

US EPA ARCHIVE DOCUMENT

REGULATING STORMWATER ACTIVITIES: CONSTRUCTION PERMITS

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SUMMARY

- Construction stormwater permit program – basic requirements
- EPA's 2008 construction general permit (CGP) reissuance



1987 WATER QUALITY ACT STORMWATER PROGRAM

- Phase I regulations: November 1990
- Phase II regulations: December 1999
- Phase I discharges:
 - Associated with industrial activity
 - Municipal separate storm sewer systems (MS4s) serving a population of 100,000 to 250,000 and MS4s serving a population of 250,000 or more

CLASSES OF FACILITIES THAT DISCHARGE STORM WATER ASSOCIATED WITH INDUSTRIAL ACTIVITY

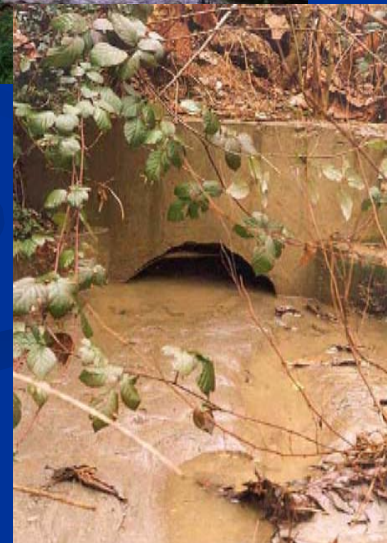
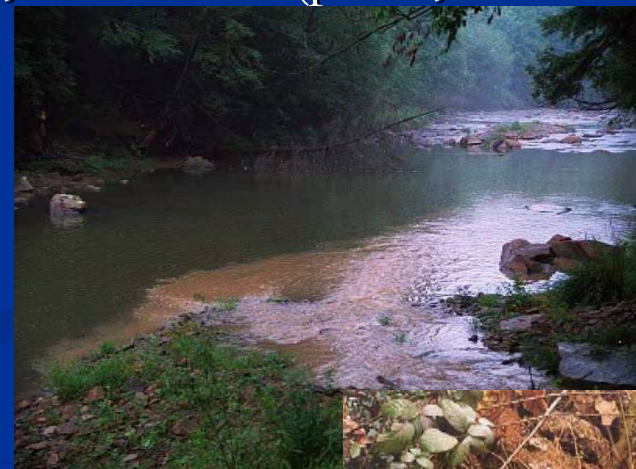
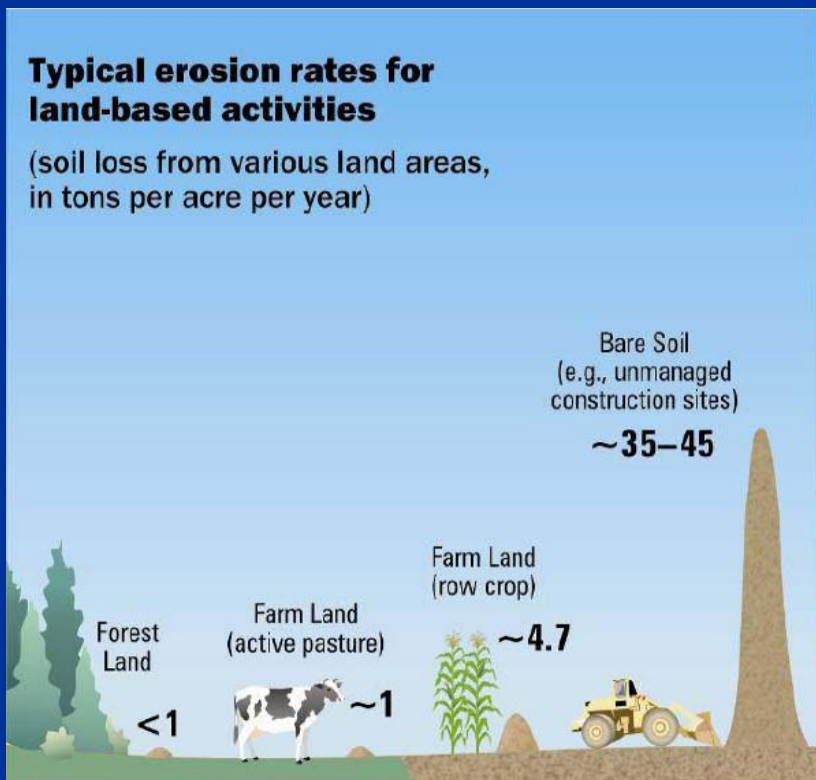
- Manufacturing facilities
- Mining and oil and gas
- Hazardous waste treatment, storage or disposal facilities
- Landfills
- Auto dismantlers and recycling facilities
- Steam electric power plants
- Transportation facilities (e.g. airports, trucking) with vehicle maintenance
- Sewage treatment plants
- **Construction activity disturbing 5 or more acres**

PHASE II CONSTRUCTION PERMIT REQUIREMENTS

- Permits for construction sites of 1 to 5 acres, including sites less than 1 acre that are part of a larger common plan of development which is larger than 1 acre.
- Permit waivers for small construction:
 - When the rainfall erosivity factor "R" in the revised universal soil loss equation is less than 5; or
 - Controls are not needed based on a total maximum daily load (TMDL) or equivalent analysis
- Online erosivity factor calculator at:
<http://cfpub.epa.gov/npdes/stormwater/LEW/lewCalculator.cfm>

ENVIRONMENTAL CONCERNS

- The primary pollutant of concern is sediment for construction
- Other pollutants include trash and debris, chemicals (paint, concrete washout) oil and grease, etc.



EPA 2008 CONSTRUCTION GENERAL PERMIT (CGP)

- Reissued on July 14, 2008 (73 FR 40338)
- Covers all Tribal lands in Region 9 (CA, NV and AZ) and most Tribal lands elsewhere
- What's new?
 - Two-year permit term with few changes from 2003 CGP
 - Notice of intent (NOI) requirements
 - Permit reorganized
 - Two new best management practices (BMPs)

WHY A TWO-YEAR PERMIT?

- Allows coordination with the timing of the new effluent guidelines for construction industry
- Effluent guidelines schedule:
 - Proposal – summer 2008
 - Final – as early as December 2008
 - Court deadline of December 2009 for final guidelines
- 2010 CGP would incorporate new guidelines

2008 CGP NOI REQUIREMENTS

- New NOI is not required for operators of ongoing construction projects covered by the 2003 CGP; these operators continue to be covered by the 2003 CGP.
- New NOIs only required for:
 - New projects
 - Ongoing projects not covered by the 2003 CGP
 - New operators of ongoing projects
- Use of eNOI encouraged:
(<http://cfpub.epa.gov/npdes/stormwater/enoi.cfm>)
 - eNOI guide on the website
- 2008 CGP retains 7-day waiting period before coverage is active
- Small change in NOI form – identify NOI preparer

NOI – WHO APPLIES?

- All entities which meet the definition of an “operator.”
 - Parties with control over construction plans and specifications; and
 - Parties with day-to-day operational control of activities at a construction site necessary to comply with the permit (e.g., the general contractor)

CGP REORGANIZATION

- Permit reorganized to clarify what are effluent limits, inspection requirements and stormwater pollution prevention (SWPPP) documentation requirements
- 2008 CGP organization:
 - Part 3 – Effluent limits
 - Part 4 – Inspections
 - Part 5 – SWPPP
- 2003 CGP organization:
 - Part 3 – SWPPP
 - Part 4 – Special conditions

PUBLIC REVIEW OF SWPPPs/ STORMWATER MANAGEMENT PLANS (SWMPs)

- Ninth Circuit decision of January 14, 2003 regarding small MS4s:
 - Need state review of NOIs which include SWMPs
 - Need to provide for public hearings for NOIs/SWMPs
 - Need to provide for public availability of NOIs/SWMPs
- Second Circuit decision of February 28, 2005 regarding confined animal feeding operations (CAFOs)



2008 CGP - TWO NEW BMPs

- Part 3.6 – Must remove trapped sediment from a silt fence before the deposit reaches 50% of the above-ground fence height
- Part 3.7 – Must train employees and subcontractors as necessary to make them aware of applicable control measures
- New BMPs are in response to public comments



TMDL REQUIREMENTS

- No approved TMDLs on Region 9 Tribal lands at the moment, but this may change in the future
- TMDL consistency requirements in the CGP:
 - Determine if there are applicable TMDLs for your site. (www.epa.gov/NPDES/stormwater/cgp)
 - Comply with applicable TMDL requirements for your construction site, or construction sites in general, if any.
 - If no applicable TMDL requirements for construction sites then comply with permit effluent limits in Part 3
- NOI requires certification of consistency with TMDLs
- SWPPP requires documentation of consistency

ENDANGERED SPECIES ACT (ESA) REQUIREMENTS

- NOI requires certification of compliance with ESA
- Six options are provided, e.g.,
 - No listed species present
 - Not likely to adversely effect
 - Consultation with Fish and Wildlife
- Appendix C provides ESA review procedures
- SWPPP requires documentation of ESA compliance



CONSTRUCTION AT OIL AND GAS SITES

- 2005 Energy Act (construction stormwater permit exemption for most oil and gas exploration, production, treatment, processing and transmission facilities)
- Final EPA regulations of June 12, 2006
- November 2006 NRDC lawsuit
- Ninth Circuit opinion of May 2008 vacating June 2006 regulations
- EPA appeal of May 2008 decision so the June 2006 regulations are still in effect for now



EPA SWPPP RESOURCES

- EPA SWPPP Guide
- SWPPP Template (MS Word)
- Self-Inspection Form
- Example SWPPPs for two hypothetical projects
 - Residential
 - Commercial
- http://cfpub.epa.gov/npdes/home.cfm?program_id=6
- <http://www.cicacenter.org/> (compliance assistance website for construction)

