

CONSTRUCTION DOCUMENTS

Sheffield





Mr. Don Good
Project Manager
Archer Western Contractors, Ltd.
2121 Avenue "J"
Suite 103
Arlington, TX 76006

Re: Ground water discharge at 60" Main Lowering

April 1, 2005

Dear Don:

On behalf of the Town of Addison, Archer Western Contractors, Ltd. is directed to stop all discharge of ground water with suspended solids across the railroad track into the North ditch. Since there is no erosion control devices installed along this ditch to attempt to remove the suspended solids from this water until it reaches the rock berm that are established at Surveyor Blvd. flume or fall out within the newly installed box culvert.

As discussed on several occasion, All ground water with suspended solids is to be discharged into the nearest adjacent sanitary sewer man hole for disposal. This will prevent sediment from collecting in the adjacent drainage systems and being washed down stream during a heavy rain event.

Thank you,

Guy Van Baulen
HNTB Corporation

Cc: File
Steve Chutchian, Town of Addison
Jerry D. Holder, HNTB Corporation
Michael Ebeling, HNTB Corporation



Archer Western
Contractors

July 14, 2004

Town of Addison
Department of Public Works
16801 Westgrove
Addison, TX. 75001

Attn: Jim Pierce

Ref: Arapaho Road Phase III – Surveyor Blvd to Addison Rd.

Subj: Equal Employment Opportunity Policy & EEO Officer

Dear Mr. Pierce,

The following are designated EEO Officers for the above referenced project:

Don Good – Project Superintendent – On Site
Joe Lindeman – Texas Area Manager – Off Site

Archer Western Contractors, Ltd's Equal Employment Opportunity Statement along with our Affirmative Action, Employee Conduct, Work Rules, Drug and Alcohol Use and Sexual Harassment policies are included for your reference.

If you have questions or require additional information, please contact this office.

Sincerely,

Ben Withered
Project Manager



Archer Western
Contractors

July 14, 2004

Town of Addison
Department of Public Works
16801 Westgrove
Addison, TX. 75001

Attn: Jim Pierce

Re: Arapaho Road Phase III – Surveyor Blvd to Addison Rd.I

Subj: Authorized person to sign Form WH-348 "Statement of Compliance"

Dear Mr. Pierce,

The person authorized to sign Form WH-348 "Statement of Compliance" for the above referenced project is Fran Waller, Payroll Administrator.

If you have any questions or concerns regarding this information, please contact this office.

Sincerely,

Ben Withered
Project Manager



Archer Western
Contractors

July 14, 2004

Town of Addison
Department of Public Works
16801 Westgrove
Addison, TX. 75001

Attn: Jim Pierce

Ref: Arapaho Road Phase III – Surveyor Blvd to Addison Rd.

Subj: Persons Responsible for Traffic Control Plan.

Dear Mr. Pierce,

The persons responsible for the traffic control plan on the above referenced project are Don Good, Project Superintendent with Archer Western and Gary Howell, superintendent with Dallas Lite and Barricade. Don Good can be reached at 817-401-5456, and Gary Howell can be reached at 214-415-5049.

If you have any questions or concerns regarding this information, please contact our office.

Thank you.

Sincerely,

Ben Withered
Project Manger



Archer Western
Contractors

July 14, 2004

Town of Addison
Department of Public Works
16801 Westgrove
Addison, TX. 75001

Attn: Jim Pierce

Ref: Arapaho Road Phase III – Surveyor Blvd to Addison Rd.

Subj: Project Superintendent

Dear Mr. Pierce,

The Project Superintendent for the above referenced project will be Don Good.

If you have any questions or concerns regarding this information, please contact our office.

Thank you.

Sincerely,

Ben Withered
Project Manger



Archer Western
Contractors

July 14, 2004

Town of Addison
Department of Public Works
16801 Westgrove
Addison, TX. 75001

Attn: Jim Pierce

Ref: Arapaho Road Phase III – Surveyor Blvd to Addison Rd.

Subj: Safety Officer

Dear Mr. Pierce,

The Safety Officer for the above referenced project will be Jack Brazil.

If you have any questions or concerns regarding this information, please contact our office.

Thank you.

Sincerely,

Ben Withered
Project Manger



EQUAL EMPLOYMENT OPPORTUNITY POLICY

The Walsh Group, Ltd., Inc. and its Subsidiaries, d/b/a Archer Western Contractors, Ltd. recognizes and acknowledges that the Civil Rights Act of 1964 and Executive Order 11246 (as amended by Executive Order 11375) prohibit discrimination in employment on the basis of disability, color, religion, sex, age, national origin or status as a veteran.

Accordingly, it is the policy of The Walsh Group, Ltd., Inc. and its Subsidiaries, d/b/a Archer Western Contractors, Ltd. that equal employment opportunities shall be afforded all qualified persons without regard to disability, race, color, religion, sex, age, national origin or status as a veteran. This shall be applied to all matters relating to hiring, promotion, compensation, transfer or termination of all employees, and shall cover all salaried and hourly paid positions in the office headquarters, shops, and in the field, including all job classifications within the respective trades.

It is, and shall continue to be, the policy of the Company that its employees and their work environment shall be free from all forms of sexual harassment and intimidation. Verbal and physical conduct of a sexual nature by any employee or supervisor is strictly prohibited. Employees who believe they are being subjected to sexual harassment by co-workers or supervisors, or believe their employment is being adversely affected by such conduct, should report such incidents to Joe Lindeman. A prompt and thorough investigation of the complaints will be conducted.

It is also the policy of The Walsh Group, Ltd., Inc. and its Subsidiaries, d/b/a Archer Western Contractors, Ltd. to cooperate with all governmental agencies charged with the responsibility of administering equal employment opportunity programs. The Walsh Group, Ltd., Inc. and its Subsidiaries d/b/a Archer Western Contractors, Ltd. has established an Affirmative Action Program which has as its objective the employment of minorities and women to achieve an employment profile consistent with the distribution of minorities and women in the population of the geographic areas in which it operates.

ARCHER WESTERN CONTRACTORS, LTD.

Jeffery Dunifon
VICE PRESIDENT



AFFIRMATIVE ACTION PROGRAM FOR EQUAL EMPLOYMENT OPPORTUNITY
WALSH GROUP DBA ARCHER WESTERN CONTRACTORS, LTD.

THE WALSH GROUP DBA ARCHER WESTERN CONTRACTORS, LTD. hereby reaffirms that its officers and employees are committed to, and shall diligently apply, all the terms and provisions of the Civil Rights Act of 1964 and of Executive Order 11246 (as amended by Executive 11375) in establishing and carrying out its Affirmative Action Program.

To implement this Program, WALSH GROUP DBA ARCHER WESTERN CONTRACTORS, LTD. will adhere to the following:

1. All superintendents, foremen, office managers and other supervisory personnel employed by the Company and having the authority to hire, discharge, promote, lay off, or discipline employees, will read and be familiar with this Affirmative Action Plan.
2. The discharge of an employee for cause, including (but not limited to) ability or work performance, as well as the lay off of an employee for lack of work, the recall or demotion of an employee, shall not be based upon that employee's disability, race, color, religion, sex, age or by reason of national origin. Further, the Company shall maintain such documentation as may be necessary to effectuate this policy.
3. The Company will post conspicuously such announcements with respect to nondiscrimination and equal employment opportunity as are required by law and Executive Order 11246, rules and regulations of agencies concerned, including the United States Department of Labor, and require that all subcontractors shall do likewise.
4. The Company will make its hiring policy and Affirmative Action Program known to all subcontractors, and shall include as a condition of the subcontract that the subcontractor shall observe the provisions of Executive Order 11246.
5. In requesting workers from hiring sources, this Company will ask for qualified workers, white and non-whites. This Company will ask for written assurances from hiring sources that admission to their referral facilities is open on equal terms to all qualified persons without discrimination based on disability, race, color, religion, sex, age, or national origin.
6. This Company will cooperate with governmental agencies, federal, state or local, who have the responsibility to observe our actual compliance with various laws relating to employment, by furnishing such reports, records and other matters as requested in order to foster the program of equal opportunity for all persons, regardless of disability, race, color, religion, sex, age or national origin, including statistical data on the total work force on a monthly basis during the duration of the contract. This data will include the number of percentages of minorities and women employed in the various crafts and skills utilized on the project.



7. All supervisory personnel will be fair, considerate and firm with all employees and shall expect and receive a fair day's work for a fair day's pay without favoritism or consideration to an employee's disability, race, color, religion, sex, age or national origin.
8. In all Company advertisements for employees, such advertisements shall contain the phrase "An Equal Opportunity Employer", and publications of special interest to minority groups will be given such advertisements when feasible.
9. Job superintendents shall have the overall responsibility of carrying out Company policies and this Affirmative Action Program on their prospective jobs.
10. In the event that a cooperative type program, in coordination with the school system, is established, the Company will make such training available to minority group and female students.
11. Placement, promotion and transfer activities at all levels will be monitored to insure that full consideration, as required by the Company policy, has been given to qualified minority group and female employees. The Company will review job categories where a few minority group and female persons are presently employed, and seek to determine the cause for such situations. When necessary, remedial efforts may include such actions as the following:
 - a) More vigorous recruitment of qualified minority group and female candidates.
 - b) Special discussions with appropriate management, supervisory, or other personnel, regarding the company's policy and its desire to insure the utilization of qualified minority group and female personnel at all job levels.
 - c) Re-evaluate qualifications of the lower echelon of minority group and female employees to determine whether their skills and capabilities may be more fully utilized at higher job levels or would warrant their transfer to other jobs more readily leading to advancement.
 - d) On-the-job training programs, as well as other training and educational programs to which the Company gives support or sponsorship, will be regularly reviewed to insure that minority group and female candidates, as well as all other employees, are given equal opportunity to participate.
 - e) Steps will be taken to give active encouragement to minority group and female employees to increase their skills and job potential through participation in available training and educational programs.
 - f) The Company will insure that qualified minority group and female employees are included in supervisory training classes sponsored or supported by the Company.



- g) The Company will seek the inclusion of qualified minority group and female employees in all crafts and skills utilized during the performance of the contract.
12. The Company will insure that all services and Company sponsored activities are made available to employees, regardless of disability, race, color, religion, sex, age or national origin.
13. There will be no segregated facilities sponsored by, nor the use of such accepted by, this Company for employee utilization.
14. The Company will seek and make known to qualified minority group subcontractors what work can be sublet so that they will have an opportunity to bid.
15. The Company will designate an equal opportunity officer on the jobsite and a general equal opportunity officer in the main office. The names of such officers will be posted and any complaint will be channeled to the job equal opportunity officer for handling.
16. The Company will advise and make known in writing to all sources from which it obtains employees of this Affirmative Action Program for Equal Opportunity. It will seek to obtain qualified minority group and female applicants, including contracting representatives of local civic and community organizations, to fill such job openings and through advertisements in news media predominantly used by minority group communities.

WALSH GROUP DBA
ARCHER WESTERN CONTRACTORS, LTD.

Jeffery Dunifon
VICE PRESIDENT

The Walsh Group
Walsh Employee Handbook

701 Employee Conduct and Work Rules

Effective Date: 06/01/99

To ensure orderly operations and provide the best possible work environment, the Company expects employees to follow rules of conduct that will protect the interests and safety of all employees and the organization.

It is not possible to list all the forms of behavior that are considered unacceptable in the workplace. The following are examples of infractions of rules of conduct that may result in disciplinary action, up to and including termination of employment:

- ❖ Theft or inappropriate removal or possession of property
- ❖ Falsification of timekeeping records
- ❖ Working under the influence of alcohol or illegal drugs
- ❖ Possession, distribution, sale, transfer, or use of alcohol or illegal drugs in the workplace, while on duty, or while operating employer-owned vehicles or equipment
- ❖ Fighting or threatening violence in the workplace
- ❖ Boisterous or disruptive activity in the workplace
- ❖ Negligence or improper conduct leading to damage of employer-owned or customer-owned property
- ❖ Insubordination or other disrespectful conduct
- ❖ Violation of safety and health rules
- ❖ Smoking in prohibited areas
- ❖ Sexual or other unlawful or unwelcome harassment
- ❖ Possession of dangerous or unauthorized materials, such as explosives or firearms, in the workplace
- ❖ Excessive absenteeism or any absence without notice
- ❖ Unauthorized absence from work station during the workday
- ❖ Unauthorized use of telephones, mail system, or other employer-owned equipment
- ❖ Unauthorized disclosure of business "secrets" or confidential information
- ❖ Violation of personnel policies
- ❖ Unsatisfactory performance or conduct

Employment with the Company is at the mutual consent of the Company and the employee, and either party may terminate that relationship at any time, with or without cause, and with or without advance notice.

The Walsh Group
Walsh Employee Handbook

702 Personal Conduct and Customer Service

Effective 06/01/03

Employees are expected to conduct themselves in a professional manner at all times. While "professional manner" is a generally understood concept, it may mean something different to each person. The following guidelines are designed to further explain how the Company defines professional manner:

- ❖ Display a positive attitude when dealing with customers
- ❖ Do not discuss competitors with our customers
- ❖ Avoid discussing customer matters in the presence of someone who has no reason to be part of the discussion.
- ❖ Information that could be considered confidential should not be discussed with customers
- ❖ Employees must always be on time for customer appointments. If an employee is going to be late for a customer appointment, he or she must contact the customer to notify him or her of the expected arrival time.
- ❖ Employees encountering a difference of opinion with a customer must immediately advise their supervisor of the problem and seek their assistance with resolution of the situation.
- ❖ If the customer is dissatisfied with anything, appropriate supervisors must be immediately notified.

The Walsh Group
Walsh Employee Handbook

703 Drug-Free Workplace

Effective 06/01/99
Revised 04/01/03

The Company is committed to providing a safe work environment for the health and well being of its employees. This commitment is jeopardized when an employee illegally uses drugs or alcohol on the job, comes to work under the influence of these substances, or possesses, distributes, or sells drugs in the workplace.

It shall be a violation of this policy for any employee to possess, sell, trade, or offer for sale illegal drugs at their workplace. It shall be a violation of this policy to use illegal drugs or be under the influence of illegal drugs or alcohol at anytime while on or using company property, conducting company business or otherwise representing the company. It shall be a violation to consume alcohol on the job before or during work hours.

It shall be a violation of this policy for anyone to use prescription drugs illegally. However, nothing in this policy shall preclude the appropriate use of legally prescribed medications. Employees are responsible for notifying their supervisor if the prescribed medication will affect the employee's ability to perform any function of their job.

Violations of this policy may lead to disciplinary action, up to and including immediate termination of employment, and/or required participation in a substance abuse rehabilitation or treatment program.

The Company is signatory to multiple collective bargaining agreements and nothing stated in this policy is intended to conflict or supersede the terms of such agreements. In the event of a conflict between the terms of this Policy and the terms of a collective bargaining agreement to which the Company is signatory, the terms of the collective bargaining agreement shall control.

Each Regional Office shall administer the Drug-Free Workplace Policy with assistance from Human Resources as needed. Drug testing results will be kept confidential and only released to individuals responsible for administering this policy. A photo ID is mandatory and must be presented at the time of testing.

The different types of testing that may be conducted are:

Pre-Employment Drug Testing

Pre-Employment Drug Testing shall be conducted on all newly hired employees unless prohibited by a collective bargaining agreement. Employees may be allowed to begin work prior to receipt of the drug test results by the Company, however employment is contingent upon passing the drug test.

The Walsh Group

Walsh Employee Handbook

Re-hire drug testing will be required if a non-union employee returns to work for the Company and has not worked for the Company within the past 30 days or if a union employee returns to work for the Company and has not worked for the Company within the past 6 months. (The last day worked can be found on users.walshgroup.com. This is the same requirement for completion of re-hire personnel / payroll paperwork.)

Vehicle Authorization Testing

When an employee is assigned a company vehicle or given authority to operate a company vehicle, they are subject to an initial drug test and random lottery tests thereafter as long as the vehicle is assigned to them or they have authority to operate a company vehicle. If an employee covered by a collective bargaining agreement declines completion of a drug test, he/she then voluntarily revokes his/her authorization to operate a company vehicle until such test is successfully completed.

Once an employee is initially tested, and the test results are negative, a card authorizing the employee to drive company vehicles will be given to the employee to retain. When employees are transferred from jobsite to jobsite, it is the responsibility of project management to make sure no one is operating a company vehicle without having a company authorization card.

Post-Accident Drug Testing

Employees shall submit to Post-Accident Drug and Alcohol Testing by a qualified clinic and in a manner that is not overly invasive (employee hereby acknowledges that giving urine and/or breath samples is not overly invasive) if they are involved in an employment-related accident or incident or if there is a workplace injury. An accident shall include any event resulting in injury to a person to such a degree that medical attention is reasonably required or resulting in material damage to property to which an employee contributed as a direct or indirect cause. An incident includes an event which has all the attributes of an accident, except that no harm was caused to person or property. Failure by the injured employee to reasonably submit to medical attention shall not relieve an involved party from being required to submit to drug and alcohol testing.

Random Testing

Random Drug Testing shall be conducted on all Regular Full-Time Employees and Non-Union Tradesman Full-Time Employees. Random Drug Testing shall also be conducted on Union Employees when required by a project owner or construction manager, by vehicle authorization testing, or when allowed by a collective bargaining agreement. Random Drug Testing selections will be by a random lottery selection process.

The Walsh Group

Walsh Employee Handbook

Refusal or Failure to Submit to Testing

Employees who refuse or fail to timely submit to drug and alcohol testing under the terms of this Policy shall be subject to disciplinary action up to and including, immediate termination (unless prohibited by an appropriate collective bargaining agreement).

Follow-up Drug Testing

At the sole discretion of the Company, employees who have violated this Policy may be given the opportunity to continue employment with the Company based upon the successful completion of a rehabilitation program. Such employees shall be subjected to unannounced drug and/or alcohol testing as a condition of employment for a period of one year following the successful completion of the rehabilitation program. If an employee tests positive as a result of a follow-up drug or alcohol test, the employee shall not be eligible for employment with the Company for a period of one year, or longer at the sole discretion of the Company.

Stricter Requirements

If an employee's profession is subject to other drug testing requirements imposed by law, those requirements shall supersede this Policy to the extent they are in conflict or are stricter.

Any questions regarding this policy should be directed to your manager or the Human Resources Manager.

The Walsh Group

Walsh Employee Handbook

704 Anti-Harassment

Effective date: 06/01/99

Revised date: 04/01/03

It is the policy of the Company that harassment of a sexual nature or any other types of unlawful harassment in the workplace, is unacceptable and will not be tolerated. All employees are expected to avoid any behavior or conduct toward any subordinates, co-workers, supervisors, executives, vendors, clients, customers, or visitors that could be interpreted as harassment. Any employee exhibiting such behavior is subject to immediate disciplinary action, which may include termination.

The Company is committed to maintaining a work environment that is free of discrimination, including harassment, on the basis of: race, color, gender, religion, creed, national origin, age, disability, marital status, sexual orientation and protected activity under anti-discrimination laws.

Conduct that is prohibited by this policy consists of:

- Unwelcome conduct, whether verbal, physical or visual, that is based upon the characteristics listed above, and
- Harassment on the basis of the protected status of an individual's relatives, friends, or associates.

Sexual harassment deserves special mention. According to the U.S. Equal Employment Opportunity Commission, unwelcome sexual advances, requests for sexual favors, and other verbal, physical or visual conduct based on a sexual nature constitute sexual harassment when:

- Submission to the conduct becomes an explicit or implicit term or condition of employment,
- Submission to or rejection of the conduct is the basis for any employment decision, or
- The conduct causes interference with the employee's work performance or creates an intimidating, hostile or offensive work environment.

Sexual harassment is not limited to an expression of demands for sexual favors. It can include conduct based on sex, whether directed toward a person of the opposite or same sex, and also may include such actions as:

- Sexually-oriented verbal kidding, teasing or jokes;
- Repeated sexual flirtations, advances or propositions;
- Continued or repeated verbal abuse of a sexual nature;

The Walsh Group

Walsh Employee Handbook

- Graphic or degrading comments about an individual or his/her appearance or sexual activity;
- Visual conduct, including leering, making sexual gestures, the display of sexually suggestive objects or pictures, cartoons, or posters;
- Subtle pressure for sexual activity;
- Suggestive or obscene letters, e-mails, notes or invitations;
- Offensive physical contact such as patting, grabbing, pinching, blocking or brushing against another's body; or
- Inappropriate use of the Company's business communication systems, including telephones, voicemail, computer, and e-mail systems.

Sexual harassment does not refer to occasional compliments of a socially acceptable nature. Nor is it sexual harassment if a personal relationship develops which is based on mutual consent.

Reporting Offensive Conduct. All employees must help assure that we avoid harassment. No employees are exempt from this policy. We encourage you to report incidents of harassment before they become severe and widespread. If you feel you have experienced or witnessed any conduct that may be inconsistent with this policy, we encourage you, to the extent you feel comfortable doing so, to inform the offender that you find his/her conduct offensive. You should notify any of the following:

- Your Business Group / Regional Manager
 - Arizona – Roy Epps
 - California – Bob Fouty
 - Colorado – Bob Fouty
 - Florida – Sam Joiner
 - Georgia – Don Gillis
 - Illinois – Rhonda Ceska (HR Manager)
 - Indiana – Jeff Dunifon
 - Massachusetts – Jeff Bardell
 - Michigan – Jeff Dunifon
 - Pennsylvania – David Pinyot
 - Texas – Joe Lindeman
 - Virginia – Sven Nysten
- The Human Resources Manager, Rhonda Ceska, 312/563-5967
- The EEO Officer, David May, 312/563-5400

All of the above are authorized to receive and address reports of harassment or discrimination.

The Walsh Group

Walsh Employee Handbook

Corrective Action.

The company will thoroughly investigate all reports describing conduct that is inconsistent with this policy.

The Company may discipline an employee for any inappropriate conduct discovered in investigating reports made under this policy.

In an investigation and in imposing any discipline, the Company will attempt to preserve confidentiality to the extent the needs of the situation permit.

All employees involved in the investigation are expected to respect the need for confidentiality as well.

If the investigation confirms that a policy violation has occurred, the Company will take appropriate corrective action, which may include termination of employment.

If the report of offensive conduct involves an individual who is not employed by the Company, the Company will take whatever corrective action is reasonable and appropriate under the circumstances.

Retaliation Prohibited. The Company forbids retaliation against anyone for:

- Reporting harassment,
- Assisting in making a harassment complaint, or
- Cooperating in a harassment investigation.

Anyone experiencing or witnessing any conduct they believe to be retaliatory should immediately follow the reporting procedures outlined above.



Archer Western
Contractors

July 14, 2004

Town of Addison
Department of Public Works
16801 Westgrove
Addison, TX. 75001

Attn: Jim Pierce

Re: Arapaho Road Phase III – Surveyor Blvd to Addison Rd.I

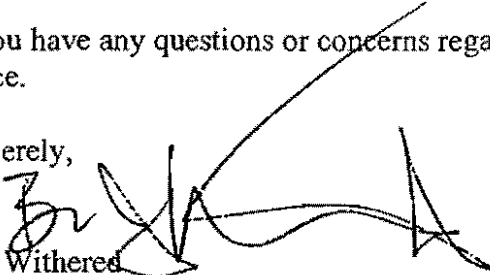
Subj: Project Schedule

Dear Mr. Pierce,

Attached is our Tentative Project Schedule for construction. Prior to commencement of work we will provide a Base Line Schedule.

If you have any questions or concerns regarding this information, please contact this office.

Sincerely,


Ben Withered
Project Manager



Archer Western
Contractors

July 14, 2004

Town of Addison
Department of Public Works
16801 Westgrove
Addison, TX. 75001

Attn: Jim Pierce

Re: Arapaho Road Phase III – Surveyor Blvd to Addison Rd.I

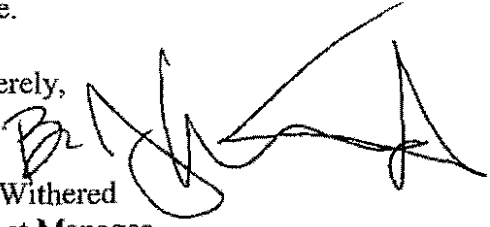
Subj: Erosion Control

Dear Mr. Pierce,

Attached is our Temporary Erosion, Sedimentation and Water Pollution Prevention and Control Plan.

If you have any questions or concerns regarding this information, please contact this office.

Sincerely,


Ben Withered
Project Manager

Temporary Erosion, Sedimentation and Water Pollution Prevention and Control

Identification of Major Soil Disturbing Activities

1. Prep Right of Way
2. Excavation & Embankment
3. Inlets & Pipe
4. Riprap
5. Landscaping

Methods of Accomplishment

1. Prep Right of Way
 - a. Our erosion control subcontractor "North Texas Erosion, Inc." shall place erosion control devices as shown on the SW3P plan in areas disturbed prior to or immediately after being disturbed. Plan sheets # 79-85A, outline the basic prevention methods to be used on this project.
2. Excavation & Embankment
 - a. Once excavation and embankment activities have begun, erosion control items shall be placed strategically to provide practical control of storm water runoff. These shall include items such as sediment control fence, hay bales, rock bedding at construction entrances/exits. These items shall be placed and maintained by our subcontractor.
3. Inlets & Pipe
 - a. Storm drainage pipe and inlets shall be installed during the roadway work phase. Archer Western Contractors is responsible for the pipe installation and a subcontractor "Inlet Specialties" shall construct the manholes and inlets. Pipe trenches shall be backfilled each day and erosion devices reinstalled if removed for the operation. After completion of the first stage of inlets, erosion control items shall be placed as necessary to avoid undue storm water runoff coming into the system. These items shall include: sediment control fence, curb inlet erosion control, sandbags, etc as required to maintain best management practices. Upon final construction of inlets, they shall be backfilled to grade and landscape placed as shown on the plans. Most of these items shall be placed by our subcontractor.
4. Riprap

- a. Concrete riprap shall be placed in a timely manner as soon as the site conditions allow for the permanent construction. Prior to this, erosion control methods shall remain in place until needed.
5. Landscaping
- a. Landscape work shall be either temporary or permanent construction items. Upon completion of the other items of work in a general area, our subcontractor "American Landscape Systems" shall apply the landscaping materials to stabilize the slopes and minimize the erosion effects.

In general, the storm water pollution prevention plan as shown in the contract documents and attached to this plan shall be implemented on this project by Archer Western Contractors and its subcontractors using the best management practice theory. All erosion control items shall be maintained in good working order.

Archer Western Contractors plan for waste materials of the project include:

- 1) Concrete disposal to:
 - a) Big City Crushed Concrete Dallas, TX
- 2) Soil disposal to:
 - a) Beltline & Ledbetter Farmers Branch, TX

Archer Western Contractors plan for SW3P industrial activities on the Right of Way:

- 1) No industrial activities are planned within the Right of Way

Archer Western Contractors plan for pollution control outside the Right of Way:

- 1) See the attached "Spill Prevention Control & Countermeasures Plan"

Attachments: SW3P contract documents
Spill Prevention Control and Countermeasures Plan



Archer Western
Contractors

Arapaho Road Phase III

**SPILL PREVENTION CONTROL AND
COUNTERMEASURES PLAN**

TABLE OF CONTENTS

1. INTRODUCTION AND GENERAL FACILITIES INFORMATION

- 1.1 Introduction and Purpose of Plan
- 1.2 Facility Name, Location, and Description
- 1.3 Organization Structure for SPCC Plan Implementation

2. CONTINGENCY PLANNING FOR OIL AND CHEMICAL SPILLS

- 2.1 Direction of Past Spill Events and Corrective Actions
- 2.2 Potential Spills: Prediction of Directions, Flow Rates, and Quantities
- 2.3 Contaminate and Diversionary Structures and Equipment
- 2.4 Conformance with Applicable Guidelines and Additional Regulations
- 2.5 Provisions for Facility Drainage and Additional Regulation
- 2.6 Storage Tank Construction, Containment, and High-Level Indicators
- 2.7 Tank Car and Tank Truck Loading and Unloading
- 2.8 Inspection and Record keeping
- 2.9 Site Security / Valve and Pump Lockouts
- 2.10 Personnel Training and Spill Prevention Procedures

3. FIGURES AND LAYOUTS

- 3.1 Figure 1 – Vicinity Map
- 3.2 Figure 2 – Facility Layout

APPENDIX A – Spill Response Procedures

APPENDIX B – Inspection Procedures and Sample Reports

APPENDIX C – OPA-SPCC Regulations (from 40 CFR ~ 112)

PART I

INTRODUCTION AND GENERAL FACILITIES INFORMATION

ARCHER WESTERN CONTRACTORS LTD. OFFICE AND LAYDOWN YARD

Addison, Texas 75001

1.1 Introduction and Purpose of Plan

The U.S Environmental Protection Agency (EPA) has implemented various programs to prevent pollution and the endangerment of public health and safety from accidental release of toxic, hazardous, or other polluting materials into the environment. These programs include the regulations contained in CFR ~ 112, Spill Prevention Control and Countermeasures (SPCC).

In addition, the Texas Natural Resource Conservation Commission (TNRCC) has issued regulations requiring the reporting, containment and cleanup of spills of petroleum products and other "hazardous substances" under 30 TAC ~ 327.3.

In compliance with these regulations, Archer Western Contractors Ltd. (AWC) will implement this SPCC Plan to minimize the potential for discharge of pollutants, the efficient and safe cleanup of materials, and protect the public health and safety. This SPCC Plan is expected to comply with the applicable SPCC requirements of the EPA and the TNRCC in effects as of the date of this plan.

1.2.1 Facility Name, Location, and Description:

**Archer Western Contractors, Ltd.
Field Office and Laydown Yard
_____ , Addison, Texas 75001**

**Office Telephone: (972)000-0000
Emergency Telephone: (972)000-0000**

1.2.2 Location Description:

The facility is located at the southeast corner of Arapaho Road and Surveyor Blvd.

1.2.3 Mailing Address:

**Archer Western Contractors, Ltd.
2121 Ave J, Suite 103**

Arlington, Texas 76006

1.2.3 Facility Description:

The Archer Western facility is comprised of several temporary structures, including portable office buildings, storage trailers, and materials for construction (see Figure 2 for details). Petroleum product storage and handling includes the following items, all above ground.

- Diesel fuel storage in self contained tank, 1000 gallons

1.3 Organization Structure for SPCC Plan Implementation

The Emergency Coordinator is responsible for coordination and direction of spill response activities at the AWC facility, and is also responsible for personnel training and spill prevention. Implementation of the SPCC Plan is the responsibility of the Emergency Coordinator. The current Emergency Coordinators for the AWC George Bush Turnpike facility are:

1.3.1 Emergency Coordinator:

Mr. Don Good
Superintendent
Archer Western Contractors, Ltd.
(817) 401-5456

1.3.2 Alternate:

Mr. Andrew Shneeman
Assistant Project Manager
Archer Western Contractors, Ltd.
(214) 000-0000

PART II

**CONTINGENCY PLANNING FOR OIL AND CHEMICAL
SPILLS**

**ARCHER WESTERN CONTRACTORS, LTD OFFICE AND LAYDOWN
YARD**

**Arapaho Road and Surveyor Blvd
Addison, Texas 75001**

2.1 Description of Past Spill Events and Corrective Actions

There have not been any reportable spills at the facilities covered by this SPCC Plan within 12 months of the requirements to have a SPCC Plan, as defined in CFR ~ 112.

2.2 Potential Spills: Prediction of Directions, Flow Rates, and Quantities

Refer to Figure 2 – Facility Layout, for details described in the following text:

- 2.2.1 Diesel fuel storage and dispensing tank, 1000 gallons – this is a single walled Above ground storage tank (AST) containing diesel fuel, situated in a manufactured containment berm. The containment berm is constructed of steel, and is sufficient in size to contain a spill of greater than 110 % of the previously mentioned tank capacity. Any leak from the AST, although unlikely, would be contained by the berm. Potential spillage would probably occur from overfilling the tank itself, or from overfilling vehicle fuel tanks during dispensing. The maximum rate of loss from one tank overfilling is estimated at 30 gal/min. Possible spill pathways for the diesel fuel are illustrated in Figure 2.

2.3 Containment and Diversionary Structures and Equipment

The AST is provided with a manufactured containment berm as described in 2.2.1.

2.4 Conformance with Applicable Guidelines and Additional Regulation

Applicable SPCC guidelines for onshore facilities (40 CFR ~ 112.7 (a) – (e)) shall be incorporated into this SPCC Plan; see the following sections for details. Spill and/or accidental releases of SARA Title III hazardous chemicals are reportable under Texas Law (30 TAC ~ 327.3). Refer to 2.10 Personnel Training and Spill Response Procedures for details.

2.5 Provisions for Facility Drainage from Diked Storage Areas

No drainage provisions exist for the AST containment unit. Any oil found in the berm will, upon discovery, be pumped into an appropriate disposal vessel, and disposed of in accordance with all applicable regulations.

2.6 Storage Tanks Construction, Containment, and High-Level Indicators

The fuel dispensing AST is of steel construction, compatible with the diesel fuel contained within. The AST is located on compacted soil. There is a visual level indicator provided for the AST.

2.7 Tank Car and Tank Truck Loading and Unloading

2.7.1 The operator dispensing diesel fuel into the AST will be present during the entire operation, and will continuously monitor the amount of gallons pumped, and will periodically check the tank gauges to prevent overfilling the tank. All transfer hoses and connections will be inspected by the truck operator before, during, and after dispensing. Residual product remaining in hoses will be drained into the tanks or into a container before disconnection and storage.

2.7.2 An AWC employee will be present during the connection, filling, and the disconnection operations to observe proper procedures are followed. The individual who signs the delivery ticket for fuel shipments is responsible for visual inspection of the lowermost liquid connection of the tank truck prior to its departure.

2.8 Inspections and Recordkeeping

2.8.1 Visual inspections of the AST (and any associated hoses or piping) will be performed weekly by the AWC Emergency Coordinator or Alternate.

2.8.2 Records of all visual inspections will be maintained using appropriate inspection logs (See Appendix B) which will be kept in the SPCC binder for not less than three years. Deficiencies in any area will be noted and promptly communicated to the maintenance personnel for corrective action.

2.8.3 Training records are kept for at least three years by the Environmental, Health and Safety Department, and then they are archived. Reports to outside authorities are kept on file in perpetuity.

2.9 Site Security / Valve and Pump Lockouts

- 2.9.1 Visual inspections of the tank systems are performed weekly as described above.
- 2.9.2 Sufficient exterior lighting is provided to discourage vandalism and to discover nighttime spills. This site is patrolled 24 hrs/day and is secured with chain link fencing.
- 2.9.3 All drain valves associated with tank systems are kept in the closed or "off" position, respectively, and will be locked out.
- 2.9.4 When not in use, all load/unload connections are capped or otherwise secured.

2.10 Personnel Training and Spill Prevention Procedures

2.10.1 Personnel Training

Annual training sessions are conducted for all personnel having responsibilities involving the fuel tanks. Records are kept at the field office. Training sessions will include tank filling procedures, inspections, spill response procedures, leak detection methods, and procedures to be followed when contacting outside contractors for assistance in an emergency situation.

2.10.2 Spill Response Procedures, Communications, Cleanup Equipment

The following procedure is to be followed during a spill event or incident discovered by an AWC employee.

1. The person discovering the spill will attempt to eliminate further release of oil or other polluting substance, if possible without personal harm. The anticipated actions would include:
 - a. Shutting off pumps or valves, or up-righting a topped drum.
 - b. Capping fuel delivery hoses and blocking storm drains.
 - c. Requesting assistance from on-site maintenance personnel.
2. If the spill or release threatens to escape the local containment area, the person will then notify the Emergency Coordinator of the situation, who will summon cleanup personnel and equipment to the scene.
3. The Emergency Coordinator will assess environmental impact, if any, and if required by law will notify appropriate authorities (See 2.10.3).

2.10.3 Spill / Release Notification Requirements

Under Texas Law (30 TAC ~ 327) in case of spills or discharges of petroleum products or used oil involving waters of the state in quantities sufficient to create

a sheen, or onto bare land in quantities of 25 gallons or more, within a 24 hour period, immediate notification shall be provided to:

**STATE EMERGENCY RESPONSE CENTER (SERC)
24 HR TELEPHONE: (800) 823-8224**

Alternatively, during daytime business hours, the TNRCC Region 4 Office may be contacted at (817) 588-5800.

Notification to the SERC or TNRCC Region 4 Office should be by telephone initially, and then followed up by written report if requested by TNRCC.

In the case of a release of over 1,000 gal petroleum products, or in the event of a spill of such volume or mass as to cause or threaten to cause damage to the public health, safety or welfare, aquatic life, animal life, plant life, or water use, the National Response Center and the USEPA Region VI Emergency Response Center must be notified:

**NATIONAL RESPONSE CENTER
24 HR EMERGENCY HOTLINE:
(800) 424-8802**

**USEPA REGION VI EMERGENCY RESPONSE CENTER
24 HR TELEPHONE
(214) 665-2222**

PART III

FIGURES AND LAYOUTS

ARCHER WESTERN CONTRACTORS, Ltd.

**Arapaho Road and Surveyor Blvd
Addison, Texas 75001**

Figures and Layouts to Follow at a later Date

APPENDIX A

SPILL RESPONSE PROCEDURES

**SPILL PREVENTION PROCEDURE
ARCHER WESTERN CONTRACTORS Ltd.**

1.0 PURPOSE

The purpose of this procedure is to prevent accidental discharges of oil and other polluting substances into waters of the State of Texas, as prohibited by 40 CFR ~ 112 and 30 TAC ~ 327.3, during routine delivery of bulk petroleum products at AWC facilities.

2.0 PROCEDURES

Deliveries of Fuel Oil

- 2.1 Fuel oil deliveries will be scheduled in advance. On the scheduled day of delivery, AWC management will ensure that an AWC employee will be available to supervise the fuel oil unloading process, and that spill prevention devices are available.
- 2.2 When the fuel oil delivery truck arrives, an AWC employee will meet the truck at the delivery point. The AWC employee will inform the fuel oil delivery truck driver regarding AWC spill prevention procedures.
- 2.3 The AWC employee will place a drain-blocking device at the opening of the storm water drain nearest to the delivery connection before any fuel being dispensed.
- 2.4 The AWC employee will supervise the hookup process connecting the tanker truck to the fuel oil supply connection fill port, and will remain in observation during the entire fuel oil unloading / delivery process.
- 2.5 The AWC employee or his assistant will monitor the level of the fuel oil storage tank continuously during the fuel oil unloading / delivery process to prevent overfilling.
- 2.6 If the tank approaches 90% of its maximum capacity during the fuel oil unloading / delivery process, the AWC employee will signal the fuel oil delivery truck driver to halt the flow of fuel oil, and will shut off flow to the full tank.

- 2.7 Prior to disconnecting the fuel oil delivery hose from the fuel oil supply connection fill port, the fuel oil delivery truck driver will drain fuel oil left in the hose into either:
- The fuel oil supply connection
 - The fuel oil delivery truck; or
 - An intact container of sufficient size to contain all the fuel oil left in the hose
- 2.8 The fuel oil delivery truck driver will handle and stow the fuel oil delivery hose in such a manner as to prevent any spillage or leakage of fuel oil, and will ensure the maximum amount of drainage possible prior to disconnecting the hose.
- 2.9 Any spills or leaks of fuel oil during any part of the delivery / unloading process will be immediately cleaned up using absorbent materials of the highest efficiency capable of removing fuel oil from intact surfaces.
- 2.10 Any discharges of fuel oil during any part of the delivery / unloading process that threaten to enter waterways (or the environment in damaging quantities) must be addressed per 2.10.3 of the AWC SPCC Plan.

Maintenance Activities

- 2.11 Any maintenance activities performed on the fuel oil bulk storage tank that could result in significant leaks or spills of fuel oil will be supervised by the AWC SPCC Plan Emergency Coordinator or by another designated AWC employee.
- 2.12 Any small spillage of fuel oil during any part of the maintenance activities performed on the fuel oil storage system will be immediately cleaned up using absorbent materials of the highest efficiency capable of removing fuel oil from intact surfaces.
- 2.13 In the event of an uncontrolled release of fuel oil to any containment area in excess of the containments area's capacity, immediate measures will be taken to address the spill by:
- Blocking near storm drains and paths to water receptors, and
 - Implementing section 2.10.3 of the AWC SPCC Plan.

APPENDIX B

INSPECTION PROCEDURES AND SAMPLE REPORTS

FACILITY INSPECTION CHECKLIST

This inspection record will be completed every month. Place an X in the appropriate box for each item. If any req elaboration or is not applicable, note this in the Description and Comments space provided. Further descriptions comments should be attached on a separate sheet of paper if necessary.

	Yes	No	Descriptions and Comments
Tank surfaces show signs of leakage	<input type="checkbox"/>	<input type="checkbox"/>	
Tanks are damaged, rusted, or deteriorated	<input type="checkbox"/>	<input type="checkbox"/>	
Bolts, rivets, or seams are damaged	<input type="checkbox"/>	<input type="checkbox"/>	
Tank supports are deteriorated or buckled	<input type="checkbox"/>	<input type="checkbox"/>	
Tank foundations have eroded or settled	<input type="checkbox"/>	<input type="checkbox"/>	
Level gauges or alarms are inoperative	<input type="checkbox"/>	<input type="checkbox"/>	
Valve seals or gaskets are leaking	<input type="checkbox"/>	<input type="checkbox"/>	
Loading/unloading area is damaged or deteriorated	<input type="checkbox"/>	<input type="checkbox"/>	
Connections are not capped or blank-flanged	<input type="checkbox"/>	<input type="checkbox"/>	
Secondary containment is damaged or stained	<input type="checkbox"/>	<input type="checkbox"/>	
Dike drainage valves are open (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>	
Fencing, gates or lighting are not functional	<input type="checkbox"/>	<input type="checkbox"/>	
Drums show signs of leakage	<input type="checkbox"/>	<input type="checkbox"/>	
Drums are damaged, rusted, or deteriorated	<input type="checkbox"/>	<input type="checkbox"/>	
Secondary containment is damaged or stained	<input type="checkbox"/>	<input type="checkbox"/>	

Remarks: _____

Signature: _____

Date: _____

APPENDIX C

OPA – SPCC REGULATIONS (40 CFR ~ 112)

EPA REGULATIONS ON OIL POLLUTION PREVENTION

(40 CFR 112; 38 FR 34164, Dec. 11, 1973; Revised through July 1, 1991; amended at 57 FR 52704, Nov. 4, 1992; 58 FR 45035, Aug. 25, 1993)

TITLE 40—PROTECTION
OF ENVIRONMENT
CHAPTER I—ENVIRONMENTAL
PROTECTION AGENCY
SUBCHAPTER D—WATER
PROGRAMS
PART 112—OIL POLLUTION
PREVENTION

Authority: 33 U.S.C. 1251 *et seq.*

[Revised at 57 FR 52705, Nov. 4, 1992;
58 FR 45035, Aug. 25, 1993]

Sec.	
112.1	General applicability.
112.2	Definitions.
112.3	Requirements for preparation and implementation of Spill Prevention Control and Countermeasure Plans.
112.4	Amendment of SPCC Plans by Regional Administrator.
112.5	Amendment of Spill Prevention Control and Countermeasure Plans by owners and operators.
112.6	Civil penalties for violation of oil pollution prevention regulations.
112.7	Guidelines for the preparation and implementation of a Spill Prevention Control and Countermeasure Plan.

Appendix to Part 112—Memorandum of Understanding Between the Secretary of Transportation and the Administrator of the Environmental Protection Agency

§112.1 General applicability.

(a) This part establishes procedures, methods and equipment and other requirements for equipment to prevent the discharge of oil from non-transportation-

related onshore and offshore facilities into or upon the navigable waters of the United States or adjoining shorelines.

(b) Except as provided in paragraph (d) of this section, this part applies to owners or operators of non-transportation-related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil and oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines.

(c) As provided in section 313 (86 Stat. 875) departments, agencies, and instrumentalities of the Federal government are subject to these regulations to the same extent as any person, except for the provisions of §112.6.

(d) This part does not apply to:

(1) Facilities, equipment or operations which are not subject to the jurisdiction of the Environmental Protection Agency, as follows:

(i) Onshore and offshore facilities, which, due to their location, could not reasonably be expected to discharge oil into or upon the navigable waters of the United States or adjoining shorelines. This determination shall be based solely upon a consideration of the geographical, locational aspects of the facility (such as proximity to navigable waters or adjoining shorelines, land contour, drainage, etc.) and shall exclude consideration of man-made features such as dikes, equipment or other structures which may serve to restrain, hinder, contain, or otherwise pre-

vent a discharge of oil from reaching navigable waters of the United States or adjoining shorelines; and

(ii) Equipment or operations of vessels or transportation-related onshore and offshore facilities which are subject to authority and control of the Department of Transportation, as defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of the Environmental Protection Agency, dated November 24, 1971, 36 FR 24000.

(2) Those facilities which, although otherwise subject to the jurisdiction of the Environmental Protection Agency, meet both of the following requirements:

(i) The underground buried storage capacity of the facility is 42,000 gallons or less of oil, and

(ii) The storage capacity, which is not buried, of the facility is 1,320 gallons or less of oil, provided no single container has a capacity in excess of 660 gallons.

(e) This part provides for the preparation and implementation of Spill Prevention Control and Countermeasure Plans prepared in accordance with §112.7, designed to complement existing laws, regulations, rules, standards, policies and procedures pertaining to safety standards, fire prevention and pollution prevention rules, so as to form a comprehensive balanced Federal/State spill prevention program to minimize the potential for oil discharges. Compliance with this part does not in any way relieve the owner or operator of an onshore or an offshore facility from compliance with other Federal, State or local laws.

[Sec. 112.1(e)]

§112.2 Definitions.

For the purposes of this part:

(a) "Oil" means oil of any kind or in any form, including, but not limited to petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil.

(b) "Discharge" includes but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping. For purposes of this part, the term "discharge" shall not include any discharge of oil which is authorized by a permit issued pursuant to section 13 of the River and Harbor Act of 1899 (30 Stat. 1121, 33 U.S.C. 407), or sections 402 or 405 of the FWPCA Amendments of 1972 (86 Stat. 816 et seq., 33 U.S.C. 1251 et seq.).

(c) "Onshore facility" means any facility of any kind located in, on, or under any land within the United States, other than submerged lands, which is not a transportation-related facility.

(d) "Offshore facility" means any facility of any kind located in, on, or under any of the navigable waters of the United States, which is not a transportation-related facility.

(e) "Owner or operator" means any person owning or operating an onshore facility or an offshore facility, and in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment.

(f) "Person" includes an individual, firm, corporation, association, and a partnership.

(g) "Regional Administrator", means the Regional Administrator of the Environmental Protection Agency, or his designee, in and for the Region in which the facility is located.

(h) "Transportation-related" and "non-transportation-related" as applied to an onshore or offshore facility, are defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of the Environmental Protection Agency, dated November 24, 1971, 36 FR 24080.

(i) "Spill event" means a discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in harmful quantities, as defined at 40 CFR part 110.

(j) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone,

Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(k) The term "navigable waters" of the United States means "navigable waters" as defined in section 502(7) of the FWPCA, and includes:

(1) All navigable waters of the United States, as defined in judicial decisions prior to passage of the 1972 Amendments to the FWPCA (Pub. L. 92-500), and tributaries of such waters;

(2) Interstate waters;

(3) Intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; and

(4) Intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce. Navigable waters 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.

[Amended at 58 FR 45035, Aug. 25, 1993]

(l) "Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used as a means of transportation on water, other than a public vessel.

§112.3 Requirements for preparation and implementation of Spill Prevention Control and Countermeasure Plans.

(a) Owners or operators of onshore and offshore facilities in operation on or before the effective date of this part that have discharged or, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in 40 CFR part 110, into or upon the navigable waters of the United States or adjoining shorelines, shall prepare a Spill Prevention Control and Countermeasure Plan (hereinafter "SPCC Plan"), in writing and in accordance with §112.7. Except as provided for in paragraph (f) of this section, such SPCC Plan shall be prepared within six months after the effective date of this part and shall be fully implemented as soon as possible, but not later than one year after the effective date of this part.

(b) Owners or operators of onshore and offshore facilities that become operational after the effective date of this part, and

that have discharged or could reasonably be expected to discharge oil in harmful quantities, as defined in 40 CFR part 110, into or upon the navigable waters of the United States or adjoining shorelines, shall prepare an SPCC Plan in accordance with §112.7. Except as provided for in paragraph (f) of this section, such SPCC Plan shall be prepared within six months after the date such facility begins operations and shall be fully implemented as soon as possible, but not later than one year after such facility begins operations.

(c) Owners or operators of onshore and offshore mobile or portable facilities, such as onshore drilling or workover rigs, barge mounted offshore drilling or workover rigs, and portable fueling facilities shall prepare and implement an SPCC Plan as required by paragraphs (a), (b) and (d) of this section. The owners or operators of such facility need not prepare a new SPCC Plan each time the facility is moved to a new site. The SPCC Plan may be a general plan, prepared in accordance with §112.7, using good engineering practice. When the mobile or portable facility is moved, it must be located and installed using the spill prevention practices outlined in the SPCC Plan for the facility. No mobile or portable facility subject to this regulation shall operate unless the SPCC Plan has been implemented. The SPCC Plan shall only apply while the facility is in a fixed (non-transportation) operating mode.

(d) No SPCC Plan shall be effective to satisfy the requirements of this part unless it has been reviewed by a Registered Professional Engineer and certified to by such Professional Engineer. By means of this certification the engineer, having examined the facility and being familiar with the provisions of this part, shall attest that the SPCC Plan has been prepared in accordance with good engineering practices. Such certification shall in no way relieve the owner or operator of an onshore or offshore facility of his duty to prepare and fully implement such Plan in accordance with §112.7, as required by paragraphs (a), (b) and (c) of this section.

(e) Owners or operators of a facility for which an SPCC Plan is required pursuant to paragraph (a), (b) or (c) of this section shall maintain a complete copy of the Plan at such facility if the facility is normally attended at least 3 hours per day, or at the nearest field office if the facility is

not so attended, and shall make such Plan available to the Regional Administrator for on-site review during normal working hours.

(f) Extensions of time.

(1) The Regional Administrator may authorize an extension of time for the preparation and full implementation of an SPCC Plan beyond the time permitted for the preparation and implementation of an SPCC Plan pursuant to paragraph (a), (b) or (c) of this section where he finds that the owner or operator of a facility subject to paragraphs (a), (b) or (c) of this section cannot fully comply with the requirements of this part as a result of either nonavailability of qualified personnel, or delays in construction or equipment delivery beyond the control and without the fault of such owner or operator or their respective agents or employees.

(2) Any owner or operator seeking an extension of time pursuant to paragraph (f)(1) of this section may submit a letter of request to the Regional Administrator. Such letter shall include:

- (i) A complete copy of the SPCC Plan, if completed;
- (ii) A full explanation of the cause for any such delay and the specific aspects of the SPCC Plan affected by the delay;
- (iii) A full discussion of actions being taken or contemplated to minimize or mitigate such delay;
- (iv) A proposed time schedule for the implementation of any corrective actions being taken or contemplated, including interim dates for completion of tests or studies, installation and operation of any necessary equipment or other preventive measures.

In addition, such owner or operator may present additional oral or written statements in support of his letter of request.

(3) The submission of a letter of request for extension of time pursuant to paragraph (f)(2) of this section shall in no way relieve the owner or operator from his obligation to comply with the requirements of §112.3 (a), (b) or (c). Where an extension of time is authorized by the Regional Administrator for particular equipment or other specific aspects of the SPCC Plan, such extension shall in no way affect the owner's or operator's obligation to comply with the requirements of §112.3 (a), (b) or (c) with respect to other equipment or other specific aspects of the

SPCC Plan for which an extension of time has not been expressly authorized.

§112.4 Amendment of SPCC Plans by Regional Administrator.

(a) Notwithstanding compliance with §112.3, whenever a facility subject to §112.3 (a), (b) or (c) has: Discharged more than 1,000 U.S. gallons of oil into or upon the navigable waters of the United States or adjoining shorelines in a single spill event, or discharged oil in harmful quantities, as defined in 40 CFR part 110, into or upon the navigable waters of the United States or adjoining shorelines in two spill events, reportable under section 311(b)(5) of the FWPCA, occurring within any twelve month period, the owner or operator of such facility shall submit to the Regional Administrator, within 60 days from the time such facility becomes subject to this section, the following:

- (1) Name of the facility;
- (2) Name(s) of the owner or operator of the facility;
- (3) Location of the facility;
- (4) Date and year of initial facility operation;
- (5) Maximum storage or handling capacity of the facility and normal daily throughput;
- (6) Description of the facility, including maps, flow diagrams, and topographical maps;
- (7) A complete copy of the SPCC Plan with any amendments;
- (8) The cause(s) of such spill, including a failure analysis of system or subsystem in which the failure occurred;
- (9) The corrective actions and/or countermeasures taken, including an adequate description of equipment repairs and/or replacements;
- (10) Additional preventive measures taken or contemplated to minimize the possibility of recurrence;
- (11) Such other information as the Regional Administrator may reasonably require pertinent to the Plan or spill event.

(b) Section 112.4 shall not apply until the expiration of the time permitted for the preparation and implementation of an SPCC Plan pursuant to §112.3 (a), (b), (c) and (f).

(c) A complete copy of all information provided to the Regional Administrator pursuant to paragraph (a) of this section shall be sent at the same time to the State agency in charge of water pollution control activities in and for the State in which

the facility is located. Upon receipt of such information such State agency may conduct a review and make recommendations to the Regional Administrator as to further procedures, methods, equipment and other requirements for equipment necessary to prevent and to contain discharges of oil from such facility.

(c) After review of the SPCC Plan for a facility subject to paragraph (a) of this section, together with all other information submitted by the owner or operator of such facility, and by the State agency under paragraph (c) of this section, the Regional Administrator may require the owner or operator of such facility to amend the SPCC Plan if he finds that the Plan does not meet the requirements of this part or that the amendment of the Plan is necessary to prevent and to contain discharges of oil from such facility.

(e) When the Regional Administrator proposes to require an amendment to the SPCC Plan, he shall notify the facility operator by certified mail addressed to, or by personal delivery to, the facility owner or operator, that he proposes to require an amendment to the Plan, and shall specify the terms of such amendment. If the facility owner or operator is a corporation, a copy of such notice shall also be mailed to the registered agent, if any, of such corporation in the State where such facility is located. Within 30 days from receipt of such notice, the facility owner or operator may submit written information, views, and arguments on the amendment. After considering all relevant material presented, the Regional Administrator shall notify the facility owner or operator of any amendment required or shall rescind the notice. The amendment required by the Regional Administrator shall become part of the Plan 30 days after such notice, unless the Regional Administrator, for good cause, shall specify another effective date. The owner or operator of the facility shall implement the amendment of the Plan as soon as possible, but not later than six months after the amendment becomes part of the Plan, unless the Regional Administrator specifies another date.

(f) An owner or operator may appeal a decision made by the Regional Administrator requiring an amendment to an SPCC Plan. The appeal shall be made to the Administrator of the United States Environmental Protection Agency and must be made in writing within 30 days of

receipt of the notice from the Regional Administrator requiring the amendment. A complete copy of the appeal must be sent to the Regional Administrator at the time the appeal is made. The appeal shall contain a clear and concise statement of the issues and points of fact in the case. It may also contain additional information from the owner or operator, or from any other person. The Administrator or his designee may request additional information from the owner or operator, or from any other person. The Administrator or his designee shall render a decision within 60 days of receiving the appeal and shall notify the owner or operator of his decision.

§112.5 Amendment of Spill Prevention Control and Countermeasure Plans by owners or operators.

(a) Owners or operators of facilities subject to §112.3 (a), (b) or (c) shall amend the SPCC Plan for such facility in accordance with §112.7 whenever there is a change in facility design, construction, operation or maintenance which materially affects the facility's potential for the discharge of oil into or upon the navigable waters of the United States or adjoining shore lines. Such amendments shall be fully implemented as soon as possible, but not later than six months after such change occurs.

(b) Notwithstanding compliance with paragraph (a) of this section, owners and operators of facilities subject to §112.3 (a), (b) or (c) shall complete a review and evaluation of the SPCC Plan at least once every three years from the date such facility becomes subject to this part. As a result of this review and evaluation, the owner or operator shall amend the SPCC Plan within six months of the review to include more effective prevention and control technology if:

(1) Such technology will significantly reduce the likelihood of a spill event from the facility, and

(2) If such technology has been field-proven at the time of the review.

(c) No amendment to an SPCC Plan shall be effective to satisfy the requirements of this section unless it has been certified by a Professional Engineer in accordance with §112.3(d).

§112.6 Civil penalties for violation of oil pollution prevention regulations.

(a) Applicability of section. This section shall apply to violations specified in paragraph (b) of this section which occurred prior to August 18, 1990.

(b) Owners or operators of facilities subject to §112.3 (a), (b) or (c) who violate the requirements of this part 112 by failing or refusing to comply with any of the provisions of §112.3, §112.4 or §112.5 shall be liable for a civil penalty of not more than \$5,000 for each day such violation continues. Civil penalties shall be imposed in accordance with procedures set out in part 114 of this subchapter D.

[§112.6 revised at 57 FR 52705, Nov. 4, 1992]

§112.7 Guidelines for the preparation and implementation of a Spill Prevention Control and Countermeasure Plan.

The SPCC Plan shall be a carefully thought-out plan, prepared in accordance with good engineering practices, and which has the full approval of management at a level with authority to commit the necessary resources. If the plan calls for additional facilities or procedures, methods, or equipment not yet fully operational, these items should be discussed in separate paragraphs, and the details of installation and operational start-up should be explained separately. The complete SPCC Plan shall follow the sequence outlined below, and include a discussion of the facility's conformance with the appropriate guidelines listed:

(a) A facility which has experienced one or more spill events within twelve months prior to the effective date of this part should include a written description of each such spill, corrective action taken and plans for preventing recurrence.

(b) Where experience indicates a reasonable potential for equipment failure (such as tank overflow, rupture, or leakage), the plan should include a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each major type of failure.

(c) Appropriate containment and/or diversionary structures or equipment to prevent discharged oil from reaching a navigable water course should be provided. One of the following preventive systems or its equivalent should be used as a minimum:

- (1) Onshore facilities:
 - (i) Dikes, berms or retaining walls sufficiently impervious to contain spilled oil;
 - (ii) Curbing;
 - (iii) Culverting, gutters or other drainage systems;
 - (iv) Weirs, booms or other barriers;
 - (v) Spill diversion ponds;
 - (vi) Retention ponds;
 - (vii) Sorbent materials.
- (2) Offshore facilities:
 - (i) Curbing, drip pans;
 - (ii) Sumps and collection systems.

(d) When it is determined that the installation of structures or equipment listed in §112.7(c) to prevent discharged oil from reaching the navigable waters is not practicable from any onshore or offshore facility, the owner or operator should clearly demonstrate such impracticability and provide the following:

(1) A strong oil spill contingency plan following the provision of 40 CFR part 109.

(2) A written commitment of manpower, equipment and materials required to expeditiously control and remove any harmful quantity of oil discharged.

(e) In addition to the minimal prevention standards listed under §112.7(c), sections of the Plan should include a complete discussion of conformance with the following applicable guidelines, other effective spill prevention and containment procedures (or, if more stringent, with State rules, regulations and guidelines):

(1) Facility drainage (onshore); (excluding production facilities).

(i) Drainage from diked storage areas should be restrained by valves or other positive means to prevent a spill or other excessive leakage of oil into the drainage system or inplant effluent treatment system, except where plan systems are designed to handle such leakage. Diked areas may be emptied by pumps or ejectors; however, these should be manually activated and the condition of the accumulation should be examined before starting to be sure no oil will be discharged into the water.

(ii) Flapper-type drain valves should not be used to drain diked areas. Valves used for the drainage of diked areas should, as far as practical, be of manual, open-and-closed design. When plant drainage drains directly into water courses and not into wastewater treatment plants, retained storm water should

[Sec. 112.7(e)(1)(ii)]

OIL POLLUTION PREVENTION

be inspected as provided in paragraphs (c)(2)(iii) (B), (C) and (D) of this section before drainage.

(iii) Plant drainage systems from undiked areas should, if possible, flow into ponds, lagoons or catchment basins, designed to retain oil or return it to the facility. Catchment basins should not be located in areas subject to periodic flooding.

(iv) If plant drainage is not engineered as above, the final discharge of all in-plant ditches should be equipped with a diversion system that could, in the event of an uncontrolled spill, return the oil to the plant.

(v) Where drainage waters are treated in more than one treatment unit, natural hydraulic flow should be used. If pump transfer is needed, two "lift" pumps should be provided, and at least one of the pumps should be permanently installed when such treatment is continuous. In any event, whatever techniques are used facility drainage systems should be adequately engineered to prevent oil from reaching navigable waters in the event of equipment failure or human error at the facility.

(2) *Bulk storage tanks (onshore); (excluding production facilities).*

(i) No tank should be used for the storage of oil unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature, etc.

(ii) All bulk storage tank installations should be constructed so that a secondary means of containment is provided for the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation. Diked areas should be sufficiently impervious to contain spilled oil. Dikes, containment curbs, and pits are commonly employed for this purpose, but they may not always be appropriate. An alternative system could consist of a complete drainage trench enclosure arranged so that a spill could terminate and be safely confined in an in-plant catchment basin or holding pond.

(iii) Drainage of rainwater from the diked area into a storm drain or an effluent discharge that empties into an open water course, lake, or pond, and bypassing the in-plant treatment system may be acceptable if:

(A) The bypass valve is normally sealed closed.

(B) Inspection of the run-off rain water ensures compliance with applicable water quality standards and will not cause a harmful discharge as defined in 40 CFR part 110.

(C) The bypass valve is opened, and resealed following drainage under responsible supervision.

(D) Adequate records are kept of such events.

(iv) Buried metallic storage tanks represent a potential for undetected spills. A new buried installation should be protected from corrosion by coatings, cathodic protection or other effective methods compatible with local soil conditions. Such buried tanks should at least be subjected to regular pressure testing.

(v) Partially buried metallic tanks for the storage of oil should be avoided, unless the buried section of the shell is adequately coated, since partial burial in damp earth can cause rapid corrosion of metallic surfaces, especially at the earth/air interface.

(vi) Aboveground tanks should be subject to periodic integrity testing, taking into account tank design (floating roof, etc.) and using such techniques as hydrostatic testing, visual inspection or a system of non-destructive shell thickness testing. Comparison records should be kept where appropriate, and tank supports and foundations should be included in these inspections. In addition, the outside of the tank should frequently be observed by operating personnel for signs of deterioration, leaks which might cause a spill, or accumulation of oil inside diked areas.

(vii) To control leakage through defective internal heating coils, the following factors should be considered and applied, as appropriate.

(A) The steam return or exhaust lines from internal heating coils which discharge into an open water course should be monitored for contamination, or passed through a settling tank, skimmer, or other separation or retention system.

(B) The feasibility of installing an external heating system should also be considered.

(viii) New and old tank installations should, as far as practical, be fail-safe engineered or updated into a fail-safe engineered installation to avoid spills. Consideration should be given to providing one or more of the following devices:

(A) High liquid level alarms with an audible or visual signal at a constantly manned operation or surveillance station; in smaller plants an audible air vent may suffice.

(B) Considering size and complexity of the facility, high liquid level pump cutoff devices set to stop flow at a predetermined tank content level.

(C) Direct audible or code signal communication between the tank gauger and the pumping station.

(D) A fast response system for determining the liquid level of each bulk storage tank such as digital computers, telepulse, or direct vision gauges or their equivalent.

(E) Liquid level sensing devices should be regularly tested to insure proper operation.

(ix) Plant effluents which are discharged into navigable waters should have disposal facilities observed frequently enough to detect possible system upsets that could cause an oil spill event.

(x) Visible oil leaks which result in a loss of oil from tank seams, gaskets, rivets and bolts sufficiently large to cause the accumulation of oil in diked areas should be promptly corrected.

(xi) Mobile or portable oil storage tanks (onshore) should be positioned or located so as to prevent spilled oil from reaching navigable waters. A secondary means of containment, such as dikes or catchment basins, should be furnished for the largest single compartment or tank. These facilities should be located where they will not be subject to periodic flooding or washout.

(3) *Facility transfer operations, pumping, and in-plant process (onshore); (excluding production facilities).*

(i) Buried piping installations should have a protective wrapping and coating and should be cathodically protected if soil conditions warrant. If a section of buried line is exposed for any reason, it should be carefully examined for deterioration. If corrosion damage is found, additional examination and corrective action should be taken as indicated by the magnitude of the damage. An alternative would be the more frequent use of exposed pipe corridors or galleries.

(ii) When a pipeline is not in service, or in standby service for an extended time the terminal connection at the transfer

point should be capped or blank-flanged, and marked as to origin.

(iii) Pipe supports should be properly designed to minimize abrasion and corrosion and allow for expansion and contraction.

(iv) All aboveground valves and pipelines should be subjected to regular examinations by operating personnel at which time the general condition of items, such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, locking of valves, and metal surfaces should be assessed. In addition, periodic pressure testing may be warranted for piping in areas where facility drainage is such that a failure might lead to a spill event.

(v) Vehicular traffic granted entry into the facility should be warned verbally or by appropriate signs to be sure that the vehicle, because of its size, will not endanger above ground piping.

(4) *Facility tank car and tank truck loading/unloading rack (onshore).*

(i) Tank car and tank truck loading/unloading procedures should meet the minimum requirements and regulation established by the Department of Transportation.

(ii) Where rack area drainage does not flow into a catchment basin or treatment facility designed to handle spills, a quick drainage system should be used for tank truck loading and unloading areas. The containment system should be designed to hold at least maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded in the plant.

(iii) An interlocked warning light or physical barrier system, or warning signs, should be provided in loading/unloading areas to prevent vehicular departure before complete disconnect of flexible or fixed transfer lines.

(iv) Prior to filling and departure of any tank car or tank truck, the lowermost drain and all outlets of such vehicles should be closely examined for leakage, and if necessary, tightened, adjusted, or replaced to prevent liquid leakage while in transit.

(5) *Oil production facilities (onshore).*

(i) *Definition.* An onshore production facility may include all wells, flowlines, separation equipment, storage facilities, gathering lines, and auxiliary non-transportation-related equipment and facilities

in a single geographical oil or gas field operated by a single operator.

(ii) *Oil production facility (onshore) drainage.* (A) At tank batteries and central treating stations where an accidental discharge of oil would have a reasonable possibility of reaching navigable waters, the dikes or equivalent required under §112.7(c)(1) should have drains closed and sealed at all times except when rainwater is being drained. Prior to drainage, the diked area should be inspected as provided in paragraphs (c)(2)(iii) (B), (C), and (D) of this section. Accumulated oil on the rainwater should be picked up and returned to storage or disposed of in accordance with approved methods.

(B) Field drainage ditches, road ditches, and oil traps, sumps or skimmers, if such exist, should be inspected at regularly scheduled intervals for accumulation of oil that may have escaped from small leaks. Any such accumulations should be removed.

(iii) *Oil production facility (onshore) bulk storage tanks.*

(A) No tank should be used for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage.

(B) All tank battery and central treating plant installations should be provided with a secondary means of containment for the entire contents of the largest single tank if feasible, or alternate systems such as those outlined in §112.7(c)(1). Drainage from undiked areas should be safely confined in a catchment basin or holding pond.

(C) All tanks containing oil should be visually examined by a competent person for condition and need for maintenance on a scheduled periodic basis. Such examination should include the foundation and supports of tanks that are above the surface of the ground.

(D) New and old tank battery installations should, as far as practical, be fail-safe engineered or updated into a fail-safe engineered installation to prevent spills. Consideration should be given to one or more of the following:

(1) Adequate tank capacity to assure that a tank will not overflow; should a pumper/gauger be delayed in making his regular rounds.

(2) Overflow equalizing lines between tanks so that a full tank can overflow to an adjacent tank.

(3) Adequate vacuum protection to prevent tank collapse during a pipeline run.

(4) High level sensors to generate and transmit an alarm signal to the computer where facilities are a part of a computer production control system.

(iv) *Facility transfer operations, oil production facility (onshore).*

(A) All above ground valves and pipelines should be examined periodically on a scheduled basis for general condition of items such as flange joints, valve glands and bodies, drip pans, pipeline supports, pumping well polish rod stuffing boxes, bleeder and gauge valves.

(B) Salt water (oil field brine) disposal facilities should be examined often, particularly following a sudden change in atmospheric temperature to detect possible system upsets that could cause an oil discharge.

(C) Production facilities should have a program of flowline maintenance to prevent spills from this source. The program should include periodic examinations, corrosion protection, flowline replacement, and adequate records, as appropriate, for the individual facility.

(6) *Oil drilling and workover facilities (onshore).*

(i) Mobile drilling or workover equipment should be positioned or located so as to prevent spilled oil from reaching navigable waters.

(ii) Depending on the location, catchment basins or diversion structures may be necessary to intercept and contain spills of fuel, crude oil, or oily drilling fluids.

(iii) Before drilling below any casing string or during workover operations, a blowout prevention (BOP) assembly and well control system should be installed that is capable of controlling any well head pressure that is expected to be encountered while that BOP assembly is on the well. Casing and BOP installations should be in accordance with State regulatory agency requirements.

(7) *Oil drilling, production, or workover facilities (offshore).*

(i) *Definition:* "An oil drilling, production or workover facility (offshore)" may include all drilling or workover equipment, wells, flowlines, gathering lines, platforms, and auxiliary non-transportation-related equipment and facilities in a single geographical oil or gas field operated by a single operator.

[Sec. 112.7(e)(7)(i)]

(ii) Oil drainage collection equipment should be used to prevent and control small oil spillage around pumps, glands, valves, flanges, expansion joints, hoses, drain lines, separators, treaters, tanks, and allied equipment. Drains on the facility should be controlled and directed toward a central collection sump or equivalent collection system sufficient to prevent discharges of oil into the navigable waters of the United States. Where drains and sumps are not practicable oil contained in collection equipment should be removed as often as necessary to prevent overflow.

(iii) For facilities employing a sump system, sump and drains should be adequately sized and a spare pump or equivalent method should be available to remove liquid from the sump and assure that oil does not escape. A regular scheduled preventive maintenance inspection and testing program should be employed to assure reliable operation of the liquid removal system and pump start-up device. Redundant automatic sump pumps and control devices may be required on some installations.

(iv) In areas where separators and treaters are equipped with dump valves whose predominant mode of failure is in the closed position and pollution risk is high, the facility should be specially equipped to prevent the escape of oil. This could be accomplished by extending the flare line to a diked area if the separator is near shore, equipping it with a high liquid level sensor that will automatically shut-in wells producing to the separator, parallel redundant dump valves, or other feasible alternatives to prevent oil discharges.

(v) Atmospheric storage or surge tanks should be equipped with high liquid level sensing devices or other acceptable alternatives to prevent oil discharges.

(vi) Pressure tanks should be equipped with high and low pressure sensing devices to activate an alarm and/or control the flow or other acceptable alternatives to prevent oil discharges.

(vii) Tanks should be equipped with suitable corrosion protection.

(viii) A written procedure for inspecting and testing pollution prevention equipment and systems should be prepared and maintained at the facility. Such procedures should be included as part of the SPCC Plan.

(ix) Testing and inspection of the pollution prevention equipment and systems at the facility should be conducted by the owner or operator on a scheduled periodic basis commensurate with the complexity, conditions and circumstances of the facility or other appropriate regulations.

(x) Surface and subsurface well shut-in valves and devices in use at the facility should be sufficiently described to determine method of activation or control, e.g., pressure differential, change in fluid or flow conditions, combination of pressure and flow, manual or remote control mechanisms. Detailed records for each well, while not necessarily part of the plan should be kept by the owner or operator.

(xi) Before drilling below any casing string, and during workover operations a blowout preventer (BOP) assembly and well control system should be installed that is capable of controlling any wellhead pressure that is expected to be encountered while that BOP assembly is on the well. Casing and BOP installations should be in accordance with State regulatory agency requirements.

(xii) Extraordinary well control measures should be provided should emergency conditions, including fire, loss of control and other abnormal conditions, occur. The degree of control system redundancy should vary with hazard exposure and probable consequences of failure. It is recommended that surface shut-in systems have redundant or "fail close" valving. Subsurface safety valves may not be needed in producing wells that will not flow but should be installed as required by applicable State regulations.

(xiii) In order that there will be no misunderstanding of joint and separate duties and obligations to perform work in a safe and pollution free manner, written instructions should be prepared by the owner or operator for contractors and subcontractors to follow whenever contract activities include servicing a well or systems appurtenant to a well or pressure vessel. Such instructions and procedures should be maintained at the offshore production facility. Under certain circumstances and conditions such contractor activities may require the presence at the facility of an authorized representative of the owner or operator who would intervene when necessary to prevent a spill event.

(xiv) All manifolds (headers) should be equipped with check valves on individual flowlines.

(xv) If the shut-in well pressure is greater than the working pressure of the flowline and manifold valves up to and including the header valves associated with that individual flowline, the flowline should be equipped with a high pressure sensing device and shut-in valve at the wellhead unless provided with a pressure relief system to prevent over pressuring.

(xvi) All pipelines appurtenant to the facility should be protected from corrosion. Methods used, such as protective coatings or cathodic protection, should be discussed.

(xvii) Sub-marine pipelines appurtenant to the facility should be adequately protected against environmental stresses and other activities such as fishing operations.

(xviii) Sub-marine pipelines appurtenant to the facility should be in good operating condition at all times and inspected on a scheduled periodic basis for failures. Such inspections should be documented and maintained at the facility.

(3) *Inspections and records.* Inspections required by this part should be in accordance with written procedures developed for the facility by the owner or operator. These written procedures and a record of the inspections, signed by the appropriate supervisor or inspector, should be made part of the SPCC Plan and maintained for a period of three years.

(9) *Security (excluding oil production facilities).*

(i) All plants handling, processing, and storing oil should be fully fenced, and entrance gates should be locked and/or guarded when the plant is not in production or is unattended.

(ii) The master flow and drain valves and any other valves that will permit direct outward flow of the tank's content to the surface should be securely locked in the closed position when in non-operating or non-standby status.

(iii) The starter control on all oil pumps should be locked in the "off" position or located at a site accessible only to authorized personnel when the pumps are in a non-operating or non-standby status.

(iv) The loading/unloading connections of oil pipelines should be securely capped or blank-flanged when not in service or standby service for an extended time.

This security practice should also apply to pipelines that are emptied of liquid content either by draining or by inert gas pressure.

(v) Facility lighting should be commensurate with the type and location of the facility. Consideration should be given to: (A) Discovery of spills occurring during hours of darkness, both by operating personnel, if present, and by non-operating personnel (the general public, local police, etc.) and (B) prevention of spills occurring through acts of vandalism.

(10) *Personnel, training and spill prevention procedures.*

(i) Owners or operators are responsible for properly instructing their personnel in the operation and maintenance of equipment to prevent the discharges of oil and applicable pollution control laws, rules and regulations.

(ii) Each applicable facility should have a designated person who is accountable for oil spill prevention and who reports to line management.

(iii) Owners or operators should schedule and conduct spill prevention briefings for their operating personnel at intervals frequent enough to assure adequate understanding of the SPCC Plan for that facility. Such briefings should highlight and describe known spill events or failures, malfunctioning components, and recently developed precautionary measures.

Appendix—Memorandum of Understanding Between the Secretary of Transportation and the Administrator of the Environmental Protection Agency

SECTION II—DEFINITIONS

The Environmental Protection Agency and the Department of Transportation agree that for the purposes of Executive Order 11543, the term:

(1) "Non-transportation-related onshore and offshore facilities" means:

(A) Fixed onshore and offshore oil well drilling facilities including all equipment and appurtenances related thereto used in drilling operations for exploratory or development wells, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(B) Mobile onshore and offshore oil well drilling platforms, barges, trucks, or other mobile facilities including all equipment and appurtenances related thereto when such mobile facilities are fixed in

position for the purpose of drilling operations for exploratory or development wells, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(C) Fixed onshore and offshore oil production structures, platforms, derricks, and rigs including all equipment and appurtenances related thereto, as well as completed wells and the wellhead separators, oil separators, and storage facilities used in the production of oil, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(D) Mobile onshore and offshore oil production facilities including all equipment and appurtenances related thereto as well as completed wells and wellhead equipment, piping from wellheads to oil separators, oil separators, and storage facilities used in the production of oil when such mobile facilities are fixed in position for the purpose of oil production operations, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(E) Oil refining facilities including all equipment and appurtenances related thereto as well as in-plant processing units, storage units, piping, drainage systems and waste treatment units used in the refining of oil, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(F) Oil storage facilities including all equipment and appurtenances related thereto as well as fixed bulk plant storage, terminal oil storage facilities, consumer storage, pumps and drainage systems used in the storage of oil, but excluding inline or breakout storage tanks needed for the continuous operation of a pipeline system and any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(G) Industrial, commercial, agricultural or public facilities which use and store oil, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(H) Waste treatment facilities including in-plant pipelines, effluent discharge

lines, and storage tanks, but excluding waste treatment facilities located on vessels and terminal storage tanks and appurtenances for the reception of oily ballast water or tank washings from vessels and associated systems used for off-loading vessels.

(I) Loading racks, transfer hoses, loading arms and other equipment which are appurtenant to a nontransportation-related facility or terminal facility and which are used to transfer oil in bulk to or from highway vehicles or railroad cars.

(J) Highway vehicles and railroad cars which are used for the transport of oil exclusively within the confines of a nontransportation-related facility and which are not intended to transport oil in interstate or intrastate commerce.

(K) Pipeline systems which are used for the transport of oil exclusively within the confines of a nontransportation-related facility or terminal facility and which are not intended to transport oil in interstate or intrastate commerce, but excluding pipeline systems used to transfer oil in bulk to or from a vessel.

(2) "Transportation-related onshore and offshore facilities" means:

(A) Onshore and offshore terminal facilities including transfer hoses, loading arms and other equipment and appurtenances used for the purpose of handling or transferring oil in bulk to or from a vessel as well as storage tanks and appurtenances for the reception of oily ballast water or tank washings from vessels, but excluding terminal waste treatment facilities and terminal oil storage facilities.

(B) Transfer hoses, loading arms and other equipment appurtenant to a nontransportation-related facility which is used to transfer oil in bulk to or from a vessel.

(C) Interstate and intrastate onshore and offshore pipeline systems including pumps and appurtenances related thereto as well as in-line or breakout storage tanks needed for the continuous operation of a pipeline system, and pipelines from onshore and offshore oil production facilities, but excluding onshore and offshore piping from wellheads to oil separators and pipelines which are used for the transport of oil exclusively within the confines of a nontransportation-related facility or terminal facility and which are not intended to transport oil in interstate or in-

{Part 112, Appendix}

OIL POLLUTION PREVENTION

trastate commerce or to transfer oil in bulk to or from a vessel.

(D) Highway vehicles and railroad cars which are used for the transport of oil in interstate or intrastate commerce and the

equipment and appurtenances related thereto, and equipment used for the fueling of locomotive units, as well as the rights-of-way on which they operate. Excluded are highway vehicles and railroad

cars and motive power used exclusively within the confines of a nontransportation-related facility or terminal facility and which are not intended for use in interstate or intrastate commerce.

[Part 112, Appendix]

Monday
July 6, 1998

**Revised
Final Report
Federal NPDES**

Part II

**Environmental
Protection Agency**

**Reissuance of NPDES General Permits
for Storm Water Discharges From
Construction Activities in Region 6;
Notice**

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6119-7]

Reissuance of NPDES General Permits for Storm Water Discharges from Construction Activities in Region 6

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final NPDES general permits.

SUMMARY: Region 6 is issuing the final National Pollutant Discharge Elimination System (NPDES) general permits for storm water discharges associated with construction activity in Region 6. EPA first issued permits for these activities in September 1992. These permits subsequently expired in September 1997. Today's permits, which replace those expired permits, are similar to the permits issued in 1992. The main changes from those 1992 permits are summarized in the SUPPLEMENTARY INFORMATION section, below.

ADDRESSES: The index to the administrative record and the complete administrative record are available at the Water Docket, MC-4101, U.S. EPA, 401 M Street SW, Washington, DC 20460. Copies of information in the record are available upon request. A reasonable fee may be charged for copying. The index to the administrative record is also available from EPA Region 6, Water Quality Protection Division, Customer Service Branch (6WQ-CA) 1445 Ross Avenue, Suite 1200, Dallas, TX 75202.

DATES: These general permits shall be effective on July 6, 1998.

NOTICE OF INTENT: A NOTICE OF INTENT (NOI) FORM MUST BE SUBMITTED TO OBTAIN COVERAGE FOR STORM WATER DISCHARGES UNDER THESE PERMITS. THE NOI FORM IS GIVEN IN ADDENDUM C OF THESE PERMITS. DEADLINES FOR SUBMITTAL OF NOI'S ARE PROVIDED IN PART II.A OF THE PERMITS. FOR FURTHER INFORMATION CONTACT: For further information on the NPDES Construction General Permits, call the EPA Region 6 Storm Water Hotline at 1-800-245-6510. Information is also available through the EPA Region 6's storm water web site at "<http://www.epa.gov/region6/sw/>" and on the PIPES bulletin board web site at "<http://pipes.ehsg.salc.com/pipes.htm>".

SUPPLEMENTARY INFORMATION:

Contents

I. Introduction

II. Answers to Common Questions

III. Section 401 Certification and Coastal Zone Management Act

IV. Endangered Species Protection
V. Historic Properties Protection
VI. Regulatory Review (Executive Order 12866)

VII. Unfunded Mandates Reform Act

VIII. Paperwork Reduction Act

IX. Regulatory Flexibility Act

I. Introduction

The United States Environmental Protection Agency Region 6 office is reissuing the general permits which authorize the discharge storm water associated with construction activity. As used in this permit, "storm water associated with construction activity" means construction activity disturbing at least five acres, or construction activity disturbing less than five acres which is part of a larger common plan of development or sale with the potential to disturb cumulatively five or more acres (See 40 CFR 122.26(b)(14)(x)).

These permits replace the previous Baseline Construction General Permits which were issued for a five-year term in September 1992. The most significant changes from the 1992 permits are:

- ▶ New conditions to protect listed endangered and threatened species and critical habitats;

- ▶ Expanded coverage to construction sites under five acres of disturbed land which are not part of a larger common plan of development or sale when an operator has been designated by the Director to obtain coverage.

- ▶ A requirement to post at the construction site the confirmation of permit coverage (the permit number or copy of the Notice of Intent (NOI) if a permit number has not yet been assigned) including a brief description of the project;

- ▶ Storm water pollution prevention plan performance objectives have been added.

These general permits for storm water discharges associated with construction activity was proposed on June 2, 1997 (62 FR 29786), and are hereby issued for the following areas in Region 6: The States of New Mexico and Texas; Indian Country lands in Louisiana, Oklahoma, Texas and New Mexico (except Navajo Reservation Lands and Ute Mountain Reservation Lands); and oil and gas construction in the State of Oklahoma.

II. Answers to Common Questions

In this section, EPA provides answers to some of the more common questions on the construction storm water permitting program. These answers are fairly broad and may not take into account all scenarios possible at construction sites. More details on these issues are provided at 63 FR 7858

(February 17, 1998) in the "Summary of Responses to Comments on the Proposed Permit" section of the reissuance of NPDES General Permits From Construction Activities for Regions 1, 2, 3, 7, 8, 9 and 10.

How do I Know if I Need a Permit?

You need a storm water permit if you can be considered an "operator" of the construction activity that would result in the "discharge of storm water associated with construction activity." You must become a permittee if you meet either of the following two criteria:

- ▶ You have operational control of construction project plans and specifications, including the ability to make modifications to those plans and specifications; or

- ▶ You have day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan (SWPPP) for the site or other permit conditions (e.g., you are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions).

There may be more than one party at a site performing the tasks relating to "operational control" as defined above. Depending on the site and the relationship between the parties (e.g., owner, developer), there can either be a single party acting as site operator and consequently be responsible for obtaining permit coverage, or there can be two or more operators with all needing permit coverage. The following are three general operator scenarios (variations on any of the three are possible as the number of "owners" and contractors increases):

- ▶ **Owner as Sole Permittee.** The property owner designs the structures for the site; develops and implements the SWPPP, and serves as general contractor (or has an on-site representative with full authority to direct day-to-day operations). He may be the only party that needs a permit, in which case everyone else on the site may be considered subcontractors and not need permit coverage.

- ▶ **Contractor as Sole Permittee.** The property owner hires a construction company to design the project, prepare the SWPPP, and supervise implementation of the plan and compliance with the permit (e.g., a "turnkey" project). Here, the contractor would be the only party needing a permit. It is under this scenario that an individual having a personal residence built for his own use (e.g., not those to be sold for profit or used as rental property) would not be considered an

operator. EPA believes that the general contractor, being a professional in the building industry, should be the entity rather than the individual who is better equipped to meet the requirements of both applying for permit coverage and developing and properly implementing a SWPPP. However, individuals would meet the definition of "operator" and require permit coverage in instances where they perform general contracting duties for construction of their personal residences.

► **Owner and Contractor as Co-Permittees.** The owner retains control over any changes to site plans, SWPPPs, or storm water conveyance or control designs; but the contractor is responsible for overseeing actual earth disturbing activities and daily implementation of SWPPP and other permit conditions. In this case, both parties may need coverage.

However, you are probably not an operator and subsequently do not need permit coverage if:

► You are a subcontractor hired by, and under the supervision of, the owner or a general contractor (i.e., if the contractor directs your activities on-site, you probably are not an operator); or

► your activities on site result in earth disturbance and you are not legally a subcontractor, but a SWPPP specifically identifies someone other than you (or your subcontractor) as the party having operational control to address the impacts your activities may have on storm water quality (i.e., another operator has assumed responsibility for the impacts of your construction activities). This particular provision will apply to most utility service line installations. For further information concerning whether utility service line installations meet the definition of operator and require permit coverage, see the discussion under "Installation of Utility Service Lines" in Section VIII, Summary Response to Public Comments of the Fact Sheet.

In addition, for purposes of this permit and determining who is an operator, "owner" refers to the party that owns the structure being built. Ownership of the land where construction is occurring does not necessarily imply the property owner is an operator (e.g., a landowner whose property is being disturbed by construction of a gas pipeline). Likewise, if the erection of a structure has been contracted for, but possession of the title or lease to the land or structure is not to occur until after construction, the would-be owner may not be considered an operator (e.g.,

having a house built by a residential homebuilder).

My Project Will Disturb Less Than Five Acres, but It May Be Part of a "Larger Common Plan of Development or Sale." How Can I Tell and What Must I do?

If your smaller project is part of a larger common plan of development or sale that collectively will disturb five or more acres (e.g., you are building on six half-acre residential lots in a 10-acre development or are putting in a parking lot in a large retail center) you need permit coverage. The "plan" in a common plan of development or sale is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot. You must still meet the definition of operator in order to be required to get permit coverage, regardless of the acreage you personally disturb. As a subcontractor, it is unlikely you would need a permit.

For some situations where less than five acres of the original common plan of development remain undeveloped, a permit may not be needed for the construction projects "filling in" the last parts of the common plan of development. A case in which a permit would not be needed is where several empty lots totaling less than five acres remain after the rest of the project had been completed, providing stabilization had also been completed for the entire project. However, if the total area of all the undeveloped lots in the original common plan of development was more than five acres, a permit would be needed.

When Can You Consider Future Construction on a Property To Be Part of a Separate Plan of Development or Sale?

In many cases, a common plan of development or sale consists of many small construction projects that collectively add up to five (5) or more acres of total disturbed land. For example, an original common plan of development for a residential subdivision might lay out the streets, house lots, and areas for parks, schools and commercial development that the developer plans to build or sell to others for development. All these areas would remain part of the common plan of development or sale until the intended construction occurs. After this initial plan is completed for a particular

parcel, any subsequent development or redevelopment of that parcel would be regarded as a new plan of development, and would then be subject to the five-acre cutoff for storm water permitting.

What Must I do to Satisfy The Permit Eligibility Requirements Related to Endangered Species?

In order to be eligible for this permit, you must follow the procedures and examples found in Addendum A for the protection of endangered species. You cannot submit your NOI until you are able to certify your eligibility for the permit. Enough lead time should be built into your project schedule to accomplish these procedures. If another operator has certified eligibility for the project (or at least the portion of the project you will be working on) in his NOI, you will usually be able to rely on his certification of project eligibility and not have to repeat the process. EPA created this "coat tail" eligibility option for protection of endangered species to allow the site developer/owner to obtain up-front "clearance" for a project, thereby avoiding duplication of effort by his contractors and unnecessary delays in construction.

What Does the Permit Require Regarding Historic Preservation?

Today's permit does not currently impose requirements related to historic preservation, though EPA may modify the permit at a later date after further discussions with the Advisory Council on Historic Preservation. Therefore, under today's permit, EPA will conduct consultations as it did under the pre-existing Baseline Construction General Permit on a case-by-case basis as needed. Removal of the proposed permit provisions related to historic preservation in no way relieves applicants and permittees of their obligations to comply with applicable State, Tribal or local laws for the preservation of historic properties. EPA reminds permittees that according to section 110(k) of the National Historic Preservation Act (NHPA), an intentional action to significantly adversely affect historic resources with intent to avoid Federal historic preservation requirements may jeopardize future permit coverage for such a permittee.

How Many Notices of Intent (NOIs) Must I Submit? Where and When Are They Sent?

You only need to submit one NOI to cover all activities on any one common plan of development or sale. The site map you develop for the storm water pollution prevention plan identifies which parts of the overall project are

under your control. For example, if you are a homebuilder in a residential development, you need submit only one NOI to cover all your lots, even if they are on opposite sides of the development.

The NOI must be postmarked two days before you begin work on site. The address for submitting NOIs is found in the instruction portion of the NOI form and in Part II.C. of the CGP. You must also look in Part X of the permit to determine if copies of the NOI form are to be sent to a State or Indian Tribe.

If I Am on an ongoing Construction Project, do I Have to Fill in a New NOI To Be Covered by the Permit?

Yes, if you are on an ongoing construction project, a construction project which started prior to the effective date of this permit, you must complete a revised NOI Form (EPA Form 3510-9) to obtain coverage under this permit. However, applicants who have previously submitted an NOI for permit coverage prior to the effective date of this permit have the option to leave the section regarding Addendum A on endangered species blank unless there is a potential impact on endangered species or their habitat.

How do I Know Which Permit Conditions Apply to Me?

You are responsible for complying with all parts of the permit that are applicable to the construction activities you perform. Part III.E. of the permit defines the roles of various operators at a site. In addition, several States and Indian Tribes require alternative or additional permit conditions, and these can be found in Part X of the permit.

Do I Have Flexibility In Preparing the Storm Water Pollution Prevention Plan (SWPPP) and Selecting Best Management Practices (BMPs) for My Site?

Storm water pollution prevention plan requirements were designed to allow maximum flexibility to develop the needed storm water controls based on the specifics of the site. Some of the factors you might consider include: more stringent local development requirements and/or building codes; precipitation patterns for the area at the time the project will be underway; soil types; slopes; layout of structures for the site; sensitivity of nearby water bodies; safety concerns of the storm water controls (e.g., potential hazards of water in storm water retention ponds to the safety of children; the potential of drawing birds to retention ponds and the hazards they pose to aircraft); and coordination with other site operators.

Must Every Permittee Have His Own Separate SWPPP or Is a Joint Plan Allowed?

The only requirement is that there be at least one SWPPP for a site which incorporates the required elements for all operators, but there can be separate plans if individual permittees so desire. EPA encourages permittees to explore possible cost savings by having a joint SWPPP for several operators. For example, the prime developer could assume the inspection responsibilities for the entire site, while each homebuilder shares in the installation and maintenance of sediment traps serving common areas.

If a Project Will Not Be Completed Before This Permit Expires, How Can I Keep Permit Coverage?

If the permit is reissued or replaced with a new one before the current one expires, you will need to comply with whatever conditions the new permit requires in order to transition coverage from the old permit. This usually includes submitting a new NOI. If the permit expires before a replacement permit can be issued, the permit will be administratively "continued." You are automatically covered under the continued permit, without needing to submit anything to EPA, until the earliest of:

- ▶ The permit being reissued or replaced;
- ▶ Submittal of a Notice of Termination (NOT);
- ▶ Issuance of an individual permit for your activity; or
- ▶ The Director issues a formal decision not to reissue the permit, at which time you must seek coverage under an alternative permit.

When Can I Terminate Permit Coverage? Can I Terminate Coverage (i.e., Liability for Permit Compliance) Before the Entire Project Is Finished?

You can submit an NOT for your portion of a site providing: (1) You have achieved final stabilization of the portion of the site for which you are a permittee (including, if applicable, returning agricultural land to its pre-construction agricultural use); (2) another operator/permittee has assumed control according to Part VI.G.2.c. of the permit over all areas of the site that have not been finally stabilized which you were responsible for (for example, a developer can pass permit responsibility for lots in a subdivision to the homebuilder who purchases those lots, providing the homebuilder has filed his own NOI); or (3) for residential construction only, you have completed

temporary stabilization and the residence has been transferred to the homeowner.

III. Section 401 Certification and Coastal Zone Management Act

Section 401 of the Clean Water Act states that EPA may not issue an NPDES permit until the State in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and State law. The Region has received section 401 certification from the appropriate States and Indian Tribes for all facilities covered by today's permits. Additional permit requirements were required as a condition of certification by the State of Texas and by the Pueblos of Isleta, Nambe, Picuris, Pojoaque, Sandia, Tesuque and Santa Clara in New Mexico. These additional permit requirements are contained in Part X of the permits.

The Coastal Zone Management Act (CZMA) requires all Federal permitting actions to be reviewed for consistency with each approved State Coastal Zone Management Plan. Texas is the only State covered by these permits that has an approved Coastal Zone Management Plan. EPA Region 6 has determined that the permit is consistent with the Texas Coastal Zone Management Plan. The Texas Coastal Zone Management Plan procedures for Federal consistency with Coastal Management Program goals and policies (31 TAC 506.12) state that if an activity requiring a state agency or subdivision action above thresholds requires an equivalent Federal permit, the Texas Coastal Coordination Council may determine the consistency of the state agency/subdivision action or the Federal permit, but not both. Permittees whose construction projects are located within the boundary of the Texas Coastal Management Program above thresholds will be required, as a part of pre-construction project approval, to have a consistency review by the Texas Council. An additional consistency review by the Texas Coastal Coordination Council of the storm water discharges from these construction projects covered by today's permit is, therefore, not required.

IV. Endangered Species Protection

A. Background

The Construction General Permit (CGP) also contains conditions to ensure the activities regulated by it are protective of species that are listed under the Endangered Species Act (ESA) as endangered or threatened (known as "listed species"), and listed species habitat that is designated under

the ESA as critical ("critical habitat"). In addition, the permit's coverage does not extend to discharges and discharge-related activities likely to jeopardize the continued existence of species proposed but not yet listed as endangered or threatened or result in the adverse modification of habitat proposed to be designated critical habitat.

The ESA places several different requirements on activities covered by the CGP. First, section 9 of the ESA and the ESA implementing regulations generally prohibit any person from "taking" a listed animal species (e.g., harassing or harming it) unless the take is authorized under the ESA. This prohibition applies to all entities and includes EPA, permit applicants, permittees and the public at large. Second, section 7(a)(2) of the ESA requires that Federal agencies consult with the Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS) ("the Services") to insure that any action authorized, funded or carried out by them (also known as "agency actions") are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. Jeopardizing the continued existence of a listed species means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers or distribution of that species (See 40 CFR 402.02).

The ESA section 7 implementing regulations at 50 CFR 402 apply this consultation requirement to any action authorized by a Federal agency that may affect listed species or critical habitat, including permits. This effect, among other things, can be beneficial, detrimental, direct and indirect. The issuance of the CGP by EPA is thus subject to the ESA section 7(a)(2) consultation requirements. Finally, ESA section 7(a)(1) directs Federal agencies to use their authority to further the purposes of the ESA by carrying out programs for the conservation of listed species, and section 7(a)(4) directs Federal agencies to confer with the Services on Agency actions likely to jeopardize the existence of species proposed but not yet finally listed or result in the adverse modification of critical habitat proposed to be designated.

The ESA regulations provide for two types of consultation: formal and informal. Informal consultation is an optional process that includes

discussions, correspondence, etc. between the Services and a Federal agency or a designated non-Federal representative (NFR) to determine whether a Federal action is likely to have an adverse effect on listed species or critical habitat. During informal consultation the Services may suggest modifications to the action that a Federal agency, permit applicant or non-Federal representative could implement to avoid likely adverse effects to listed species or critical habitat. If adverse effects are likely and those effects cannot be addressed through informal consultation, then formal consultation generally occurs.

Also of relevance for the CGP are ESA section 10 incidental taking permits. Section 10 of the ESA allows persons, including non-Federal entities to incidentally take listed animal species, where otherwise prohibited, through the issuance of a permit after development of a habitat conservation plan (HCP). These procedures were developed to allow non-Federal entities such as developers to, among other things, alter habitat without incurring takings liability where take is minimized to the extent practicable.

B. Conditions in the June 2, 1997 Proposed Permit To Protect Species and Critical Habitat

The CGP was proposed with a number of conditions to ensure that storm water discharges and best management practices (BMPs) to control storm water runoff were protective of listed species or critical habitat. Specifically, coverage under the proposed CGP would be granted only under the following circumstances:

1. An applicant's storm water discharges or BMPs to control storm water runoff were not likely to adversely affect listed species (identified in Addendum A of the permit) or critical habitat; or

2. The applicant's activity was previously authorized under § 7 or § 10 of the Endangered Species Act (ESA) and that authorization addressed storm water discharges and BMPs to control storm water runoff; or

3. The applicant's activity was considered as part of a larger, more comprehensive assessment of impacts on endangered and threatened species under § 7 or § 10 of the ESA which accounted for storm water discharges and BMPs to control storm water runoff; or

4. Consultation under § 7 of the ESA was conducted for the applicant's activity which resulted in either a no jeopardy opinion or a written

concurrence on a finding of no likelihood of adverse effects; or

5. The applicant's activity was considered as part of a larger, more comprehensive site-specific assessment of impacts on endangered and threatened species by the owner or other operator of the site and that permittee certified eligibility under Items 1., 2., 3. or 4. above.

The proposal required that applicants assess the impacts of their "storm water discharges" and "BMPs to control storm water runoff" on listed species and critical habitat that are located "in proximity" to the those discharges and BMPs when developing Storm Water Pollution Prevention Plans (SWPPPs) as part of the application process. The proposed CGP also required applicants to include measures in SWPPPs to protect listed species and critical habitat. "In proximity" was defined in Addendum A to include species:

► Located in the path or immediate area through which or over which contaminated point source storm water flows from construction activities to the point of discharge into the receiving water;

► Located in the immediate vicinity of, or nearby, the point of discharge into receiving waters; or

► Located in the area of a site where storm water BMPs are planned or are to be constructed.

EPA also solicited comment on whether the area or scope of impacts to be considered by applicants should be broadened to encompass listed species found on the entire construction site and not just those species found "in proximity" as currently defined in Addendum A.

Failure by permittees to abide by measures in their SWPPPs to protect species and critical habitat would invalidate permit coverage. Attached to the proposed permits were instructions (Addendum A) to assist permit applicants in making this inquiry. The proposal indicated that a county-by-county species list would be included in Addendum A of the final permit to assist applicants in determining if listed species might be "in proximity" to storm water discharges and BMPs. EPA did not provide a draft species list in proposed Addendum A. Instead, EPA referred commenters to a similar species list that was used for an earlier EPA-issued storm water permit, the Multisector Storm Water General Permit, that was issued on September 29, 1995 (See 62 FR 29792, note 12, June 2, 1997).

C. Final CGP Conditions To Protect Listed Species

On April 28, 1997, EPA entered into formal consultation with the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (the "Services") for issuance of the CGP. After discussions with the Services, EPA terminated formal consultation and entered into ESA section 7 Informal consultation and conferencing with the Fish and Wildlife Service (FWS) and the National Fisheries Service Services (NMFS) on June 11, 1997. On November 4, and 26, 1997, EPA completed ESA Informal consultation when NMFS and FWS provided their respective concurrences with EPA's finding that issuance of the CGP was not likely to adversely affect listed species or critical habitat. However, the negotiations on CGP did not consider ongoing construction projects; i.e., construction projects which started prior to the effective date of these permits.

In January, 1998, Region 6 decided to address ESA certification issues for ongoing construction projects before finalizing the permit. In February, 1998, EPA Region 6 began a supplemental Informal consultation with FWS and NMFS on language to clarify requirements for ongoing construction activity. EPA Region 6 completed ESA Informal section 7 consultation and conferencing when FWS and NMFS provided their concurrences that issuance of these permits is unlikely to adversely affect listed species or critical habitat on June 9, and 15, respectively. With the completion of these consultations, EPA Region 6 has reduced the administrative burden associated with obtaining permit coverage for ongoing construction projects for the federal agencies and the regulated community.

Based on that consultation and in consideration of comments received on the June 2, 1997, proposal, EPA has placed the following conditions in the permit to protect listed species and critical habitat (See Part I.B.3.e). Coverage under the CGP is available for construction projects only if:

a. The storm water discharges and storm water discharge-related activities are not likely to adversely affect listed species or critical habitat (Part I.B.3.e.(2)(a)); or

b. Formal or Informal consultation with the Services under section 7 of the Endangered Species Act (ESA) has been concluded which addresses the effects of the applicant's storm water discharges and storm water discharge-related activities on listed species and critical habitat and the consultation

results in either a no jeopardy opinion or a written concurrence by the Service(s) on a finding that the applicant's storm water discharges and storm water discharge-related activities are not likely to adversely affect listed species or critical habitat. A section 7 consultation may occur in the context of another Federal on (e.g., an ESA section 7 consultation was performed for issuance of a wetlands dredge and fill permit for the project, or as part of a National Environmental Policy Act [NEPA] review); or

c. The applicant's construction activities are covered by a permit under section 10 of the ESA and that permit addresses the effects of the applicant's storm water discharges and storm water discharge-related activities on listed species and critical habitat (Part I.B.3.e.(2)(c)); or

d. The applicant's storm water discharges and storm water discharge-related activities were already addressed in another operator's certification of eligibility under Part I.B.3.e.(2)(a), (b), or (c) which included the applicant's project area. By certifying eligibility under Part I.B.3.e.(2)(d), the applicant agrees to comply with any measures or controls upon which the other operator's certification under Part I.B.3.e.(2)(a), (b) or (c) was based.

The CGP requires that applicants consider effects to listed species and critical habitat when developing SWPPPs and require that those plans include measures, as appropriate, to protect those resources. Failure by permittees to abide by measures in the SWPPPs to protect species and critical habitat may invalidate permit coverage.

This permit requires all projects commencing construction after the effective date of this permit, to follow the procedures provided in Addendum A of the permit when applying for permit coverage. The Director may also require any existing permittee or applicant to provide documentation of eligibility for this permit using the procedures in Addendum A, where EPA or the Fish and Wildlife Services determine that there is a potential impact on endangered or threatened species or a critical habitat. Nothing in the permit relieves applicants which are under construction as of the effective date of this permit of their obligations they may have to comply with any requirements of the Endangered Species Act.

Addendum A contains instructions to assist permit applicants in making this inquiry. Those instructions require that applicants ascertain: (1) If their construction activities would occur in critical habitat; (2) whether listed

species are in the project area; and (3) whether the applicant's storm water discharges and discharge-related activities are likely to adversely affect listed species or critical habitat. If adverse effects are likely, then applicants would have to meet one of the eligibility requirements of Part I.B.3.e.(2)(b)-(d) (paragraphs b., c., and d. above) to receive permit coverage. "Discharge-related activities" include activities which cause point source storm water pollutant discharges including but not limited to excavation, site development, and other surface disturbing activities, and measures to control, reduce or prevent storm water pollution including the siting, construction and operation of BMPs. The "project area" includes:

1. Area(s) on the construction site where storm water discharges originate and flow towards the point of discharge into the receiving waters (this includes the entire area or areas where excavation, site development, or other ground disturbance activities occur), and the immediate vicinity;

2. Area(s) where storm water discharges flow from the construction site to the point of discharge into receiving waters;

3. Area(s) where storm water from construction activities discharges into the receiving waters and the area(s) in the immediate vicinity of the point of discharge; and

4. Area(s) where storm water BMPs will be constructed and operated, including any area(s) where storm water flows to and from BMPs.

The project area will vary with the size and structure of the construction activity, the nature and quantity of the storm water discharges, the measures (including BMPs) to control storm water runoff, and the type of receiving waters.

Addendum A also contains information on where to find information on listed and proposed species organized by State and county to assist applicants in determining if further inquiry is necessary as to whether listed species are present in the project area. Applicants can check the Office of Wastewater Management's website (<http://www.epa.gov/owm>). CGP applicants can also get updated species information for their county by calling the appropriate FWS or NMFS office. EPA Region 6 applicants can also contact the EPA Region 6 Storm Water Hotline (1-800-245-6510) for updated species information.

The CGP also requires that applicants comply with any conditions imposed under the eligibility requirements of Part I.B.3.e.(2)a., b., c., or d. above to remain eligible for coverage under this

permit. Such conditions must be incorporated in the applicant's SWPPP. The CGP does not authorize any prohibited take (as defined under section 3 of the ESA and 50 CFR 17.3) of endangered or threatened species unless such takes are authorized under sections 7 or 10 of the ESA. The CGP does not authorize any storm water discharges or storm water discharge-related activities that are likely to jeopardize the continued existence of any species that are listed or proposed to be listed as endangered or threatened under the ESA or result in the adverse modification or destruction of habitat that is designated or proposed to be designated as critical under the ESA.

It is EPA's intention to provide permit applicants with the greatest possible flexibility in meeting permit requirements for protecting listed species and critical habitat. Thus, EPA is allowing applicants to use either section 7 or section 10 ESA mechanisms to address situations where adverse effects are likely (See Part 1.3.e.(2)(b) and (c)). Also, to give applicants additional flexibility in meeting the Part 1.3.e. eligibility requirements and with the timing of informal consultations, the permit automatically designates CGP applicants as non-Federal representatives for the purpose of carrying out informal consultation. However, EPA notes that meeting ESA requirements raises difficult implementation issues on how to best ensure that the permits are protective of listed species and critical habitats without unduly burdening permit applicants, permittees, and State, local, and Federal governmental entities. Thus, EPA intends in the future to review those permit conditions and procedures that relate to the ESA and the protection of historic resources to see how well that goal has been achieved and may revise the permits if necessary to better achieve that goal.

V. Historic Property Protection

A. Background

The National Historic Preservation Act of 1966, as amended, (NHPA) establishes a national historic preservation program for the identification and protection of historic properties and resources. Under the NHPA, identification of historic properties is coordinated by the State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs) or other Tribal Representatives (in the absence of a THPO). Section 106 of the NHPA requires Federal agencies to take into account the effects of their actions on historic properties that are

listed or eligible for listing on the National Register of Historic Places and to seek comments from the Advisory Council on Historic Preservation (ACHP). The permit was proposed with a number of conditions pertaining to the consideration of historic properties. EPA has decided to not include those conditions because the ACHP and the National Conference of State Historic Preservation Officers (NCSHPO) have requested that EPA not include such conditions in the final permit at this time. The ACHP and the NCSHPO have recommended that EPA issue the permit but recommend that EPA continue working with them and Tribes regarding the possible development of a more comprehensive and efficient approach to ensure that effects to historic properties are given appropriate consideration while ensuring undue burdens are not imposed on applicants and regulatory authorities. EPA plans to continue working with the ACHP, NCSHPO and Tribes on this effort and may modify the permit to incorporate procedures regarding the protection of historic resources at a later date.

B. Future CGP Conditions To Protect or Consider Effects to Historic Properties

In response to comments received on the permit proposal and because the Agency is still discussing historic preservation with the Advisory Council on Historic Preservation (ACHP), the final permit reserves permit requirements related to historic preservation. Today's final permit does not include the eligibility restrictions and evaluation requirements from the proposed permit. After future discussions with the ACHP, EPA may modify the permit to reflect those discussions.

VI. Regulatory Review (Executive Order 12866)

Under Executive Order 12866, (58 FR 51735 [October 4, 1993]) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of

entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this re-issued general permit is not a "significant regulatory action" under the terms of Executive Order 12866.

VII. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, UMRA § 205 generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of UMRA § 205 do not apply when they are inconsistent with applicable law. Moreover, UMRA § 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes an explanation with the final rule why the alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under UMRA § 203 a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating and advising small governments on compliance with the regulatory requirements.

A. UMRA Section 202 and the Construction General Permit

UMRA § 202 requires a written statement containing certain assessments, estimates and analyses prior to the promulgation of certain general notices of proposed rulemaking (2 U.S.C. 1532). UMRA § 421(10) defines

"rule" based on the definition of rule in the Regulatory Flexibility Act. Section 601 of the Regulatory Flexibility Act defines "rule" to mean any rule for which an agency publishes a general notice of proposed rulemaking pursuant to § 553 of the Administrative Procedure Act. EPA does not propose to issue NPDES general permits based on APA § 553. Instead, EPA relies on publication of general permits in the Federal Register in order to provide "an opportunity for a hearing" under CWA § 402(a), 33 U.S.C. 1342(a). Nonetheless, EPA has evaluated permitting alternatives for regulation of storm water discharges associated with construction activity. The general permit that EPA proposes to re-issue would be virtually the same NPDES general permit for construction that many construction operators have used over the past five years. Furthermore, general permits provide a more cost and time efficient alternative for the regulated community to obtain NPDES permit coverage than that provided through individually drafted permits.

B. UMRA Section 203 and the Construction General Permit

Agencies are required to prepare small government agency plans under UMRA § 203 prior to establishing any regulatory requirement that might significantly or uniquely affect small governments. "Regulatory requirements" might, for example, include the requirements of these NPDES general permits for discharges associated with construction activity, especially if a municipality sought coverage under one of the general permits. EPA envisions that some municipalities—those with municipal separate storm sewer systems serving a population over 100,000—may elect to seek coverage under these proposed general permits. For many municipalities, however, a permit application is not required until August 7, 2001, for a storm water discharge associated with construction activity where the construction site is owned or operated by a municipality with a population of less than 100,000. (See 40 CFR 122.26(e)(1)(ii) and (g)).

In any event, any such permit requirements would not significantly affect small governments because most State laws already provide for the control of sedimentation and erosion in a similar manner as today's general permit. Permit requirements also would not uniquely affect small governments because compliance with the permit's conditions affects small governments in the same manner as any other entity

seeking coverage under the permit. Thus, UMRA § 203 would not apply.

VIII. Paperwork Reduction Act

On June 2, 1997, EPA solicited comments on the proposed revision to the current Information Collection Request (ICR) document for this permit (ICR approved OMB; OMB No. 2040-0086, expiration, August 31, 1998) to accommodate the increased information requirements in the new NOI for the construction general permit (62 FR 29826). A revised NOI form has been approved (EPA Form 3510-9 OMB No. 2040-0188.) This revised form is included in the permit in Addendum C. EPA estimates an increase in the burden associated with filling out the NOI form for the permit due to added requirements under the Endangered Species Act. EPA also anticipates a small increase in the time because of the requirement to submit a NOT upon completion of construction activities.

IX. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, a Federal agency must prepare an initial regulatory flexibility analysis "for any proposed rule" for which the agency "is required by section 553 of [the Administrative Procedure Act (APA)], or any other law, to publish general notice of proposed rulemaking." The RFA exempts from this requirement any rule that the issuing agency certifies "will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA did not prepare an initial regulatory flexibility analysis (IRFA) for the proposed CGP. (Note that in today's action, EPA is issuing a separate general permit for each jurisdiction where EPA issues permits; i.e., in certain States, Indian Country lands and Federal facilities within certain States. However, for purposes of readability, reference is made to the permits in the singular form such as "permit" or "CGP" rather than in plural form.) In the notice of the proposed permit, EPA explained its view that issuance of an NPDES general permit is not subject to rulemaking requirements, including the requirement for a general notice of proposed rulemaking, under APA section 553 or any other law, and is thus not subject to the RFA requirement to prepare an IRFA. Nevertheless, in keeping with EPA's policy to consider the impact of its actions on small entities even when it is not legally required to do so, the Agency considered the potential impact of the permit on small entities that would be eligible for coverage under the permit. EPA concluded that the permit,

if issued as drafted, would not have a significant impact on a substantial number of small entities. EPA based its conclusion on the fact that the draft permit was largely the same as the previous permit issued in 1992 and, to the extent it differed, provided dischargers with more flexibility than that permit allowed.

Some commenters on the proposed CGP disagreed with EPA's conclusions that NPDES general permits are not subject to rulemaking requirements and that the proposed permit would not have a significant impact on small entities. They asserted that the CGP is subject to rulemaking requirements and thus the RFA, and that the Agency should have prepared an IRFA for the permit.

In light of the comments received, EPA further considered whether NPDES general permits are subject to rulemaking requirements. The Agency reviewed its previous NPDES general permitting actions and related statements in the Federal Register or elsewhere. This review suggests that the Agency has generally treated NPDES general permits effectively as rules, though at times it has given contrary indications as to whether these actions are rules or permits. EPA also reviewed again the applicable law, including the CWA, relevant CWA case law and the APA, as well as the Attorney General's Manual on the APA (1947). On the basis of its review, EPA has concluded, as set forth in the proposal, that NPDES general permits are permits under the APA and thus not subject to APA rulemaking requirements or the RFA.

The APA defines two broad, mutually exclusive categories of agency action—"rules" and "orders." Its definition of "rule" encompasses "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency." * * * APA section 551(4). Its definition of "order" is residual: "a final disposition * * * of an agency in a matter other than rule making but including licensing." APA section 551(6) (emphasis added). The APA defines "license" to "include * * * an agency permit * * *." APA section 551(8). The APA thus categorizes a permit as an order, which by the APA's definition is not a rule.

Section 553 of the APA establishes "rule making" requirements. The APA defines *rule making* as "the agency process for formulating, amending, or repealing a rule." APA § 551(5). By its terms, then, § 553 applies only to "rules" and not also to "orders," which

include permits. As the Attorney General's Manual on the APA explains, "the entire Act is based upon a dichotomy between rule making and adjudication [the agency process for formulation of an order]" (p. 14).

The CWA specifies the use of permits for authorizing the discharge of pollutants to waters of the United States. Section 301(a) of the CWA prohibits discharges of pollutants "[except as in compliance with" specified sections of the CWA, including section 402. 33 U.S.C. 1311(a). Section 402 of the CWA authorizes EPA "to issue a permit for the discharge of any pollutant * * *, notwithstanding section [301(a) of the CWA]." 33 U.S.C. 1342(a). Thus, the only circumstances in which a discharge of pollution may be authorized is where the Agency has issued a permit for the discharge. Courts, recognizing that a permit is the necessary condition-precursor to any lawful discharge, specifically suggested the use of area-wide and general permits as a mechanism for addressing the Agency's need to issue a substantial number of permits. See *NRDC v. Train*, 396 F.Supp. 1393, 1402 (D.D.C. 1975); *NRDC v. Costle*, 568 F.2d 1369, 1381, (D.C. Cir. 1977). Adopting the courts' suggestion, EPA has made increasing use of general permits in its CWA regulatory program, particularly for storm water discharges.

In the Agency's view, the fact that an NPDES general permit may apply to a large number of different dischargers does not convert it from a permit into a rule. As noted above, the courts which have faced the issue of how EPA can permit large numbers of discharges under the CWA have suggested use of a general permit, not a rule. Under the APA, the two terms are mutually exclusive. Moreover, an NPDES general permit retains unique characteristics that distinguish a permit from a rule. First, today's NPDES general permit for storm water discharges associated with construction activity is effective only with respect to those dischargers that choose to be bound by the permit. Thus, unlike the typical rule, this NPDES general permit does not impose immediately effective obligations of general applicability. A discharger must choose to be covered by this general permit and so notify EPA. A discharger always retains the option of obtaining its own individual permit. Relatedly, the terms of the NPDES general permit are enforceable only against dischargers that choose to make use of the permit. If a source discharges without authorization of a general or an individual permit, the discharger

violates § 301 of the Act for discharging without a permit, not for violating the terms of an NPDES general permit.

Because the CWA and its case law make clear that NPDES permits are the congressionally chosen vehicle for authorizing discharges of pollutants to waters of the United States, the APA's rulemaking requirements are inapplicable to issuance of such permits, including today's general permit. Further, while the CWA requires that NPDES permits be issued only after an opportunity for a hearing, it does not require publication of a general notice of proposed rulemaking. Thus, NPDES permitting is not subject to the requirement to publish a general notice of proposed rulemaking under the APA or any other law. Accordingly, it is not subject to the RFA.

At the same time, the Agency recognizes that the question of the applicability of the APA, and thus the RFA, to the issuance of a general permit is a difficult one, given the fact that a large number of dischargers may choose to use the general permit. Indeed, the point of issuing a general permit is to provide a speedier means of permitting large number of sources and save dischargers and EPA time and effort. Since the Agency hopes that many dischargers will make use of a general permit and since the CWA requires EPA to provide an opportunity for "a hearing" prior to issuance of a permit, EPA provides the public with notice of a draft general permit and an opportunity to comment on it. From public comments, EPA learns how to better craft a general permit to make it appropriate for, and acceptable to, the largest number of potential permittees. This same process also provides an opportunity for EPA to consider the potential impact of general permit terms on small entities and how to craft the permit to avoid any undue burden on small entities. This process, however, is voluntary, and does not trigger rulemaking or RFA requirements.

In the case of the CGP being issued today, the Agency has considered and addressed the potential impact of the general permit on small entities in a manner that would meet the requirements of the RFA if it applied. Specifically, EPA has analyzed the potential impact of the general permit on small entities and found that it will not have a significant economic impact on a substantial number of small entities. Like the previous general permit that it replaces (the Baseline Construction General Permit), the permit will make available to many small entities, particularly operators of construction sites, a streamlined process

for obtaining authorization to discharge. Of the possible permitting mechanisms available to dischargers subject to the CWA, NPDES general permits are designed to reduce the reporting and monitoring burden associated with NPDES permit authorization, especially for small entities with discharges having comparatively less potential for environmental degradation than discharges typically regulated under individual NPDES permits. Thus, general permits like the permit at issue here provide small entities with a permitting application option that is much less burdensome than NPDES individual permit applications.

Furthermore, the general permit is virtually identical to its predecessor, the Baseline Construction General Permit, under which many construction operators have operated during the past five years. Moreover, the other new provisions of the permit have been designed to minimize burdens on small entities, including eliminating the requirement that construction site operators require that their contractors and subcontractors sign a standard certification statement agreeing to abide by storm water pollution prevention plan provisions developed for a project. In today's general permit, only the operator(s) of a construction site are required to satisfy certification requirements under the permit. EPA believes this modification from the prior permit should reduce any such adverse economic impacts on both operators and contractors/subcontractors who, in many instances, are small entities. In view of the foregoing, the Regional Administrators find that the final general permit, even if it were a rule, will not have a significant economic impact on a substantial number of small entities.

Storm Water General Permit for Construction Activities in Region 6
NPDES Permit No. [See Part I.A.]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq.), except as provided in Part LB.3 of this permit, operators of construction activities located in an area specified in Part I.A. and who submit a Notice of Intent in accordance with Part II, are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth herein.

This permit shall become effective on [insert the date of publication of the final permit in the Federal Register].

This permit and the authorization to discharge shall expire at midnight, July 7, 2003.

Signed: June 24, 1998.

William B. Hathaway,

Director, Water Quality Protection Division.

NPDES General Permits for Storm Water Discharges from Construction Activities

Table of Contents

Part I. Coverage Under this Permit

- A. Permit Area
- B. Eligibility
- C. Obtaining Authorization
- D. Terminating Coverage

Part II. Notice of Intent Requirements

- A. Deadlines for Notification
- B. Contents of Notice of Intent
- C. Where to Submit

Part III. Special Conditions Management Practices, and Other Non-Numeric Limitations

- A. Prohibition on Non-Storm Water Discharges
- B. Releases in Excess of Reportable Quantities
- C. Spills
- D. Discharge Compliance with Water Quality Standards
- E. Responsibilities of Operators
- F. Consistency with the Texas Coastal Management Program

Part IV. Storm Water Pollution Prevention Plans

- A. Deadlines for Plan Preparation and Compliance
- B. Signature, Plan Review and Making Plans Available
- C. Keeping Plans Current
- D. Contents of Plan

Part V. Retention of Records

- A. Documents
- B. Accessibility
- C. Addresses

Part VI. Standard Permit Conditions

- A. Duty to Comply
- B. Continuation of the Expired General Permit
- C. Need to Halt or Reduce Activity not a Defense
- D. Duty to Mitigate
- E. Duty to Provide Information
- F. Other Information
- G. Signatory Requirements
- H. Penalties for Falsification of Reports
- I. Oil and Hazardous Substance Liability
- J. Property Rights
- K. Severability
- L. Requiring an Individual Permit or an Alternative General Permit
- M. State/Tribal Environmental Laws
- N. Proper Operation and Maintenance
- O. Inspection and Entry
- P. Permit Actions

Part VII. Reopener Clause

Part VIII. Termination of Coverage

- A. Notice of Termination
- B. Addresses

Part IX. Definitions

Part X. Permit Conditions Applicable to Specific States, Indian Country Lands, or Territories

Addenda

- A. Endangered Species
- B. Historic Properties (Reserved)
- C. Notice of Intent (NOI) Form
- D. Notice of Termination (NOT) Form

Part I. Coverage Under This Permit

A. Permit Area

The permit language is structured as if it were a single permit, with State, Indian Country land, or other area-specific conditions specified in Part X. Permit coverage is actually provided by legally separate and distinctly numbered permits covering each of the following areas:

Region 6

LAR10*##I: Indian Country lands in the State of Louisiana

NMR10*##: The State of New Mexico, except Indian Country lands

NMR10*##I: Indian Country lands in the State of New Mexico, except Navajo Reservation Lands and Ute Mountain Reservation Lands

OKR10*##I: Indian Country lands in the State of Oklahoma

OKR10*##F: Oil and Gas Sites in State of Oklahoma

TXR10*##: The State of Texas, except Indian Country lands

TXR10*##I: Indian Country lands in the State of Texas

B. Eligibility

1. Permittees are authorized to discharge pollutants in storm water runoff associated with construction activities as defined in 40 CFR 122.26(b)(14)(x) and those construction site discharges designated by the Director as needing a storm water permit under 122.26(a)(1)(v) or under 122.26(a)(9) and 122.26(g)(1)(i). Discharges identified under Part I.B.3 are excluded from coverage. Any discharge authorized by a different NPDES permit may be commingled with discharges authorized by this permit.

2. This permit also authorizes storm water discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided:

- a. The support activity is directly related to a construction site that is required to have NPDES permit coverage for discharges of storm water associated with construction activity;
- b. The support activity is not a commercial operation serving multiple unrelated construction projects by different operators, and does not operate beyond the completion of the construction activity at the last construction project it supports; and
- c. Appropriate controls and measures are identified in a storm water pollution

prevention plan covering the discharges from the support activity areas.

3. Limitations on Coverage

a. *Post Construction Discharges.* This permit does not authorize storm water discharges that originate from the site after construction activities have been completed and the site, including any temporary support activity site, has undergone final stabilization. Industrial post-construction storm water discharges may need to be covered by a separate NPDES permit.

b. *Discharges Mixed with Non-Storm Water.* This permit does not authorize discharges that are mixed with sources of non-storm water, other than those discharges which are identified in Part III.A.2. or 3. (exceptions to prohibition on non-storm water discharges) and are in compliance with Part IV.D.5 (non-storm water discharges).

c. *Discharges Covered by Another Permit.* This permit does not authorize storm water discharges associated with construction activity that have been covered under an individual permit or required to obtain coverage under an alternative general permit in accordance with Part VII.L.

d. *Discharges Threatening Water Quality.* This permit does not authorize storm water discharges from construction sites that the Director (EPA) determines will cause, or have reasonable potential to cause or contribute to, violations of water quality standards. Where such determinations have been made, the Director may notify the operator(s) that an individual permit application is necessary in accordance with Part VII.L. However, the Director may authorize coverage under this permit after appropriate controls and implementation procedures designed to bring the discharges into compliance with water quality standards have been included in the storm water pollution prevention plan;

e. *Storm water discharges and storm water discharge-related activities that are not protective of Federally listed endangered and threatened ("listed") species or designated critical habitat ("critical habitat").*

(1) For the purposes of complying with the Part I.B.3.e. eligibility requirements, "storm water discharge-related activities" include:

- (a) Activities which cause, contribute to, or result in point source storm water pollutant discharges, including but not limited to: excavation, site development, grading and other surface disturbance activities; and
- (b) Measures to control storm water including the siting, construction and operation of best management practices

(BMPs) to control, reduce or prevent storm water pollution.

(2) Coverage under this permit is available only if the applicant certifies that it meets at least one of the criteria in paragraphs (a)–(d) below. Failure to continue to meet one of these criteria during the term of the permit will render a permittee ineligible for coverage under this permit.

(a) The storm water discharges and storm water discharge-related activities are not likely to adversely affect listed species or critical habitat; or

(b) Formal or informal consultation with the Fish and Wildlife Service and/or the National Marine Fisheries Service (the "Services") under section 7 of the Endangered Species Act (ESA) has been concluded which addresses the effects of the applicant's storm water discharges and storm water discharge-related activities on listed species and critical habitat and the consultation results in either a no jeopardy opinion or a written concurrence by the Service(s) on a finding that the applicant's storm water discharges and storm water discharge-related activities are not likely to adversely affect listed species or critical habitat. A section 7 consultation may occur in the context of another Federal action (e.g., a ESA section 7 consultation was performed for issuance of a wetlands dredge and fill permit for the project, or as part of a National Environmental Policy Act (NEPA) review); or

(c) The applicant's construction activities are authorized under section 10 of the ESA and that authorization addresses the effects of the applicant's storm water discharges and storm water discharge-related activities on listed species and critical habitat; or

(d) The applicant's storm water discharges and storm water discharge-related activities were already addressed in another operator's certification of eligibility under Part I.B.3.e.(2)(a), (b), or (c) which included the applicant's project area. By certifying eligibility under Part I.B.3.e.(2)(d), the applicant agrees to comply with any measures or controls upon which the other operator's certification under Part I.B.3.e.(2)(a), (b) or (c) was based.

(3) For all projects commencing construction after the effective date of this permit, applicants must follow the procedures provided at Addendum A of this permit when applying for permit coverage. The Director may also require any existing permittee or applicant to provide documentation of eligibility for this permit using the procedures in Addendum A, where EPA or the Fish and Wildlife Services determine that there is a potential impact on

endangered or threatened species or a critical habitat. Nothing in this permit relieves applicants which are under construction as of the effective date of this permit of their obligations they may have to comply with any requirements of the Endangered Species Act.

(4) The applicant must comply with any applicable terms, conditions or other requirements developed in the process of meeting eligibility requirements of Part I.B.3.e.(2)(a), (b), (c), or (d) above to remain eligible for coverage under this permit. Such terms and conditions must be incorporated in the applicant's storm water pollution prevention plan.

(5) Applicants who choose to conduct informal consultation to meet the eligibility requirements of Part I.B.3.e.(2)(b) are automatically designated as non-Federal representatives under this permit. See 50 CFR 402.08. Applicants who choose to conduct informal consultation as a non-Federal representatives must notify EPA and the appropriate Service office in writing of that decision.

(6) This permit does not authorize any storm water discharges where the discharges or storm water discharge-related activities cause prohibited "take" (as defined under section 3 of the Endangered Species Act and 50 CFR 17.3) of endangered or threatened species unless such takes are authorized under sections 7 or 10 of the Endangered Species Act.

(7) This permit does not authorize any storm water discharges where the discharges or storm water discharge-related activities are likely to jeopardize the continued existence of any species that are listed or proposed to be listed as endangered or threatened under the ESA or result in the adverse modification or destruction of habitat that is designated or proposed to be designated as critical under the ESA.

f. Storm water Discharges and Storm Water Discharge-Related Activities with Unconsidered Adverse Effects on Historic Properties. (Reserved)

C. Obtaining Authorization

1. In order for storm water discharges from construction activities to be authorized under this general permit, an operator must:

a. Meet the Part I.B.3.e. eligibility requirements;

b. Except as provided in Parts IIA.5 and IIA.6, develop a storm water pollution prevention plan (SWPPP) covering either the entire site or all portions of the site for which they are operators (see definition in Part IX.N) according to the requirements in Part IV. A "joint" SWPPP may be developed and

implemented as a cooperative effort where there is more than one operator at a site; and

c. Submit a Notice of Intent (NOI) in accordance with the requirements of Part II, using an NOI form provided in Addendum C of this permit. Only one NOI need be submitted to cover all of the permittee's activities on the common plan of development or sale (e.g., you do not need to submit a separate NOI for each separate lot in a residential subdivision or for two separate buildings being constructed at a manufacturing facility, provided your SWPPP covers each area for which you are an operator). The SWPPP must be implemented upon commencement of construction activities.

2. Any new operator on site, including those who replace an operator who has previously obtained permit coverage, must submit an NOI to obtain permit coverage.

3. Unless notified by the Director to the contrary, operators who submit a correctly completed NOI in accordance with the requirements of this permit are authorized to discharge storm water from construction activities under the terms and conditions of this permit two (2) days after the date that the NOI is postmarked. The Director may deny coverage under this permit and require submittal of an application for an individual NPDES permit based on a review of the NOI or other information (see Part VII).

D. Terminating Coverage

1. Permittees wishing to terminate coverage under this permit must submit a Notice of Termination (NOT) in accordance with Part VIII of this permit. Compliance with this permit is required until an NOT is submitted. The permittee's authorization to discharge under this permit terminates at midnight of the day the NOT is signed.

2. All permittees must submit a NOT within thirty (30) days after one or more of the following conditions have been met:

a. Final stabilization (see definition Part IX.I) has been achieved on all portions of the site for which the permittee is responsible (including if applicable, returning agricultural land to its pre-construction agricultural use);

b. Another operator/permittee has assumed control according to Part VI.G.2.c. over all areas of the site that have not been finally stabilized; or

c. For residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner.

Enforcement actions may be taken if a permittee submits a NOT without

meeting one or more of these conditions.

Part II. Notice of Intent Requirements

A. Deadlines for Notification

1. Except as provided in Parts II.A.3, II.A.4, II.A.5 or II.A.6 below, parties defined as operators (see definition in Part IX.N) due to their operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications, must submit a Notice of Intent (NOI) in accordance with the requirements of this Part at least two (2) days prior to the commencement of construction activities (i.e., the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities).

2. Except as provided in Parts II.A.3, II.A.4, II.A.5 or II.A.6 below, parties defined as operators (see definition in Part IX.N) due to their day-to-day operational control over activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan or other permit conditions (e.g., general contractor, erosion control contractor) must submit a NOI at least two (2) days prior to commencing work on-site.

3. For storm water discharges from construction projects where the operator changes, including instances where an operator is added after a NOI has been submitted under Parts II.A.1 or II.A.2, the new operator must submit a NOI at least two (2) days before assuming operational control over site specifications or commencing work on-site.

4. Operators are not prohibited from submitting late NOIs. When a late NOI is submitted, authorization is only for discharges that occur after permit coverage is granted. The Agency reserves the right to take appropriate enforcement actions for any unpermitted activities that may have occurred between the time construction commenced and authorization of future discharges is granted (typically 2 days after a complete NOI is submitted).

5. Operators of on-going construction projects as of the effective date of this permit which received authorization to discharge for these projects under the 1992 baseline construction general permit must:

a. Submit a NOI according to Part II.B. within 90 days of the effective date of this permit. If the permittee is eligible to submit a Notice of Termination (e.g., construction is finished and final stabilization has been achieved) before the 90th day, a new NOI is not required to be submitted;

b. For the first 90 days from the effective date of this permit, comply with the terms and conditions of the 1992 baseline construction general permit they were previously authorized under; and

c. Update their storm water pollution prevention plan to comply with the requirements of Part IV within 90 days after the effective date of this permit.

6. Operators of on-going construction projects as of the effective date of this permit which did not receive authorization to discharge for these projects under the 1992 baseline construction general permit must:

a. Prepare and comply with an interim storm water pollution prevention plan in accordance with the 1992 baseline construction general permit prior to submitting an NOI;

b. Submit a NOI according to Part II.B; and

c. Update their storm water pollution prevention plan to comply with the requirements of Part IV within 90 days after the effective date of this permit.

B. Contents of Notice of Intent (NOI)

i. Use of Revised NOI Form

The revised NOI form [EPA Form 3510-9] shall be signed in accordance with Part VI.G of this permit and shall include the following information:

a. The name, address, and telephone number of the operator filing the NOI for permit coverage;

b. An indication of whether the operator is a Federal, State, Tribal, private, or other public entity;

c. The name (or other identifier), address, county, and latitude/longitude of the construction project or site;

d. An indication of whether the project or site is located on Indian Country lands;

e. Confirmation that a storm water pollution prevention plan (SWPPP) has been developed or will be developed prior to commencing construction activities, and that the SWPPP will be compliant with any applicable local sediment and erosion control plans. Copies of SWPPPs or permits should not be included with the NOI submission;

f. Optional information: the location where the SWPPP may be viewed and the name and telephone number of a contact person for scheduling viewing times;

g. The name of the receiving water(s);

h. Estimates of project start and completion dates, and estimates of the number of acres of the site on which soil will be disturbed (if less than 1 acre, enter "1");

i. Based on the instructions in Addendum A, whether any listed or

proposed threatened or endangered species, or designated critical habitat, are in proximity to the storm water discharges or storm water discharge-related activities to be covered by this permit;

j. Under which section(s) of Part I.B.3.e. (Endangered Species) the applicant is certifying eligibility; and

Note that as of the effective date of this permit, reporting of information relating to the preservation of historic properties has been reserved and is not required at this time. Such reservation in no way relieves applicants or permittees from any otherwise applicable obligations or liabilities related to historic preservation under State, Tribal or local law. After further discussions between EPA and the Advisory Council on Historic Preservation, the Agency may modify the permit. Any such modification may affect future Notice of Intent reporting requirements.

C. Where To Submit

1. NOIs must be signed in accordance with Part VI.G. and sent to the following address: Storm Water Notice of Intent (4203), US EPA, 401 M Street, SW, Washington, DC 20460.

Part III. Special Conditions, Management Practices, and Other Non-Numeric Limitations

A. Prohibition on Non-Storm Water Discharges

1. Except as provided in Parts I.B.2 or 3 and III.A.2 or 3, all discharges covered by this permit shall be composed entirely of storm water associated with construction activity.

2. Discharges of material other than storm water that are in compliance with an NPDES permit (other than this permit) issued for that discharge may be discharged or mixed with discharges authorized by this permit.

3. The following non-storm water discharges from active construction sites are authorized by this permit provided the non-storm water component of the discharge is in compliance with Part IV.D.5 (non-storm water discharges): discharges from fire fighting activities; fire hydrant flushings; waters used to wash vehicles where detergents are not used; water used to control dust in accordance with Part IV.D.2.c.(2); potable water sources including waterline flushings; routine external building wash down which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air

conditioning condensate; uncontaminated ground water or spring water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

B. Releases In Excess of Reportable Quantities

The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. This permit does not relieve the permittee of the reporting requirements of 40 CFR 110, 40 CFR 117 and 40 CFR 302. Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR 110, 40 CFR 117 or 40 CFR 302, occurs during a 24 hour period:

1. The permittee is required to notify the National Response Center (NRC) (800-424-8802; in the Washington, DC, metropolitan area call 202-426-2675) in accordance with the requirements of 40 CFR 110, 40 CFR 117 and 40 CFR 302 as soon as he or she has knowledge of the discharge;

2. The storm water pollution prevention plan required under Part IV of this permit must be modified within 14 calendar days of knowledge of the release to: provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

C. Spills

This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

D. Discharge Compliance With Water Quality Standards

Operators seeking coverage under this permit shall not be causing or have the reasonable potential to cause or contribute to a violation of a water quality standard. Where a discharge is already authorized under this permit and is later determined to cause or have the reasonable potential to cause or contribute to the violation of an applicable water quality standard, the Director will notify the operator of such violation(s). The permittee shall take all necessary actions to ensure future discharges do not cause or contribute to the violation of a water quality standard and document these actions in the storm water pollution prevention plan. If violations remain or re-occur, then

coverage under this permit may be terminated by the Director, and an alternative general permit or individual permit may be issued. Compliance with this requirement does not preclude any enforcement activity as provided by the Clean Water Act for the underlying violation.

E. Responsibilities of Operators

Permittees may meet one or both of the operational control components in the definition of "operator" found in Part IX.N. Either Parts III.E.1 or III.E.2 or both will apply depending on the type of operational control exerted by an individual permittee. Part III.E.3 applies to all permittees.

1. Permittees with operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications (e.g., developer or owner), must:

a. Ensure the project specifications that they develop meet the minimum requirements of Part IV (Storm Water Pollution Prevention Plans (SWPPP)) and all other applicable conditions;

b. Ensure that the SWPPP indicates the areas of the project where they have operational control over project specifications (including the ability to make modifications in specifications), and ensure all other permittees implementing portions of the SWPPP impacted by any changes they make to the plan are notified of such modifications in a timely manner; and

c. Ensure that the SWPPP for portions of the project where they are operators indicates the name and NPDES permit number for parties with day-to-day operational control of those activities necessary to ensure compliance with the SWPPP or other permit conditions. If these parties have not been identified at the time the SWPPP is initially developed, the permittee with operational control over project specifications shall be considered to be the responsible party until such time as the authority is transferred to another party (e.g., general contractor) and the plan updated.

2. Permittee(s) with day-to-day operational control of those activities at a project which are necessary to ensure compliance with a SWPPP for the site or other permit conditions (e.g., general contractor) must:

a. Ensure that the SWPPP for portions of the project where they are operators meets the minimum requirements of Part IV (Storm Water Pollution Prevention Plan) and identifies the parties responsible for implementation of control measures identified in the plan;

b. Ensure that the SWPPP indicates areas of the project where they have operational control over day-to-day activities;

c. Ensure that the SWPPP for portions of the project where they are operators indicates the name and NPDES permit number of the party(ies) with operational control over project specifications (including the ability to make modifications in specifications);

3. Permittees with operational control over only a portion of a larger construction project (e.g., one of four homebuilders in a subdivision) are responsible for compliance with all applicable terms and conditions of this permit as it relates to their activities on their portion of the construction site, including protection of endangered species and implementation of BMPs and other controls required by the SWPPP. Permittees shall ensure either directly or through coordination with other permittees, that their activities do not render another party's pollution controls ineffective. Permittees must either implement their portions of a common SWPPP or develop and implement their own SWPPP.

F. Consistency With the Texas Coastal Management Program

This permit does not relieve permittees whose construction project is located within the boundary of the Texas Coastal Management Program of their responsibility to insure consistency with all applicable requirements of this State program. While pre-construction approval of development projects is not within the jurisdiction of the Federal NPDES permit program, State or local pre-construction project approvals and/or permits may be required. The permittee's Storm Water Pollution Prevention Plan must be consistent with any storm water discharge-related requirements established pursuant to, or necessary to be consistent with, the Texas Coastal Management Program. This permit may be reopened, upon petition by the State, to include more stringent discharge requirements applying to areas within the State's designated coastal zone.

The Texas Coastal Management Program boundary covers part or all of the following Texas Counties: Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Harris, Jackson, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Orange, Refugio, San Patricio, Victoria, and Willacy. To determine if a construction project is located within the Texas Coastal Zone, and if so, the applicable requirements of the Texas Coastal Management Program, please

contact the Texas General Land Office's Coastal Hotline at 1-800-85-BEACH or access their Internet site at "http://red.glo.state.tx.us/res-mgmt/coastal/". Information is also available from the Texas Coastal Coordination Council's Coastal Permitting Assistance Office at 1-888-3-PERMIT or via the Internet at "http://red.glo.state.tx.us/coastalpermits/".

Part IV. Storm Water Pollution Prevention Plans

At least one storm water pollution prevention plan (SWPPP) shall be developed for each construction project or site covered by this permit. For more effective coordination of BMPs and opportunities for cost sharing, a cooperative effort by the different operators at a site to prepare and participate in a comprehensive SWPPP is encouraged. Individual operators at a site may, but are not required, to develop separate SWPPPs that cover only their portion of the project provided reference is made to other operators at the site. In instances where there is more than one SWPPP for a site, coordination must be conducted between the permittees to ensure the storm water discharge controls and other measures are consistent with one another (e.g., provisions to protect listed species and critical habitat).

Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The SWPPP shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction site. The SWPPP shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges associated with construction activity at the construction site and assure compliance with the terms and conditions of this permit.

When developing SWPPPs, applicants must follow the procedures in Addendum A of this permit to determine whether listed endangered or threatened species or critical habitat would be affected by the applicant's storm water discharges or storm water discharge-related activities. Any information on whether listed species or critical habitat are found in proximity to the construction site must be included in the SWPPP. Any terms or conditions that are imposed under the eligibility requirements of Part I.B.3.e and Addendum A of this permit to protect listed species or critical habitat from storm water discharges or storm water discharge-related activity must be incorporated into the SWPPP.

Permittees must implement the applicable provisions of the SWPPP required under this part as a condition of this permit.

A. Deadlines for Plan Preparation and Compliance

The storm water pollution prevention plan shall:

1. Be completed prior to the submittal of an NOI to be covered under this permit (except as provided in Parts II.A.5 and II.A.6) updated as appropriate; and
2. Provide for compliance with the terms and schedule of the SWPPP beginning with the initiation of construction activities.

B. Signature, Plan Review and Making Plans Available

1. The SWPPP shall be signed in accordance with Part VI.G, and be retained on-site at the facility which generates the storm water discharge in accordance with Part V (Retention of Records) of this permit.

2. The permittee shall post a notice near the main entrance of the construction site with the following information:

- a. The NPDES permit number for the project or a copy of the NOI if a permit number has not yet been assigned;
- b. The name and telephone number of a local contact person;
- c. A brief description of the project; and
- d. The location of the SWPPP if the site is inactive or does not have an on-site location to store the plan.

If posting this information near a main entrance is infeasible due to safety concerns, the notice shall be posted in a local public building. If the construction project is a linear construction project (e.g., pipeline, highway, etc.), the notice must be placed in a publicly accessible location near where construction is actively underway and moved as necessary. This permit does not provide the public with any right to trespass on a construction site for any reason, including inspection of a site; nor does this permit require that permittees allow members of the public access to a construction site.

3. The permittee shall make SWPPPs available upon request to the Director, a State, Tribal or local agency approving sediment and erosion plans, grading plans, or storm water management plans; local government officials; or the operator of a municipal separate storm sewer receiving discharges from the site. The copy of the SWPPP that is required to be kept on-site or locally available must be made available to the Director for review at the time of an on-site

inspection. Also, in the interest of public involvement, EPA encourages permittees to make their SWPPPs available to the public for viewing during normal business hours.

4. The Director may notify the permittee at any time that the SWPPP does not meet one or more of the minimum requirements of this Part. Such notification shall identify those provisions of this permit which are not being met by the SWPPP as well as those requiring modification in order to meet the minimum requirements of this Part. Within seven (7) calendar days of receipt of such notification from the Director (or as otherwise provided by the Director), the permittee shall make the required changes to the SWPPP and shall submit to the Director a written certification that the requested changes have been made. The Director may take appropriate enforcement action for the period of time the permittee was operating under a plan that did not meet the minimum requirements of this permit.

C. Keeping Plans Current

The permittee must amend the storm water pollution prevention plan whenever:

1. There is a change in design, construction, operation, or maintenance which has a significant effect on the discharge of pollutants to the waters of the United States which has not been addressed in the SWPPP; or
2. Inspections or investigations by site operators, local, State, Tribal or Federal officials indicate the SWPPP is proving ineffective in eliminating or significantly minimizing pollutants from sources identified under Part IV.D.1 of this permit, or is otherwise not achieving the general objectives of controlling pollutants in storm water discharges associated with construction activity.

D. Contents of Plan

The storm water pollution prevention plan (SWPPP) shall include the following items:

1. Site Description

Each SWPPP shall provide a description of potential pollutant sources and other information as indicated below:

- a. A description of the nature of the construction activity;
- b. A description of the intended sequence of major activities which disturb soils for major portions of the site (e.g., grubbing, excavation, grading, utilities and infrastructure installation);
- c. Estimates of the total area of the site and the total area of the site that is

expected to be disturbed by excavation, grading, or other activities including off-site borrow and fill areas;

d. An estimate of the runoff coefficient of the site for both the pre-construction and post-construction conditions and data describing the soil or the quality of any discharge from the site;

e. A general location map (e.g., a portion of a city or county map) and a site map indicating the following: drainage patterns and approximate slopes anticipated after major grading activities; areas of soil disturbance; areas which will not be disturbed; locations of major structural and nonstructural controls identified in the SWPPP; locations where stabilization practices are expected to occur; locations of off-site material, waste, borrow or equipment storage areas; surface waters (including wetlands); and locations where storm water discharges to a surface water;

f. Location and description of any discharge associated with industrial activity other than construction, including storm water discharges from dedicated asphalt plants and dedicated concrete plants, which is covered by this permit;

g. The name of the receiving water(s) and the areal extent and description of wetland or other special aquatic sites (as described under 40 CFR 230.3(q-1)) at or near the site which will be disturbed or which will receive discharges from disturbed areas of the project;

h. A copy of the permit requirements (attaching a copy of this permit is acceptable);

i. Information on whether listed endangered or threatened species, or critical habitat, are found in proximity to the construction activity and whether such species may be affected by the applicant's storm water discharges or storm water discharge-related activities; and

j. Information on whether storm water discharges or storm water discharge-related activities would have an effect on a property that is listed or eligible for listing on the National Register of Historic Places; where effects may occur, any written agreements with the State Historic Preservation Officer, Tribal Historic Preservation Officer, or other Tribal leader to mitigate those effects.

2. Controls

Each SWPPP shall include a description of appropriate control measures (i.e., BMPs) that will be implemented as part of the construction activity to control pollutants in storm water discharges. The SWPPP must

clearly describe for each major activity identified in Part IV.D.1.b: (a) appropriate control measures and the general timing (or sequence) during the construction process that the measures will be implemented; and (b) which permittee is responsible for implementation (e.g., perimeter controls for one portion of the site will be installed by Contractor A after the clearing and grubbing necessary for installation of the measure, but before the clearing and grubbing for the remaining portions of the site; and perimeter controls will be actively maintained by Contractor B until final stabilization of those portions of the site up-gradient of the perimeter control; and temporary perimeter controls will be removed by the owner after final stabilization). The description and implementation of control measures shall address the following minimum components:

a. *Erosion and Sediment Controls.*

(1) *Short and Long Term Goals and Criteria:*

(a) The construction-phase erosion and sediment controls should be designed to retain sediment on site to the extent practicable.

(b) All control measures must be properly selected, installed, and maintained in accordance with the manufacturers specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the permittee must replace or modify the control for site situations.

(c) If sediment escapes the construction site, off-site accumulations of sediment must be removed at a frequency sufficient to minimize offsite impacts (e.g., fugitive sediment in street could be washed into storm sewers by the next rain and/or pose a safety hazard to users of public streets).

(d) Sediment must be removed from sediment traps or sedimentation ponds when design capacity has been reduced by 50%.

(e) Litter, construction debris, and construction chemicals exposed to storm water shall be prevented from becoming a pollutant source for storm water discharges (e.g., screening outfalls, picked up daily).

(f) Offsite material storage areas (also including overburden and stockpiles of dirt, borrow areas, etc.) used solely by the permitted project are considered a part of the project and shall be addressed in the SWPPP.

(2) *Stabilization Practices:* The SWPPP must include a description of interim and permanent stabilization practices for the site, including a

schedule of when the practices will be implemented. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized. Stabilization practices may include but are not limited to: establishment of temporary vegetation, establishment of permanent vegetation, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures. Use of impervious surfaces for stabilization should be avoided.

The following records shall be maintained and attached to the SWPPP: the dates when major grading activities occur; the dates when construction activities temporarily or permanently cease on a portion of the site; and the dates when stabilization measures are initiated.

Except as provided in Parts IV.D.2.a.(2)(a), (b), and (c) below, stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased.

(a) Where the initiation of stabilization measures by the 14th day after construction activity temporary or permanently cease is precluded by snow cover or frozen ground conditions, stabilization measures shall be initiated as soon as practicable.

(b) Where construction activity on a portion of the site is temporarily ceased, and earth disturbing activities will be resumed within 21 days, temporary stabilization measures do not have to be initiated on that portion of site.

(c) In arid areas (areas with an average annual rainfall of 0 to 10 inches), semi-arid areas (areas with an average annual rainfall of 10 to 20 inches), and areas experiencing droughts where the initiation of stabilization measures by the 14th day after construction activity has temporarily or permanently ceased is precluded by seasonal arid conditions, stabilization measures shall be initiated as soon as practicable.

(3) *Structural Practices:* The SWPPP must include a description of structural practices to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable. Structural practices may include but are not limited to: silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection.

rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Placement of structural practices in floodplains should be avoided to the degree attainable. The installation of these devices may be subject to section 404 of the CWA.

(a) For common drainage locations that serve an area with ten (10) or more acres disturbed at one time, a temporary (or permanent) sediment basin that provides storage for a calculated volume of runoff from a 2 year, 24 hour storm from each disturbed acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. Where no such calculation has been performed, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. When computing the number of acres draining into a common location it is not necessary to include flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin.

In determining whether installing a sediment basin is attainable, the permittee may consider factors such as site soils, slope, available area on site, etc. In any event, the permittee must consider public safety, especially as it relates to children, as a design factor for the sediment basin and alternative sediment controls shall be used where site limitations would preclude a safe design. For drainage locations which serve ten (10) or more disturbed acres at one time and where a temporary sediment basin or equivalent controls is not attainable, smaller sediment basins and/or sediment traps should be used. Where neither the sediment basin nor equivalent controls are attainable due to site limitations, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries of the construction area and for those side slope boundaries deemed appropriate as dictated by individual site conditions. EPA encourages the use of a combination of sediment and erosion control measures in order to achieve maximum pollutant removal.

(b) For drainage locations serving less than 10 acres, smaller sediment basins and/or sediment traps should be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as

dictated by individual site conditions) of the construction area unless a sediment basin providing storage for a calculated volume of runoff from a 2 year, 24 hour storm or 3,600 cubic feet of storage per acre drained is provided. EPA encourages the use of a combination of sediment and erosion control measures in order to achieve maximum pollutant removal.

b. *Storm Water Management.* A description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed must be included in the SWPPP. Structural measures should be placed on upland soils to the degree attainable. The installation of these devices may also require a separate permit under section 404 of the CWA. Permittees are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with construction activity have been eliminated from the site. However, post-construction storm water BMPs that discharge pollutants from point sources once construction is completed may, in themselves, need authorization under a separate NPDES permit.

(1) Such practices may include but are not limited to: storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems (which combine several practices). The SWPPP shall include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels.

(2) Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel to provide a non-erosive flow velocity from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g., no significant changes in the hydrological regime of the receiving water).

c. *Other Controls:*

(1) No solid materials, including building materials, shall be discharged to waters of the United States, except as authorized by a permit issued under section 404 of the CWA.

(2) Off-site vehicle tracking of sediments and the generation of dust shall be minimized.

(3) The SWPPP shall be consistent with applicable State, Tribal and/or

local waste disposal, sanitary sewer or septic system regulations to the extent these are located within the permitted area.

(4) The SWPPP shall include a description of construction and waste materials expected to be stored on-site with updates as appropriate. The SWPPP shall also include a description of controls to reduce pollutants from these materials including storage practices to minimize exposure of the materials to storm water, and spill prevention and response.

(5) The SWPPP shall include a description of pollutant sources from areas other than construction (including storm water discharges from dedicated asphalt plants and dedicated concrete plants), and a description of controls and measures that will be implemented at those sites to minimize pollutant discharges.

(6) The SWPPP shall include a description of measures necessary to protect listed endangered or threatened species, or critical habitat, including any terms or conditions that are imposed under the eligibility requirements of Part I.B.3.e(4) of this permit. Failure to describe and implement such measures will result in storm water discharges from construction activities that are ineligible for coverage under this permit.

d. *Approved State, Tribal or Local Plans.*

(1) Permittees which discharge storm water associated with construction activities must ensure their storm water pollution prevention plan is consistent with requirements specified in applicable sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State, Tribal or local officials.

(2) Storm water pollution prevention plans must be updated as necessary to remain consistent with any changes applicable to protecting surface water resources in sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State, Tribal or local officials for which the permittee receives written notice.

3. *Maintenance*

All erosion and sediment control measures and other protective measures identified in the SWPPP must be maintained in effective operating condition. If site inspections required by Part IV.D.4. identify BMPs that are not operating effectively, maintenance shall be performed before the next anticipated storm event, or as necessary to maintain the continued effectiveness of storm

water controls. If maintenance prior to the next anticipated storm event is impracticable, maintenance must be scheduled and accomplished as soon as practicable.

4. Inspections

Qualified personnel (provided by the permittee or cooperatively by multiple permittees) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every fourteen (14) calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.

Where sites have been finally or temporarily stabilized, runoff is unlikely due to winter conditions (e.g., site is covered with snow, ice, or frozen ground exists), or during seasonal arid periods in arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (areas with an average annual rainfall of 10 to 20 inches) such inspections shall be conducted at least once every month.

Permittees are eligible for a waiver of monthly inspection requirements until one month before thawing conditions are expected to result in a discharge if all of the following requirements are met: (1) the project is located in an area where frozen conditions are anticipated to continue for extended periods of time (i.e., more than one month); (2) land disturbance activities have been suspended; and (3) the beginning and ending dates of the waiver period are documented in the SWPPP.

a. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Sediment and erosion control measures identified in the SWPPP shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. Where discharge locations are inaccessible, nearby downstream locations shall be inspected to the extent that such inspections are practicable. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.

b. Based on the results of the inspection, the SWPPP shall be modified as necessary (e.g., show additional controls on map required by Part IV.D.1; revise description of controls required by Part IV.D.2) to

include additional or modified BMPs designed to correct problems identified. Revisions to the SWPPP shall be completed within 7 calendar days following the inspection. If existing BMPs need to be modified or if additional BMPs are necessary, implementation shall be completed before the next anticipated storm event. If implementation before the next anticipated storm event is impracticable, they shall be implemented as soon as practicable.

c. A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, and major observations relating to the implementation of the SWPPP shall be made and retained as part of the SWPPP for at least three years from the date that the site is finally stabilized. Major observations should include: the location(s) of discharges of sediment or other pollutants from the site; location(s) of BMPs that need to be maintained; location(s) of BMPs that failed to operate as designed or proved inadequate for a particular location; and location(s) where additional BMPs are needed that did not exist at the time of inspection. Actions taken in accordance with Part IV.D.4.b of this permit shall be made and retained as part of the storm water pollution prevention plan for at least three years from the date that the site is finally stabilized. Such reports shall identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VI.G of this permit.

5. Non-Storm Water Discharges

Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A.2 pr 3 of this permit that are combined with storm water discharges associated with construction activity must be identified in the SWPPP. The SWPPP shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

Part V. Retention of Records

A. Documents

The permittee shall retain copies of storm water pollution prevention plans and all reports required by this permit, and records of all data used to complete the Notice of Intent to be covered by this permit, for a period of at least three

years from the date that the site is finally stabilized. This period may be extended by request of the Director at any time.

B. Accessibility

The permittee shall retain a copy of the storm water pollution prevention plan required by this permit (including a copy of the permit language) at the construction site (or other local location accessible to the Director, a State, Tribal or local agency approving sediment and erosion plans, grading plans, or storm water management plans; local government officials; or the operator of a municipal separate storm sewer receiving discharges from the site) from the date of project initiation to the date of final stabilization. Permittees with day-to-day operational control over SWPPP implementation shall have a copy of the SWPPP available at a central location on-site for the use of all operators and those identified as having responsibilities under the SWPPP whenever they are on the construction site.

C. Addresses

Except for the submittal of NOIs and NOTs (see Parts ILC and VIII.B, respectively), all written correspondence concerning discharges in any State, Indian Country land or from any Federal facility covered under this permit and directed to the EPA, including the submittal of individual permit applications, shall be sent to the address listed below: United States EPA, Region 6, Storm Water Staff, Enforcement and Compliance Assurance Division (GEN-WC), EPA SW Construction GP, P.O. Box 50625, Dallas, TX 75205.

Part VI Standard Permit Conditions

A. Duty To Comply

1. The Permittee Must Comply With All Conditions of This Permit

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

2. Penalties for Violations of Permit Conditions

The Director will adjust the civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (Federal Register: December 31, 1996, Volume 61, Number 252, pages 69359-69366, as corrected, March 20, 1997, Volume 62, Number 54, pages 13514-

13517) as mandated by the Debt Collection Improvement Act of 1996 for inflation on a periodic basis. This rule allows EPA's penalties to keep pace with inflation. The Agency is required to review its penalties at least once every four years thereafter and to adjust them as necessary for inflation according to a specified formula. The civil and administrative penalties listed below were adjusted for inflation starting in 1996.

a. Criminal.

(1) *Negligent Violations.* The CWA provides that any person who negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(2) *Knowing Violations.* The CWA provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(3) *Knowing Endangerment.* The CWA provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than \$250,000, or by imprisonment for not more than 15 years, or both.

(4) *False Statement.* The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than four years, or by both. (See section 309.c.4 of the Clean Water Act).

b. Civil Penalties. The CWA provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to

exceed \$27,500 per day for each violation.

c. Administrative Penalties. The CWA provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

(1) *Class I Penalty.* Not to exceed \$11,000 per violation nor shall the maximum amount exceed \$27,500.

(2) *Class II Penalty.* Not to exceed \$11,000 per day for each day during which the violation continues, nor shall the maximum amount exceed \$137,500.

B. Continuation of the Expired General Permit

If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedures Act and remain in force and effect. Any permittee who was granted permit coverage prior to the expiration date will automatically remain covered by the continued permit until the earlier of:

1. Reissuance or replacement of this permit, at which time the permittee must comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge; or

2. The permittee's submittal of a Notice of Termination; or

3. Issuance of an individual permit for the permittee's discharges; or

4. A formal permit decision by the Director not to reissue this general permit, at which time the permittee must seek coverage under an alternative general permit or an individual permit.

C. Need To Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty To Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Duty To Provide Information

The permittee shall furnish to the Director or an authorized representative of the Director any information which is requested to determine compliance with this permit or other information.

F. Other Information

When the permittee becomes aware that he or she failed to submit any

relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, he or she shall promptly submit such facts or information.

G. Signatory Requirements

All Notices of Intent, Notices of Termination, storm water pollution prevention plans, reports, certifications or information either submitted to the Director or the operator of a large or medium municipal separate storm sewer system, or that this permit requires be maintained by the permittee, shall be signed as follows:

1. All Notices of Intent and Notices of Termination shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000 (in second-quarter 1980 dollars) if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

2. All reports required by this permit and other information requested by the Director or authorized representative of the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director.

b. The authorization specifies 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 company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

c. Changes to Authorization. If an authorization under Part II.B is no longer accurate because a different operator has responsibility for the overall operation of the construction site, a new Notice of Intent satisfying the requirements of Part II.B must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative. The change in authorization must be submitted within the time frame specified in Part II.A.3, and sent to the address specified in Part II.C.

d. Certification. Any person signing documents under Part VI.G 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."

H. Penalties for Falsification of Reports

Section 309(c)(4) of the Clean Water Act provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years, or by both.

I. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

J. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

K. Severability

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

L. Requiring an Individual Permit or an Alternative General Permit

1. The Director may require any person authorized by this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the Director to take action under this paragraph. Where the Director requires a permittee authorized to discharge under this permit to apply for an individual NPDES permit, the Director shall notify the permittee in writing that a permit application is required. This notification shall include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for the permittee to file the application, and a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. Applications shall be submitted to the appropriate Regional Office indicated in Part V.C of this permit. The Director may grant additional time to submit the application upon request of the applicant. If a permittee fails to submit in a timely manner an individual NPDES permit application as required by the Director under this paragraph, then the applicability of this permit to the individual NPDES permittee is automatically terminated at the end of the day specified by the Director for application submittal.

2. Any permittee authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. In such cases, the permittee shall submit an individual application in accordance with the requirements of 40 CFR 122.26(c)(1)(ii), with reasons supporting the request, to the Director at the address for the

appropriate Regional Office indicated in Part V.C of this permit. The request may be granted by issuance of any individual permit or an alternative general permit if the reasons cited by the permittee are adequate to support the request.

3. When an individual NPDES permit is issued to a permittee otherwise subject to this permit, or the permittee is authorized to discharge under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Director.

M. State/Tribal Environmental Laws

1. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State/Tribal law or regulation under authority preserved by section 510 of the Act.

2. No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

N. 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 requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of this permit.

O. Inspection and Entry

The permittee shall allow the Director or an authorized representative of EPA, the State/Tribe, or, in the case of a construction site which discharges

through a municipal separate storm sewer, an authorized representative of the municipal owner/operator or the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;
2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit; and
3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment).

P. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. 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.

Part VII. Reopener Clause

A. If there is evidence indicating that the storm water discharges authorized by this permit cause, have the reasonable potential to cause or contribute to, a violation of a water quality standard, the permittee may be required to obtain an individual permit or an alternative general permit in accordance with Part I.C of this permit, or the permit may be modified to include different limitations and/or requirements.

B. Permit modification or revocation will be conducted according to 40 CFR 122.62, 122.63, 122.64 and 124.5.

C. EPA may propose a modification to this permit after further discussions between the Agency and the Advisory Council on Historic Preservation for the protection of historic properties.

Part VIII. Termination of Coverage

A. Notice of Termination

Permittees must submit a completed Notice of Termination (NOT) that is signed in accordance with Part VI.G of this permit when one or more of the conditions contained in Part LD.2. (Terminating Coverage) have been met at a construction project. The NOT form found in Addendum D will be used unless it has been replaced by a revised version by the Director. The Notice of Termination shall include the following information:

1. The NPDES permit number for the storm water discharge identified by the Notice of Termination;

2. An indication of whether the storm water discharges associated with construction activity have been eliminated (i.e., regulated discharges of storm water are being terminated) or the permittee is no longer an operator at the site;

3. The name, address and telephone number of the permittee submitting the Notice of Termination;

4. The name of the project and street address (or a description of location if no street address is available) of the construction site for which the notification is submitted;

5. The latitude and longitude of the construction site; and

6. The following certification, signed in accordance with Part VI.G (signatory requirements) of this permit. For construction projects with more than one permittee and/or operator, the permittee need only make this certification for those portions of the construction site where the permittee was authorized under this permit and not for areas where the permittee was not an operator:

"I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that authorized by a general permit have been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this notice of termination, I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this Notice of Termination does not release an operator from liability for any violations of this permit or the Clean Water Act."

For the purposes of this certification, elimination of storm water discharges associated with construction activity means that all disturbed soils at the portion of the construction site where the operator had control have been finally stabilized (as defined in Part IX.D) and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time to ensure final stabilization is maintained, or that all storm water discharges associated with construction activities from the identified site that are authorized by a NPDES general permit have otherwise been eliminated from the portion of the construction site where the operator had control.

B. Addresses

1. All Notices of Termination, signed in accordance with Part VI.G of this permit, are to be submitted using the form provided by the Director (or a photocopy thereof), to the address specified on the NOT form.

Part IX. Definitions

A. *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.

B. *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.

C. *Commencement of Construction* the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

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

E. *Director* means the Regional Administrator of the Environmental Protection Agency or an authorized representative.

F. *Discharge* when used without qualification means the "discharge of a pollutant."

G. *Discharge of Storm Water Associated With Construction Activity* as used in this permit, refers to a discharge of pollutants in storm water runoff from areas where soil disturbing activities (e.g., clearing, grading, or excavation), construction materials or equipment storage or maintenance (e.g., fill piles, borrow areas, concrete truck washout, fueling), or other industrial storm water directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

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

I. *Final Stabilization* means that either:

1. All soil disturbing activities at the site have been completed and a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70% of the native background vegetative cover for the area

has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gablons, or geotextiles) have been employed. In some parts of the country, background native vegetation will cover less than 100% of the ground (e.g., arid areas, beaches). Establishing at least 70% of the natural cover of native vegetation meets the vegetative cover criteria for final stabilization (e.g., if the native vegetation covers 50% of the ground, 70% of 50% would require 35% total cover for final stabilization; on a beach with no natural vegetation, no stabilization is required); or

2. For individual lots in residential construction by either: (a) the homebuilder completing final stabilization as specified above, or (b) the homebuilder establishing temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and informing the homeowner of the need for, and benefits of, final stabilization. (Homeowners typically have an incentive to put in landscaping functionally equivalent to final stabilization as quick as possible to keep mud out of their homes and off their sidewalks and driveways.); or

3. For construction projects on land used for agricultural purposes (e.g., pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to "waters of the United States," and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization criteria in (1) or (2) above.

J. *Flow-Weighted Composite Sample* means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

K. *Large and Medium Municipal Separate Storm Sewer System* means all municipal separate storm sewers that are either:

1. Located in an incorporated place (city) with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census (these cities are listed in Appendices F and G of 40 CFR 122); or

2. Located in the counties with unincorporated urbanized populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships or

towns within such counties (these counties are listed in Appendices H and I of 40 CFR 122); or

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

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

M. *NOT* means Notice of Termination (see Part VIII of this permit).

N. *Operator* for the purpose of this permit and in the context of storm water associated with construction activity, means any party associated with a construction project that meets either of the following two criteria:

1. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or

2. The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions).

This definition is provided to inform permittees of EPA's interpretation of how the regulatory definitions of "owner or operator" and "facility or activity" are applied to discharges of storm water associated with construction activity.

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

P. *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, landfill leachate collection system, 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 storm water runoff.

Q. *Pollutant* is defined at 40 CFR 122.2. 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.

R. *Runoff coefficient* means the fraction of total rainfall that will appear at the conveyance as runoff.

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

T. *Storm Water Associated With Industrial Activity* is defined at 40 CFR 122.26(b)(14) and incorporated here by reference. Most relevant to this permit is 40 CFR 122.26(b)(14)(x), which relates to construction activity including clearing, grading and excavation activities that result in the disturbance of five (5) or more acres of total land area, or are part of a larger common plan of development or sale.

U. *Waters of the United States* 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 (a) through (d) 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.

Part X. Permit Conditions Applicable to Specific States and Indian Country Lands

The provisions of this Part provide additions to the applicable conditions of Parts I through IX of this permit to reflect specific additional conditions required as part of the State or Tribal CWA Section 401 certification process. The additional revisions and requirements listed below are set forth in connection with, and only apply to, the following States and Indian Country lands.

1. LAR10*#: Indian Country Lands in the State of Louisiana

No additional requirements.

2. NMR10*#: The State of New Mexico, Except Indian Country Lands

No additional requirements.

3. NMR10*#: Indian Country Lands in the State of New Mexico, Except Navajo Reservation Lands (see Region 9) and Ute Mountain Reservation Lands (see Region 8)

a. *Pueblo of Isleta*. Copies of Notices of Intent (NOI), Notices of Termination (NOT), and Storm Water Pollution Prevention Plans (SWPPPs) must be submitted to the Pueblo of Isleta's Environment Department, Water Quality Program.

(1) Part II.C.2 of the permit is added as follows:

Special NOI Requirements for the Pueblo of Isleta. NOIs shall also be submitted to the Pueblo of Isleta's Environment Department, Water Quality Program, concurrently with their submission to EPA at the following address: Isleta Environment Department, Water Quality Program, Pueblo of Isleta, PO Box 1270, Isleta, New Mexico 87022.

(2) Part VIII.B.2 is added to the permit as follows:

Special NOI Requirements for the Pueblo of Isleta. NOTs shall also be submitted to the Pueblo of Isleta's Environment Department, Water Quality Program, concurrently with their submission to EPA. NOTs are to be sent to the address given in Part II.C.2.

(3) Part IV.A.3 is added to the permit as follows:

Special Storm Water Pollution Prevention Plan Requirements for the Pueblo of Isleta. Storm water pollution prevention plans must be submitted to the Pueblo of Isleta Environment Department, Water Quality Program, ten working days prior to commencing the project on Pueblo of Isleta tribal lands.

SWPPPs are to be sent to the address given in Part II.C.2.

b. *Pueblo of Nambe*. Copies of Notices of Intent (NOI), Notices of Termination (NOT), and Storm Water Pollution Prevention Plans (SWPPPs) must be submitted to the Pueblo of Nambe Department of Environment and Natural Resources.

(1) Part II.C.2 is added to the permit as follows:

Special NOI Requirements for the Pueblo of Nambe. NOIs shall also be submitted to the Pueblo of Nambe Department of Environment and Natural Resources at the same time they are submitted to EPA at the following address: Pueblo of Nambe, Department of Environment and Natural Resources Route 1 Box 11788, Santa Fe, New Mexico 87501, Phone (505) 455-2036, Fax (505) 455-2038.

(2) Part VIII.B.2 is added to the permit as follows:

Special NOT Requirements for the Pueblo of Nambe. NOTs shall also be submitted to the Pueblo of Nambe Department of Environment and Natural Resources at the same time they are submitted to EPA. NOTs are to be sent to the address given in Part II.C.2.

(3) Part IV.A.3 is added to the permit as follows:

Special Storm Water Pollution Prevention Plan Requirements for the Pueblo of Nambe. Storm water pollution prevention plans must be submitted to the Pueblo of Nambe Department of Environment and Natural Resources before the project on Pueblo of Nambe tribal lands begins. SWPPPs are to be sent to the address given in Part II.C.2.

c. *Pueblo of Picuris*. Copies of Notices of Intent (NOI), Notices of Termination (NOT), and Storm Water Pollution Prevention Plans (SWPPPs) must be submitted to the Pueblo of Picuris Environment Department.

(1) Part II.C.2 is added to the permit as follows:

Special NOI Requirements for the Pueblo of Picuris. NOIs shall also be submitted to the Pueblo of Picuris Environment Department at the same time they are submitted to EPA at the following address: Pueblo of Picuris, Environment Department, P.O. Box 127, Penasco, New Mexico 87553, Phone (505) 587-2519, Fax (505) 587-1071.

(2) Part VIII.B.2 is added to the permit as follows:

Special NOT Requirements for the Pueblo of Picuris. NOTs shall also be submitted to the Pueblo of Picuris Environment Department at the same time they are submitted to EPA. NOTs are to be sent to the address given in Part II.C.2.

(3) Part IV.A.3 is added to the permit as follows:

Special Storm Water Pollution Prevention Plan Requirements for the Pueblo of Picuris. Storm water pollution prevention plans must be submitted to the Picuris Environment Department before the project on Pueblo of Picuris tribal lands begins. SWPPPs are to be sent to the address given in Part II.C.2.

d. *Pueblo of Pojoaque*. Copies of Notices of Intent (NOI), Notices of Termination (NOT), and Storm Water Pollution Prevention Plans (SWPPPs) must be submitted to the Pueblo of Pojoaque Environment Department Director.

(1) Part II.C.2 is added to the permit as follows:

Special NOI Requirements for the Pueblo of Pojoaque. NOIs shall also be submitted to the Pueblo of Pojoaque Environment Department Director at the same time they are submitted to EPA at the following address: Pueblo of Pojoaque, Environment Department, Route 111 P.O. Box 208, Santa Fe, New Mexico 87501, Phone (505) 455-3383, Fax (505) 455-3633.

(2) Part VIII.B.2 of the permit is added as follows:

Special NOT Requirements for the Pueblo of Pojoaque. NOTs shall also be submitted to the Pueblo of Pojoaque Environment Department Director at the same time they are submitted to EPA. NOTs are to be sent to the address given in Part II.C.2.

(3) Part IV.A.3 is added to the permit as follows:

Special Storm Water Pollution Prevention Plan Requirements for the Pueblo of Pojoaque. Storm water pollution prevention plans must be submitted to the Pueblo of Pojoaque Environment Department Director before the project on Pueblo of Pojoaque tribal lands begins. SWPPPs are to be sent to the address given in Part II.C.2.

e. *Pueblo of San Juan*. No additional requirements.

f. *Pueblo of Sandia*. Copies of Notices of Intent (NOI), Notices of Termination (NOT), and Storm Water Pollution Prevention Plans (SWPPPs) must be submitted to the Pueblo of Sandia Environment Department.

(1) Part II.C.2 of the permit is added as follows:

Special NOI Requirements for the Pueblo of Sandia. NOIs shall also be submitted to the Pueblo of Sandia Environment Department at the same time they are submitted to EPA at the following address: Pueblo of Sandia, Environment Department, Box 6008, Bernalillo, New Mexico 87004, Phone (505) 867-4533; Fax (505) 867-9235.

(2) Part VIII.B.2 is added to the permit as follows:

Special NOT Requirements for the Pueblo of Sandia. NOTs shall also be submitted to the Pueblo of Sandia Environment Department at the same time they are submitted to EPA. NOTs are to be sent to the address given in Part II.C.2.

(3) Part IV.A.3 is added to the permit as follows:

Special Storm Water Pollution Prevention Plan Requirements for the Pueblo of Sandia. Storm water pollution prevention plans must be submitted to the Pueblo of Sandia Environment Department before commencement of the project on Pueblo of Sandia tribal lands. SWPPPs are to be sent to the address given in Part II.C.2.

g. Pueblo of Tesuque. Copies of Notices of Intent (NOI), Notices of Termination (NOT), Storm Water Pollution Prevention Plans (SWPPPs), inspection reports, all certifications and "other information" must be submitted, by hand delivery or certified mail, to the Pueblo of Tesuque.

(1) Part II.C.2 of the permit is added as follows:

Special NOI Requirements for the Pueblo of Tesuque. NOIs shall also be submitted to the Pueblo of Tesuque at least five (5) days prior to any ground disturbing activity at the following address: Pueblo of Tesuque, Environment Department, Route 5, Box 3260-T, Santa Fe, New Mexico 87501. Phone (505) 983-2667; Fax (505) 982-2331.

(2) Part VIII.B.2 is added to the permit as follows:

Special NOT Requirements for the Pueblo of Tesuque. NOTs shall also be submitted to the Pueblo of Tesuque at the same time they are submitted to EPA. NOTs are to be sent to the address given in Part II.C.2.

(3) Part IV.A.3 is added to the permit as follows:

Special Storm Water Pollution Prevention Plan Requirements for the Pueblo of Tesuque. Storm water pollution prevention plans must be submitted to the Pueblo of Tesuque at least five (5) days prior to any ground disturbing activity on Pueblo of Tesuque tribal lands. SWPPPs are to be sent to the address given in Part II.C.2.

(4) Part V.D is added to the permit as follows:

Special Reporting Requirements for the Pueblo of Tesuque. Copies of all certifications required by Section IV.D, copies of "other information" required by Section V.F shall be provided to the Pueblo of Tesuque, by hand delivery or certified mail. Also, copies of all inspection reports required

under Section IV.D.A.c. shall be submitted within five (5) days of completion of the inspection. All information sent to the Pueblo of Tesuque is to be sent to the address given in Part II.C.2.

h. Santa Clara Pueblo. Copies of Notices of Intent (NOI) and Notices of Termination (NOT) must be submitted to the Santa Clara Pueblo Governors Office with a copy to the Office of Environmental Affairs.

(1) Part I.C.4. is added to the permit as follows:

Special Authorization Requirements for the Santa Clara Pueblo. Prior to submitting a Notice of Intent, the operator must obtain permission from the Santa Clara Governors Office to do the construction. If the project is approved by the tribal administration, the operator may proceed with submitting a Notice of Intent (NOI).

(2) Part II.C.2 is added to the permit as follows:

Special NOI Requirements for the Santa Clara Pueblo. NOIs shall also be submitted to the Santa Clara Pueblo Governors Office with a copy to the Office of Environmental Affairs at least two (2) weeks prior to the start of construction at the following address: Santa Clara Governors Office, PO Box 580, Espanola, New Mexico 87532, Phone (505) 753-7326; Fax (505) 753-8988.

(3) Part VIII.B.2 is added to the permit as follows:

Special NOT Requirements for the Santa Clara Pueblo. NOTs shall also be submitted to the Santa Clara Pueblo Governors Office with a copy to the Office of Environmental Affairs at least two (2) weeks prior to the start of construction. NOTs are to be sent to the address given in Part II.C.2.

l. All Other Indian Country lands in New Mexico. No additional requirements.

4. OKR10*##I: Indian Country Lands in the State of Oklahoma.¹

No additional requirements.

5. OKR10*##F: Oil and Gas Sites in the State of Oklahoma

No additional requirements.

6. TXR10*##: The State of Texas, Except Indian Country Lands

a. Part III of the permit is modified as follows: Change the title of Part III. (*Special Conditions, Management Practices, and other Non-Numeric Limitations*) to: *Part III. Special Conditions, Management Practices, and other Limitations.*

b. Part III.G is added to the permit as follows:

Special Numeric Limitations for Discharges from Ready-Mixed Concrete Plants in the State of Texas, except Indian Country lands. All discharges of storm water from ready-mixed concrete plants covered by this permit must comply with the following limitations:
pH—Between 6.0 and 9.0 standard units
Oil and Grease—15 mg/l as a daily maximum
Total Suspended Solids—65 mg/l as a daily maximum

These limitations must be taken into account when designing the storm water control measures to be used for areas draining any ready-mixed concrete plants operated by the permittee.

7. TXR10*##I: Indian Country Lands in the State of Texas

No additional requirements.

Addendum A—Endangered Species

I. Instructions for Applicants

A. Background

To meet its obligations under the Clean Water Act and the Endangered Species Act (ESA) and to promote those Acts' goals, the Environmental Protection Agency (EPA) is seeking to ensure the activities regulated by the Construction General Permit (CGP) are protective of endangered and threatened species and critical habitat. To ensure that those goals are met, applicants for CGP coverage are required under Part I.B.3.e. to assess the impacts of their storm water discharges and storm water discharge-related activities on Federally listed endangered and threatened species ("listed species") and designated critical habitat ("critical habitat") by following Steps One through Six listed below. EPA strongly recommends that applicants follow these steps at the earliest possible stage to ensure that measures to protect listed species and critical habitat are incorporated early in the planning process. At minimum, the procedures should be followed when developing the storm water pollution prevention plan.

Permittees and applicants also have an independent ESA obligation to ensure that their activities do not result in any prohibited "takes" of listed species.¹ Many of the measures required in the CGP and in these instructions to protect species may also assist permittees in ensuring that their construction activities do not result in a prohibited take of species in violation of § 9 of the ESA. Applicants who plan construction activities in areas that harbor endangered and threatened species are advised to ensure that

¹ Section 9 of the ESA prohibits any person from "taking" a listed species (e.g., harassing or harming it) unless: (1) the taking is authorized through a "incidental take statement" as part of undergoing ESA § 7 formal consultation; (2) where an incidental take permit is obtained under ESA § 10 (which requires the development of a habitat conservation plan); or (3) where otherwise authorized or exempted under the ESA. This prohibition applies to all entities including private individuals, businesses, and governments.

they are protected from potential takings liability under ESA § 9 by obtaining either an ESA § 10 permit or by requesting formal consultation under ESA § 7 (as described in more detail in Step Seven below). Applicants who seek protection from takings liability should be aware that it is possible that some specific construction activities may be too unrelated to storm water discharges to be afforded incidental take coverage through an ESA § 7 consultation that is performed to meet the eligibility requirements for CGP coverage. In such instances, applicants should apply for an ESA § 10 permit. Where applicants are not sure whether to pursue a § 10 permit or a § 7 consultation for takings protection, they should confer with the appropriate Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS) office.

This permit provides for the possibility of multiple permittees at a construction site. Applicants should be aware that in many cases they can meet the permit eligibility requirements by relying on another operator's certification of eligibility under Part I.B.3.e.(2)(a), (b), or (c). This is allowed under Part I.B.3.e.(2)(d) of the permit. However, the other operator's certification must apply to the applicant's project area and must address the effects from the applicant's storm water discharges and storm water discharge-related activities on listed species and critical habitat. By certifying eligibility under Part I.B.3.e.(2)(d), the applicant agrees to comply with any measures or controls upon which the other operator's certification under Part I.B.3.e.(2)(a), (b) or (c) was based. This situation will typically occur where a developer or primary contractor, such as one for construction of a subdivision or industrial park, conducts a comprehensive assessment of effects on listed species and critical habitat for the entire construction project, certifies eligibility under Part I.B.3.e.(2)(a), (b) or (c), and that certification is relied upon by other operators (i.e., contractors) at the site. However, applicants that consider relying on another operator's certification should carefully review that certification along with any supporting information. If an applicant does not believe that the operator's certification provides adequate coverage for the applicant's storm water discharges and storm water discharge-related activities or for the applicant's particular project area, the applicant should provide its own independent certification under Part I.B.3.e.(2)(a), (b), or (c).

B. Procedures

To receive coverage under the Construction General Permit, applicants must assess the potential effects of their storm water discharges and storm water discharge-related activities on listed species and their critical habitat. To make this assessment, applicants must follow the steps outlined below prior to completing and submitting Notice of Intent (NOI) form. Applicants who are able to certify eligibility under Parts I.B.3.e.(2)(b), (c) because of a previously issued ESA permit, a previously completed ESA § 7 consultation, or because the applicant's activities were already addressed in another operator's certification of eligibility may proceed directly to Step Six.

Note.—The revised NOI form which was included in the CGP (see 62 FR 29822-29823, June 2, 1997) requires that applicants provide detailed certification information on listed species. That form is still under development and is not expected to be finalized before this permit is issued. Until the revised NOI form is finalized, applicants must use the existing NOI form which does not contain the specific certification provisions relating to listed species and critical habitats at construction projects. However, use of the existing NOI form does not relieve applicants of their obligation to follow the procedures listed below to determine if their construction storm water discharges or storm water discharge-related activities meet permit eligibility requirements for the protection of listed species and critical habitat. By following these instructions, applicants will have sufficient information on listed species and critical habitat in order to complete either the existing or revised NOI form and sign the certification statement.

Step One: Determine if the Construction Site Is Found Within Designated Critical Habitat for Listed Species

Some, but not all, listed species have designated critical habitat. Exact locations of such habitat is provided in the Service regulations at 50 CFR Parts 17 and 226. To determine if their construction site occurs within designated critical habitat, applicants should either:

- Contact the nearest Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) Office. A list of FWS and NMFS offices is found in Section II of this Addendum; or
- Contact the State or Tribal Natural Heritage Centers. These centers compile and disseminate information on Federally listed and other protected species. They frequently have the most current information on listed species and critical habitat. A list of these centers is provided in Section III of this Addendum; or
- Review those regulations (which can be found in many larger libraries).

If the construction site is not located in designated critical habitat, then the applicant does not need to consider impacts to critical habitat when following Steps Two through Six below. If the site is located within critical habitat, then the applicant must look at impacts to critical habitat when following Steps Two through Six. Note that many but not all measures imposed to protect listed species under these steps will also protect critical habitat. Thus, meeting the eligibility requirements of this permit may require measures to protect critical habitat that are separate from those to protect listed species.

Step Two: Determine if Listed Species Are Located in the County(ies) Where the Construction Activity Will Occur

Section IV of the Addendum contains a county-by-county list of listed endangered and threatened species ("listed species"), and proposed endangered and threatened species ("proposed species"). Since the list was current as of September 1, 1997, applicants must also check with other sources for updated species and county information.

These sources include: Sections II and III of this Addendum; EPA's Office of Wastewater Management's web page at "<http://www.epa.gov/owm>" where updates of the county-by-county list will be posted on a periodic basis; Federal Register Notices; State wildlife protection offices; a biologist or similar professional in the environmental field; or any other method which can be reasonably expected to provide this information. Applicants with construction projects located in EPA Region 2 and Region 6 can call the Storm Water General Permits Hotline at (800) 245-6510 for further assistance, while applicants with projects located in EPA Regions 1, 3, 7, 8, 9 and 10 may contact the appropriate EPA Regional Office.

Where a facility is located in more than one county, the lists for all counties should be reviewed. Where a facility discharges into a water body which serves as a border between counties or which crosses a county line which is in the immediate vicinity of the point of discharge, applicants should also review the species list for the county which lies immediately downstream or is across the water body from the point of discharge.

After a review of the available information from the sources mentioned above, if no listed species are located in a facility's county or if a facility's county is not listed, and the construction site is not located in critical habitat as described under Step One... an applicant is eligible for CGP coverage without further inquiry into the presence of, or effect to, listed species. The applicant must check the appropriate certification item on the revised NOI form (Part I.B.3.e.(2)(a)).

Once the applicant has determined which listed species are located in his or her facility's county, the applicant must follow Step Three.

Step Three: Determine if any Federally Listed Endangered and Threatened Species May Be Present in the Project Area

The project area consists of:

- The areas on the construction site where storm water discharges originate and flow toward the point of discharge into the receiving waters (including areas where excavation, site development, or other ground disturbance activities occur) and the immediate vicinity.

Example(s)

1. Where bald eagles nest in a tree that is on or bordering a construction site and could be disturbed by the construction activity.
2. Where grading causes storm water to flow into a small wetland or other habitat that is on the site which contains listed species.

- The areas where storm water discharges flow from the construction site to the point of discharge into receiving waters.

Example(s)

1. Where storm water flows into a ditch, swale, or gully which leads to receiving waters and where listed species (such as amphibians) are found in the ditch, swale, or gully.

- The areas where storm water from construction activities discharge into receiving waters and the areas in the immediate vicinity of the point of discharge.

Example(s)

1. Where storm water from construction activities discharges into a stream segment that is known to harbor listed aquatic species.

- The areas where storm water BMPs will be constructed and operated, including any areas where storm water flows to and from BMPs.

Example(s)

1. Where a storm water retention pond would be built.

The project area will vary with the size and structure of the construction activity, the nature and quantity of the storm water discharges, the storm water discharge-related activities and the type of receiving water. Given the number of construction activities potentially covered by the CGP, no specific method to determine whether listed species may be located in the project area is required for coverage under the CGP. Instead, applicants should use the method which allows them to determine, to the best of their knowledge, whether listed species are located in their project area. These methods may include:

- Conducting visual inspections: This method may be particularly suitable for construction sites that are smaller in size or located in non-natural settings such as highly urbanized areas or industrial parks where there is little or no natural habitat, or for construction activities that discharge directly into municipal storm water collection systems.

- Contacting the nearest State or Tribal wildlife agency, the Fish and Wildlife Service (FWS), or the National Marine Fisheries Service (NMFS). Many endangered and threatened species are found in well-defined areas or habitats. Such information is frequently known to State, Tribal, or Federal wildlife agencies. A list of FWS and NMFS offices is provided in Section II of this Addendum below.

- Contacting local/regional conservation groups or the State or Tribal Natural Heritage Centers (see Section III of this Addendum). State and local conservation groups may have location specific listed species information. The Natural Heritage Centers inventory species and their locations and maintain lists of sightings and habitats.

- Submitting a data request to a Natural Heritage Center. Many of these centers will provide site specific information on the presence of listed species in a project area. Some of these centers will charge a fee for researching data requests.

- Conducting a formal biological survey. Larger construction sites with extensive storm water discharges may choose to conduct biological surveys as the most effective way to assess whether species are located in the project area and whether there are likely adverse effects. Biological surveys are frequently performed by environmental consulting firms. A biological survey can be conducted to follow Steps Four through Six of the instructions.

- Conducting an environmental assessment under the National Environmental Policy Act (NEPA). Some construction activities may require

environmental assessments under NEPA. Such assessments may indicate if listed species are in the project area. Coverage under the CGP does not trigger such an assessment because the permit does not regulate any dischargers subject to New Source Performance Standards under Section 306 of the Clean Water Act, and is thus statutorily exempted from NEPA. See CWA § 511(c). However, some construction activities might require review under NEPA because of Federal funding or other Federal involvement in the project.

If no species are found in the project area, an applicant is eligible for CGP coverage. Applicants must provide the necessary certification on the revised NOI form. If listed species are found in the project area, applicants must indicate the location and nature of this presence in the storm water pollution prevention plan and follow Step Four.

Step Four: Determine if Listed Species or Critical Habitat Are Likely To Be Adversely Affected by the Construction Activity's Storm Water Discharges or Storm Water Discharge-Related Activities

To receive CGP coverage, applicants must assess whether their storm water discharges or storm water discharge-related activities are likely to adversely affect listed species or critical habitat. "Storm water discharge-related activities" include:

- Activities which cause, contribute to, or result in point source storm water pollutant discharges, including but not limited to excavation, site development, grading, and other surface disturbance activities; and

- Measures to control storm water discharges including the siting, construction, operation of best management practices (BMPs) to control, reduce or prevent storm water pollution.

Potential adverse effects from storm water discharges and storm water discharge-related activities include:

- **Hydrological.** Storm water discharges may cause siltation, sedimentation or induce other changes in receiving waters such as temperature, salinity or pH. These effects will vary with the amount of storm water discharged and the volume and condition of the receiving water. Where a storm water discharge constitutes a minute portion of the total volume of the receiving water, adverse hydrological effects are less likely. Construction activity itself may also alter drainage patterns on a site where construction occurs which can impact listed species or critical habitat.

- **Habitat.** Excavation, site development, grading, and other surface disturbance activities from construction activities, including the installation or placement of storm water BMPs, may adversely affect listed species or their habitat. Storm water may drain or inundate listed species habitat.

- **Toxicity.** In some cases, pollutants in storm water may have toxic effects on listed species.

The scope of effects to consider will vary with each site. If the applicant is having difficulty in determining whether his or her project is likely to adversely affect a listed species or critical habitat, then the

appropriate office of the FWS, NMFS or Natural Heritage Center listed in Sections II and III of this Addendum should be contacted for assistance. If adverse effects are not likely, then the applicant should make the appropriate certification on the revised NOI form and apply for coverage under the permit. If adverse effects are likely, applicants must follow Step Five.

Step Five: Determine if Measures Can Be Implemented To Avoid Any Adverse Effects

If an applicant makes a preliminary determination that adverse effects are likely, it can still receive coverage under Part I.B.3.e.(2)(a) of the CGP if appropriate measures are undertaken to avoid or eliminate the likelihood of adverse effects prior to applying for permit coverage. These measures may involve relatively simple changes to construction activities such as re-routing a storm water discharge to bypass an area where species are located, relocating BMPs, or by changing the "footprint" of the construction activity. Applicants may wish to contact the FWS and/or NMFS to see what appropriate measures might be suitable to avoid or eliminate the likelihood of adverse impacts to listed species and/or critical habitat. (See 50 CFR 402.13(b).) This can entail the initiation of informal consultation with the FWS and/or NMFS which is described in more detail in Step Six.

If applicants adopt measures to avoid or eliminate adverse effects, they must continue to abide by those measures during the course of permit coverage. These measures must be described in the storm water pollution prevention plan and may be enforceable as permit conditions. If appropriate measures to avoid the likelihood of adverse effects are not available to the applicant, the applicant must follow Step Six.

Step Six: Determine if the Eligibility Requirements of Part I.B.3.e.(2)(b)-(d) Can Be Met

Where adverse effects are likely, the applicant must contact the EPA and FWS/NMFS. Applicants may still be eligible for CGP coverage if any likely adverse effects can be addressed through meeting the criteria of Part I.B.3.e.(2)(b)-(d) of the permit. These criteria are as follows:

1. An ESA Section 7 Consultation Is Performed for the Applicant's Activity (See Part I.B.3.e.(2)(b))

Formal or Informal ESA § 7 consultation is performed with the FWS and/or NMFS which addresses the effects of the applicant's storm water discharges and storm water discharge-related activities on listed species and critical habitat. The formal consultation must result in either a "no jeopardy opinion" or a "jeopardy opinion" that identifies reasonable and prudent alternatives to avoid jeopardy which are to be implemented by the applicant. The informal consultation must result in a written concurrence by the Service(s) on a finding that the applicant's storm water discharge(s) and storm water discharge-related activities are not likely to adversely affect listed species or critical habitat (for informal consultation, see 50 CFR 402.13).

Most consultations are accomplished through informal consultation. By the terms of this permit, EPA has automatically designated applicants as non-Federal representatives for the purpose of conducting informal consultations. See Part I.B.3.e.(5) and 50 CFR 402.08 and 402.13. When conducting informal ESA § 7 consultation as a non-Federal representative, applicants must follow the procedures found in 50 CFR 402 of the ESA regulations.

Applicants must also notify EPA and the Services of their intention and agreement to conduct consultation as a non-Federal representative. Consultation may occur in the context of another Federal action at the construction site (e.g., where ESA § 7 consultation was performed for issuance of a wetlands dredge and fill permit for the project or where a NEPA review is performed for the project which incorporates a section 7 consultation). Any terms and conditions developed through consultations to protect listed species and critical habitat must be incorporated into the SWPPP. As noted above, applicants may, if they wish, initiate consultation with the Services at Step Five.

Whether ESA § 7 consultation must be performed with either the FWS, NMFS or both Services depends on the listed species which may be affected by the applicant's activity. In general, NMFS has jurisdiction over marine, estuarine, and anadromous species. Applicants should also be aware that while formal § 7 consultation provides protection from incidental takings liability, informal consultation does not.

An Incidental Taking Permit Under Section 10 of the ESA is issued for the Applicants Activity (See Part I.B.3.e.(2)(c))

The applicant's construction activities are authorized through the issuance of a permit under § 10 of the ESA and that authorization addresses the effects of the applicant's storm water discharge(s) and storm water discharge-related activities on listed species and critical habitat. Applicants must follow FWS and/or NMFS procedures when applying for an ESA Section 10 permit (see 50 CFR § 17.22(b)(1) (FWS) and § 222.22 (NMFS)). Application Instructions for Section 10 permits for NMFS species can be obtained by (1) accessing the "Office of Protected Resources" sector of the NMFS Home Page at "<http://www.nmfs.gov>" or by contacting the National Marine Fisheries Service, Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, Maryland 20910; telephone (301) 713-1401, fax (301) 713-0376.

3. The Applicant Is Covered Under the Eligibility Certification of Another Operator or the Project Area (See Part I.B.3.e.(2)(d))

The applicant's storm water discharges and storm water discharge-related activities were already addressed in another operator's certification of eligibility under Part I.B.3.e.(2)(b), or (c) which also included the applicant's project area. By certifying eligibility under Part I.B.3.e.(2)(d), the applicant agrees to comply with any measures or controls upon which the other operator's certification under Part I.B.3.e.(2)(a), (b) or (c) was based.

Certification under Part I.B.3.e.(2)(d) is discussed in more detail in Section I.A. of this addendum.

The applicant must comply with any terms and conditions imposed under the eligibility requirements of paragraphs I.B.3.e.(2)(a), (b), (c), (d) to ensure that its storm water discharges and storm water discharge-related activities are protective of listed species and/or critical habitat. Such terms and conditions must be incorporated in the project's SWPPP. If the eligibility requirements of Part I.B.3.e.(2)(a)-(d) cannot be met, then the applicant may not receive coverage under the CGP. Applicants should then consider applying to EPA for an individual permit.

II. List of Fish and Wildlife Service and National Marine Fisheries Service Offices

A. U.S. Fish and Wildlife Service Offices

National Website for Endangered Species Information:

Endangered Species Home page: <http://www.fws.gov/r9endspp/endspp.html>

Regional, State, Field and Project Offices
USFWS Region Two

Regional Office

Division Chief, Endangered Species, U.S. Fish and Wildlife Service, ARD Ecological Services, P.O. Box 1306, Albuquerque, NM 87103

State, Field, and Project Offices (Region Two)

Field Supervisor, U.S. Fish and Wildlife Service, Corpus Christi Field Office, 6300 Ocean Dr., Campus Box 338, Corpus Christi, TX 78412

Field Supervisor, U.S. Fish and Wildlife Service, Arlington Field Office, 711 Stadium Dr., East, Suite 252, Arlington, TX 76011

Field Supervisor, U.S. Fish and Wildlife Service, Clear Lake Field Office, 17629 El Camino Real, Suite 211, Houston, TX 77058

Field Supervisor, U.S. Fish and Wildlife Service, Oklahoma Field Office, 222 S. Houston, Suite a, Tulsa, OK 74127

Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Field Office, 2105 Osuna, NE, Albuquerque, NM 87113

Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Serv. Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758

Field Supervisor, U.S. Fish and Wildlife Service, Arizona State Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021-4951

USFWS Region Four

Regional Office

Division Chief, Endangered Species, U.S. Fish and Wildlife Service, ARD—Ecological Services, 1875 Century Blvd., Suite 200, Atlanta, GA 30345

State, Field, and Project Offices (Region Four)

Field Supervisor, U.S. Fish and Wildlife Service, Panama City Field Office, 1612 June Avenue, Panama City, FL 32405-3721

Field Supervisor, U.S. Fish and Wildlife Service, South Florida Ecosystem Field

Office, 1360 U.S. Hwy 1, #5; P.O. Box 2676, Vero Beach, FL 32961-2676

Field Supervisor, U.S. Fish and Wildlife Service, Caribbean Field Office, P.O. Box 491, Boqueron, PR 00622

Field Supervisor, U.S. Fish and Wildlife Service, Puerto Rican Parrot Field Office, P.O. Box 1600, Rio Grande, PR 00745

Field Supervisor, U.S. Fish and Wildlife Service, Brunswick Field Office, 4270 Norwich Street, Brunswick, GA 31520-2523

Field Supervisor, U.S. Fish and Wildlife Service, Jacksonville Field Office, 6620 Southpoint Drive S., Suite 310, Jacksonville, FL 32216-0912

Field Supervisor, U.S. Fish and Wildlife Service, Charleston Field Office, 217 Ft. Johnson Road, P.O. Box 12559, Charleston, SC 29422-2559

Field Supervisor, U.S. Fish and Wildlife Service, Clemson F.O., Dept. of Forest Resources, 261 Lehotsky Hall, Box 341303, Clemson, SC 29634-1003

Field Supervisor, U.S. Fish and Wildlife Service, Raleigh Field Office, P.O. Box 33728, Raleigh, NC 27636-3726

Field Supervisor, U.S. Fish and Wildlife Service, Cookeville Field Office, 446 Neal Street, Cookeville, TN 38501

Field Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 160 Zillicoa Street, Asheville, NC 28801

Field Supervisor, U.S. Fish and Wildlife Service, Daphne Field Office, P.O. Drawer 1190, Daphne, AL 36526

Field Supervisor, U.S. Fish and Wildlife Service, Vicksburg Field Office, 2524 S. Frontage Road, Suite B, Vicksburg, MS 39180-5269

Field Supervisor, U.S. Fish and Wildlife Svc., Lafayette Field Office, Brandywine II, Suite 102, 825 Kaliste Saloom Road, Lafayette, LA 70508

Field Supervisor, U.S. Fish and Wildlife Service, Jackson Field Office, 6578 Dogwood View Pkwy Suite A, Jackson, MS 39213

B. National Marine Fisheries Service Offices

The National Marine Fisheries Service is developing a database to provide county and territorial water (up to three miles offshore) information on the presence of endangered and threatened species and critical habitat. The database is projected to be available to the public sometime in December 1997. The database should be found at the "Office of Protected Resources" site on the NMFS Homepage at "<http://www.nmfs.gov>".

Regional and Field Office

Southeast Region

Protective Species Management Branch, National Marine Fisheries Service, Southeast Region, 9721 Executive Center Drive, St. Petersburg, Florida 33702-2432

III. Natural Heritage Centers

The Natural Heritage Network comprises 85 biodiversity data centers throughout the Western Hemisphere. These centers collect, organize, and share data relating to endangered and threatened species and habitat. The network was developed to inform land-use decisions for developers.

corporations, conservationists, and government agencies and is also consulted for research and educational purposes. The centers maintain a Natural Heritage Network Control Server Website (<http://www.heritage.tnc.org>) which provides website and other access to a large number of specific biodiversity centers. Some of these centers are listed below:

Oklahoma Natural Heritage Inventory

Oklahoma Biological Survey, 111 East Chesapeake Street, University of Oklahoma, Norman, OK 73019-0575, 405/325-1985 Fax: 405/325-7702, Web site: <http://obssun02.uoknor.edu/biosurvey/onhi/home.html>

Louisiana Natural Heritage Program

Department of Wildlife & Fisheries, P.O. Box 98000, Baton Rouge, LA 70898-9000, 504/765-2821 Fax: 504/765-2607

Navajo Natural Heritage Program

P.O. Box 1480, Window Rock, Navajo Nation, AZ 86515, (520) 871-7603, (520) 871-7068 (FAX)

Texas Biological and Conservation Data System

3000 South IH-35, Suite 100, Austin, TX 78704, 512/912-7011 Fax: 512/912-7058

IV. County List of Endangered and Threatened Species

Please see February 17, 1998, Federal Register Vol. 63 no. 31 for county by county listing or contact EPA Region 6 Storm Water Hotline (1-800-245-6510). EPA's Office of Wastewater Management's web page at "<http://www.epa.gov/owm>" will post periodic updates of the county-by-county list. You may also check the list of endangered and threatened species published by the Fish and Wildlife Service on the Endangered Species Home Page (<http://www.fws.gov/~r9endspp/endspp.htm>) which is also attached to the FWS Home Page in the "Nationwide Activities Category". List of species under NMFS jurisdiction can be found on the NMFS Homepage (<http://www.nmfs.gov>) under the "Protected Resources Program." Lists and maps of critical habitat can be found in the Code of Federal Regulations (CFRs) at 50 CFR parts 17 and 226.

Addendum B—Historic Properties (Reserved)

Instructions related to historic preservation have not been included in the permit at this time. EPA may modify the permit to include such provisions at a later date. This does not

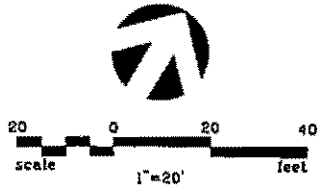
relieve applicants or permittees of their responsibility to comply with applicable State, Tribal or local laws for the protection of historic properties.

Addendum C—Revised Notice of Intent Form

The Notice of Intent form (EPA3510-9) replaces the Notice of Intent form (EPA 3510-6 (8-98)). The revised form is contained in this Addendum. According to the provisions in Part I.B.1 of this permit, applicants are reminded they must certify that they meet all eligibility requirements of Part I.B. of this permit and are informing the Director of their intent to be covered by, and comply with, those terms and conditions. These conditions include certifications that the applicant's storm water discharges and storm water-related discharge activities will not adversely affect listed endangered or threatened species, or their critical habitat. EPA may modify this permit to include provisions relating to historic preservation.

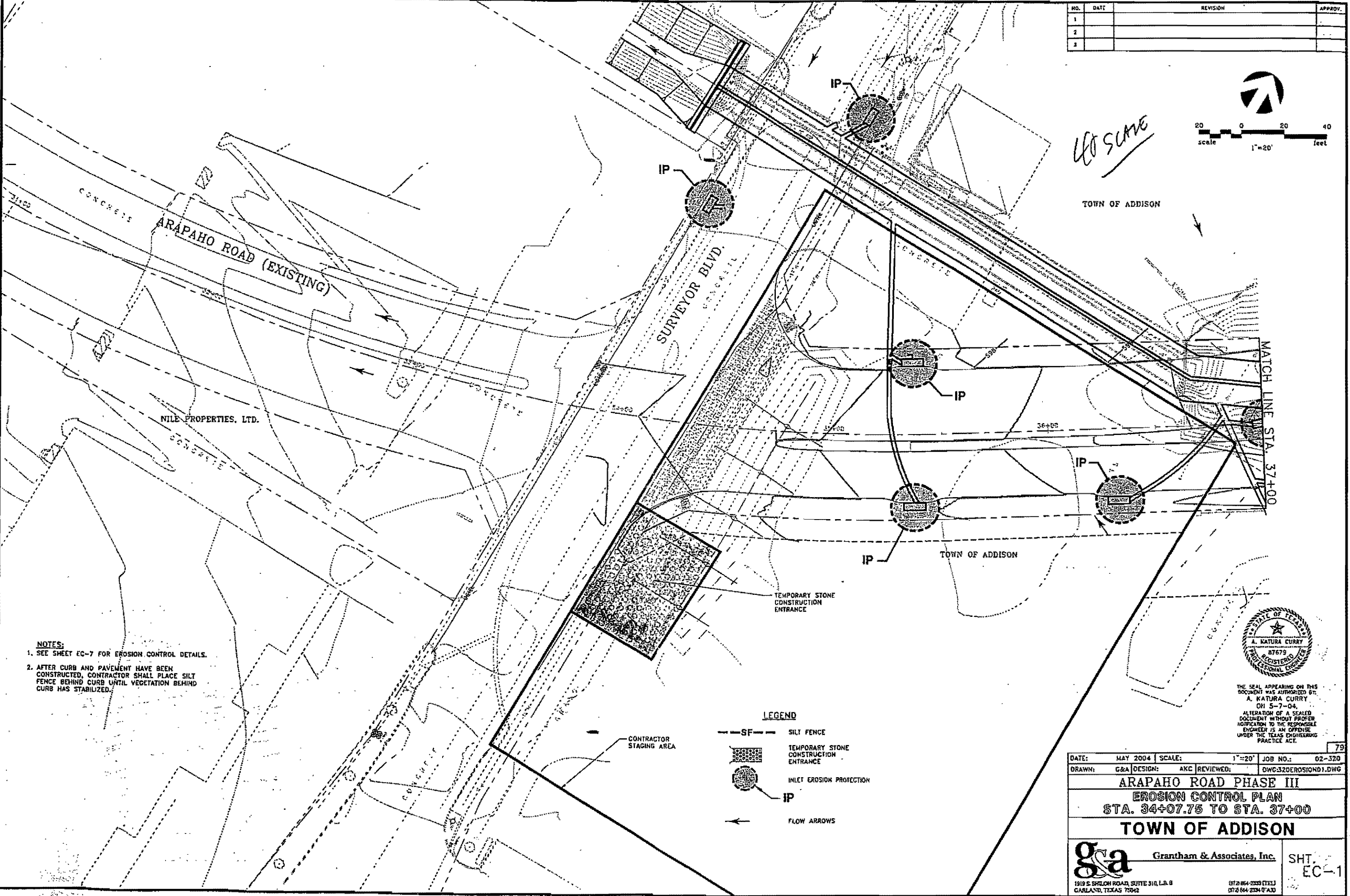
BILLING CODE 6330-50-P

NO.	DATE	REVISION	APPROV.
1			
2			
3			

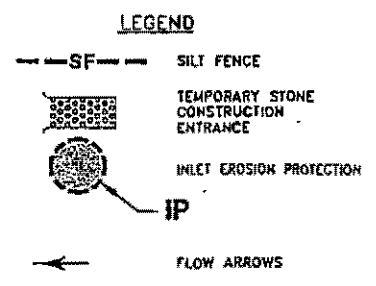


LET SCALE

TOWN OF ADDISON



- NOTES:**
- SEE SHEET EC-7 FOR EROSION CONTROL DETAILS.
 - AFTER CURB AND PAVEMENT HAVE BEEN CONSTRUCTED, CONTRACTOR SHALL PLACE SILT FENCE BEHIND CURB UNTIL VEGETATION BEHIND CURB HAS STABILIZED.

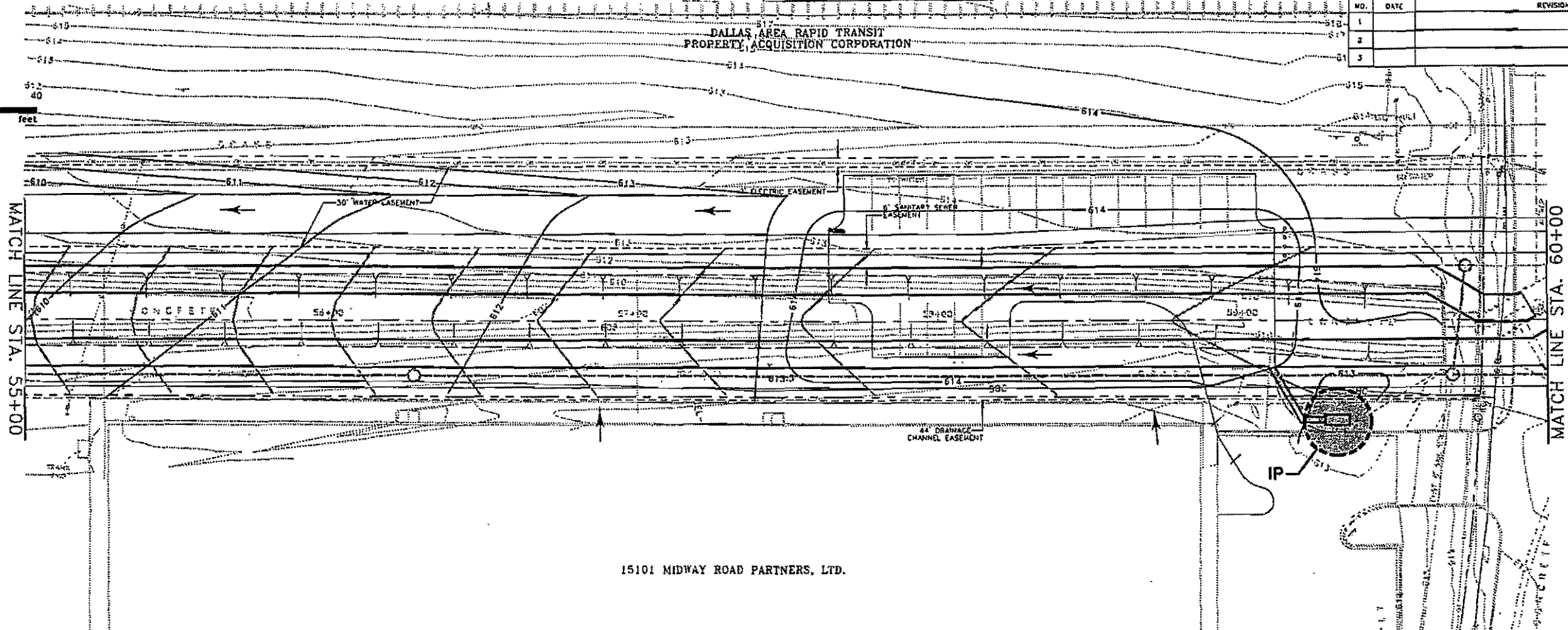
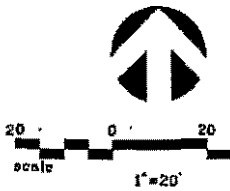


THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY:
 A. NATURA CURRY
 ON 5-7-04
 ALTERATION OF A SEALED DOCUMENT WITHOUT PROPER NOTIFICATION TO THE RESPONSIBLE ENGINEER IS AN OFFENSE UNDER THE TEXAS ENGINEERING PRACTICE ACT.

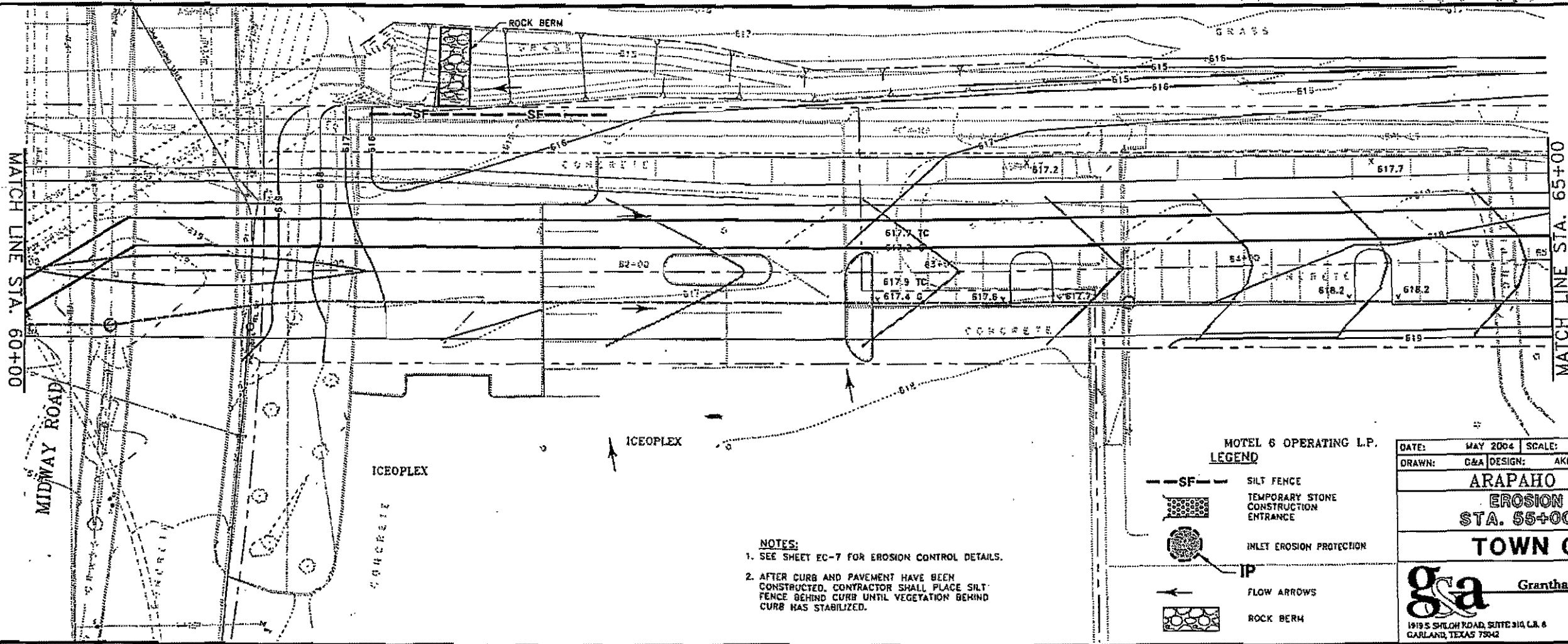
DATE:	MAY 2004	SCALE:	1"=20'	JOB NO.:	02-320
DRAWN:	G&A	DESIGN:	AKC	REVIEWED:	DWC-320EROSION01.DWG
ARAPAHO ROAD PHASE III					
EROSION CONTROL PLAN					
STA. 34+07.75 TO STA. 37+00					
TOWN OF ADDISON					
		Grantham & Associates, Inc.		SHT. EC-1	
		1919 S. EPHRAIM ROAD, SUITE 310, L.B. 8 CARLISLE, TEXAS 75002			
		072 864-2339 (TELE)		072 664-2334 (FAX)	

DALLAS AREA RAPID TRANSIT
PROPERTY ACQUISITION CORPORATION

NO.	DATE	REVISION	APPROV.
1			
2			
3			



15101 MIDWAY ROAD PARTNERS, LTD.



THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY:
A. NATURA CURRY
ON 5-7-04.
ALTERATION OF A SEALED DOCUMENT WITHOUT PROPER NOTIFICATION TO THE RESPONSIBLE ENGINEER IS AN OFFENSE UNDER THE TEXAS ENGINEERING PRACTICE ACT.

- NOTES:**
- SEE SHEET EC-7 FOR EROSION CONTROL DETAILS.
 - AFTER CURB AND PAVEMENT HAVE BEEN CONSTRUCTED, CONTRACTOR SHALL PLACE SILT FENCE BEHIND CURB UNTIL VEGETATION BEHIND CURB HAS STABILIZED.

MOTEL 6 OPERATING I.P.

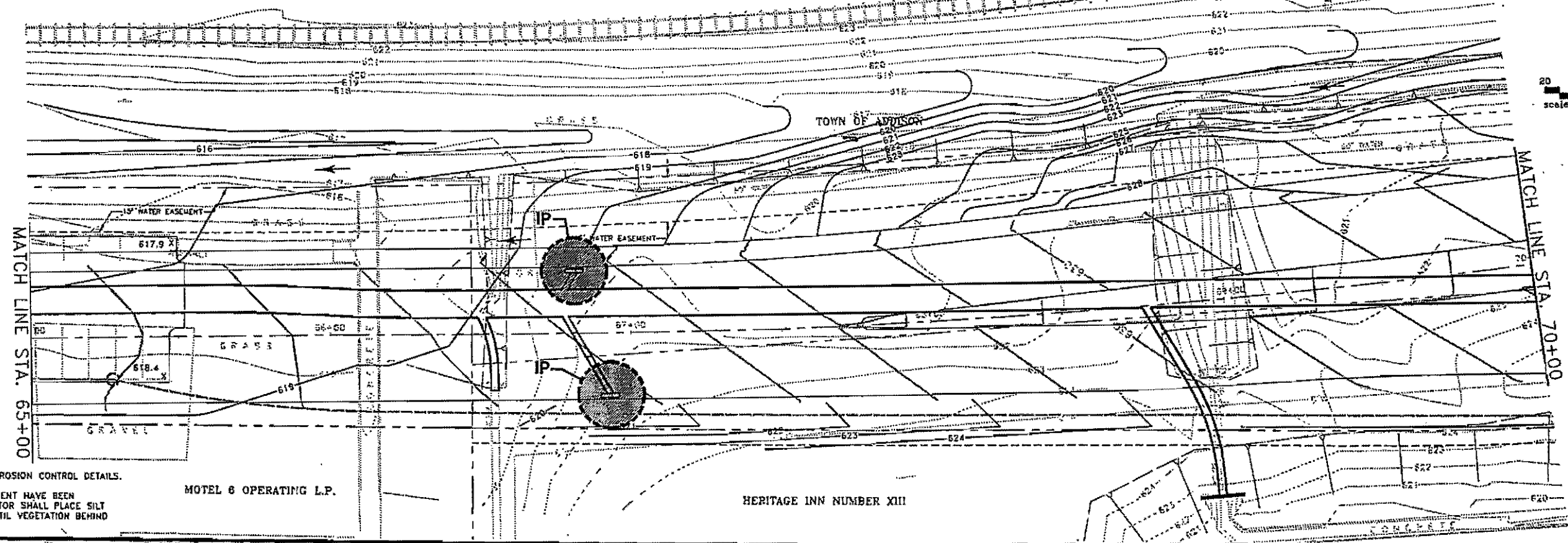
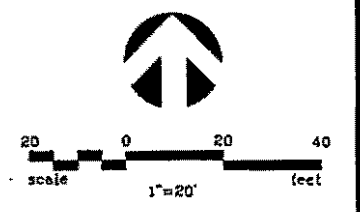
LEGEND

- SILT FENCE
- TEMPORARY STONE CONSTRUCTION ENTRANCE
- INLET EROSION PROTECTION
- IP
- FLOW ARROWS
- ROCK BERM

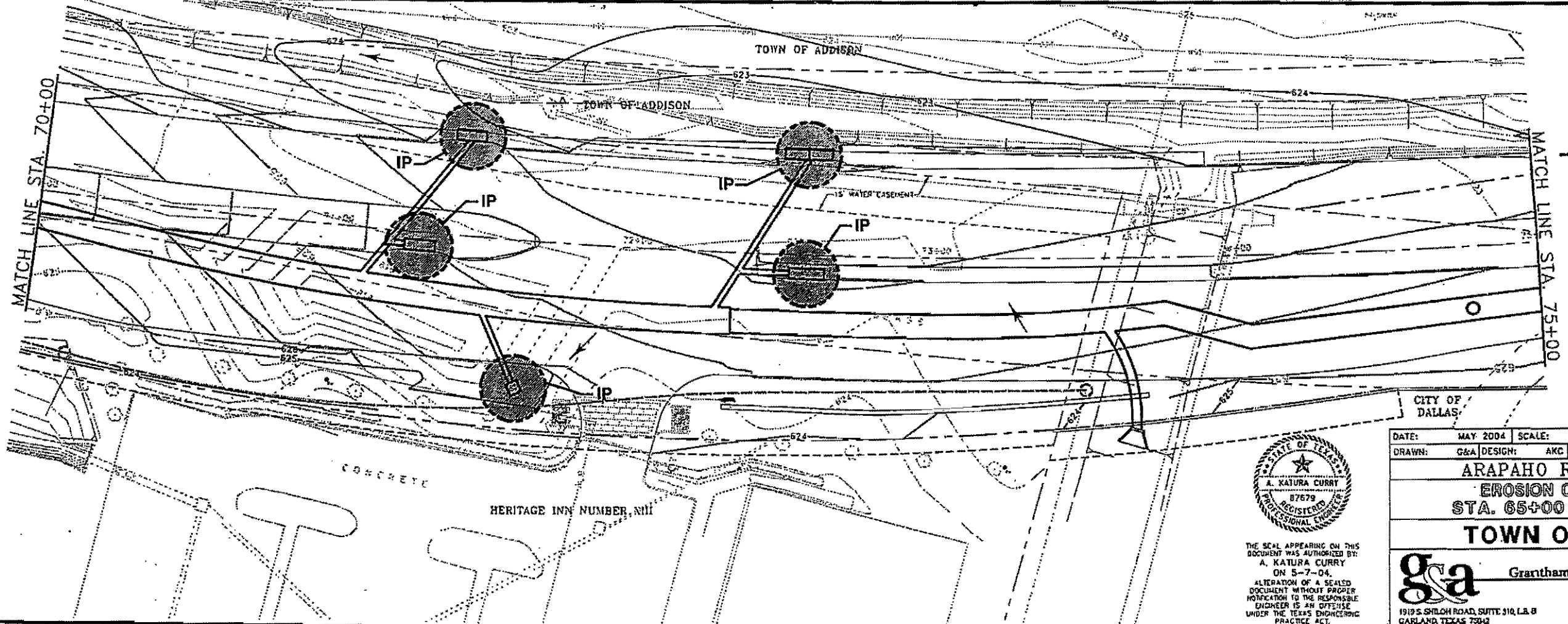
DATE:	MAY 2004	SCALE:	1"=20'	JOB NO.:	02-320
DRAWN:	G&A	DESIGN:	AKC	REVIEWED:	DWG:J2GERSION01.DWG
ARAPAHO ROAD PHASE III					
EROSION CONTROL PLAN					
STA. 55+00 TO STA. 65+00					
TOWN OF ADDISON					
Grantham & Associates, Inc.				SHT. EC-4	
<small>1919 S. SHELTON ROAD, SUITE 310, L.R. 6 GARLAND, TEXAS 75042</small>				<small>(972) 864-2335 (FAX) 972 864-2334</small>	

DALLAS AREA RAPID TRANSIT
PROPERTY ACQUISITION CORPORATION

NO.	DATE	REVISION	APPROV.
1			
2			
3			



- NOTES:**
1. SEE SHEET EC-7 FOR EROSION CONTROL DETAILS.
 2. AFTER CURB AND PAVEMENT HAVE BEEN CONSTRUCTED, CONTRACTOR SHALL PLACE SILT FENCE BEHIND CURB UNTIL VEGETATION BEHIND CURB HAS STABILIZED.



LEGEND

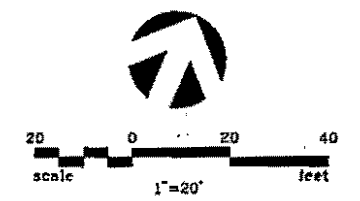
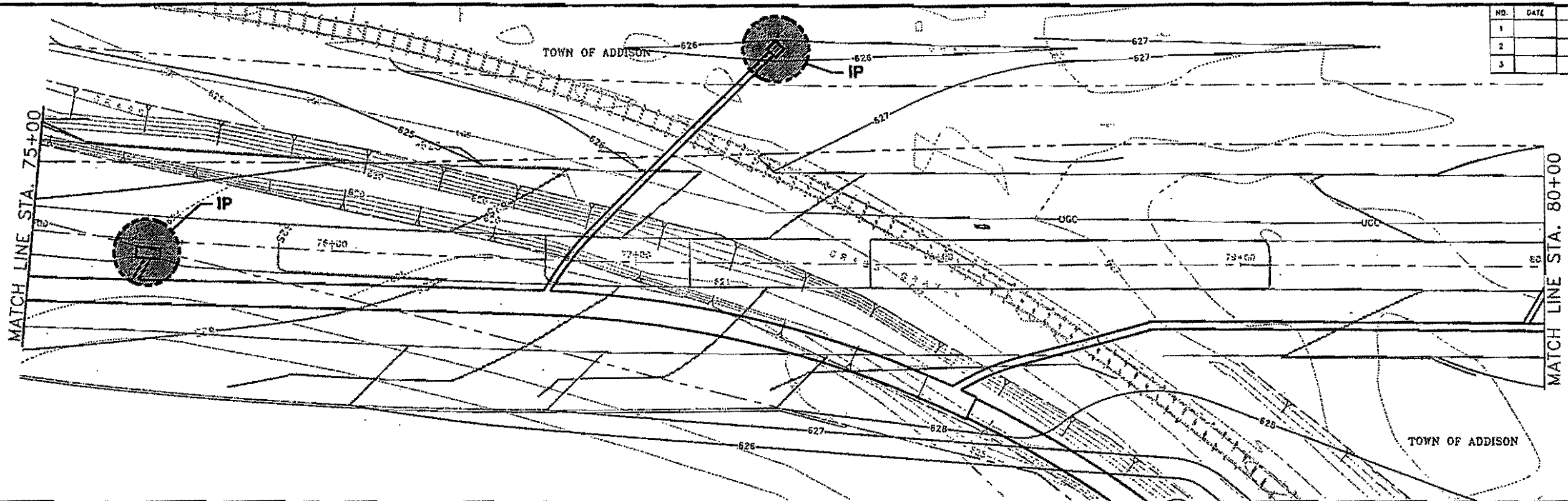
- SF SILT FENCE
- TEMPORARY STONE CONSTRUCTION ENTRANCE
- INLET EROSION PROTECTION
- IP
- FLOW ARROWS



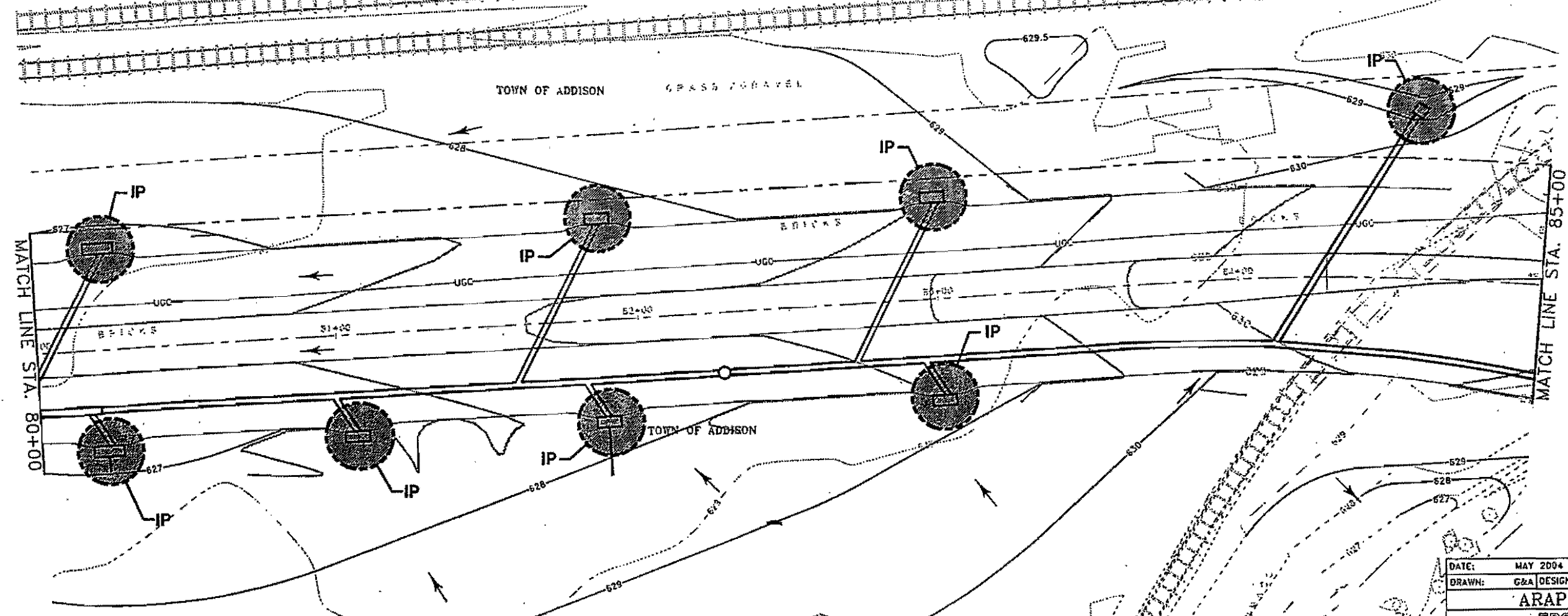
THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY:
A. KATURA CURRY
ON 5-7-04.
ALTERATION OF A SEALED DOCUMENT WITHOUT PROPER NOTIFICATION TO THE RESPONSIBLE DESIGNER IS AN OFFENSE UNDER THE TEXAS ENGINEERING PRACTICE ACT.

DATE:	MAY 2004	SCALE:	1"=20'	JOB NO.:	02-320
DRAWN:	G&A	DESIGN:	AKC	REVIEWED:	DWG320EROSION01.DWG
ARAPAHO ROAD PHASE III					
EROSION CONTROL PLAN					
STA. 65+00 TO STA. 75+00					
TOWN OF ADDISON					
			Grantham & Associates, Inc.		SHT. EC-5
1919 S. SHILOH ROAD, SUITE 310, L.B. 8 GARLAND, TEXAS 75042			877 864-2333 (TEL) 877 864-2334 (FAX)		

NO.	DATE	REVISION	APPROV.
1			
2			
3			



- LEGEND**
- SF SILT FENCE
 - TEMPORARY STONE CONSTRUCTION ENTRANCE
 - INLET EROSION PROTECTION
 - IP
 - FLOW ARROWS



THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY:
 A. KATURA CURRY
 ON 5-7-04.
 ALTERATION OF A SEALED DOCUMENT WITHOUT PROPER NOTIFICATION TO THE RESPONSIBLE ENGINEER IS AN OFFENSE UNDER THE TEXAS ENGINEERING PRACTICE ACT.

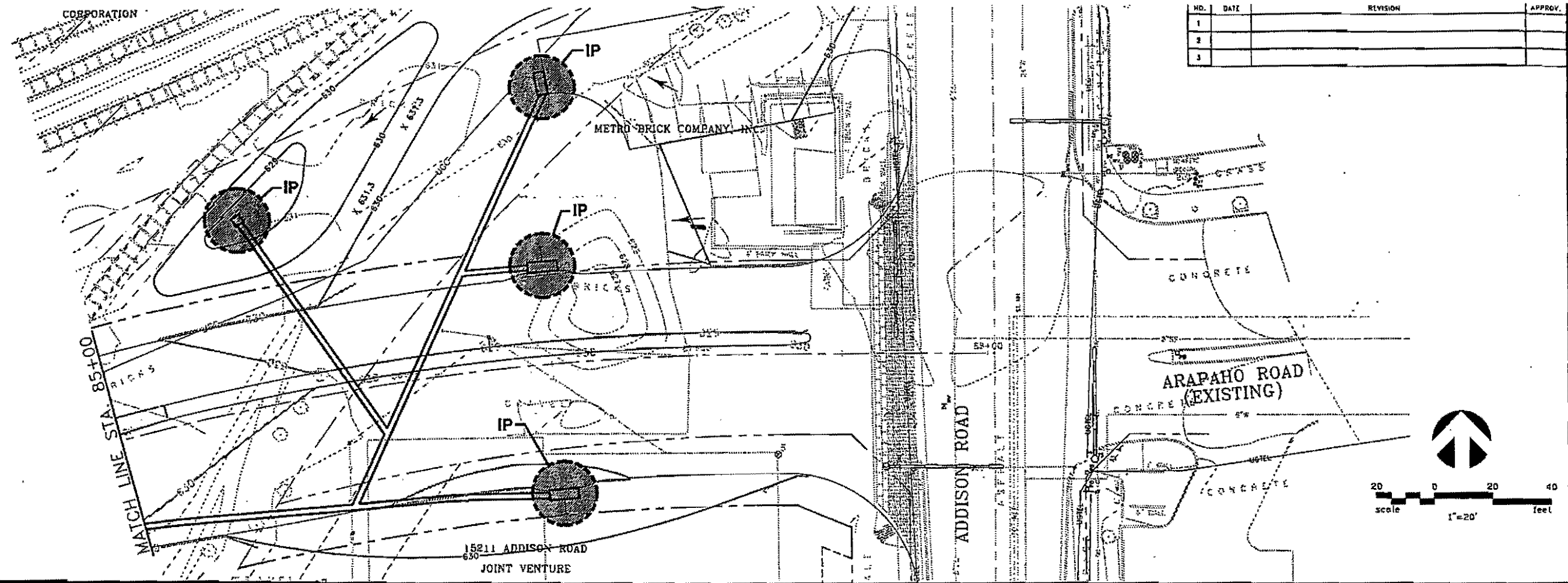
- NOTES:**
- SEE SHEET EC-7 FOR EROSION CONTROL DETAILS.
 - AFTER CURB AND PAVEMENT HAVE BEEN CONSTRUCTED, CONTRACTOR SHALL PLACE SILT FENCE BEHIND CURB UNTIL VEGETATION BEHIND CURB HAS STABILIZED.

DATE:	MAY 2004	SCALE:	1"=20'	JOB NO.:	02-320
DRAWN:	G&A	DESIGN:	AKC	REVIEWED:	DWG:320EROSION01.DWG

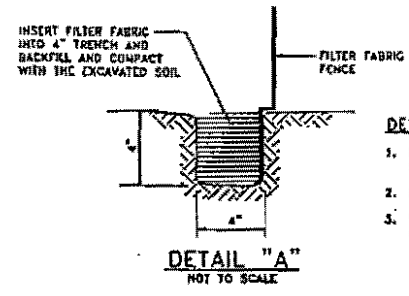
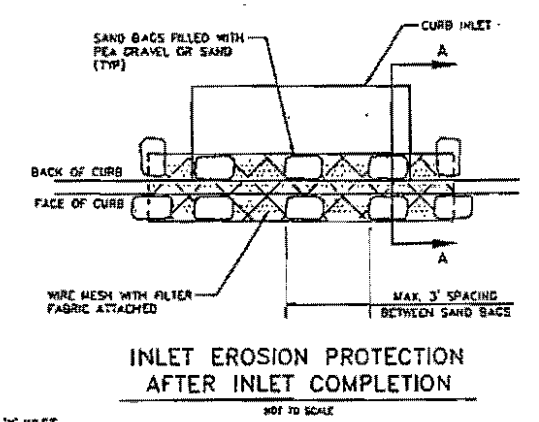
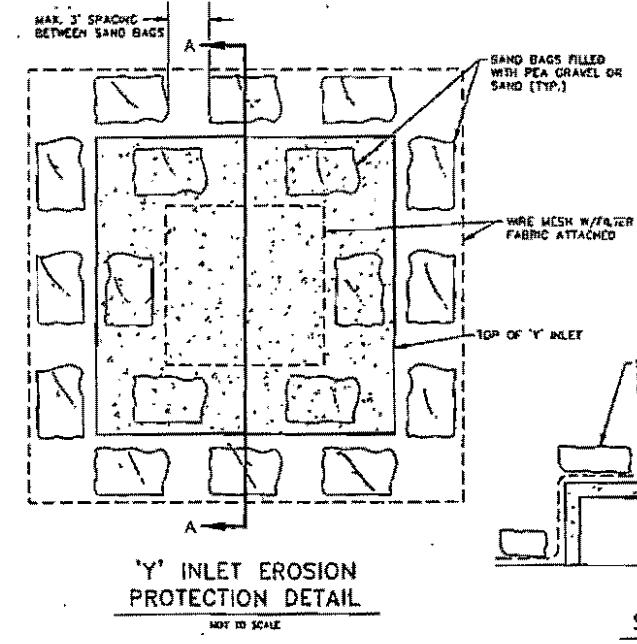
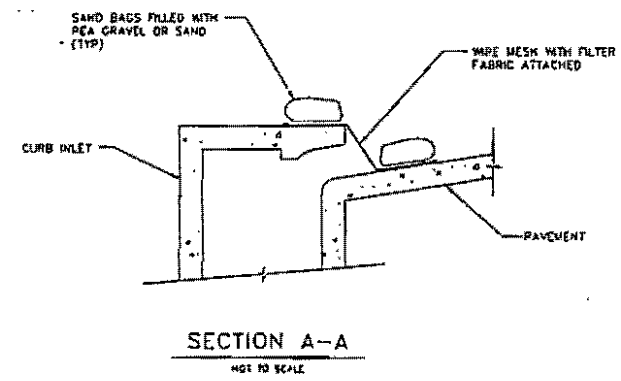
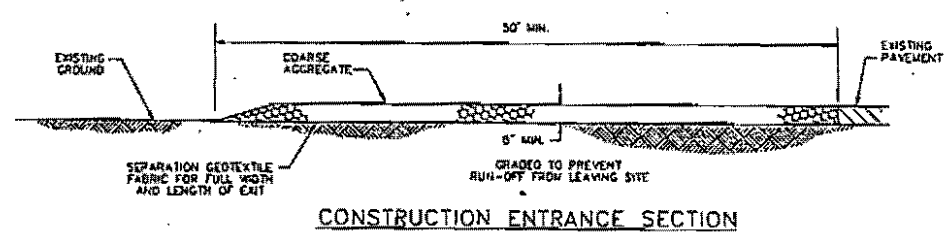
**ARAPAHO ROAD PHASE III
 EROSION CONTROL PLAN
 STA. 75+00 TO STA. 85+00
 TOWN OF ADDISON**

g&a Grantham & Associates, Inc. SHT. EC-6

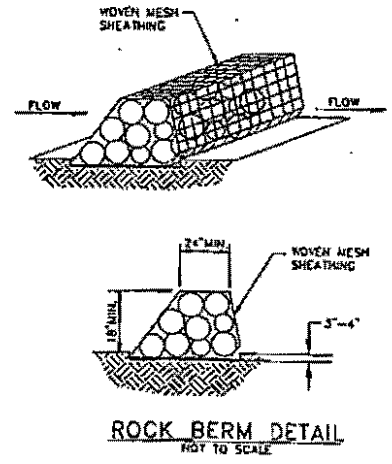
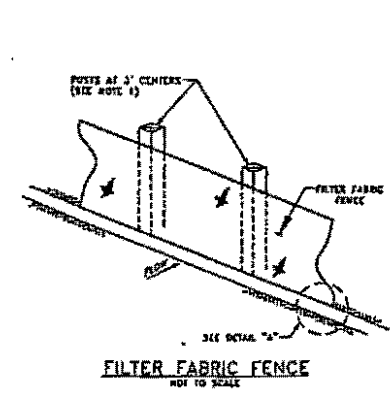
1915 S. SHILOH ROAD, SUITE 310, L.B. GARLAND TEXAS 75042 (972) 664-2333 (TX) (972) 664-7904 (TX)



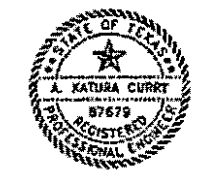
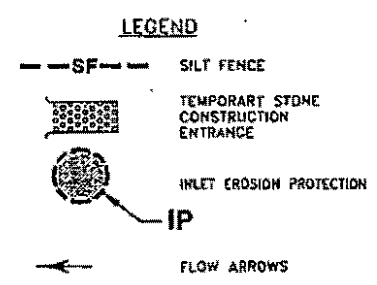
NO.	DATE	REVISION	APPROV.
1			
2			
3			



- DETAIL NOTES:**
1. IF FACTORY PREASSEMBLED FENCE WITH SUPPORT NETTING IS USED, SPACING OF POSTS MAY INCREASE TO 8' MAXIMUM.
 2. FILTER FABRIC SHALL BE AS PER ASTM D4833.
 3. WHEN TWO SECTIONS OF FILTER FABRIC ADJOIN EACH OTHER, PROVIDE 6" OF OVERLAP AT THE POST AND FOLD.



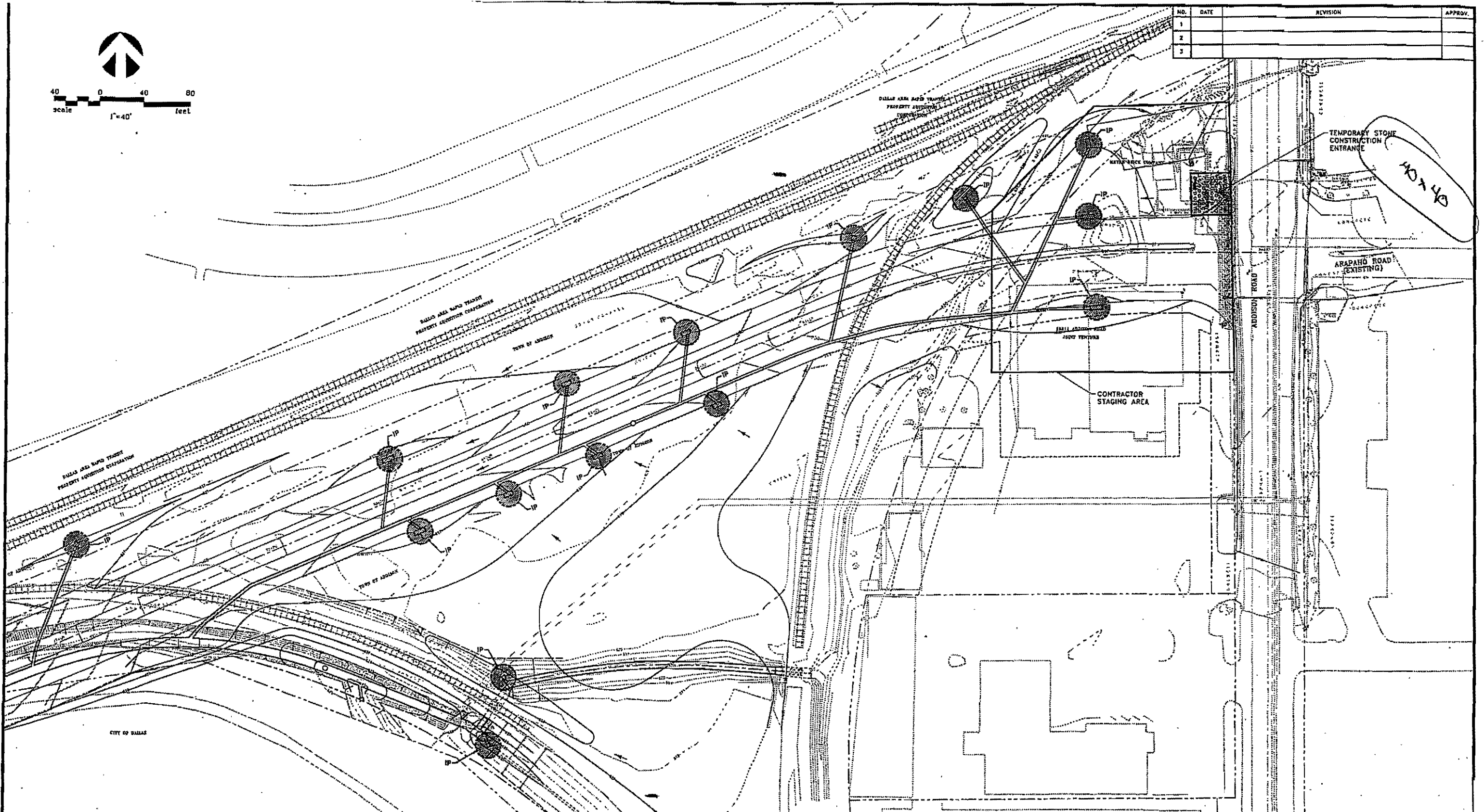
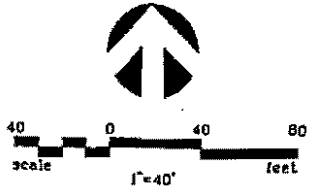
- INLET PROTECTION NOTES:**
1. WIRE MESH PER ASTM D4632 W/OPENING NOT TO EXCEED 1"
 2. FILTER FABRIC SHALL BE AS PER ASTM D4833. FILTER FABRIC TO BE SECURED TO WIRE MESH WITH WIRE OR PLASTIC CABLE TIES.
 3. SAND BAGS SHALL BE POLYETHYLENE OR COTTON BURLAP FABRIC 24" TO 30" IN LENGTH AND 15" TO 18" IN WIDTH. BAGS TO BE FILLED WITH PEA GRAVEL OR COARSE GRADE SAND TO APPROXIMATELY 40 POUNDS.
- NOTES:**
1. AFTER CURB AND PAVEMENT HAVE BEEN CONSTRUCTED, CONTRACTOR SHALL PLACE SILT FENCE BEHIND CURB UNTIL VEGETATION BEHIND CURB HAS STABILIZED.



THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY:
A. KATURA CURRY
ON 5-7-04.
ALTERATION OF A SEALED DOCUMENT WITHOUT PROPER IDENTIFICATION TO THE RESPONSIBLE ENGINEER IS AN OFFENSE UNDER THE TEXAS ENGINEERING PRACTICE ACT.

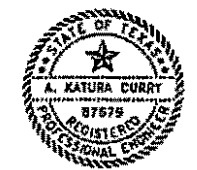
DATE:	MAY 2004	SCALE:	1"=20'	JOB NO.:	D2-320
DRAWN:	G&A	DESIGN:	AKC	REVIEWED:	DWC:320EROSION.DWG
ARAPAHO ROAD PHASE III					
EROSION CONTROL PLAN					
STA. 85+00 TO END					
TOWN OF ADDISON					
g&a Grantham & Associates, Inc.				SHT. EC-7	
1919 S. SHELDON ROAD, SUITE 310, L.B. 8 GARLAND, TEXAS 75042				817.864.2333 (TEL.) 817.864.2334 (FAX)	

NO.	DATE	REVISION	APPROV.
1			
2			
3			



LEGEND

- SILT FENCE
- TEMPORARY STONE CONSTRUCTION ENTRANCE
- INLET EROSION PROTECTION
- FLOW ARROWS



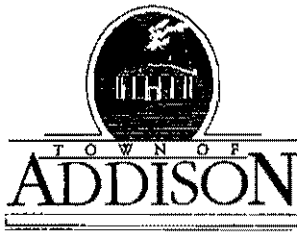
THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY:
 A. KATURA CURRY
 ON 5-7-04.
 ALTERATION OF A SEALED DOCUMENT WITHOUT PROPER NOTIFICATION TO THE RESPONSIBLE ENGINEER IS AN OFFENSE UNDER THE TEXAS ENGINEERING PRACTICE ACT.

DATE: MAY 2004	SCALE: 1"=20'	JOB NO.: 02-320
DRAWN: G&A	DESIGN: AKC	REVIEWED: DWG:320EROSION01.DWG

**ARAPAHO ROAD PHASE III
 EROSION CONTROL PLAN
 'Y' TRACK
 TOWN OF ADDISON**

g&a Grantham & Associates, Inc. SHT. EC-8

1919 S. SHELTON ROAD, SUITE 310, L.B. 8 GARLAND, TEXAS 75042 (972) 854-2338 (TX) (972) 854-2304 (TX)



PUBLIC WORKS DEPARTMENT
Post Office Box 9010 Addison, Texas 75001-9010

Addison 50!

50 YEARS OF FUN!

(972) 450-2871 FAX (972) 450-2837
16801 Westgrove

October 13, 2004

David Cheney
Comcast
1565 Chenault St
Dallas, Texas 75228

Re: Arapaho Phase 3

Mr. Cheney,

This letter is to advise you of a road construction project located within the Town of Addison. The Town is currently in the construction phase of this project, which expands Arapaho from Surveyor Blvd to Addison Road. A bridge over will also be constructed over Midway Road. As a result, there will be a need to perform extensive utility adjustments. Please consider this correspondence as a letter of intent for this project.

If you have any questions regarding this matter, please do not hesitate to contact me at 972-450-2860.

Thank you for your help in this matter.

Sincerely,

Jenny Nicewander, P.E.
Project Manager

Cc: file

TOWN OF
ADDISON

PUBLIC WORKS

To: DAVID CHENEY

From: Jenny Nicewander

Company: COMCAST

FAX #: 214 320 7559

Phone: 972/450-2860

Fax: 972/450-2837

Date: 10/13/04

No. of pages (including cover): 2

16801 Westgrove
P.O. Box 9010
Addison, TX 75001-9010

HP LaserJet 3200se



HP LASERJET 3200

OCT-13-2004 10:35AM

Fax Call Report

Job	Date	Time	Type	Identification	Duration	Pages	Result
401	10/13/2004	10:34:04AM	Send	92143207559	0:00	0	No Answer

TOWN OF
ADDISON

PUBLIC WORKS

To: DAVID CHEWLEY

From: Jenny Nicewander

Company: COMCAST

Phone: 972/450-2860

Fax: 972/450-2837

FAX #: 214 370 7559

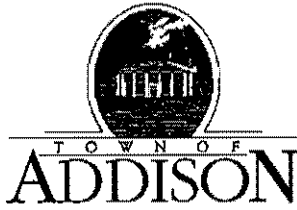
Date: 10/13/04

16801 Westgrove

P.O. Box 9010

Addison, TX 75001-9010

No. of pages (including cover): 2



PUBLIC WORKS DEPARTMENT

Post Office Box 9010 Addison, Texas 75001-9010

Addison 50!

50 YEARS OF FUN!

(972) 450-2871 FAX (972) 450-2837

16801 Westgrove

September 15, 2004

David Martinez
Dallas, Garland & Northeastern Railroad Inc.
403 International Parkway
Suite 500
Richardson, Texas 75081

Mr. Martinez,

We have received your letter stating that the Temporary "Y" crossing work for the Arapaho Road Project will cost an estimated \$4,140.00. The Town is satisfied with your estimate and would like you and/or your contractor to begin this work as soon as possible.

If you have any questions regarding this matter, please do not hesitate to contact me at 972-450-2860.

Thank you for your help in this matter.

Sincerely,

Jenny Nicewander, P.E.



DALLAS, GARLAND & NORTHEASTERN RAILROAD, INC.

403 International Pkwy • Suite 500 • Richardson, Tx 75081 • 972-808-9800 • Fax 972-808-9900

September 10, 2004

Ms. Jenny Nicewander
Town of Addison
16801 Westgrove
P.O. Box 9010
Addison, TX 75001-9010

Ms. Nicewander
we are providing the required estimate for following crossing.

- Temporary crossing on the "Y" track in Addison. , All work will be done by our contractor; we will be able to start on the week of September 13, 2004.

If you have any questions concerning this matter, please do not hesitate to contact me at 972-808-9800 ext. 213

Regards,

David R. Martinez



A RailAmerica Company

**Detailed Estimate for Grade Crossing Replacement
East Leg of "Y" track temporary crossing**

JOB DESCRIPTION	QTY	UNIT	COST PER UNIT	TOTAL
MATERIAL				
Concrete Panels & Rubber Flangeway	16	FT.	225.00	\$3,600.00
Filter Fabric		FT.		
Perferated Pipe		FT.		
Field Welds		EA.		
Ballast		TON		
Ties		EA.		
Material Handling	1	Lot	15%	\$540.00
Removal / Disposal of Existing Crossing				
Material	1	Lot		
Installation of Crossing	1	Lot		\$0.00
			TOTAL	\$4,140.00

Note 1 Railroad contractor will work with Railroad to construct temporary crossing with out delaying trains.

Note 2 Railroad contractor to provide flagging or other means of roadway worker Protection.

Note 3 Railroad will inspect temporary crossing when completed.

TOWN OF
ADDISON

PUBLIC WORKS

To: DAVE MARTINEZ

From: JENNY NICKENMAYER

Company: D&D

FAX #: 972-808-9990

Date: 9/15/04

No. of pages (including cover): 2

Phone: 972/450-2860

Fax: 972/450-2837

16801 Westgrove

P.O. Box 9010

Addison, TX 75001-9010



**DALLAS, GARLAND &
NORTHEASTERN RAILROAD, INC.**

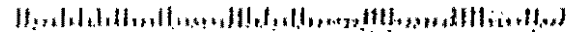
403 International Pkwy • Suite 500 • Richardson, Tx • 75081



Pay off of this

MS. JENNY NICEWANDER, P.E.
TOWN OF ADDISON
16801 WESTGROVE
P.O. BOX 9010
ADDISON, TX 75001-9010

75001#9010



AGREEMENT NUMBER: C405-01-010

WORK ORDER NUMBER: 005

WORK ORDER

This WORK ORDER, executed this 10th day of February, 2005, by and between

Contractor

Customer

MasTec North America, Inc., a Florida Corporation.

Town of Addison

4747 Irving Blvd., Suite 221

16801 Westgrove Drive

Dallas, Texas 75247

Addison, Texas 75001-9010

Contractor acknowledges that it has visited the site(s), has visually inspected it and is familiar with the general and local conditions of the Scope of Work listed below.

SCOPE OF WORK

Provide manpower and equipment to complete all necessary tasks for the Marsh Lane 16" Water Main Interconnect for the Town of Addison, Texas. All work to be done to OSHA specifications, The Town of Addison Purchase Order No. S000113 and per the plans from Grantham & Associates dated January, 2005.

PRICING

Contractor will get paid a lump sum amount of fifty three thousand seven hundred twenty dollars and 00/100 (\$ 53,720.00) for the work specified above.

CONTRACTOR:

By: 

David Holland
(Printed Name)

Title: Senior Vice President

Date: 2/10/05

CUSTOMER:

By: 

Jim Pierce
(Printed Name)

Title: Interim Public Wks Director

Date: 2-11-05



4747 Irving Boulevard, Suite 221
Dallas, Texas 75247
Phone: (214) 571-2500
Fax: (214) 571-2555

February 10, 2005

Town of Addison, Texas
C/o Jenny Nicewander
16801 Westgrove
Addison, Texas 75001-9010

**RE: P.O. No. S000113 – Marsh Lane Emergency 16" Water Line Interconnection
DWU – Farmers Branch**

Dear Mrs. Nicewander:

Located below is the requested breakdown of the above referenced project.

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	BID UNIT	BID TOTAL
1	Mobilization	1	LS	3,000.00	3,000.00
2	16" Concrete Cylinder Pipe Interconnect	20	LF	1,000.00	20,000.00
3	Concrete Thrust Blocking	2	CY	250.00	500.00
4	16" Tapping Valve	2	EA	8,500.00	17,000.00
5	Remove & Replace 10" Concrete Paving	30	SY	200.00	6,000.00
6	Erosion Control	1	LS	750.00	750.00
7	Traffic Control Plan & Implementation	1	LS	2,570.00	2,570.00
8	Trench Safety Design & Implementation	1	LS	3,000.00	3,000.00
9	Sod	30	SY	30.00	900.00
TOTAL BID					53,720.00

Should you require any further information or clarification feel free to contact me at (214) 571-2535.

Sincerely,

Josh Thomas
Estimator
MasTec North America, Inc.

TOWN OF ADDISON SERVICE CENTER
16801 WESTGROVE
ADDISON, TX 75001-5190

S000113

02/10/05

09151 02/10/05 W-9

MASTEC, INC
4747 IRVING BLVD 221
DALLAS, TX 75247

TOWN OF ADDISON SERVICE CENTER
16801 WESTGROVE
ADDISON, TX 75001-5190

ROBIN JONES

972-450-2849

1	1 EACH MARSH LANE EMERGENCY WATER	53720.0000	53720.00
	INTERCONNECTION-C.G.I. #R10		
	ACCOUNT DISTRIBUTION:		
	41-000-58110-83300	53720.00	

75-1333-555	SUB-TOTAL	53720.00
	TAX	0.00
	SHIPPING AND HANDLING CHARGE	0.00
AREA : STREETS SUE ELLEN FAIRLEY		53720.00

TOWN OF ADDISON
PURCHASE ORDER ENCUMBRANCE POSTING
UPDATE

AREA : STSF STREETS SUE ELLEN FAIRLEY

```

=====
PO #      S000113          PO DATE      02/10/05    AREA        STSF
VENDOR 09151      ADDR #      0          ENCUMBERED DATE 02/10/05    ORDERED BY  SUE ELLEN FAIRLEY
MASTEC, INC          EXPIRATION DATE 00/00/00    APPROVED BY RANDY MORAVEC
4747 IRVING BLVD 221    SHIP TO      8          F.O.B
DALLAS      TX 75247    BILL TO      8          TERMS
                                           SHIPVIA      W-9
                                           ORDER TOTAL      0.00
=====

```

```

=====
LINE REQ #  TRANS #  TYPE WHSE  STOCK #  BPO #  ACCOUNT #  ACCOUNT NAME  HAZARD TAX CODE
ENC SHIP DATE  UOM  QUANTITY  PRICE  SUB TOTAL  TAX TOTAL  TOTAL PRICE  MARKUP  ENC AMOUNT
=====

```

```

1      10800002615  N          41-000-58110-83300  LAND PURCHASE
Y 02/10/05      EACH      1      53720.00000      53720.00      0.00      53720.00      0.00      53720.00
COMMODITY          GRANT          PROJECT 83300      TASK      WO #      0 WORK CODE

```

DESCRIPTION: MARSH LANE EMERGENCY WATER
INTERCONNECTION-C.G.I. #R10

REMARKS: COUNCIL AGENDA ITEM #R10, APPROVED AT COUNCIL MEETING
FEBRUARY 8, 2005

BIDS:

MASTEC - \$53,720.00

LARRETT, INC. - \$80,770.00

NO BID - MIKE ALBERT CONSTRUCTION

NO BID - DOWAGER

TOTAL FOR AREA STSF 53720.00 0.00 53720.00 0.00 53720.00

GRAND TOTAL 53720.00 0.00 53720.00 0.00 53720.00