

STATE WATER ALTERATION PROGRAM (SWAP) REGULATIONS
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Title 11: Mississippi Department of Environmental Quality

Part 6: Wastewater Pollution Control Regulations

Part 6, Chapter 1: Mississippi Commission on Environmental Quality National Pollutant Discharge Elimination System (NPDES) Permits, Underground Injection Control (UIC) Permits, State Permits, Water-Quality Based Effluent Limitations (WQBEL) and Water Quality Certifications (WQC), and State Water Alteration Program (SWAP)

Subchapter 1 Wastewater Permit Regulations

Rule 1.1.1 General Requirements

A. Definitions of Terms

(85) “Waters of the State” means all waters within the jurisdiction of this State, including all streams, lakes, ponds, wetlands, impounding reservoirs, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, whether permanent, intermittent, or ephemeral, situated wholly or partly within or bordering upon the State, and such coastal waters as are within the jurisdiction of the State ~~, except lakes, ponds, or other surface waters which are wholly landlocked, privately owned, and which are not regulated under the Federal Clean Water Act (33 U.S.C. 1251, et seq.).~~

The following are excluded from the definition of waters of the State:

(a) a lake, pond, or other basin that is entirely surrounded by land; owned by a single individual, partnership, or corporation; has no inlet from or outlet to other surface waters; and is not regulated under the Federal Clean Water Act (33 U.S.C. 1251, et seq.).

(b) artificial basins or wetlands constructed entirely in upland areas; used primarily for stormwater or wastewater storage, treatment, or flow control; and not constructed for wetland mitigation purposes.

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Subchapter 4 State Water Alteration Program (SWAP) for Initial Impacts to Waters of the State

Rule 1.4.1 General Requirements

A. Definitions of Terms

The applicable definitions set forth in Rule 1.1.1.A of this Chapter and in 40 CFR 122, 123, 124, 125, 144, 146, 403, and 503 and all amendments and additions thereto are incorporated herein and adopted by reference and shall be considered valid in this regulation unless a term is otherwise defined herein. In addition, the following definitions are applicable to this Subchapter.

- (1) “Access road” means a temporary or permanent road built to provide vehicle access to a specific location, typically a construction site, or remote area, from a public road, allowing for equipment and personnel to reach the site for maintenance, development, or other activities.
- (2) “Activity,” for purposes of this Subchapter, means any and all work or acts associated with performing or carrying out a project or plan or constructing a structure that may result in initial impacts to waters of the State.
- (3) “Ephemeral streams” means linear watercourses meeting the definition in Rule 1.1.1.A.(23) of this Chapter.
- (4) “Initial impact” means the permanent or temporary physical alteration of waters of the State located within the boundaries of a proposed project, plan, or construction site and as a direct result of the proposed activity including, but not limited to, dredging; discharge of clean dredge or clean fill material; and hydrologic modification of a stream or wetland including draining, filling, channelization, flooding, impounding, or other hydrologic modification.
- (5) “Intermittent streams” means linear watercourses that contain sustained flowing surface water for only part of the year, typically during the wet season, where the

streambed may be below the water table and/or where snowmelt from surrounding uplands provides sustained flow. The flow may vary greatly with stormwater runoff.

- (6) “Larger common plan of development or sale” means a contiguous area where multiple separate and distinct construction activities are occurring under one plan. The plan in a larger 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 that construction activities may occur on a specific plot.
- (7) “Linear project” or “linear component(s) of a project” means a project or activities involving construction for the purpose of getting people, goods, or services from a point of origin to a terminal point, often involving multiple crossings of one or more waterbodies at separate and distant locations.
- (8) “Linear watercourses” means surface water channels that contribute or are capable of contributing flow to other aquatic features, including other non-linear watercourses. The term linear watercourses includes perennial streams, intermittent streams, ephemeral streams, drainage systems, and irrigation systems.
- (9) “Mitigation” means measures consistent with the definition in Rule 1.1.1.(43) of this Chapter.
- (10) “Non-linear open waters” means non-linear areas that, during a year with normal patterns of precipitation, have standing or flowing water for sufficient duration to establish an ordinary high water mark. Aquatic vegetation within the area of standing or flowing water is non-emergent, sparse, or absent. The term non-linear open water includes aquatic features such as estuaries, lakes, ponds, reservoirs, other surface water impoundments, and vegetated shallows. The term non-linear open waters does not include linear watercourses.
- (11) “Perennial streams” means linear watercourses that contain flowing surface water continuously during a year of normal rainfall, often with the streambed located below the water table for most of the year. Groundwater typically supplies the baseflow for perennial reaches, but the baseflow may also be supplemented by stormwater runoff and/or snowmelt.
- (12) “Practicable alternatives” means alternatives meeting the definition in Rule 1.1.1.(27) of this Chapter.
- (13) “Secondary impact” means any effect on the physical, chemical, or biological integrity of waters of the State resulting from the initial impacts of a proposed activity. Examples of

secondary impacts to waters of the State include, but are not limited to, pollutant loading resulting from discharge of fill, increased sedimentation or turbidity downstream from the project site, loss of connection between waters at the project site and upstream waters, and changes to circulation patterns and water movement in waters outside project site boundaries.

- (14) “Single and complete project” means the total project proposed or undertaken as a unified plan of development or sale regardless of permit or certificate of coverage issuance, reissuance, renewal, or transfer and without regard to any change in ownership. A single and complete project may be a linear project, a non-linear project, or a project with both linear components and non-linear components (e.g., residential development that also includes utility lines and roads).
 - (a) A single and complete linear project or the linear component of a single and complete project may include multiple crossings of a single or multiple water bodies, provided such crossings are not at separate and distant locations. For linear projects or linear components of a project crossing a single or multiple water bodies multiple times at separate and distant locations, each crossing may be considered a single and complete project. Individual channels in a braided stream or river or individual arms of a large, irregularly shaped wetland or lake, etc. are not separate water bodies or separate and distant locations; multiple crossings of such waters are considered part of one single and complete project.
 - (b) For a non-linear project to be considered a single and complete project on its own it must be a project that would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project or multiple activities occurring under a larger common plan of development or sale would together constitute one single and complete project. The individual project phases or individual activities under a larger common plan of development are not separate single and complete projects.
- (15) “Wetlands” means those areas that under normal circumstances are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions. The term wetlands includes aquatic features such as bogs, marshes, seeps, swamps, wet flats (e.g., pine savannas), and similar areas.

B. Applicability

- (1) This Subchapter applies to activities with initial impacts to waters of the State, which may include both Waters of the United States and waters that are waters of the State only.

(2) Except for activities subject to an exemption as defined in this Subchapter or in compliance with a SWAP permit (permit by rule, general permit, or individual permit) in accordance with the provisions of this Subchapter, no person shall conduct activities with initial impacts to waters of the State on or after EFFECTIVE DATE.

C. Effect of a SWAP Permit

- (1) Compliance with the requirements of a SWAP permit (permit by rule, general permit, or individual permit) constitutes compliance with Miss. Code Ann. § 49-17-29 (2) and the requirements of this Subchapter for the permitted activity.
- (2) SWAP permits by rule and SWAP general permits do not apply to any activity for which issuance of a federal permit or license is conditioned upon the Department either issuing an individual Water Quality Certification under Clean Water Act Section 401 or waiving its authority under Clean Water Act Section 401. For any such activity, a SWAP individual permit is required.
- (3) A SWAP permit does not authorize initial impacts to waters of the State where there is a practicable alternative with less adverse impacts.
- (4) A SWAP permit does not authorize the direct discharge of wastewater or stormwater discharges regulated under 40 C.F.R. §122.
- (5) A SWAP permit shall not be construed so as to negate, modify, or in any way affect notification requirements or the requirement to submit plans, specifications, as-builts, approvals, or any other necessary documents to the appropriate state or local entity for review and/or approval, if required.

D. Conditions Applicable to All SWAP Actions

- (1) Coverage under a SWAP exemption or SWAP permit is not authorized if a proposed activity or the terms or conditions of the SWAP permit do not comply with state law or regulations.
- (2) Coverage under a SWAP exemption or SWAP permit is not authorized if a proposed activity would have initial impacts to waters of the State outside the boundaries of the proposed project, plan, or construction site (e.g., impounding at the project site that results in inundation of upstream waters).
- (3) No SWAP permit by rule will apply and no SWAP permit application will be processed unless the applicant controls the real property upon which the proposed activities will occur. The applicant may demonstrate control through ownership, lease, eminent domain, easement, license, and/or contract.

- (4) SWAP exemptions and SWAP permits do not convey any property rights in either real or personal property, or any exclusive privileges, nor do they authorize injury to private property or any invasion of personal rights or any infringement of federal, state, or local laws or regulations.
- (5) Nothing in this Subchapter shall relieve a person of otherwise applicable requirements under sections 404 and 401 of the Clean Water Act for waters of the State that are also waters of the United States.
- (6) Nothing in this Subchapter shall be construed so as to negate, modify, or in any way affect obligations under other federal, state, tribal, or local laws.
- (7) For initial impacts to waters of the State that are also waters of the United States, a Water Quality Certification under Section 401 of the Clean Water Act fulfills the statutory and regulatory requirements for obtaining a SWAP permit.
- (8) A permit by rule does not authorize initial impacts or secondary impacts to Outstanding Mississippi Waters (OMWs) as classified in 11 Miss. Admin. Code Pt. 6, Ch. 2, Outstanding National Resource Waters (ONRWs), or Wild and Scenic rivers. Any such proposed activity must be covered by a SWAP general permit or SWAP individual permit prior to commencement of the activity.
- (9) A permit by rule does not authorize initial impacts or secondary impacts to waters of the State that are likely to jeopardize the continued existence of any species identified as rare, threatened, or endangered under the State of Mississippi's Natural Heritage Program. Any such proposed activity must be covered by a SWAP general permit or SWAP individual permit prior to commencement of the activity.
- (10) The Department may conduct inspections for determining compliance with the provisions of this Subchapter and any applicable SWAP permit conditions.
- (11) The Department may enforce the provisions of this Subchapter as specified in Miss. Code Ann. § 49-17-43 and using all applicable procedures under the law.

Rule 1.4.2 Exemptions for Activities with Initial Impacts to Waters of the State.

A. Effect of a SWAP Exemption

- (1) A person conducting or proposing to conduct activities with initial impacts to waters of the State in accordance with the provisions of this section shall be exempted from the requirement to apply for a SWAP permit from the Permit Board.

- (2) An exemption under this Subchapter satisfies the requirements of Miss. Code Ann. § 49-17-29 (2).
- (3) The SWAP exemptions in this Subchapter do not apply to any activity for which issuance of a federal permit or license is conditioned upon the Department either issuing an individual Water Quality Certification under Clean Water Act Section 401 or waiving its authority under Clean Water Act Section 401. For such activities, application for a SWAP individual permit is required.
- (4) A SWAP exemption does not authorize the direct discharge of wastewater or stormwater discharges regulated under 40 C.F.R. Part 122.
- (5) A SWAP exemption shall not be construed so as to negate, modify, or in any way affect notification requirements or the requirement to submit plans, specifications, as-builts, approvals, or any other necessary documents to the appropriate state or local entity for review and/or approval, if required.

B. SWAP Exempted Activities

- (1) Constructed Ditch Maintenance

This exemption applies to removal of accumulated sediments and debris in, and in the immediate vicinity of, constructed ditches excavated wholly in and draining only otherwise dry land and which do not carry water except in response to precipitation. Such removal cannot significantly alter the path of the water or reshape an existing drainage or irrigation ditch. Any sediment and debris removed cannot be placed in waters of the State.

When reshaping an existing drainage for water quality improvement, the permit by rule in Rule 1.4.3.B.(1)(a) applies.

- (2) Emergency Watershed Protection and Rehabilitation Activities

This exemption applies to any emergency watershed protection or rehabilitation activities to be completed by or funded by a federal or state department or agency such as: the U.S. Natural Resources Conservation Service emergency Watershed Protection Program; the U.S. Forest Service under the Burned-Area Emergency Rehabilitation Handbook; the U.S. Department of the Interior for wildland fire management burned area emergency stabilization and rehabilitation; the U.S. Farm Service Agency under its Emergency Conservation Program; the Mississippi Department of Wildlife, Fisheries, and Parks; or the Department's Mining and Reclamation Division for abandoned mine land reclamation activities under Title IV of the Surface Mining Control and Reclamation Act, provided the activity does not involve coal extraction.

(3) **Established and Ongoing Farming, Ranching, and Silviculture Activities**

This exemption applies to established and ongoing farming, ranching, and silviculture activities, including plowing; seeding; cultivating; minor drainage; harvesting for the production of food, fiber, and forest products; bank stabilization; construction, relocation, reshaping, or maintenance of drainage and irrigation ditches and farm or stock ponds used solely for farming or ranching; construction and maintenance of farm and forest roads; installation, placement, construction, or maintenance of drainage tiles or levees; maintenance of dams and dikes; mechanized land clearing; land leveling; and upland soil and water conservation practices.

Activities on areas lying fallow as part of a conventional rotational cycle are part of an established operation. Activities that bring an area into farming, ranching, or silviculture use are not part of an established operation and would require a SWAP permit for initial impacts to waters of the State.

An operation ceases to be established when the area on which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operations. Any future activities within this area that have initial impacts to waters of the State would require a SWAP permit.

(4) **Response Operations for Oil or Hazardous Substances**

This exemption applies to activities conducted in response to a discharge or release of oil or hazardous substances in accordance with 40 C.F.R. Part 300 and activities required for cleanup of oil releases from electrical equipment governed by the polychlorinated biphenyl spill response regulations at 40 C.F.R. Part 761. This exemption also authorizes the use of temporary structures and fills in waters of the State for spill response training exercises.

Rule 1.4.3 SWAP Permits by Rule

A. Permit by Rule Procedures and Requirements

- (1) To meet the requirements of this section for coverage under a SWAP permit by rule, a person conducting or proposing to conduct activities covered by a permit by rule must submit a complete Consolidated SWAP Form, including all of its components.
- (2) For a permit by rule, a complete Consolidated SWAP Form consists of:
 - (a) all required sections of the SWAP Permit by Rule Certification Form;

(b) a delineation completed in accordance with the most recent version of the *Waters of the State of Mississippi Delineation and Functional Assessment Manual* and identifying all aquatic resources within the project site boundaries; and

(c) a site map that includes

- (1) the boundaries of the property
- (2) all proposed activities planned for the property, including limits of disturbance
- (3) location of all aquatic resources within the property boundaries
- (4) identification of all waters of the State for which there will be initial impacts from the proposed activities
- (5) original and proposed flow patterns of waters of the State
- (6) original and proposed contours, if feasible, or plan view and cross section of initial impact areas and
- (7) any proposed post-construction stormwater management controls designed to eliminate or minimize post-project initial impacts and secondary impacts to waters of the State, including waters downstream of the project site.

(3) A complete Consolidated SWAP Form for a permit by rule as defined in Rule 1.4.3.A.(2) constitutes notice by the signatory to the Department that the proposed activities are eligible for a permit by rule. Activities covered by the permit by rule may commence upon the Department's receipt of the complete Consolidated SWAP Form.

(4) Any person submitting a Consolidated SWAP Form to the Department shall certify that all information submitted is true, based upon information provided by responsible individuals. Any person who knowingly makes any false statement, representation, or certification in a Consolidated SWAP Form, including all required components, shall be subject to the penalties provided for by statute for perjury or false statements. In the event the applicant becomes aware that it failed to submit any relevant facts in a Consolidated SWAP Form, including all required components, they shall promptly submit such facts or information.

(5) Applicants submitting a Consolidated SWAP Form must comply with the signatory requirements in Rule 1.1.2.C.

(6) Failure to complete and submit a Consolidated SWAP Form prior to commencing activities with initial impacts to waters of the State described in subparagraph B. or subparagraph C. below is a violation of State law.

- (7) A permit by rule shall expire five (5) years from the date that the Consolidated SWAP Form is completed and submitted.
- (8) A person proposing to continue activities with initial impacts to waters of the State that are subject to an expiring permit by rule must complete and submit a new Consolidated SWAP Form for a permit by rule prior to the expiration date of the expiring permit by rule or obtain coverage under a SWAP general permit or SWAP individual permit. Continuing such activities without completing and submitting a new Consolidated SWAP Form for a permit by rule or obtaining coverage under a SWAP general permit or SWAP individual permit prior to the expiration date of the expiring permit by rule is a violation of State law.

B. SWAP Permits by Rule with No Initial Impact Eligibility Thresholds

Activities described in this section are eligible for a SWAP permit by rule without consideration of the size of initial impacts (e.g., linear feet of stream impacted or acres of wetlands impacted). A person conducting or proposing to conduct activities with initial impacts to waters of the State in accordance with the provisions of this section shall be considered to have a SWAP permit from the Permit Board for initial impacts to waters of the State provided all Applicability and Eligibility criteria are met. Activities described in this section that do not meet all Applicability and Eligibility criteria must apply for a SWAP general permit or SWAP individual permit, as appropriate, for authorization of initial impacts to waters of the State.

(1) Permit by Rule for Ecosystem and Watershed Restoration and Protection Activities

This SWAP permit by rule authorizes initial impacts to waters of the State from certain Ecosystem and Watershed Restoration and Protection Activities, establishes requirements for avoiding or minimizing initial impacts and secondary impacts from these activities to waters of the State where possible, and includes BMPs that must be implemented while conducting these activities. Nothing in this permit by rule shall be construed so as to negate, modify, or in any way affect requirements to obtain any other applicable permit coverage from a federal, state, tribal, or local entity.

(a) Applicability

The Ecosystem and Watershed Restoration and Protection Activities SWAP permit by rule applies to the following activities:

- (1) Aquatic Ecosystem Restoration, Establishment, and Enhancement Activities, including activities associated with restoration, enhancement, and establishment of wetlands and riparian areas or restoration and enhancement of streams and other open waters, provided the activities result in net increases in aquatic resource functions and services. Activities must be planned and designed to result in an aquatic habitat that resembles an ecological

reference based on the characteristics of one or more intact aquatic habitats or riparian areas of the same type. An ecological reference may be based on a conceptual model developed from ecological knowledge of the target aquatic habitat type or riparian area.

Activities authorized by this permit by rule include, but are not limited to the removal of accumulated sediments; releases of sediment from reservoirs to maintain sediment transport continuity to restore downstream habitats; the installation, removal, and maintenance of small water control structures, dikes, and berms, as well as discharges of dredged or fill material to restore appropriate stream channel configurations after small water control structures, dikes, and berms are removed; the installation of current deflectors; the enhancement, rehabilitation, or reestablishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to enhance, rehabilitate, or reestablish stream meanders; the removal of stream barriers, such as undersized culverts, fords, and grade control structures; the backfilling of artificial channels; the removal of existing drainage structures, such as drain tiles, and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology; the installation of structures or fills necessary to restore or enhance wetland or stream hydrology; the construction of small nesting islands; the construction of open water areas; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; reestablishment of submerged aquatic vegetation in areas where those plant communities previously existed; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

This permit by rule authorizes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services. This permit by rule does not authorize stream channelization; or, except when relocating non-tidal waters on the project site, conversion of a stream or natural wetlands to another aquatic habitat type (e.g., conversion of a stream to wetland or vice versa) or uplands.

- (2) Repair of Uplands Damaged by Discrete Events, including activities associated with restoration of upland areas damaged by storms, floods, or other discrete events. Restoration of damaged areas, including bank stabilization, must not exceed the contours or ordinary high water mark that existed before the damage occurred. Minor dredging is authorized under this permit by rule, but is limited to the amount necessary to restore the damaged upland area and should not significantly alter the pre-existing bottom contours of the waterbody. The work must commence within five years of the date of damage.

For work commencing more than five years after the date of the damage, the Permit Board may require application for a SWAP individual permit.

(3) Reshaping Existing Drainage and Irrigation Ditches for Water Quality Improvement, including modifying the cross-sectional configuration of currently serviceable drainage and irrigation ditches constructed in waters of the State for the purpose of improving water quality by re-grading the drainage or irrigation ditch with gentler slopes to reduce erosion, increase growth of vegetation, and increase uptake of nutrients and other substances by vegetation. The reshaping of the drainage ditch cannot increase drainage capacity beyond the original as-built capacity, nor can it expand the area drained by the drainage ditch as originally constructed (i.e., the capacity of the drainage ditch must be the same as originally constructed and it cannot drain additional waters of the State).

This permit by rule does not authorize the relocation of drainage or irrigation ditches. The location of the centerline of the reshaped drainage or irrigation ditch must be approximately the same as the location of the centerline of the original drainage or irrigation ditch. This permit by rule does not authorize stream channelization or stream relocation projects.

For maintenance of constructed ditches that does not significantly alter the path of the water or reshape the existing ditch, the exemption in Rule 1.4.2.B.(1) applies.

For maintenance or reshaping of an existing drainage or irrigation ditch associated with established and ongoing farming, ranching, or silviculture activities, the exemption in Rule 1.4.2.B.(3) applies.

(b) Eligibility

- (1) This permit by rule authorizes initial impacts to waters of the State from the Ecosystem and Watershed Restoration and Protection Activities specified in Rule 1.4.3.B.(1)(a).
- (2) The eligibility criteria for this permit by rule do not include size thresholds for initial impacts to waters of the State; however, initial impacts to waters of the State must be quantified in accordance with the most recent version of the *Waters of the State of Mississippi Assessment and Delineation Manual*, and this information must be included in the fully executed Consolidated SWAP Form required by Rule 1.4.3.A.(2).

(c) Permit Conditions

The following conditions apply to all activities under this permit by rule:

(1) Availability of Certification Documentation

A copy of the Consolidated SWAP Form submitted to the Department, including all required components as specified in Rule 1.4.3.A.(2), must be retained by the owner or operator as required by paragraph (14) below, and must be kept at the site or made locally available in case inspector review is necessary.

(2) Least Environmentally Damaging Practicable Alternative

The owner or operator must select the least environmentally damaging practicable alternative with the least initial and secondary impacts on waters of the State.

(3) Avoidance and Minimization

Activities must be designed and constructed to avoid and minimize initial and secondary impacts, both temporary and permanent, to waters of the State to the maximum extent practicable.

(4) Sediment and Erosion Controls

Appropriate BMPs shall be properly installed and maintained to prevent the movement of sediment offsite and into adjacent drainage areas. Special care shall be taken prior to commencement of and during the proposed activities to prevent the movement of sediment offsite and into adjacent waters. In the event of any BMP failure, corrective actions shall be taken immediately. The Department recommends that activities occurring within waters of the State be conducted during periods of low flow or no flow.

(5) Access Roads

Access roads must be the minimum width necessary to complete the covered activities. Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the State and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the State must be properly bridged or culverted to maintain surface flows. Temporary access roads constructed solely for use during the construction phase of covered activities shall be removed upon completion of work, and the site shall be restored.

(6) Dewatering

The owner or operator shall treat dewatering discharges with controls necessary to prevent discharges of pollutants to surface waters or groundwaters. To the extent feasible, the owner or operator shall use vegetated, upland areas to filter dewatering flows. Using waters of the State for treatment of such flows is prohibited.

(7) Equipment

Any heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

(8) Suitable Material

No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts. (See Section 307 of the Clean Water Act.)

(9) Management of Water Flows

To the maximum extent practicable, pre-construction contours must be maintained and the effect on circulation patterns and water movement on waters of the State, including impacts on hydrologic connectivity to upstream and downstream waters, must be minimized.

(10) Federal Emergency Management Agency Requirements

The initial impacts authorized by this permit by rule must comply with applicable Federal Emergency Management Agency-approved state or local floodplain management requirements.

(11) Removal of Temporary Structures and Fills

Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

(12) Stabilization

To the extent practicable, disturbed areas must be returned to their previous condition. Cleared wetland areas must be re-vegetated, as appropriate, with species of native wetland vegetation.

(13) Repair, Rehabilitation, and Restoration

The affected environment should be repaired, rehabilitated, or restored to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(14) Record Keeping

All records, reports, forms, and information relating to activities conducted under this permit by rule shall be retained for a period of at least five (5) years from the date that the document was generated. Any documents required by this permit by rule may be kept electronically but must be readily available during site inspection or upon request.

(15) Duty to Comply

The owner or operator must comply with all requirements of this permit by rule. Any noncompliance constitutes a violation and is grounds for enforcement action, denial of coverage under this permit by rule, and/or the requirement to obtain coverage under a SWAP general permit or obtain a SWAP individual permit in order to continue the proposed activity.

(16) Duty to Provide Information

The owner or operator shall furnish to the Department, within a reasonable time, any information which the Department may request to determine eligibility for this permit by rule. The owner or operator shall also furnish to the Department, upon request, copies of records required to be retained by this permit by rule.

(17) Civil and Criminal Liability

- (i) Any person who violates a term or condition contained within this permit by rule or the Mississippi Air and Water Pollution Control Law is subject to the actions defined by law.
- (ii) Nothing in this permit shall be construed to relieve the coverage recipient from civil or criminal penalties for noncompliance.
- (iii) It shall not be a defense in an enforcement action that it would have been necessary to halt or reduce the activity in order to maintain compliance with the requirements of this permit by rule.

(18) Corrective Action for Noncompliance

In the event that the owner or operator is unable to comply with any of the terms or conditions of this permit by rule due to any cause, the owner or operator must immediately take action to stop, contain, and mitigate noncompliant activities and unauthorized impacts.

(19) Duty to Halt Activity

If at any time the minimum conditions for eligibility in Rule 1.4.3.C.(1)(b) under this permit by rule are no longer met, any activity with initial impacts to waters of the State otherwise authorized under this permit by rule must immediately cease, except for those necessary to protect human health or the environment.

(20) Requirement to Obtain a SWAP General or Individual Permit

At any time, the Permit Board may require the owner or operator to apply for and obtain coverage under a SWAP general permit or apply for and obtain a SWAP individual permit in order to conduct activities with initial impacts to waters of the State otherwise authorized by this permit by rule due to (1) failure to comply with the conditions of this permit by rule, (2) disproportionate impacts to waters of the State, or (3) any other circumstances deemed necessary. The Permit Board may require an owner or operator to apply for coverage under a SWAP general permit or apply for a SWAP individual permit only if the owner or operator has been notified in writing. This notice shall include facts supporting the Permit Board's decision and a filing deadline. Upon request, the Permit Board may grant additional time to comply with the requirement to apply for a coverage under a SWAP general permit or to apply for a SWAP individual permit.

(2) Permit by Rule for Miscellaneous Low-Impact Activities

This permit by rule authorizes initial impacts to waters of the State from certain Miscellaneous Low-Impact Activities, establishes requirements for avoiding or minimizing initial impacts and secondary impacts from these activities to waters of the State where possible, and includes BMPs that must be implemented while conducting these activities. Nothing in this permit by rule shall be construed so as to negate, modify, or in any way affect requirements to obtain any other applicable permit coverage from a federal, state, tribal, or local entity.

(a) Applicability

The Miscellaneous Low-Impact Activities permit by rule applies to the following activities:

- (1) Fish and Wildlife Management and Harvesting Activities, including placement of duck blinds; placement of artificial wildlife habitat structures; and activities associated with moist soil management for wildlife for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife (e.g., plowing or discing to impede succession, preparing seed beds, or establishing fire breaks).

This permit by rule does not authorize impoundments and semi-impoundments of waters of the State for culture or holding of motile species.

For activities associated with moist soil management, sufficient riparian areas must be maintained adjacent to all open water bodies, including streams, to preclude water quality degradation due to erosion and sedimentation. This permit by rule does not authorize the construction of new dikes, roads, water control structures, or similar features associated with the management areas. The activity must not result in a net loss of aquatic resource functions and services. This permit by rule does not authorize the conversion of wetlands to uplands, impoundments, or other open water bodies.

- (2) Temporary Placement of Scientific Devices for measuring and recording scientific data, including placement of devices such as meteorological stations, staff gages, small weirs or flumes for recording water quantity and velocity, water recording and biological observation devices, water quality testing and improvement devices, and similar structures.

Upon completion of the use of the device to measure and record scientific data, the measuring device and any other structures or fills associated with that device (e.g., foundations, anchors, buoys, lines, etc.) must be removed to the maximum extent practicable and the site restored to pre-construction elevations.

- (3) Stormwater Management Maintenance Activities, including maintenance of stormwater management facilities, low-impact development integrated management features, and pollutant reduction green infrastructure features, provided the maintenance activities are limited to restoring their original design capacities.

- (4) Structural Maintenance Activities, including:

- (i) repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill provided that the structure or fill is not to be put to any use differing from those uses specified or contemplated for it in the

original permit by rule or permit or the most recently authorized permit modification;

- (ii) removal of previously authorized structures or fills;
- (iii) repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within five (5) years of the date of their destruction or damage;
- (iv) removal of accumulated sediment and debris within, and in the immediate vicinity of, the structure or fill;
- (v) removal of accumulated sediments and debris outside the immediate vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.). The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 200 feet in any direction from the structure. This 200-foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no waters of the State; and
- (vi) temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the maintenance activity.

Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized.

Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including removal of material from the stream channel, must be immediately adjacent to the project.

- (5) Survey Activities, including core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory type bore holes, exploratory trenching, soil surveys, sampling, sample plots or transects for wetland delineations, historic resources surveys, and construction of temporary pads needed to conduct such activities.

For the purposes of this permit by rule, the term “exploratory trenching” means mechanical land clearing of the upper soil profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work and must not drain a water of the State. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench.

This permit by rule does not authorize initial impacts to waters of the State associated with the recovery of historic resources; drilling and discharge of excavated material from test wells for oil and gas exploration (plugging of such wells is authorized); fill placed for roads and other similar activities; or any permanent structures.

(b) Eligibility

- (1) This permit by rule authorizes initial impacts to waters of the State from the Miscellaneous Low-Impact Activities specified in Rule 1.4.3.B.(2)(a).
- (2) The eligibility criteria for this permit by rule do not include size thresholds for initial impacts to waters of the State; however, initial impacts to waters of the State must be quantified in accordance with the most recent version of the *Waters of the State of Mississippi Assessment and Delineation Manual*, and this information must be included in the fully executed SWAP Certification Form required by Rule 1.4.3.A.(2).

(c) Permit Conditions

The following conditions apply to all activities under this permit by rule.

(1) Availability of Certification Documentation

A copy of the Consolidated SWAP Form submitted to the Department, including all required components as specified in Rule 1.4.3.A.(2), must be retained by the owner or operator as required by paragraph (14) below, and must be kept at the site or made locally available in case inspector review is necessary.

(2) Least Environmentally Damaging Practicable Alternative

The owner or operator must select the least environmentally damaging practicable alternative with the least initial and secondary impacts on waters of the State.

(3) Avoidance and Minimization

Activities must be designed and constructed to avoid and minimize initial and secondary impacts, both temporary and permanent, to waters of the State to the maximum extent practicable.

(4) Sediment and Erosion Controls

Appropriate BMPs shall be properly installed and maintained to prevent the movement of sediment offsite and into adjacent drainage areas. Special care shall be taken prior to commencement of and during the proposed activities to prevent the movement of sediment offsite and into adjacent waters. In the event of any BMP failure, corrective actions shall be taken immediately. The Department recommends that activities occurring within waters of the State be conducted during periods of low flow or no flow.

(5) Access Roads

Access roads must be the minimum width necessary to complete the covered activities. Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the State and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the State must be properly bridged or culverted to maintain surface flows. Temporary access roads constructed solely for use during the construction phase of covered activities shall be removed upon completion of work, and the site shall be restored.

(6) Dewatering

The owner or operator shall treat dewatering discharges with controls necessary to prevent discharges of pollutants to surface waters or groundwaters. To the extent feasible, the owner or operator shall use vegetated, upland areas to filter dewatering flows. Using waters of the State for treatment of such flows is prohibited.

(7) Equipment

Any heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

(8) Suitable Material

No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts. (See Section 307 of the Clean Water Act.)

(9) Management of Water Flows

To the maximum extent practicable, pre-construction contours must be maintained and the effect on circulation patterns and water movement on waters of the State, including impacts on hydrologic connectivity to upstream and downstream waters, must be minimized.

(10) Federal Emergency Management Agency Requirements

The initial impacts authorized by this permit by rule must comply with applicable Federal Emergency Management Agency-approved state or local floodplain management requirements.

(11) Removal of Temporary Structures and Fills

Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

(12) Stabilization

To the extent practicable, disturbed areas must be returned to their previous condition. Cleared wetland areas must be re-vegetated, as appropriate, with species of native wetland vegetation.

(13) Repair, Rehabilitation, and Restoration

The affected environment should be repaired, rehabilitated, or restored to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(14) Record Keeping

All records, reports, forms, and information relating to activities conducted under this permit by rule shall be retained for a period of at least five (5) years from the date that the document was generated. Any documents required by

this permit by rule may be kept electronically but must be readily available during site inspection or upon request.

(15) **Duty to Comply**

The owner or operator must comply with all requirements of this permit by rule. Any noncompliance constitutes a violation and is grounds for enforcement action, denial of coverage under this permit by rule, and/or the requirement obtain coverage under a SWAP general permit or obtain a SWAP individual permit in order to continue the proposed activity.

(16) **Duty to Provide Information**

The owner or operator shall furnish to the Department, within a reasonable time, any information which the Department may request to determine eligibility for this permit by rule. The owner or operator shall also furnish to the Department, upon request, copies of records required to be retained by this permit by rule.

(17) **Civil and Criminal Liability**

- (i) Any person who violates a term or condition contained within this permit by rule or the Mississippi Air and Water Pollution Control Law is subject to the actions defined by law.
- (ii) Nothing in this permit shall be construed to relieve the coverage recipient from civil or criminal penalties for noncompliance.
- (iii) It shall not be a defense in an enforcement action that it would have been necessary to halt or reduce the activity in order to maintain compliance with the requirements of this permit by rule.

(18) **Corrective Action for Noncompliance**

In the event that the owner or operator is unable to comply with any of the terms or conditions of this permit by rule due to any cause, the owner or operator must immediately take action to stop, contain, and mitigate noncompliant activities and unauthorized impacts.

(19) **Duty to Halt Activity**

If at any time the minimum conditions for eligibility in Rule 1.4.3.C.(1)(b) under this permit by rule are no longer met, any activity with initial impacts to waters of the State otherwise authorized under this permit by rule must

immediately cease, except for those necessary to protect human health or the environment.

(20) Requirement to Obtain a SWAP Permit

At any time, the Permit Board may require the owner or operator to apply for and obtain coverage under a SWAP general permit or apply for and obtain a SWAP individual permit in order to conduct activities with initial impacts to waters of the State otherwise authorized by this permit by rule due to (1) failure to comply with the conditions of this permit by rule, (2) disproportionate impacts to waters of the State, or (3) any other circumstances deemed necessary. The Permit Board may require an owner or operator to apply for coverage under a SWAP general permit or apply for a SWAP individual permit only if the owner or operator has been notified in writing. This notice shall include facts supporting the Permit Board's decision and a filing deadline. Upon request, the Permit Board may grant additional time to comply with the requirement to apply for a coverage under a SWAP general permit or to apply for a SWAP individual permit.

C. Permits by Rule with Initial Impact Eligibility Thresholds

A person conducting or proposing to conduct activities with initial impacts to waters of the State in accordance with the provisions of this section shall be considered to have a SWAP permit from the Permit Board for initial impacts to waters of the State provided all Applicability and Eligibility criteria, including the thresholds for initial impacts to waters of the State established in this section (e.g., linear feet of stream impacted or acres of wetlands impacted), are met. Activities described in this section that do not meet all Applicability and Eligibility criteria must apply for a SWAP general permit or SWAP individual permit, as appropriate, for authorization of initial impacts to waters of the State.

(1) Permit by Rule for Development Activities

This permit by rule authorizes initial impacts to waters of the State from certain Development Activities, establishes requirements for avoiding or minimizing initial impacts and secondary impacts from these activities to waters of the State where possible, and includes BMPs that must be implemented while conducting these activities. Nothing in this permit by rule shall be construed so as to negate, modify, or in any way affect requirements to obtain any other applicable permit coverage from a federal, state, tribal, or local entity.

(a) Applicability

The Development Activities permit by rule applies to the following activities:

- (1) Agricultural Development Activities, including construction or expansion of building foundations and building pads associated with farm buildings; installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; construction of farm ponds in waters of the State, provided the farm pond is used solely for agricultural purposes; and similar activities.

This permit by rule does not authorize initial impacts to waters of the State from construction of aquaculture ponds.

- (2) Commercial Development Activities, including construction or expansion of building foundations and building pads associated with commercial structures such as retail stores, industrial facilities, restaurants, shopping centers, business parks, and land-based renewable energy facilities.
- (3) Institutional Development Activities, including construction or expansion of building foundations and building pads associated with institutional structures such as schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship.
- (4) Recreational Development Activities, including construction or expansion of recreational facilities such as football fields, baseball fields, soccer fields, basketball courts, tennis courts, golf courses, stadiums, arenas, nature centers, campgrounds, recreational vehicle (RV) parks, hiking trails, horse paths, bicycle and pedestrian paths, and small support structures (e.g., maintenance and storage buildings and stables) that are directly related to the recreational activity.

This permit by rule does not authorize initial impacts to waters of the State from development or construction of racetracks, all-terrain vehicle (ATV) parks, or similar facilities.

- (5) Residential Development Activities, including the construction or expansion of building foundations and building pads associated with single residences, multiple unit residential developments, and residential subdivisions.
- (6) Linear Transportation Activities, including construction, maintenance, expansion, improvement, and modification of projects such as roads, highways, airport runways, railways, driveways and associated facilities (e.g., sound barriers, signage, highway rest areas).

Bank stabilization associated with a linear transportation project is permitted only within the immediate vicinity of the project and is limited to the minimum necessary to construct or protect the project.

- (7) Utility Line Activities, including construction, maintenance, modification, or removal of electric, telecommunication, water, sanitary sewer, oil or natural gas utility lines or pipelines and associated facilities (e.g., substations, pump stations, well pads).
- (8) Structural Discharges consisting of discharge of dredged or fill material such as concrete, sand, rock, etc., into tightly sealed forms or cells and excavation of bottom material from within the form or cell prior to the discharge of concrete, sand, rock, etc., where the material will be used as a structural member for standard pile supported structures such as bridges, transmission line footings, and walkways, that are a component of Development Activities as described in this section. This permit by rule does not authorize filled structural members that would support buildings, building pads, homes, house pads, parking areas, storage areas or other such structures.
- (9) Construction of attendant features that are necessary for use and maintenance of agricultural, commercial, industrial, recreational, or residential structures and developments as described in Rule 1.4.3.C.(1)(a)(1) through (5) above. Attendant features may include roads, parking lots, garages, yards, utility lines, post-construction stormwater management facilities, wastewater treatment facilities, septic fields, playgrounds, and playing fields.
- (10) Temporary work, including temporary structures, fill, mats, access roads, or sidecast necessary to conduct Development Activities as described in this section and any BMP prescribed by this permit by rule.

(b) Eligibility

- (1) This permit by rule authorizes initial impacts to waters of the State from the Development Activities specified in Rule 1.4.3.C.(1)(a).
- (2) For eligibility under this permit by rule, all Development Activities conducted as part of a single and complete project cumulatively must meet the following thresholds for initial impacts to waters of the State:
 - (i) Initial impacts to no more than 500 linear feet of perennial and intermittent streams and other non-ephemeral, linear water courses as determined by a delineation conducted in accordance with the *Waters of the State of Mississippi Delineation and Functional Assessment Manual*;

- (ii) Initial impacts to no more than 0.50 acres of non-linear open waters and wetlands as determined by a delineation conducted in accordance with the *Waters of the State of Mississippi Delineation and Functional Assessment Manual*; and
- (iii) Initial impacts to any number of linear feet of ephemeral streams and other ephemeral linear watercourses as determined by a delineation conducted in accordance with the *Waters of the State of Mississippi Delineation and Functional Assessment Manual*.

(c) Permit Conditions

The following conditions apply to all activities under this permit by rule.

(1) Availability of Certification Documentation

A copy of the Consolidated SWAP Form submitted to the Department, including all required components as specified in Rule 1.4.3.A.(2), must be retained by the owner or operator as required by paragraph (14) below, and must be kept at the site or made locally available in case inspector review is necessary.

(2) Least Environmentally Damaging Practicable Alternative

The owner or operator must select the least environmentally damaging practicable alternative with the least initial and secondary impacts on waters of the State.

(3) Avoidance and Minimization

Activities must be designed and constructed to avoid and minimize initial and secondary impacts, both temporary and permanent, to waters of the State to the maximum extent practicable.

(4) Sediment and Erosion Controls

Appropriate BMPs shall be properly installed and maintained to prevent the movement of sediment offsite and into adjacent drainage areas. Special care shall be taken prior to commencement of and during the proposed activities to prevent the movement of sediment offsite and into adjacent waters. In the event of any BMP failure, corrective actions shall be taken immediately. The Department recommends that activities occurring within waters of the State be conducted during periods of low flow or no flow.

(5) Access Roads

Access roads must be the minimum width necessary to complete the covered activities. Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the State and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the State must be properly bridged or culverted to maintain surface flows. Temporary access roads constructed solely for use during the construction phase of covered activities shall be removed upon completion of work, and the site shall be restored.

(6) Dewatering

The owner or operator shall treat dewatering discharges with controls necessary to prevent discharges of pollutants to surface waters or groundwaters. To the extent feasible, the owner or operator shall use vegetated, upland areas to filter dewatering flows. Using water of the State for treatment of such flows is prohibited.

(7) Boring

Cuttings and fluids shall be disposed of and managed on-site in such a manner that no waste will enter a water of the State. When directional boring or horizontal directional drilling (HDD) under waters of the State, including wetlands, owners or operators shall closely monitor the project for discharges to waters of the State.

(8) Equipment

Any heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

(9) Suitable Material

No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts. (See Section 307 of the Clean Water Act.)

(10) Management of Water Flows

To the maximum extent practicable, pre-construction contours must be maintained and the effect on circulation patterns and water movement on waters of the State, including impacts on hydrologic connectivity to upstream and downstream waters, must be minimized.

(11) Federal Emergency Management Agency Requirements

The initial impacts authorized by this permit by rule must comply with applicable Federal Emergency Management Agency-approved state or local floodplain management requirements.

(12) Removal of Temporary Structures and Fills

Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

(13) Stabilization

To the extent practicable, disturbed areas must be returned to their previous condition. Cleared wetland areas must be re-vegetated, as appropriate, with species of native wetland vegetation.

(14) Repair, Rehabilitation, and Restoration

The affected environment should be repaired, rehabilitated, or restored to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(15) Record Keeping

All records, reports, forms, and information relating to activities conducted under this permit by rule shall be retained for a period of at least five (5) years from the date that the document was generated. Any documents required by this permit by rule may be kept electronically but must be readily available during site inspection or upon request.

(16) Duty to Comply

The owner or operator must comply with all requirements of this permit by rule. Any noncompliance constitutes a violation and is grounds for enforcement

action, denial of coverage under this permit by rule, and/or the requirement obtain coverage under a SWAP general permit or obtain a SWAP individual permit in order to continue the proposed activity.

(17) Duty to Provide Information

The owner or operator shall furnish to the Department, within a reasonable time, any information which the Department may request to determine eligibility for this permit by rule. The owner or operator shall also furnish to the Department, upon request, copies of records required to be retained by this permit by rule.

(18) Civil and Criminal Liability

- (i) Any person who violates a term or condition contained within this permit by rule or the Mississippi Air and Water Pollution Control Law is subject to the actions defined by law.
- (ii) Nothing in this permit shall be construed to relieve the coverage recipient from civil or criminal penalties for noncompliance.
- (iii) It shall not be a defense in an enforcement action that it would have been necessary to halt or reduce the activity in order to maintain compliance with the requirements of this permit by rule.

(19) Corrective Action for Noncompliance

In the event that the owner or operator is unable to comply with any of the terms or conditions of this permit by rule due to any cause, the owner or operator must immediately take action to stop, contain, and mitigate noncompliant activities and unauthorized impacts.

(20) Duty to Halt Activity

If at any time the minimum conditions for eligibility in Rule 1.4.3.C.(1)(b) under this permit by rule are no longer met, any activity with initial impacts to waters of the State otherwise authorized under this permit by rule must immediately cease, except for those necessary to protect human health or the environment.

(21) Requirement to Obtain a SWAP Permit

At any time, the Permit Board may require the owner or operator to apply for and obtain coverage under a SWAP general permit or apply for and obtain a SWAP individual permit in order to conduct activities with initial impacts to waters of the State otherwise authorized by this permit by rule due to (1) failure to comply with the conditions of this permit by rule, (2) disproportionate impacts to waters of the State, or (3) any other circumstances deemed necessary. The Permit Board may require an owner or operator to apply for coverage under a SWAP general permit or apply for a SWAP individual permit only if the owner or operator has been notified in writing. This notice shall include facts supporting the Permit Board's decision and a filing deadline. Upon request, the Permit Board may grant additional time to comply with the requirement to apply for a coverage under a SWAP general permit or to apply for a SWAP individual permit.

(2) Permit by Rule for Minor Discharges and Minor Dredging

This permit by rule authorizes Minor Discharges and Minor Dredging in waters of the State not associated with activities otherwise regulated under this Subchapter. This permit by rule establishes requirements for avoiding or minimizing initial impacts and secondary impacts to waters of the State where possible, and includes BMPs that must be implemented while conducting Minor Discharges and Minor Dredging. Nothing in this permit by rule shall be construed so as to negate, modify, or in any way affect requirements to obtain any other applicable permit coverage from a federal, state, tribal, or local entity.

(a) Applicability

The Minor Discharges and Minor Dredging permit by rule includes impacts to waters of the State from:

- (1) Minor Discharges of clean dredged or clean fill material into waters of the State; and
- (2) Minor Dredging of waters of the State.

(b) Eligibility

- (1) This permit by rule authorizes initial impacts to waters of the State from the Minor Discharges and Minor Dredging activities specified in Rule 1.4.3.C.(2)(a).

(2) For eligibility under this permit by rule, all Minor Discharges and Minor Dredging conducted as part of a single and complete project cumulatively must meet the following thresholds for initial impacts to waters of the State:

- (i) Discharges of clean dredged or clean fill material to perennial and intermittent streams and other non-ephemeral, linear water courses as determined by a delineation conducted in accordance with the *Waters of the State of Mississippi Delineation and Functional Assessment Manual* may not exceed a total of 10 cubic yards;
- (ii) Dredging of perennial and intermittent streams and other non-ephemeral, linear water courses as determined by a delineation conducted in accordance with the *Waters of the State of Mississippi Delineation and Functional Assessment Manual* may not exceed a total of 10 cubic yards; and
- (iii) Discharge of clean dredge or clean fill material to or dredging of ephemeral streams and other ephemeral linear watercourses as determined by a delineation conducted in accordance with the *Waters of the State of Mississippi Delineation and Functional Assessment Manual* in any volume.

(c) Permit Conditions

The following conditions apply to all activities under this permit by rule.

(1) Availability of Certification Documentation

A copy of the Consolidated SWAP Form submitted to the Department, including all required components as specified in Rule 1.4.3.A.(2), must be retained by the owner or operator as required by paragraph (14) below, and must be kept at the site or made locally available in case inspector review is necessary.

(2) Least Environmentally Damaging Practicable Alternative

The owner or operator must select the least environmentally damaging practicable alternative with the least initial and secondary impacts on waters of the State.

(3) Avoidance and Minimization

Activities must be designed and constructed to avoid and minimize initial and secondary impacts, both temporary and permanent, to waters of the State to the maximum extent practicable.

(4) Sediment and Erosion Controls

Appropriate BMPs shall be properly installed and maintained to prevent the movement of sediment offsite and into adjacent drainage areas. Special care shall be taken prior to commencement of and during the proposed activities to prevent the movement of sediment offsite and into adjacent waters. In the event of any BMP failure, corrective actions shall be taken immediately. The Department recommends that activities occurring within waters of the State be conducted during periods of low flow or no flow.

(5) Access Roads

Access roads must be the minimum width necessary to complete the covered activities. Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the State and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the State must be properly bridged or culverted to maintain surface flows. Temporary access roads constructed solely for use during the construction phase of covered activities shall be removed upon completion of work, and the site shall be restored.

(6) Dewatering

The owner or operator shall treat dewatering discharges with controls necessary to prevent discharges of pollutants to surface waters or groundwaters. To the extent feasible, the owner or operator shall use vegetated, upland areas to filter dewatering flows. Using water of the State for treatment of such flows is prohibited.

(7) Sediment and Turbidity Control

Controls shall be used at all times during Minor Discharge and Minor Dredging operations to minimize the discharge of sediment or turbid waters into waters of the State. Controls may include, but are not limited to, straw wattle; staked filter cloth; sodding, seeding and mulching; and turbidity screens installed around the immediate project site.

(8) Equipment

Any heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

(9) Suitable Material

No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts. (See Section 307 of the Clean Water Act.)

(10) Management of Water Flows

To the maximum extent practicable, pre-construction contours must be maintained and the effect on circulation patterns and water movement on waters of the State, including impacts on hydrologic connectivity to upstream and downstream waters, must be minimized.

(11) Federal Emergency Management Agency Requirements

The initial impacts authorized by this permit by rule must comply with applicable Federal Emergency Management Agency-approved state or local floodplain management requirements.

(12) Removal of Temporary Structures and Fills

Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

(13) Stabilization

To the extent practicable, disturbed areas must be returned to their previous condition. Cleared wetland areas must be re-vegetated, as appropriate, with species of native wetland vegetation.

(14) Repair, Rehabilitation, and Restoration

The affected environment should be repaired, rehabilitated, or restored to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(15) Record Keeping

All records, reports, forms, and information relating to activities conducted under this permit by rule shall be retained for a period of at least five (5) years from the date that the document was generated. Any documents required by

this permit by rule may be kept electronically but must be readily available during site inspection or upon request.

(16) **Duty to Comply**

The owner or operator must comply with all requirements of this permit by rule. Any noncompliance constitutes a violation and is grounds for enforcement action, denial of coverage under this permit by rule, and/or the requirement obtain coverage under a SWAP general permit or obtain a SWAP individual permit in order to continue the proposed activity.

(17) **Duty to Provide Information**

The owner or operator shall furnish to the Department, within a reasonable time, any information which the Department may request to determine eligibility for this permit by rule. The owner or operator shall also furnish to the Department, upon request, copies of records required to be retained by this permit by rule.

(18) **Civil and Criminal Liability**

- (i) Any person who violates a term or condition contained within this permit by rule or the Mississippi Air and Water Pollution Control Law is subject to the actions defined by law.
- (ii) Nothing in this permit shall be construed to relieve the coverage recipient from civil or criminal penalties for noncompliance.
- (iii) It shall not be a defense in an enforcement action that it would have been necessary to halt or reduce the activity in order to maintain compliance with the requirements of this permit by rule.

(19) **Corrective Action for Noncompliance**

In the event that the owner or operator is unable to comply with any of the terms or conditions of this permit by rule due to any cause, the owner or operator must immediately take action to stop, contain, and mitigate noncompliant activities and unauthorized impacts.

(20) **Duty to Halt Activity**

If at any time the minimum conditions for eligibility in Rule 1.4.3.C.(1)(b) under this permit by rule are no longer met, any activity with initial impacts to waters of the State otherwise authorized under this permit by rule must

immediately cease, except for those necessary to protect human health or the environment.

(21) Requirement to Obtain a SWAP Permit

At any time, the Permit Board may require the owner or operator to apply for and obtain coverage under a SWAP general permit or apply for and obtain a SWAP individual permit in order to conduct activities with initial impacts to waters of the State otherwise authorized by this permit by rule due to (1) failure to comply with the conditions of this permit by rule, (2) disproportionate impacts to waters of the State, or (3) any other circumstances deemed necessary. The Permit Board may require an owner or operator to apply for coverage under a SWAP general permit or apply for a SWAP individual permit only if the owner or operator has been notified in writing. This notice shall include facts supporting the Permit Board's decision and a filing deadline. Upon request, the Permit Board may grant additional time to comply with the requirement to apply for a coverage under a SWAP general permit or to apply for a SWAP individual permit.

(3) Permit by Rule for Water and Waste Management Activities

This permit by rule authorizes initial impacts to waters of the State from certain Water and Waste Management Activities, establishes requirements for avoiding or minimizing initial impacts and secondary impacts from these activities to waters of the State where possible, and includes BMPs that must be implemented while conducting these activities. Nothing in this permit by rule shall be construed so as to negate, modify, or in any way affect requirements to obtain any other applicable permit coverage from a federal, state, tribal, or local entity.

(a) Applicability

The Water and Waste Management Activities permit by rule applies to the following activities:

- (1) Outfall Structure and Associated Intake Structure Construction and Modification Activities**, including construction or modification of outfall structures and associated intake structures, where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted by, or otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (Section 402 of the Clean Water Act). This permit by rule does not authorize initial impacts to waters of the State related to construction of intake structures not directly associated with an authorized outfall structure.

- (2) Hazardous and Toxic Waste Cleanup Activities, including specific activities required to effect containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority or to implement a court-ordered remedial action plan or related settlement. This permit by rule does not authorize initial impacts to waters of the State from activities related to establishing new disposal sites or expanding existing sites used for disposal of hazardous or toxic waste.
- (3) Stormwater Management Facility Construction Activities, including construction of stormwater management facilities such as stormwater detention basins and retention basins and other stormwater management facilities; construction of water control structures, outfall structures and emergency spillways; construction of low impact development integrated management features such as bioretention facilities (e.g., rain gardens), vegetated filter strips, grassed swales, and infiltration trenches; and construction of pollutant reduction green infrastructure features designed to reduce inputs of sediments, nutrients, and other pollutants into waters. Stormwater management facilities that are part of a single and complete Development Activities project would need to be covered under a permit by rule, general permit, or individual permit for those Development Activities.
- (4) Water Reclamation and Reuse Facility Construction, Expansion, and Maintenance Activities, including construction, expansion, and maintenance of water reclamation and reuse facilities such as vegetated areas enhanced to improve water infiltration and constructed wetlands to improve water quality and temporary fills and work, including the use of temporary mats, necessary to construct the water reclamation and reuse facility and its attendant features.

(b) Eligibility

- (1) This permit by rule authorizes initial impacts to waters of the State from the Water and Waste Management Activities specified in Rule 1.4.3.C.(3)(a).
- (2) For eligibility under this permit by rule, all Water and Waste Management Activities conducted as part of a single and complete project cumulatively must meet the following thresholds for initial impacts to waters of the State:
 - (i) Initial impacts to no more than 500 linear feet of perennial and intermittent streams and other non-ephemeral, linear water courses as determined by a delineation conducted in accordance with the *Waters of the State of Mississippi Delineation and Functional Assessment Manual*;

- (ii) Initial impacts to no more than 0.50 acres of non-linear open waters and wetlands as determined by a delineation conducted in accordance with the *Waters of the State of Mississippi Delineation and Functional Assessment Manual*; and
- (iii) Initial impacts to any number of linear feet of ephemeral streams and other ephemeral linear watercourses as determined by a delineation conducted in accordance with the *Waters of the State of Mississippi Delineation and Functional Assessment Manual*.

(c) Permit Conditions

The following conditions apply to all activities under this permit by rule.

(1) Availability of Certification Documentation

A copy of the Consolidated SWAP Form submitted to the Department, including all required components as specified in Rule 1.4.3.A.(2), must be retained by the owner or operator as required by paragraph (14) below, and must be kept at the site or made locally available in case inspector review is necessary.

(2) Least Environmentally Damaging Practicable Alternative

The owner or operator must select the least environmentally damaging practicable alternative with the least initial and secondary impacts on waters of the State.

(3) Avoidance and Minimization

Activities must be designed and constructed to avoid and minimize initial and secondary impacts, both temporary and permanent, to waters of the State to the maximum extent practicable.

(4) Sediment and Erosion Controls

Appropriate BMPs shall be properly installed and maintained to prevent the movement of sediment offsite and into adjacent drainage areas. Special care shall be taken prior to commencement of and during the proposed activities to prevent the movement of sediment offsite and into adjacent waters. In the event of any BMP failure, corrective actions shall be taken immediately. The Department recommends that activities occurring within waters of the State be conducted during periods of low flow or no flow.

(5) Access Roads

Access roads must be the minimum width necessary to complete the covered activities. Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the State and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the State must be properly bridged or culverted to maintain surface flows. Temporary access roads constructed solely for use during the construction phase of covered activities shall be removed upon completion of work, and the site shall be restored.

(6) Dewatering

The owner or operator shall treat dewatering discharges with controls necessary to prevent discharges of pollutants to surface waters or groundwaters. To the extent feasible, the owner or operator shall use vegetated, upland areas to filter dewatering flows. Using water of the State for treatment of such flows is prohibited.

(7) Equipment

Any heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

(8) Suitable Material

No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts. (See Section 307 of the Clean Water Act.)

(9) Management of Water Flows

To the maximum extent practicable, pre-construction contours must be maintained and the effect on circulation patterns and water movement on waters of the State, including impacts on hydrologic connectivity to upstream and downstream waters, must be minimized.

(10) Federal Emergency Management Agency Requirements

The initial impacts authorized by this permit by rule must comply with applicable Federal Emergency Management Agency-approved state or local floodplain management requirements.

(11) Removal of Temporary Structures and Fills

Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

(12) Stabilization

To the extent practicable, disturbed areas must be returned to their previous condition. Cleared wetland areas must be re-vegetated, as appropriate, with species of native wetland vegetation.

(13) Repair, Rehabilitation, and Restoration

The affected environment should be repaired, rehabilitated, or restored to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(14) Record Keeping

All records, reports, forms, and information relating to activities conducted under this permit by rule shall be retained for a period of at least five (5) years from the date that the document was generated. Any documents required by this permit by rule may be kept electronically but must be readily available during site inspection or upon request.

(15) Duty to Comply

The owner or operator must comply with all requirements of this permit by rule. Any noncompliance constitutes a violation and is grounds for enforcement action, denial of coverage under this permit by rule, and/or the requirement obtain coverage under a SWAP general permit or obtain a SWAP individual permit in order to continue the proposed activity.

(16) Duty to Provide Information

The owner or operator shall furnish to the Department, within a reasonable time, any information which the Department may request to determine eligibility for this permit by rule. The owner or operator shall also furnish to the Department, upon request, copies of records required to be retained by this permit by rule.

(17) Civil and Criminal Liability

- (i) Any person who violates a term or condition contained within this permit by rule or the Mississippi Air and Water Pollution Control Law is subject to the actions defined by law.
- (ii) Nothing in this permit shall be construed to relieve the coverage recipient from civil or criminal penalties for noncompliance.
- (iii) It shall not be a defense in an enforcement action that it would have been necessary to halt or reduce the activity in order to maintain compliance with the requirements of this permit by rule.

(18) Corrective Action for Noncompliance

In the event that the owner or operator is unable to comply with any of the terms or conditions of this permit by rule due to any cause, the owner or operator must immediately take action to stop, contain, and mitigate noncompliant activities and unauthorized impacts.

(19) Duty to Halt Activity

If at any time the minimum conditions for eligibility in Rule 1.4.3.C.(1)(b) under this permit by rule are no longer met, any activity with initial impacts to waters of the State otherwise authorized under this permit by rule must immediately cease, except for those necessary to protect human health or the environment.

(20) Requirement to Obtain a SWAP Permit

At any time, the Permit Board may require the owner or operator to apply for and obtain coverage under a SWAP general permit or apply for and obtain a SWAP individual permit in order to conduct activities with initial impacts to waters of the State otherwise authorized by this permit by rule due to (1) failure to comply with the conditions of this permit by rule, (2) disproportionate impacts to waters of the State, or (3) any other circumstances deemed necessary. The Permit Board may require an owner or operator to apply for coverage under a SWAP general permit or apply for a SWAP individual permit only if the owner or operator has been notified in writing. This notice shall include facts supporting the Permit Board's decision and a filing deadline. Upon request, the Permit Board may grant additional time to comply with the requirement to apply for a coverage under a SWAP general permit or to apply for a SWAP individual permit.

Rule 1.4.4 SWAP General Permits and SWAP Individual Permits

A. SWAP General Permit and SWAP Individual Permit Procedures

- (1) Except for activities subject to an exemption as defined in this Subchapter or in compliance with a SWAP permit by rule in accordance with the provisions of this Subchapter, a person conducting or proposing to conduct activities with initial impacts to waters of the State must apply for coverage under an applicable SWAP general permit or to apply for a SWAP individual permit by completing and submitting a Consolidated SWAP form.
- (2) For coverage under a SWAP general permit or SWAP individual permit, a complete Consolidated SWAP Form consists of:
 - (a) the applicable sections of the form
 - (1) *For a SWAP general permit:* a SWAP General Permit Notice of Intent (NOI)
 - (2) *For a SWAP individual permit:* a SWAP Individual Permit Application
 - (b) a delineation completed in accordance with the most recent version of the *Waters of the State of Mississippi Delineation and Functional Assessment Manual* and identifying all aquatic resources within the project site boundaries; and
 - (c) a site map that includes
 - (1) the boundaries of the property
 - (2) all proposed activities planned for the property, including limits of disturbance
 - (3) location of all aquatic resources within the property boundaries
 - (4) identification of all waters of the State for which there will be initial impacts from the proposed activities
 - (5) original and proposed flow patterns of waters of the State
 - (6) original and proposed contours, if feasible, or plan view and cross section of initial impact areas and
 - (7) proposed post-construction stormwater management controls designed in accordance with Rule 1.4.4.K.(1)(a) to eliminate or minimize post-project initial impacts and secondary impacts to waters of the State, including waters downstream of the project site.

- (3) Any person submitting a Consolidated SWAP Form to the Department shall certify that all information submitted is true, based upon information provided by responsible individuals. Any person who knowingly makes any false statement, representation, or certification in a Consolidated SWAP Form, including all required components, shall be subject to the penalties provided for in the Code for perjury or false statements. In the event the applicant becomes aware that it failed to submit any relevant facts in a Consolidated SWAP Form, including all required components, it shall promptly submit such facts or information.
- (4) Applicants submitting a Consolidated SWAP Form must comply with the signatory requirements in Rule 1.1.2.C.
- (5) A complete Consolidated SWAP Form must be received by the Department:
 - (a) *For a SWAP general permit application:* at least 30 days before anticipated commencement of the proposed activities
 - (b) *For a SWAP individual permit application:* at least 180 days before anticipated commencement of the proposed activities
- (6) Upon receipt of a complete Consolidated SWAP Form, the Permit Board will
 - (a) *For a SWAP general permit application:* follow the procedures in Rule 1.4.4.E to issue or deny coverage under an issued SWAP general permit.
 - (b) *For a SWAP individual permit application:* follow the procedures in Rules 1.4.4.F through 1.4.4.J to issue or deny a SWAP individual permit.
- (7) SWAP general permits and SWAP individual permits shall expire five (5) years from the permit effective date.
- (8) A SWAP general permit issued by the Permit Board pursuant to this regulation shall continue in effect beyond its expiration date if, at least thirty (30) days prior to the expiration of the general permit, the Department issues a notice of intent to seek reissuance of the permit (with or without modification) by the Permit Board. The general permit will remain in effect until the Permit Board takes action on the Department's reissuance request.
- (9) A person may continue activities with initial impacts to waters of the State that are subject to an expiring SWAP general permit or expiring SWAP individual permit subject to the following conditions.

(a) *For a SWAP general permit:* If the expiring SWAP general permit is not reissued by the Permit Board prior to its expiration date, and it is administratively continued in accordance with (8) above, a certificate of coverage issued prior to the expiration date of the permit automatically remains in force and effect until such time as the Permit Board reissues the SWAP general permit or formally determines not to reissue the SWAP general permit.

(1) After the Permit Board reissues an expired SWAP general permit, a certificate of coverage issued under the expired SWAP general permit prior to its expiration date remains in force and effect provided the permittee follows the applicable provisions for coverage specified in the reissued SWAP general permit. This coverage remains in force and effect until the Permit Board issues or denies a new certificate of coverage under the reissued SWAP general permit or the permittee applies for and the Permit Board issues or denies coverage under a SWAP individual permit.

(2) If the Permit Board formally determines not to reissue an expired SWAP general permit, the Permit Board will identify a reasonable time period for permittees to seek coverage under an alternative SWAP general permit or SWAP individual permit. Coverage under the expired SWAP general permit will cease at the end of this time period if the permittee fails to seek coverage under an alternative SWAP permit.

(b) *For a SWAP individual permit:* The permittee must submit a new Consolidated SWAP Form, which may include an updated delineation and site map, no later than 90 days prior to the expiration date of the SWAP individual permit. If the Permit Board, through no fault of the applicant, fails to reissue the permit or to act on the application before the expiration date of the existing SWAP individual permit, the existing SWAP individual permit remains in force and effect until the Permit Board issues a new SWAP individual permit or takes final action on the new SWAP Consolidated Form.

Continuing such activities without following the applicable procedures in (a) or (b) above is a violation of State law.

B. SWAP General Permit Issuance

- (1) The Permit Board may issue a SWAP general permit to cover a specified category of activities with initial impacts to waters of the State.
- (2) Each SWAP general permit shall include Applicability criteria defining the activities or categories of activities covered by the general permit.

- (3) Each SWAP general permit shall include Eligibility criteria for determining whether the specific activities proposed by an applicant are eligible for coverage under the general permit.
- (4) Eligibility criteria for each SWAP general permit shall include the following initial impact thresholds:

<p>For initial impacts measured by the size of impacted waters of the State</p>	<p>1,500 linear ft. of perennial streams, intermittent streams, and other non-ephemeral linear watercourses and 2.0 acres of non-linear open waters and wetlands and any number of linear ft. of ephemeral streams and other ephemeral linear watercourses</p>
<p>For initial impacts measured by the quantity of material dredged or discharged</p>	<p>25 cubic yards of material</p>

- (5) All SWAP general permits shall include, at a minimum, the conditions specified in Rule 1.4.4.K of this Subchapter.
- (6) When issuing a SWAP general permit, the Permit Board shall provide public notice of the draft SWAP general permit in accordance with Rule 1.4.4.C of this Subchapter and may hold a public hearing on the draft SWAP general permit in accordance with Rule 1.4.4.D of this Subchapter.
- (7) SWAP general permit coverage or denial of coverage shall be in accordance with Rule 1.4.4.E of this Subchapter.

C. SWAP General Permit Public Comment

- (1) The Department shall provide public notice of a draft SWAP general permit.
- (2) All draft SWAP general permit public notices shall contain the following minimum information:
 - (a) The date of posting or publication of the public notice;

- (b) Name and address of the office processing the permit action for which notice is being given;
- (c) A brief description of the activities resulting in initial impacts to waters of the State proposed to be authorized in the draft SWAP general permit;
- (d) The address, telephone number, and email address of the Department office from which to obtain additional information on the draft SWAP general permit;
- (e) The time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;
- (f) Any additional information considered necessary or proper; and
- (g) Procedures for submitting public comments to the Department.

(3) Public notice of SWAP General Permits shall be given by

- (a) mailing a copy of a notice to
 - (1) the Mississippi Department of Marine Resources, the Mississippi Department of Wildlife, Fisheries, and Parks, the Mississippi Department of Archives and History, and any affected States or Indian Tribes
 - (2) the U.S. Army Corps of Engineers
 - (3) persons on a mailing list developed by:
 - (i) including those who request in writing to be on the list,
 - (ii) soliciting persons from participants in past SWAP general permit proceedings, and
 - (iii) notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as State funded newsletters, environmental bulletins, or State law journals (The Department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Department may delete from the list the name of any person who fails to respond to such a request.)
- (b) publication of a notice in a newspaper having general circulation throughout the State.

- (4) Public notice of the draft SWAP general permit shall provide at least thirty (30) days from the date of notice within which interested persons may submit to the Department their comments and information concerning the draft SWAP general permit. The time for public comment may be extended by the Permit Board if the Board determines that an extension of time is necessary or appropriate to facilitate additional public comment.
- (5) All views submitted to the Permit Board in writing by interested persons during the comment period shall be retained and considered in the formulation of final determinations on the SWAP general permit by the Permit Board.

D. SWAP General Permit Public Hearing

- (1) Anyone may request a public hearing during the public notice period of the draft SWAP general permit. Requests shall be in writing addressed to the Department and shall indicate the reasons why a hearing is requested, the interest in or relationship of the petitioner to the draft SWAP general permit or activities identified therein, and shall specifically indicate which portions of the draft SWAP general permit warrant a public hearing. If the Permit Board determines that a petition states sufficient cause or that there is significant public interest in a draft SWAP general permit for a public hearing, it may schedule such a hearing.
- (2) Public notice of a public hearing shall be given at least thirty (30) days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft SWAP general permit and the two notices may be combined.)
- (3) In addition to the public notice described in Rule 1.4.4.C of this Subchapter, a notice by the Permit Board of a public hearing on a draft SWAP general permit shall contain:
 - (a) the date, time, and place of the hearing;
 - (b) reference to the date of previous public notices relating to the permit; and
 - (c) a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.
- (4) All views submitted to the Permit Board by interested persons during the public hearing shall be part of the record of public comments on the draft SWAP general permit and considered by the Permit Board in formulating final determinations on the SWAP general permit.

E. SWAP General Permit Coverage or Denial of Coverage

After receiving a fully completed Consolidated SWAP Form applying for coverage under a SWAP general permit

- (1) For SWAP general permits with conditions stating that permit coverage becomes effective a specified number of days after the applicant fully executes a Consolidated SWAP Form unless the Department notifies the applicant otherwise, the Permit Board may:
 - (a) take no action, allowing coverage under the SWAP general permit to become effective
 - (b) notify the applicant within the period of time specified in the SWAP general permit that its SWAP general permit application is deficient and identify any supplemental information required; in such cases the Department shall notify the applicant when all deficiencies have been resolved, and SWAP general permit coverage becomes effective
 - (c) notify the applicant within the period of time specified in the SWAP general permit of its intent to deny coverage under the SWAP general permit and require the applicant to apply for and obtain a SWAP individual permit in order to conduct the proposed activities with initial impacts to waters of the State. If the proposed activities do not meet the Applicability and Eligibility criteria for the SWAP general permit or if, in the judgment of the Permit Board, the applicant is unable to meet the conditions of the SWAP general permit, the Permit Board will issue a notice of intent to deny coverage under the SWAP general permit. A notice of intent to deny coverage under a SWAP general permit will provide the applicant with a minimum of thirty (30) days to respond and address any deficiencies in the SWAP general permit application. If the applicant fails to respond or to sufficiently address deficiencies in the SWAP general permit application by the end of the stated response period, SWAP general permit coverage shall be denied.
- (2) For all other general permits, the Permit Board may:
 - (a) issue coverage under the SWAP general permit.
 - (b) notify the applicant within the period of time specified in the SWAP general permit that its SWAP general permit application is deficient and identify any supplemental information required; in such cases the Department shall notify the applicant when all deficiencies have been resolved and shall issue coverage under the SWAP general permit.

(c) notify the applicant within the period of time specified in the SWAP general permit of its intent to deny coverage under the SWAP general permit and require the applicant to apply for and obtain a SWAP individual permit in order to conduct the proposed activities with initial impacts to waters of the State. If the proposed activities do not meet the Applicability and Eligibility criteria for the SWAP general permit or if, in the judgment of the Permit Board, the applicant is unable to meet the conditions of the SWAP general permit, the Permit Board will issue a notice of intent to deny coverage under the SWAP general permit. A notice of intent to deny coverage under a SWAP general permit will provide the applicant with a minimum of thirty (30) days to respond and address any deficiencies in the SWAP general permit application. If the applicant fails to respond or to sufficiently address deficiencies in the SWAP general permit application by the end of the stated response period, SWAP general permit coverage shall be denied.

(3) Any interested party may request a formal evidentiary hearing pursuant to Rule 1.4.4.M of this Subchapter regarding the Permit Board's decision to issue coverage under a SWAP general permit.

(4) If SWAP general permit coverage is denied, the applicant may apply for an individual SWAP permit or the applicant, or any other interested party, may request a formal evidentiary hearing pursuant to Rule 1.4.4.M of this Subchapter regarding the Permit Board's decision to deny coverage.

(5) At any time, the Permit Board may require the owner or operator with coverage under a SWAP general permit to apply for and obtain a SWAP individual permit in order to continue to conduct activities with initial impacts to waters of the State otherwise authorized by the SWAP general permit due to (1) failure to comply with the conditions of the SWAP general permit, (2) disproportionate impacts to waters of the State, or (3) any other circumstances deemed necessary. The Permit Board may require the owner or operator to apply for a SWAP individual permit only if the owner or operator has been notified in writing. This notice shall include facts supporting the Permit Board's decision, an application Form, and a filing deadline. Upon request, the Permit Board may grant additional time to comply with the requirement to apply for a SWAP individual permit. The applicant or any other interested party may request a formal evidentiary hearing pursuant to Rule 1.4.4.M of this Subchapter regarding the Permit Board's decision to deny coverage.

F. SWAP Individual Permit Issuance

If, after receiving a complete, fully executed Consolidated SWAP Form, the preliminary determination of the Department is to issue a SWAP individual permit:

(1) the applicant shall provide public notice of the SWAP individual permit application in accordance with Rule 1.4.4.G of this Subchapter

- (2) the Department shall conduct a technical review of the SWAP individual permit application in accordance with the scope of review factors in Rule 1.4.4.H of this Subchapter
- (3) the Permit Board shall hold a public hearing, if applicable, in accordance with Rule 1.4.4.I of this Subchapter
- (4) the Permit Board shall make a final decision to issue or deny a SWAP individual permit in accordance with Rule 1.4.4.J of this Subchapter considering the SWAP permit application and comments received during the public comment period and any public hearing
- (5) if the Permit Board makes a final decision to issue a SWAP individual permit, it shall issue the SWAP individual permit with, at a minimum, the conditions specified in Rule 1.4.4.K of this Subchapter.

G. Public Notice of SWAP Individual Permit Applications

- (1) The applicant shall provide public notice of a SWAP individual permit application by publication in a newspaper having general circulation in the area in which the activity is proposed or throughout the State. The Department shall provide the applicant with the format for publication and specify the length of the public comment period.
- (2) A public notice of a SWAP individual permit application shall contain the following:
 - (a) the date of posting or publication of the public notice;
 - (b) the name and address of the applicant;
 - (c) project location, including the address and latitude and longitude of the proposed project site;
 - (d) the purpose of the project;
 - (e) a description of the proposed activities resulting in initial impacts to waters of the State;
 - (f) existing conditions, including:
 - (1) the size of the project site
 - (2) the type, quality, and size of waters of the State within the project site boundaries that would be impacted by the proposed project activities

- (3) the type, quality, and size of waters of the State within the project site boundaries that would be avoided
- (g) a summary of the proposed compensatory mitigation plan;
- (h) the address, telephone number, and email address of the Department office from which to obtain additional information on the SWAP individual permit application; and
- (i) procedures for submitting public comments to the Department.

(3) Public notice of the SWAP individual permit applications shall provide at least thirty (30) days from the date of notice within which interested persons may submit to the Department their comments and information concerning the application. The time for public comment may be extended by the Permit Board if the Board determines that an extension of time is necessary or appropriate to facilitate additional public comment.

(4) All views submitted to the Permit Board in writing by interested persons during the comment period shall be retained and considered in the formulation of final determinations on the SWAP individual permit by the Permit Board.

H. Technical Review of SWAP Individual Permit Applications

- (1) The scope of review for SWAP individual permit applications shall include the following factors;
 - (a) the analysis of feasible alternatives to the proposed activity;
 - (b) the proposed mitigation plan, as required by Rule 1.4.7 of this Subchapter;
 - (c) the initial and secondary impacts on all existing and all classified uses of the waters of the State;
 - (d) the degree of compliance of the proposed activity with the State of Mississippi Water Quality Criteria for Intrastate, Interstate, and Coastal Waters;
 - (e) the degree of physical, chemical, and biological impacts on waters of the State;
 - (f) the effect on circulation patterns and water movement on waters of the State;
 - (g) the degree of alteration of the aquatic ecosystem;

- (h) the degree of consistency with approved water quality management plans adopted by the Commission;
- (i) the construction and post-construction storm water management practices proposed for protecting water quality;
- (j) the compliance history of the applicant; and
- (k) any other factors deemed to be necessary by the Department and/or Permit Board to protect water quality.

(2) The Permit Board may deny a SWAP individual permit when any of the following determinations are made unless the Permit Board is assured that appropriate measures will be taken to eliminate unreasonable degradation and irreparable harm to waters of the State.

- (a) The proposed activity permanently alters the aquatic ecosystem such that water quality criteria are violated and/or it no longer supports its existing or classified uses.
- (b) There is a feasible alternative to the activity which reduces adverse consequences on water quality and classified or existing uses of waters of the State.
- (c) The proposed activity adversely impacts waters containing State or federally recognized threatened or endangered species.
- (d) The proposed activity adversely impacts a special or unique aquatic habitat, such as National or State Wild and Scenic Rivers and/or State Outstanding Resource Waters.
- (e) The proposed activity in conjunction with other activities may result in adverse cumulative impacts.
- (f) Nonpoint source/storm water management practices necessary to protect water quality have not been proposed.
- (g) Denial of wastewater permits and/or approvals by the State with regard to the proposed activities.
- (h) The proposed activity results in significant environmental impacts which may adversely impact water quality.

I. Public Hearing for a SWAP Individual Permit Application

- (1) Within the 30-day comment period or other applicable comment period provided after posting or publishing of a public notice of a SWAP individual permit application, any interested person or agency may file a petition with the Permit Board for a public hearing on a SWAP individual permit application. A petition for a public hearing shall indicate the reasons why a hearing is requested, the interest in or relationship of the petitioner to the SWAP individual permit application or existing or proposed activities and initial impacts to waters of the State identified therein and shall specifically indicate which elements of the application warrant a public hearing. If the Permit Board determines that a petition states sufficient cause or that there is significant public interest in a SWAP individual permit application for a public hearing, it may schedule such a hearing.
- (2) The hearing may be held in the geographical location of the proposed activities or, at the discretion of the Permit Board, at another appropriate location, and shall be noticed at least thirty (30) days before the hearing. The notice of public hearing shall be transmitted to the applicant and shall be published in at least one newspaper of general circulation in the geographical area of the proposed activity identified in the SWAP individual permit application and shall be mailed to any person or group upon request.
- (3) A notice by the Permit Board of a public hearing on a SWAP individual permit application shall contain in addition to the time and place of the hearing:
 - (a) the address and telephone number of the Department office responsible for permit issuance and the name, telephone number, and email address of a contact person.
 - (b) the name and address of the applicant whose SWAP individual permit application will be considered at the public hearing
 - (c) the project location, including the address and latitude and longitude of the proposed project site
 - (d) the purpose of the project
 - (e) a description of the proposed activities resulting in initial impacts to waters of the State
 - (f) existing conditions, including
 - (1) the size of the project site
 - (2) the type, quality, and size of waters of the State within the project site boundaries that would be impacted by the proposed project activities

- (3) the type, quality, and size of waters of the State within the project site boundaries that would be avoided
- (g) a summary of the proposed compensatory mitigation plan
- (h) reference to the public notice posted and published for the SWAP individual permit application
- (i) a brief statement of the nature and purpose of the public hearing, including the applicable rules and procedures.
- (j) the address or addresses of Department offices where interested persons may inspect or obtain copies of the SWAP individual permit application and any other applicable forms, reports, files or information relating to the application subject to public hearing that has not been declared confidential by the Commission.
- (k) a concise description of the nature of the public hearing and the issues to be heard, with reference to Permit Board rules and procedures to be followed.

- (4) All public hearings shall be reported verbatim by a court reporter. A copy of the transcript shall be made available for public inspection.
- (5) All views submitted to the Permit Board by interested persons during the public hearing shall be part of the record of public comments on the SWAP individual permit application and considered by the Permit Board in formulating final determinations on the SWAP individual permit.

J. Decision to Issue or Deny a SWAP Individual Permit

- (1) Following public notice and technical review of a SWAP individual permit application and after conclusion of any public hearing on the application, the Permit Board shall make a final determination to issue or deny a SWAP individual permit. The decision to issue or deny a SWAP individual permit shall consider the SWAP permit application, the factors for technical review of a SWAP individual permit application in Rule 1.4.4.H of this Subchapter, and comments received during the public comment period and public hearing, if held.
- (2) Prior to the denial of a SWAP individual permit, the Department shall issue a notice of intent to deny a permit to the applicant. The notice of intent to deny will provide the applicant with a minimum of thirty (30) days to respond and address any deficiencies in the SWAP individual permit application. If the applicant fails to respond or to sufficiently address deficiencies in the SWAP individual permit application by the end of the stated response period, the SWAP individual permit shall be denied.

(3) The applicant or any other interested party may request a formal evidentiary hearing pursuant to Rule 1.4.4.M on the Permit Board's decision to deny coverage.

K. SWAP General Permit and SWAP Individual Permit Conditions

(1) SWAP general permits and SWAP individual permits shall include the following:

- (a) a requirement to implement a post-construction stormwater management plan designed in accordance with the Department's Recommended Design Criteria for Storm Water Management Plans that ensures downstream water quality criteria will be met and that eliminates unreasonable degradation and irreparable harm to waters of the State.
- (b) a requirement to implement an approved compensatory mitigation plan
- (c) the following general conditions:

(1) Availability of Permit Documentation

A copy of the Consolidated SWAP Form submitted to the Department, including all required components as specified in Rule 1.4.4.A.(2), must be retained by the owner or operator as required by paragraph (12) below, and must be kept at the site or made locally available in case inspector review is necessary.

(2) Least Environmentally Damaging Practicable Alternative

The owner or operator must identify alternatives to the proposed activity and select the practicable alternative with the least initial and secondary impacts on waters of the State, provided that this alternative does not have other significant adverse environmental consequences to other natural ecosystem components. The owner or operator must document the analysis for selecting the least environmentally damaging practicable alternative and retain this documentation with other records relating to activities conducted under this conditional exemption.

(3) Avoidance and Minimization

Activities must be designed and constructed to avoid and minimize initial and secondary impacts, both temporary and permanent, to waters of the State to the maximum extent practicable.

(4) Sediment and Erosion Controls

Appropriate BMPs shall be properly installed and maintained to prevent the movement of sediment offsite and into adjacent drainage areas. Special care shall be taken prior to commencement of and during the proposed activities to prevent the movement of sediment offsite and into adjacent waters. In the event of any BMP failure, corrective actions shall be taken immediately. The Department recommends that activities occurring within waters of the State be conducted during periods of low-flow or no-flow.

(5) Equipment

Any heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

(6) Suitable Material

No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts. (See Section 307 of the Clean Water Act.)

(7) Management of Water Flows

To the maximum extent practicable, pre-construction contours must be maintained and the effect on circulation patterns and water movement on waters of the State, including impacts on hydrologic connectivity to upstream and downstream waters, must be minimized.

(8) Federal Emergency Management Agency Requirements

The initial impacts authorized by this permit must comply with applicable Federal Emergency Management Agency-approved state or local floodplain management requirements.

(9) Removal of Temporary Structures and Fills

Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

(10) Stabilization

To the extent practicable, disturbed areas must be returned to their previous condition. Cleared wetland areas must be re-vegetated, as appropriate, with species of native wetland vegetation.

(11) Repair, Rehabilitation, and Restoration

The affected environment should be repaired, rehabilitated, or restored to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(12) Record Keeping

All records, reports, forms, and information relating to activities conducted under this permit shall be retained for a period of at least five (5) years from the date that the document was generated. Any documents required by this permit may be kept electronically but must be readily available during site inspection or upon request.

(13) Duty to Comply

The owner or operator must comply with all requirements of this permit. Any noncompliance constitutes a violation and is grounds for enforcement action and/or the requirement to apply for and obtain a SWAP individual permit in order to continue activity currently covered under a SWAP general permit.

(14) Duty to Provide Information

The owner or operator shall furnish to the Department, within a reasonable time, any information which the Department may request to determine eligibility for this permit. The owner or operator shall also furnish to the Department, upon request, copies of records required to be retained by this permit.

(15) Civil and Criminal Liability

- (i) Any person who violates a term or condition contained within this permit or the Mississippi Air and Water Pollution Control Law is subject to the actions defined by law.
- (ii) Nothing in this permit shall be construed to relieve the coverage recipient from civil or criminal penalties for noncompliance.

- (iii) It shall not be a defense in an enforcement action that it would have been necessary to halt or reduce the activity in order to maintain compliance with the requirements of this permit.

(16) **Corrective Action for Noncompliance**

In the event that the owner or operator is unable to comply with any of the terms or conditions of this permit due to any cause, the owner or operator must immediately take action to stop, contain, and mitigate noncompliant activities and unauthorized impacts.

(17) **Duty to Halt Activity**

If at any time the minimum conditions for eligibility in Rule 1.4.3.C(1)(b) under this permit are no longer met, any activity with initial impacts to waters of the State otherwise authorized under this permit must immediately cease, except for those necessary to protect human health or the environment.

L. SWAP Permit Transfer, Modification, and Revocation and Reissuance

- (1) A SWAP permit may be transferred, modified, or revoked and reissued for cause. A request filed by the permittee for a permit modification or revocation and reissuance or a notification of planned changes or anticipated noncompliance does not stay any permit condition.
- (2) To transfer a SWAP general permit coverage or SWAP individual permit:
 - (a) For SWAP general permit coverage:
 - (1) The current and proposed applicants shall fully execute a completed SWAP Request for Transfer or Name Change Form.
 - (2) The Department will review the proposed transfer in accordance with the procedures in Rule 1.1.5.C.(2) and, if approved, execute a minor modification of SWAP general permit coverage to implement the change.
 - (b) For a SWAP individual permit:
 - (1) The current and proposed permittees shall complete and submit a SWAP Request for Transfer or Name Change Form.
 - (2) The Department will review the proposed transfer in accordance with the procedures in Rule 1.1.5.C.(2) and, if approved, execute a minor modification of

the SWAP individual permit or revoke and reissue the SWAP individual permit to implement the change.

- (3) A request for transfer of a SWAP individual permit may be combined with an early application for permit renewal.
- (4) A permittee covered by a SWAP individual permit may submit a request for modification of the SWAP individual permit to the Department. When the Department receives a request for modification of a SWAP individual permit, it shall follow the public notice and comment procedures in Rule 1.4.4.G of this Subchapter, the public hearing procedures in Rule 1.4.4.I of this Subchapter, and the evidentiary hearing and appeal procedures in Rule 1.4.4.M of this Subchapter for the request for modification.
- (5) When the Department receives new information (e.g., inspects the project site, receives a request for modification or revocation and reissuance, or conducts a review of the permit file), it may determine whether or not one or more of the causes listed in this Subchapter for modification of SWAP general permit coverage or of a SWAP individual permit or revocation and reissuance of a SWAP individual permit exists. If cause exists, the Permit Board may modify SWAP general permit coverage or revoke and reissue the permit accordingly and may request an updated Consolidated SWAP Form if necessary.
- (6) If cause does not exist, the Permit Board shall not modify or revoke and reissue the SWAP general permit coverage or a SWAP individual permit, and he or she shall send the requester a brief written response giving a reason for the decision.
- (7) Causes for modification of SWAP general permit coverage or a SWAP individual permit. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees:
 - (a) Alterations. There are material and substantial alterations or additions to the activity or initial impacts to waters of the State which occurred after SWAP general permit coverage or a SWAP individual permit was issued that justify a modification of SWAP general permit coverage (e.g., a change in the permittee's compensatory mitigation plan) or the application of SWAP individual permit conditions that are different or absent in the existing permit.
 - (b) New Information. The Department has received new information. SWAP general permit coverage or SWAP individual permits may be modified during the permit term for this cause only if the information was not available at the time of issuance of SWAP general permit coverage or SWAP individual permit issuance and would have justified a modification of SWAP general permit coverage or the application of different SWAP individual permit conditions at the time of issuance.

- (c) New regulations. The Federal or State regulations on which SWAP general permit coverage or SWAP individual permit decisions were made or State regulations on which SWAP individual permit conditions were based have been changed by promulgation of amended regulations or by judicial decision after the permit was issued.
- (8) Minor modifications. Upon the consent of the permittee, the Department may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section. Minor modifications may only:
 - (a) Correct typographical errors;
 - (b) Implement a permittee name change for SWAP general permit coverage or on a SWAP individual permit; or
 - (c) Implement a transfer of a SWAP general permit coverage or of a SWAP individual permit in accordance with Rule 1.4.4.L.(2) of this Subchapter.

M. Evidentiary Hearings and Appeals

- (1) Any appeal of a SWAP permit action by the Permit Board shall be in the form of a request for a formal evidentiary hearing before the Permit Board, in accordance with and subject to Miss. Code Ann. § 49-17-29(4)(b). All such formal evidentiary hearings shall be transcribed by a court reporter, and the testimony given shall be under oath.
- (2) Upon completion of any formal evidentiary hearing convened pursuant to Rule 1.4.4.M.(1) above, the Permit Board shall make a final decision affirming, reversing, or modifying its earlier determination. Any person aggrieved by this final action of the Permit Board may perfect an appeal to the Chancery Court upon the record made at the formal hearing, pursuant to Miss. Code Ann. § 49-17-29(4)(c) and (5).