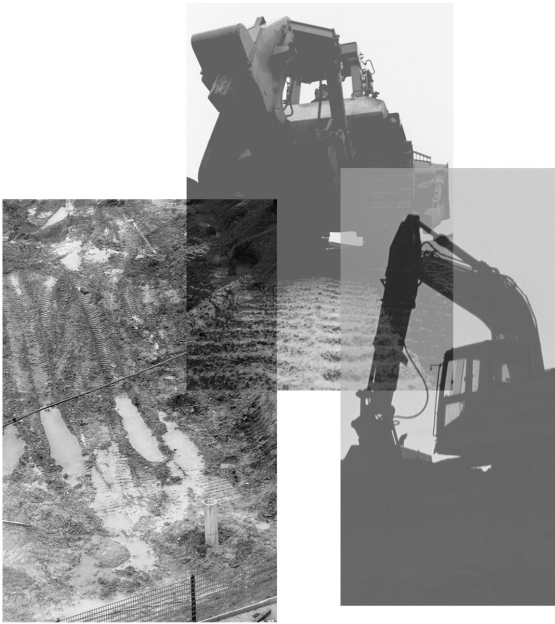


US EPA ARCHIVE DOCUMENT



III. Stormwater Permit Requirements for Construction Projects

Before beginning any construction project, you must consider the stormwater discharges from your site. These discharges are generated by runoff from or across disturbed land, vegetative areas, and impervious areas (e.g., paved streets, parking lots, and building rooftops) during rainfall and snow events. Stormwater discharges often contain pollutants in quantities that could adversely affect water quality. If your project disturbs one or more acres, or disturbs less than one acre but is part of a larger common plan of development or sale that will disturb one or more acres, you may need a stormwater permit. To get a permit, you must meet either the requirements of the EPA Construction General Permit (CGP), state-specific general stormwater permits, or site-specific stormwater permits.

Definitions

Construction Activities—Can include but is not limited to: grading; excavation; road building; construction of residential houses, office buildings, and industrial sites; demolition and other construction-related activities.

Land Disturbance—Exposed soil due to clearing, grading, or excavation activities.

Operator—The party (ies) that has: (1) operational control of construction project plans and specifications, including the ability to make modifications to those plans, or (2) day-to-day operational control of stormwater compliance activities.

Stormwater—Stormwater runoff, snow melt runoff, and surface runoff and drainage.

Waters of the United States—All waters currently used, or used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to ebb and flow of the tide. Waters of the United States include, but are not limited to, all interstate waters and intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, play lakes, or natural ponds. See 40 Code of Federal Regulations (CFR) Part 122.2 for the complete definition.

The EPA CGP is developed under the National Pollutant Discharge Elimination System (NPDES) program, which stems from the Clean Water Act (CWA). The regulatory text discussing this program (40 CFR Part 122) can be found at <http://ecfr.gpoaccess.gov> under "Title 40 - Protection of the Environment." Your state may have authority to issue permits for the NPDES program, rather than EPA. Section III-E of Part I of this guide identifies states that do not issue their own permits (i.e., where EPA is the permitting authority). Note that states' requirements may differ. If you are located in a state that stormwater permits, contact your state environmental department for further information. You can also search for your state requirements at the Construction Industry Compliance Assistance Center (<http://www.cicacenter.org/>).

Acronyms

BMP	—Best Management Practice
CFR	—Code of Federal Regulations
CGP	—Construction General Permit
CWA	—Clean Water Act
NOI	—Notice of Intent
NOT	—Notice of Termination
NPDES	—National Pollutant Discharge Elimination System
SWPPP	—Stormwater Pollution Prevention Plan

A. Is a Stormwater Permit Required for Your Construction Project?

To determine if your project requires a stormwater permit for construction activities, consider the following questions:

- Will your construction project disturb one or more acres of land?
- Will your construction project disturb less than one acre of land but is part of a larger common plan of development or sale that will disturb a total of one or more acres of land?
- Will your construction project disturb less than one acre of land but is designated by the NPDES permitting authority (state agency or EPA) as a regulated construction activity?
- Will stormwater from the construction site flow to a municipal separate storm sewer system (MS4) or a water of the United States?

For more information on the NPDES Stormwater Program go to:
<http://www.epa.gov/npdes/stormwater>

If you have answered "Yes" to any of the first three questions AND "Yes" to the fourth question, then you need a stormwater permit for your construction activities. **Please note that some municipalities also are required to implement stormwater control programs; therefore, check with your municipality for their own requirements.**

B. Are You Responsible for the Permit?

For EPA's CGP, you are responsible for getting a stormwater permit if you are considered to be an "operator" of the construction site. (If your site is in a location where the stormwater program is run by the state rather than EPA, keep in mind that the state authority may have different requirements regarding who is required to obtain permit coverage). Depending on your site and the relationship between all of the parties (e.g., owner, developer, general contractor, subcontractors), there can either be a single site operator or multiple operators.

For most construction projects, multiple parties are involved; several parties may meet the definition of operator and therefore be required to obtain coverage under EPA's CGP.

Are You Responsible for Getting a Permit?

EPA requires each party who is considered an "operator" to get permit coverage by submitting your application to EPA or the state authority. The owner, developer, general contractor, and architect could all be considered "operators" and may be required to obtain permit coverage. (Again, some states may have requirements different from EPA regarding permit coverage. To determine those requirements, you will need to consult the specific permit in the state you are operating. EPA's "Where you live" page contains links to state environmental agencies: <http://www.epa.gov/epahome/whereyoulive.htm>.) Prior to obtaining permit coverage, you will need to develop a stormwater pollution prevention plan (SWPPP).

Are You Responsible for Meeting Permit Requirements?

For EPA's CGP, you must obtain permit coverage if you meet either of the following criteria:

- *Do you have control of construction project plans and specifications, including the ability to make modifications to those plans and specifications?*
- *Do you have day-to-day control of those activities that are necessary to ensure compliance with a SWPPP for the site or other permit conditions (e.g., are you authorized to direct workers at a site to carry out activities required by the SWPPP or other permit conditions)?*

If you answer "Yes" to one or both of these questions, you are likely responsible for meeting the permit requirements.

After you obtain permit coverage, you must follow the requirements of the permit (e.g., maintaining soil and erosion controls, updating your SWPPP, conducting inspections, keeping records) as discussed in Section III-D of this guide. Typically, the contractor or subcontractor carries out activities to meet the permit requirements and notes any changes to the SWPPP.

C. What Are the Penalties?

The goal of the CWA is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." The CWA prohibits the discharge of pollu-

Case Studies

In May 12, 2004, the Department of Justice and EPA, along with the U.S. Attorney's office for the District of Delaware and the States of Tennessee, and Utah reached a CWA settlement for stormwater violations at Wal-Mart store construction sites across the country. Under this settlement, Wal-Mart agreed to pay a \$3.1 million civil penalty and conduct an environmental project costing \$250,000 that will protect sensitive wetlands or waterways in one of the affected states. This settlement also requires Wal-Mart to comply with stormwater permitting requirements and ensures rigorous oversight of its 150 contractors. Wal-Mart will be required to use qualified personnel to oversee construction, conduct training and frequent inspections, report to EPA and take quick corrective action.

If all parties involved (Wal-Mart store personnel and contractors) had discussed the stormwater requirements and followed through with meeting those requirements before starting construction at these sites, penalties for all parties could have been avoided.

tants by any person from a point source into waters of the United States, except in compliance with various sections of the Act. As defined by the CWA, "person" means any individual, corporation, partnership, association, state, municipality, commission, subdivision of a state, or interstate body.

EPA may impose administrative, civil, and criminal sanctions on a property owner and/or a contractor for failure to comply with the CWA. Administrative penalties can reach \$157,500 and civil penalties – imposed in a judicial proceeding – can reach \$32,500 per violation per day. Under certain circumstances, the CWA also authorizes criminal penalties. The CWA allows private citizens to bring civil actions against any person for any alleged violation of "an effluent standard or limitation." In a citizen suit, a court may issue an injunction and/or impose civil penalties, litigation costs, and attorney's fees. In addition to fines, you may need to pay legal fees and face project delays. If legal action is taken against your construction site, you also may be subject to increased scrutiny at all of your other construction sites by regulatory agencies and the public.

EPA has pursued enforcement actions against different parties involved in construction projects: owners, developers, general contractors, subcontractors, etc. For this reason, it is critical to define, before the start of the project, who will be responsible for complying with the stormwater requirements; assuming another party is "taking care of it" does not absolve you from any liability, and more than one party may be responsible.

While owners, contractors, and consulting engineers all may be found liable for discharging pollutants without a permit, the remedy imposed on each may vary, depending on their respective degrees of control, responsibility, or involvement in the illegal activity.

D. In General, What Are the Permit Requirements?

If you are located in an area requiring a federal permit, you must meet the EPA CGP requirements. If your location requires a state permit, you must meet the state's general permit requirements. In either case, you can apply for an individual permit in lieu of general permit coverage; however, the individual permit process can take significantly longer than the general permit process. One of the requirements of the EPA CGP is to assess the potential effects of your activities on federally listed endangered and threatened species and any designated critical habitat that exists on or near your site. More information on the Endangered Species Act (ESA) and its requirements is included in Section XI of Part I of this guide.

Requirements

The federal CGP, as well as most state general permits, has three major requirements. Because your site may have multiple responsible parties, before construction activities begin, the parties should decide, in writing, who will be held responsible for meeting each requirement. The requirements are:

1. Develop and implement a Stormwater Pollution Prevention Plan (SWPPP) — You must prepare this plan prior to submitting a Notice of Intent to EPA; it should include:
 - A site description identifying sources of pollution, including a site map;
 - A description of how you will prevent erosion, sediment, and other pollutants from contaminating stormwater;

- A description of how you will control stormwater flow from your site;
- Documentation supporting permit eligibility with regard to the Endangered Species Act;
- Documentation supporting permit eligibility with regard to local Total Maximum Daily Load (TMDL) requirements;
- Clearly outlined roles and responsibilities of different operators; and
- The protocol you will use to inspect your site.

You also must maintain records of the self-inspections performed and the times and locations of major land disturbance and stabilization activities. Make sure these records are legible and be prepared to show the SWPPP and records to government inspectors who may visit your site. Do not submit the SWPPP to EPA, but if you are in a state that administers this program, you may be required to submit the SWPPP to the state. Keep the SWPPP on site and revise it as needed. For more detail on SWPPP contents, read the CGP.

To complete an NOI online or to check the status of your NOI in the electronic database go to:
<http://cfpub.epa.gov/npdes/stormwater/enoi.cfm>. If you do not have Internet access call the NOI Processing Center toll free at: 1-866-352-7755

For a fact sheet on the CGP including detailed information on SWPPP requirements go to:
http://www.epa.gov/npdes/pubs/cgp2003_fs.pdf

2. Submit a Notice of Intent (NOI) — This notice triggers coverage under the general permit and includes general information and a certification that the activity will not impact endangered or threatened species or any historic places. You may begin work once your NOI is shown in “Active” status on the EPA eNOI web site. Note that your NOI will appear on the eNOI web site even if you submit the NOI in paper form. EPA holds your NOI for seven days before moving it to “Active” status; therefore, you must submit your NOI at least seven days (or longer if submitting it by postal mail) prior to beginning land disturbance (e.g., clearing, grading). Note that states may have different notice requirements (e.g., submission of a NOI 30 days prior to construction, approval prior to construction).
3. Submit a Notice of Termination (NOT) — You need to submit this to EPA within 30 days after one or more of the following:
 - Final stabilization has been achieved on all portions of the site for which the permittee is responsible,
 - Another operator/permittee assumes control over all areas of the site that have not achieved final stabilization,
 - Coverage has been obtained under an individual or alternative NPDES permit, or
 - For residential construction only, temporary stabilization has been achieved and the residence has been transferred to the homeowner.

Waivers

EPA may grant permit waivers for certain construction projects where it is highly unlikely that the activity will have negative impacts on water quality. These waivers can apply when operators certify to either one of two conditions:

1. Low predicted rainfall potential (i.e., project occurs during a negligible rainfall period); or
2. Controls are not necessary based on an EPA-established or -approved Total Maximum Daily Load (TMDL) that indicates stormwater will not impact water quality.

You can get more details on the waivers at EPA's NPDES web site (<http://cfpub.epa.gov/npdes/stormwater/waiver.cfm>).

Other Permits

Note that many states have a variety of construction permits that may apply to your project. Some of them, like erosion or sediment control permits, have components that are similar to those in the EPA-based stormwater permit. Keep in mind that complying with these other parallel or unrelated state programs does not release you from the need to get a stormwater permit from EPA or your state. Go to <http://www.cica-center.org/swp2.html> for a link to state permit programs.

E. Where Do You Get a Permit?

If your construction project is located in one of the following states or territories, you must get a federal stormwater permit from EPA:

- Alaska
- American Samoa
- Guam
- Idaho
- Massachusetts
- New Hampshire
- New Mexico
- Northern Mariana Islands
- Puerto Rico
- Trust Territories
- Tribal Lands (most but not all)
- Washington, D.C.

Additionally, there are several other instances where the CGP applies, including construction related to oil and gas activities in Texas; oil and gas and certain agricultural and silvicultural activities in Oklahoma; and construction of federal facilities in Colorado, Delaware, Vermont, and Washington. Refer to Attachment A of the stormwater checklist in Part II of this guide for more details.

For coverage under the federal CGP, you can submit your NOI and NOT to <http://cfpub.epa.gov/npdes/stormwater/enoi.cfm> or to the following addresses:

Regular U.S. Mail Delivery
 Stormwater Notice of Intent
 U.S. EPA - Ariel Rios Building
 Mail Code 4203M
 U.S. EPA
 1200 Pennsylvania Ave., NW
 Washington, DC 20460

Overnight/Express Mail Delivery
 Stormwater Notice of Intent
 U.S. EPA - East Building, Room 7420
 U.S. EPA
 1201 Constitution Ave., NW
 Washington, DC 20004

If your construction project is in one of the other 45 states or the U.S. Virgin Islands, you generally must get a stormwater permit from the state or territory (note that for certain activities in specific states, such as oil and gas construction activities in Texas, your project may require a federal permit). Construction projects in states authorized to administer the stormwater program may be subject to requirements that are different from the CGP requirements. **In all cases, check with your EPA region or state to determine the stormwater requirements that apply. You can find information on state-specific stormwater permit requirements and contact information for state environmental departments at the Construction Industry Compliance Assistance Center (<http://www.cicacenter.org>).**

F. What Questions Do You Need to Answer Before Starting Your Construction Project?

You can use the questions in Section II of Part I of this guide to start a discussion among all parties involved in the construction project and to assign tasks to ensure all environmental requirements are met. Each question has a space next to it to designate who will take the lead on each task. Note that designating a responsible party does not absolve you of your own obligation to meet environmental requirements or liability for failing to meet these requirements.

G. Where Can You Get Additional Information?

Many tools are available to assist you with the stormwater permit requirements, including the following:

- The Stormwater Self-Audit Checklist in Part II of this guide;
- The Construction Industry Compliance Assistance Center provides plain language explanations of environmental rules for the construction industry, including tools to identify state-specific requirements, permits, and contacts: <http://www.cicacenter.org/stormwater.html>;
- The National Environmental Compliance Assistance Clearinghouse contains a search engine to help you find compliance assistance tools, contacts, and EPA-sponsored programs: <http://www.epa.gov/clearinghouse/>;
- The Office of Wastewater Management, NPDES Stormwater Program provides information about the NPDES stormwater program: <http://www.epa.gov/npdes/stormwater>;

- The NPDES Construction Site Stormwater Runoff Control web page provides factsheets on a variety of stormwater best management practices (BMPs): http://cfpub.epa.gov/npdes/stormwater/menuof-bmps/con_site.cfm;
- Does Your Construction Site Need a Stormwater Permit? A Construction Site Operator's Guide to EPA's Stormwater Permit Program is a brochure that provides construction companies with a brief overview of EPA's CGP and its requirements: http://www.epa.gov/npdes/pubs/sw_cgp_brochure.pdf;
- Resource List for Stormwater Management Programs lists resources to help stormwater program managers start developing or improve their stormwater programs: http://www.epa.gov/npdes/pubs/sw_resource_list.pdf;
- The Stormwater Manager's Resource Center contains a series of factsheets for stormwater BMPs that include information on soil type, slope, and cost: <http://www.stormwatercenter.net/>; and
- EPA's "Where you live" page contains links to state environmental agencies: <http://www.epa.gov/epahome/wherelive.htm>.