges into the small MS4, except those discharges listed below:
    - i. Non-stormwater discharges as listed in Part I, Section C.2 ; This exception does not apply to those categories of discharge which the permittee or applicant has determined to be a significant contributor of pollutants to the small MS4; or
    - ii. Occasional incidental non-stormwater discharges (e.g. non-commercial or charity car washes, etc.) that the permittee does not expect (based on information available to the permittee) to be a significant contributor of pollutants to the small MS4 because of either the nature of the discharges or conditions the permittee has established for allowing these discharges to the small MS4 (e.g., a charity car wash with appropriate controls on frequency, proximity to sensitive waterbodies, BMPs on the wash water, etc.).
  - b. Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all waters of the United States that receive discharges from those outfalls;

- c. To the extent allowable under state or local law, effectively prohibit through ordinance or other regulatory mechanism, non-stormwater discharges into the storm sewer system and implement appropriate enforcement procedures and actions;
  - d. Develop and implement a plan to detect, identify the source of, and address non-stormwater discharges, including illegal dumping, to the system;
  - e. Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste;
  - f. Conduct dry weather field screening for non-stormwater flows. The screening must include qualitative field tests based on color, odor, or visually observed characteristics as indicators of discharge sources. If the qualitative field tests do not provide enough information for the permittee to determine the source of the discharge, the permittee must test the discharge, while in the field, for selected chemical parameters. The permittee must investigate the illicit discharge within 15 days of its detection, and must follow up investigation with an action to further study the source of the discharge or eliminate it.
  - g. Include the following information in the SWMP:
    - i. A description of detection methods;
    - ii. A description or citation of the established ordinance or other regulatory mechanism used to prohibit illicit discharges. If the permittee needs to develop this mechanism, describe the plan and a schedule to do so.
    - iii. A description of enforcement policy and jurisdiction;
    - iv. A description of the non-stormwater discharges allowed in the small MS4 pursuant to Part V, Section B.3.a.i;
    - v. A description of the non-stormwater discharges allowed in the small MS4 pursuant to Part V, Section B.3.a.ii;
    - vi. The methods for informing/training employees about illicit discharges;
    - vii. The methods for informing the public of hazards associated with illegal discharges and improper disposal of waste;
    - viii. A list of measurable goals for the illicit detection and elimination program;
    - ix. Dates, in terms of months and years, by which the permittee will achieve specific measurable goals; and
    - x. The name(s) and title(s) of the person(s) responsible for implementing and coordinating illicit discharge detection and elimination activities.
4. Construction Site Stormwater Runoff Control. The permittee or applicant, as applicable, shall:
- a. Develop, implement, and enforce a program to reduce pollutants in any stormwater runoff to the small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of stormwater discharges from construction activity disturbing less than one acre must be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the Department waives requirements for

stormwater discharges associated with small construction activity, defined under 40 CFR 122.26(b)(15)(i), the permittee is not required to develop, implement, and/or enforce a program to reduce pollutant discharges from these sites;

- b. Using an ordinance or other regulatory mechanism available under the legal authorities of the small MS4, require construction site operators to practice erosion and sediment control and require construction site operators to control waste and properly dispose of wastes, such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality. This ordinance must apply, at a minimum, to those sites described in Part V, Section B.4.a.
  - c. Review all site plans for those sites described in Part V, Section B.4.a. for potential water quality impacts, including erosion and sediment control, control of other wastes, and any other impacts that must be examined according to the requirements of the law or ordinance of Part V, Section B.4.b. Before ground is broken at the construction site, the small MS4 operator shall review the plans and, verify (in written communication with the construction site operator) that the BMPs for the site are appropriate;
  - d. Develop and implement procedures for site inspection and enforcement of control measures for those sites described in Part V, Section B.4.a.;
  - e. Include the following information in the SWMP:
    - i. A description or citation of the established ordinance or other regulatory mechanism used to prohibit erosion and ensure proper management of wastes on construction sites per Part V, Section 4.b. If the permittee needs to develop the required regulatory mechanism, describe the plan and a schedule to do so;
    - ii. A description of the sanctions and enforcement mechanism(s) to ensure compliance;
    - iii. A description of the procedures for site inspection and enforcement of control measures, and procedures for site plan reviews;
    - iv. Procedures for receipt, acknowledgment and consideration of information submitted by the public,
    - v. A list of measurable goals for the construction site runoff control program;
    - vi. Dates, in terms of months and years, by which the permittee will achieve specific measurable goals; and
    - vii. The name(s) and title(s) of the person(s) responsible for overseeing construction site runoff control activities.
5. Post-Construction Stormwater Management in New Development and Redevelopment. The permittee or applicant, as applicable, shall:
- a. Develop, implement, and enforce a program to address stormwater runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, and discharge into the small MS4. The program must ensure that controls are in place that would prevent or minimize water quality impacts;

- b. Develop and implement strategies that include a combination of structural and/or non-structural BMPs appropriate for the community;
  - c. Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under the legal authorities of the small MS4;
  - d. Ensure adequate long-term operation and maintenance of BMPs; and
  - e. Include the following information in the SWMP:
    - i. A description of the management practices to reduce post-construction runoff from new development and redevelopment projects within the MS4; address any specific priority areas and tailor to the local community;
    - ii. A description or citation of the established ordinance or other regulatory mechanism used to address post-construction runoff control. If the permittee needs to develop the required regulatory mechanism, describe the plan and a schedule to do so;
    - iii. A description of the procedure to ensure compliance with local requirements;
    - iv. A description of the education program for developers, architects and the public about project designs that minimize water quality impacts;
    - v. An identification of the measurable goals for the post-construction runoff control program;
    - vi. Dates, in terms of months and years, by which the permittee will achieve specific measurable goals; and
    - vii. The name(s) and title(s) of the person(s) responsible for the development, implementation, and enforcement of post-construction stormwater management.
6. Pollution Prevention/Good Housekeeping for Municipal Operations. The permittee or applicant, as applicable, shall:
- a. Develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations due to activities, including but not limited to, park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and stormwater system maintenance. The permittee shall address the following topics in the program:
    - i. Maintenance activities, maintenance schedules, and long-term inspection procedures for controls to reduce floatables and other pollutants to the small MS4;
    - ii. Controls to reduce or eliminate the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, waste transfer stations, fleet or maintenance shops with outdoor storage areas, and salt and sand storage locations and snow disposal areas; and
    - iii. Procedures to properly dispose of waste removed from the small MS4 and municipal operations, including dredge spoil, accumulated sediments, floatables, and other debris.

- b. Include the following information in the SWMP:
  - i. A list of the municipal operations impacted by this operation and maintenance program;
  - ii. A description of the training program for municipal employees
  - iii. A list of measurable goals for the municipal pollution prevention program;
  - iv. Dates, in terms of months and years, by which the permittee will achieve specific measurable goals; and
  - v. The name(s) and title(s) of the person(s) responsible for implementing and coordinating employee training and pollution prevention activities.
  
- C. Qualifying State or Local Program. The permittee may substitute the BMPs and measurable goals of an existing stormwater pollution control program to qualify for compliance with one or more of the minimum control measures if the existing measure meets the requirements of the minimum control measure as established in Part V, Section B.
  
- D. Sharing Responsibility. Implementation of one or more of the minimum measures may be shared with another entity, or the entity may fully take over the measure. A permittee may rely on another entity only if:
  - 1 The other entity, in fact, implements the control measure;
  - 2. The control measure, or component of that measure, is at least as stringent as the corresponding permit requirement;
  - 3. The other entity agrees to implement the control measure on the permittee's behalf. Written acceptance of this obligation is expected. The permittee shall maintain this obligation as part of the SWMP description. If the other entity agrees to report on the minimum measure, the permittee shall supply the other entity with the reporting requirements in Part V, Section G of this general permit. The permittee remains responsible for compliance with the permit obligations if the other entity fails to implement the control measure component.
  
- E. Reviewing and Updating SWMPs.
  - 1. The permittee shall annually review the SWMP in conjunction with preparation of the annual report required under Part V, Section G.
  - 2. The permittee may change the SWMP during the life of the permit according to the following procedures:
    - a. Changes adding (but not subtracting) components, controls, or requirements to the SWMP may be made at any time upon written notification to the Department;
    - b. Changes replacing an ineffective or infeasible management practice specifically identified in the SWMP with an alternate management practice may be made at any time, as long as the permittee submits a written analysis to the Department explaining why the management practice is ineffective or infeasible (including cost prohibitive), and why the replacement management practice is expected to achieve the goals of the management practice to be replaced;
    - c. Change notifications must be signed in accordance with Part VI, Section L;

3. The Department may notify a permittee that changes to the SWMP are necessary:
  - a. To address impacts on receiving water quality caused, or contributed to, by discharges from the MS4;
  - b. To include more stringent requirements necessary to comply with new federal or state statutory or regulatory requirements; and
  - c. If, at any time, the Department determines that the SWMP does not meet permit requirements.
4. The notification described above in Part V, Section E.3 will need to be addressed by the permittee in one of the following manners:
  - a. If the Department specifies changes that are to be made to the SWMP (including changes in implementation schedules), the permittee shall, within 60 days (or a later date if provided by the Department) certify that it has made changes as required by the Department. Changes must go into effect 30 days from the date the permittee certifies that changes have been made to the SWMP.
  - b. If the permittee proposes an alternative to the Department's required change (including changes in implementation schedule), the proposed alternative must be received by the Department within 60 days of notification of the required change. If the Department approves the proposed alternative, the changes to the SWMP must go into effect 30 days from the date the Department approved the proposal. If the Department does not approve the proposed alternative, the permittee must make changes to the SWMP as specified by the Department. Certification that changes have been made to the SWMP must be received within 60 days of the date the permittee received notification that the proposal had been rejected. Changes must go into effect 30 days from the date the permittee certifies that changes have been made to the SWMP.
5. Transfer of Ownership, Operational Authority, or Responsibility for SWMP Implementation. The permittee must implement the SWMP in all new areas added to the permittee's portion of the MS4 (or for which the permittee becomes responsible for implementation of stormwater quality controls) as expeditiously as practicable, but not later than one year from addition of the new areas. Implementation may be accomplished in a phased manner to allow additional time for controls that cannot be implemented immediately.
  - a. Within 90 days of a transfer of ownership, operational authority, or responsibility for SWMP implementation, the permittee must have a plan for implementing the SWMP in all affected areas. The plan may include schedules for implementation. Information on all new annexed areas and any resulting updates required to the SWMP must be included in the annual report.
  - b. Only those portions of the SWMP specifically required as permit conditions shall be subject to the modification requirements of 40 CFR 124.5. Addition of components, controls, or requirements by the permittee(s) and replacement of an ineffective or infeasible BMP implementing a required component of the SWMP with an alternate BMP expected to achieve the goals of the original BMP shall be considered minor changes to the SWMP and not modifications to the permit.

F. Monitoring.

1. The permittee must evaluate program compliance, the appropriateness of identified BMPs, and progress toward achieving identified measurable goals. If the permittee discharges to a water for which a TMDL has been established, the permittee must monitor to determine if the stormwater controls are adequate to maintain compliance with the MS4's

wasteload allocation or load allocation. If the permittee discharges to a 303(d) listed water that contains, or may contain, pollutant(s) for which the waterbody is listed, the permittee must monitor to determine if BMPs are effective to control discharges of pollutants of concern.

2. If the permittee conducts analytical monitoring at the permitted small MS4, the permittee must comply with the following:
  - a. *Representative monitoring.* Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
  - b. *Test Procedures.* Monitoring results shall be conducted according to test procedures approved in R18-9-A905(B) or other test procedures mutually agreed upon by the Director and the permittee or applicant.
  - c. *Discharge Monitoring Report.* Monitoring results must be reported on a Discharge Monitoring Report (DMR) when monitoring is performed in accordance with a TMDL requirement.
3. Records of analytical monitoring information shall include:
  - a. The date, exact place, and time of sampling or measurements;
  - b. The names(s) of the individual(s) who performed the sampling or measurements;
  - c. The date(s) analyses were performed;
  - d. The name(s) of the individual(s) who performed the analyses;
  - e. The analytical techniques or methods used; and
  - f. The results of such analyses.
4. Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit is subject to the enforcement actions established under A.R.S. Title 49, Chapter 2, Article 4, which may include the possibility of fines and/or imprisonment.

G. Annual Reports.

1. The permittee must submit annual reports to the Department for each year of the permit term. The first report is due September 30, 2004, covering the activities of the permittee during the period beginning on the effective date of the permit for the permittee and ending June 30, 2004. Subsequent annual reports are due on September 30 of each year following 2004 during the remainder of the term of the permit and must cover the activities of the permittee for the previous year up to and including June 30. The report must include:
  - a. The status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices, progress towards achieving the statutory goal of reducing the discharge of pollutants to the MEP and protecting water quality, and the measurable goals for each of the minimum control measures,
  - b. Results of information collected and analyzed, if any, during the reporting period, including monitoring data used to assess the success of the program at reducing the discharge of pollutants to the MEP;
  - c. Any changes made to the SWMP since the last annual report and a summary of the



stormwater activities the permittee plans to undertake during the next reporting cycle (including an implementation schedule);

- d. Proposed changes to the stormwater management program, including changes to any BMPs or any identified measurable goals that apply to the program elements;
  - e. A description of BMPs to be implemented within new areas annexed over the past year that are located within the regulated boundaries of the MS4;
  - f. A description and schedule for implementation of additional BMPs that may be necessary, based on monitoring results, to ensure compliance with applicable TMDLs; and
  - g. Notice that the permittee is relying on another government entity to satisfy some of the permit obligations (if applicable).
2. Where to Submit. Annual reports shall be signed in accordance with Part VI, Section L.2 and sent to the Department at the following address:

Arizona Department of Environmental Quality  
Compliance Data Unit  
1110 West Washington  
Phoenix, AZ 85007

## **PART VI. STANDARD PERMIT CONDITIONS**

### A. Duty to Comply.

- 1. Failure to comply with any applicable term or condition of this permit shall be a violation of this permit and shall be grounds to enforcement action, permit termination, revocation and reissuance, or modification, or denial of a permit renewal application.
- 2. The issuance of this general permit does not waive any federal, state, county, or local regulations or permit requirements with which a permittee discharging under this general permit is required to comply.

### B. Duty to Reapply. If a permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit.

### C. Continuation of an Expired General Permit.

- 1. If the Director does not reissue this general permit before the expiration date, the current general permit will be administratively continued and remain in force and effect until the general permit is reissued.
- 2. Any permittee granted general permit coverage before the expiration date automatically remains covered by the continued general permit until the earlier of:
  - a. Reissuance or replacement of the general permit, at which time the permittee shall comply with the NOI conditions of the new general permit to maintain authorization to discharge; or
  - b. The date the permittee has submitted a Notice of Termination; or
  - c. The date the Director has issued an individual permit for the discharge; or
  - d. The date the Director has issued a formal permit decision not to reissue the general permit, at which time the permittee shall seek coverage under an alternative general permit or an individual permit.

3. Upon reissuance of a new general permit, the permittee shall file an NOI, within 60 days of the effective date of the new general permit.
- D. Need to Halt or Reduce an Activity Is Not a Defense. It is not a defense for a permittee in an enforcement action to plead that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this general permit.
- E. Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this general permit that has a reasonable likelihood of adversely affecting human health or the environment.
- F. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the conditions of the permittee's SWMP. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.
- G. Permit actions.
1. This general permit may be reopened (in accordance with A.A.C. R18-9-A905(3)(a) which incorporates 40 CFR 122.41(f)) to address any changes in state or federal plans, policies, or regulations that would affect the quality requirements for the discharge.
  2. This general permit may be modified by the Director before the expiration date to include discharge or receiving water limitations for toxic constituents determined to be present in significant amounts in the discharge.
  3. This general permit may be modified, revoked and reissued, or terminated for cause.
  4. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.
- H. Property Rights. The issuance of this general permit does not convey any property rights or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, Indian tribe, or local laws or regulations.
- I. Duty to Provide Information. The permittee must promptly furnish the Department with the following information:
1. Upon request, any information that the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this general permit, or to determine compliance with this general permit.
  2. Upon request, copies of records required by this general permit.
  3. In the event that the permittee becomes aware that the permittee failed to submit any relevant facts in the NOI or submitted incorrect information in the NOI or in any other report to the Department, such facts or information.
- J. Inspection and Entry. The permittee shall allow the Director or the Director's designee, upon presentation of credentials and other documents as required by law, to:
1. Enter the permittee's premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of this general permit;

2. Have access to and copy, at reasonable times, any records required by this general permit;
3. Inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this general permit; and
4. Sample or monitor, at reasonable times, to assure permit compliance or as otherwise authorized under A.R.S. Title 49, Chapter 2, Article 3.1, and A.A.C. Title 18, Chapter 9, Articles 9 and 10, any substances or parameters at any location.

K. Recordkeeping.

1. The permittee shall retain records of all monitoring information, including, all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, copies of Discharge Monitoring Reports (DMRs), a copy of the NPDES or AZPDES permit, and records of all data used to complete the application (NOI) for this permit, for a period of at least three years from the date of the sample, measurement, report or application, or for the term of this permit, whichever is longer. This period may be extended at the request of the Department at any time.
2. The permittee shall submit its records to the Department only when specifically asked to do so. The permittee must retain the SWMP required by this permit (including a copy of the permit language) at a location accessible to the Department. The permittee must make its records, including the notice of intent (NOI) and the SWMP, available to the public.

L. Signatory Requirements. All NOIs, NOTs, reports required by the general permit, and other information requested by the Director shall be signed as follows:

1. NOIs and NOTs:
  - a. For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official.
2. Reports and other information.
  - a. All reports required by this general permit and other information requested by the Department or authorized representative of the Department shall be signed by a person described in Part VI, Section L.1 or by a duly authorized representative of that person.
  - b. A person is a duly authorized representative only if the authorization is made in writing by a person described in Part VI, Section L.1. The authorization shall specify either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the permittee.
3. Changes to Authorization. If the information on the NOI filed for general permit coverage is no longer accurate because a different operator has responsibility for the overall operation of the facility, a new authorization satisfying the requirement of Part VI, Section L.2.b. above must be submitted to the Department prior to or together with any reports, information, or notices of intent to be signed by an authorized representative.
4. Certification. Any person (as defined above in Part VI, Sections L.2.a and L.2.b) signing documents under this Section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure

that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

M. Reporting.

1. Anticipated noncompliance. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.
2. Transfers. This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate other requirements that may be necessary to comply with the permit. (In some cases, modification or revocation and reissuance is mandatory.)
3. Other information. When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the NOI or in any other report to the Director, the permittee shall promptly submit the facts or information.

N. Severability. The provisions of this general permit are severable, and if any provision of this general permit, or the application of any provision of this general permit to any circumstance, is held invalid, the application of the provision to other circumstances, and the remainder of this general permit shall not be affected.

O. Requiring Coverage Under an Individual Permit.

1. The Director may require a person authorized by a general permit to apply for and obtain an individual permit for any of the following cases:
  - a. A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
  - b. Effluent limitation guidelines are promulgated for point sources covered by the general permit;
  - c. An Arizona Water Quality Management Plan containing requirements applicable to the point sources is approved;
  - d. Circumstances change after the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
  - e. If the Director determines that the discharge is a significant contributor of pollutants. When making this determination, the Director shall consider:
    - i. The location of the discharge with respect to waters of the United States,
    - ii. The size of the discharge,
    - iii. The quantity and nature of the pollutants discharged to waters of the United States, and
    - iv. Any other relevant factor.

2. If an individual permit is required, the Director shall notify the discharger in writing of the decision. The notice shall include:
    - a. A brief statement of the reasons for the decision,
    - b. An application form,
    - c. A statement setting a deadline to file the application,
    - d. A statement that on the effective date of issuance or denial of the individual permit, coverage under the general permit will automatically terminate,
    - e. The applicant's right to appeal the individual permit requirement with the Water Quality Appeals Board under A.R.S. § 49-323, the number of days the applicant has to file a protest challenging the individual permit requirement, and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
    - f. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.
  3. The discharger shall apply for an individual permit within 90 days of receipt of the notice, unless the Director grants a later date. In no case shall the deadline be more than 180 days after the date of the notice.
  4. If the permittee fails to submit the individual permit application within the time period established in Part V, Section Q.3, the applicability of the general permit to the permittee is automatically terminated at the end of the day specified by the Director for application submittal.
  5. Coverage under the general permit shall continue until an individual permit is issued unless the general permit coverage is terminated under Part V, Section Q.4.
- P. Request For an Individual Permit.
1. An owner or operator authorized by a general permit may request an exclusion from coverage of a general permit by applying for an individual permit.
    - a. The owner or operator shall submit an individual permit application under R18-9-B901(B) and include the reasons supporting the request no later than March 10, 2003.
    - b. The Director shall grant the request if the reasons cited by the owner or operator are adequate to support the request.
  2. If an individual permit is issued to an owner or operator otherwise subject to a general permit, the applicability of the general permit to the discharge is automatically terminated on the effective date of the individual permit.
- Q. Other Environmental Laws. No condition of this general permit releases the permittee from any responsibility or requirements under other environmental statutes or regulations. For example, this permit does not authorize the "take" of endangered or threatened species as prohibited by section 9 of the Endangered Species Act, 16 U.S.C. 1538. Information regarding the location of endangered and threatened species and guidance on what activities constitute a "take" are available from the U.S. Fish and Wildlife Service.

## **PART VII. PENALTIES FOR VIOLATIONS OF PERMIT CONDITIONS**

Any permit noncompliance constitutes a violation and is grounds for an enforcement action, permit termination, revocation and reissuance, modification, or denial of a permit renewal application.

- A. Civil Penalties. A.R.S. § 49-262(C) provides that any person who violates any provision of A.R.S. Title 49, Chapter 2, Article 2, 3 or 3.1 or a rule, permit, discharge limitation or order issued or adopted under A.R.S. Title 49, Chapter 2, Article 3.1 is subject to a civil penalty not to exceed \$25,000 per day per violation.
- B. Criminal Penalties. Any a person who violates a condition of this general permit, or violates a provision under A.R.S. Title 49, Chapter 2, Article 3.1, or A.A.C. Title 18, Chapter 2, Articles 9 and 10 is subject to the enforcement actions established under A.R.S. Title 49, Chapter 2, Article 4, which may include the possibility of fines and/or imprisonment.

## **PART VIII. DEFINITIONS**

In addition to the definitions contained in A.R.S. 49-255 and A.A.C. R18-9-A901, all definitions contained in section 502 of the Act and 40 CFR 122 shall apply to this permit and are incorporated herein by reference. For convenience, simplified explanations of some regulatory/statutory definitions have been provided, but in the event of a conflict, the definition found in the statute or regulation takes precedence.

**Best Management Practices (BMPs)** means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

**Control Measure** as used in this permit, refers to any Best Management Practice or other method used to prevent or reduce the discharge of pollutants to waters of the United States.

**CWA** means the Clean Water Act or the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq.

**Department** as used in this permit, means the Arizona Department of Environmental Quality.

**Discharge** when used without qualification means the discharge of a pollutant,

**Discharge of a Pollutant** means

1. Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or
2. Any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger."

**Discharge-related activities** include: activities which cause, contribute to, or result in stormwater point source pollutant discharges; and measures to control stormwater discharges, including the siting, construction and operation of best management practices (BMPs) to control, reduce or prevent stormwater pollution.

**Facility** means any NPDES or AZPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES or AZPDES program.

**Illicit connection** means any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

**Illicit discharge** means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater except discharges pursuant to a NPDES or AZPDES permit (other than the NPDES or AZPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities,

**Indian country** means:

1. All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;
2. All dependent Indian communities within the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and
3. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. This definition includes all land held in trust for an Indian tribe.

**Large or Medium Municipal Separate Storm Sewer System** means all municipal separate storm sewers as defined at 40 CFR 122.26(b)(4) or (7)

**MEP** means maximum extent practicable, the technology-based discharge standard for municipal separate storm sewer systems to reduce pollutants in stormwater discharges. A discussion of MEP as it applies to small MS4s is found at 40 CFR 122.34. CWA section 402(p)(3)(B)(iii) requires that a municipal permit shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system design, and engineering methods, and other provisions that the state determines appropriate for the control of such pollutants.

**Measurable goal** means a quantitative measure of progress in implementing a component of a stormwater management program.

**MS4** means municipal separate storm sewer system.

**Municipal separate storm sewer** means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, and storm drains):

1. Owned or operated by a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Clean Water Act (33 U.S.C. 1288) that discharges to waters of the United States;
2. Designed or used for collecting or conveying stormwater;
3. That is not a combined sewer; and
4. That is not part of a publicly owned treatment works.

**NOI** means Notice of Intent to be covered by this permit (see Part II).

**NOT** means Notice of Termination.

**Outfall** means a point source as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States,

**Owner or operator** means the owner or operator of any facility or activity subject to regulation under the NPDES program.

**Point source** means any discernible, confined, and discrete conveyance, including but not limited to,

any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

**Pollutant** is defined at R18-9-A901(22). A partial listing from this definition includes: dredged spoil, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial or municipal waste.

**Significant contributors of pollutants** means any discharge that causes or could cause or contribute to a violation of surface water quality standards.

**Small Municipal Separate Storm Sewer System** all separate storm sewers that are:

- 1 Owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;
- 2 Not defined as large or medium municipal separate storm sewer systems in accordance with this permit;
- 3 This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

**Stormwater** means stormwater runoff, snow melt runoff, and surface runoff and drainage.

**Stormwater Management Program (SWMP)** means a comprehensive program to manage the quality of stormwater discharged from the municipal separate storm sewer system.

**Waters of the United States** which is interchangeable with the term "navigable waters" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
  - a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
  - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - c. Which are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as waters of the United States under this definition;
5. Tributaries of waters identified in paragraphs (1) through (4) of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs 1. through 6. of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds for steam electric generation stations per 40 CFR 423, which also meet the criteria of this definition) are not waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the



purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.