



# Fact Sheet

Commonwealth of Pennsylvania • Department of Environmental Protection

## NPDES PERMITS FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES

### BACKGROUND

In 1990, the US Environmental Protection Agency (EPA) promulgated federal National Pollutant Discharge Elimination System (NPDES) regulations for stormwater discharges under the Clean Water Act. These regulations, among other discharge requirements, established the federal Phase I NPDES stormwater discharge program which requires permit coverage for all operators of large construction activities proposing to disturb five or more acres of land. Effective October 10, 1992, operators of large construction activities required NPDES permit coverage in Pennsylvania for such activities. In December 1999, EPA promulgated NPDES Phase II regulations that require permit coverage for small construction activities that disturb one to less than five acres, which result in a point source discharge to waters of the United States. Effective December 7, 2002, the Pennsylvania Department of Environmental Protection (DEP) integrated the federal Phase II NPDES requirements into the existing Pennsylvania Phase I NPDES permit for stormwater discharges associated with construction activities (NPDES Construction Permit). An important distinction between Phase I and II is that the small construction activities only require permit coverage when the activity disturbs one to less than five acres and will result in a point source discharge to surface waters of the Commonwealth.

### NPDES CONSTRUCTION PROGRAM ADMINISTRATION

The DEP primarily administers the NPDES Construction Permit Program through delegation agreements with the county conservation districts (Districts). Districts process and authorize the permit coverage, conduct site inspections, respond to complaints, and in certain circumstances, conduct enforcement actions. If a district is not delegated, the appropriate DEP Regional Office administers the program.

### NPDES CONSTRUCTION PERMIT REQUIREMENTS

Applicable Pennsylvania state regulations found at 25 Pa. Code include Chapter 92, National Pollutant Discharge Elimination System; Chapter 93, Water Quality Standards; and Chapter 102, Erosion and Sediment Control. These chapters provide the primary regulatory authority for implementing the federal NPDES requirements within the Commonwealth. Chapter 92 regulations provide for the development and use of individual and general NPDES permits, applications and Notice of Intent (NOI), and describes the public participation and other requirements. Chapter 93 regulations identify the water quality standards that must be met, including those for special protection waters. Chapter 102 regulations provide the requirements for the development and implementation of Erosion and Sediment Control (E&S) Plans for earth disturbance activities.

For purposes of the Phase II NPDES Construction Permit the following definitions apply:

Point Source: *Any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stack, CAFO, landfill leachate collection system, or vessel or floating craft, from which pollutants are or may be discharged.*

Surface Waters of the Commonwealth: *Any and all rivers, streams, creeks, rivulets, impoundments, ditches, watercourses, storm sewers, lakes, dammed water, ponds, springs, wetlands and all other bodies or channels of conveyance of surface water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.*

A point source discharge to surface waters of the Commonwealth is a distinct conveyance used to transport stormwater from a construction site to a surface water. Some examples where NPDES Construction Permit coverage will generally be required include, but are not limited to, sediment trap outfalls and spillways, sediment basin outfalls and spillways, conveyance channels, ditches, stormwater systems, pipes, etc., having a discharge to surface waters.

### NPDES GENERAL PERMITS – PAG-2

This NPDES general permit can be used for most construction activities that require authorization under either Phase I or Phase II. Some activities that are not eligible for coverage under the general permit include:

1. Activities in special protection watersheds;
2. Activities prohibited from coverage under 25 Pa. Code Chapter 92; and
3. Activities otherwise listed in the PAG-2 General Permit as ineligible.

The NOI for a NPDES general permit should be submitted to the district at least 30 days prior to the anticipated start date of a project to ensure adequate time for reviewing and processing. Processing time for general permits is largely dependant upon the complexity and thoroughness of the application and erosion and sediment control plan. For large or complex projects, it is recommended that the application be submitted several months before the anticipated starting date.

### NPDES INDIVIDUAL PERMITS

Operators of earth disturbance activities that do not qualify for a general permit may apply for an individual NPDES permit for Stormwater Discharges Associated with Construction Activities. An individual permit application and accompanying documents must be submitted to the appropriate district or DEP Regional Office, reviewed and approved before earth disturbance activities begin. The DEP Regional Office will make the final determination to issue or deny the permit. To ensure adequate processing time and compliance with the required public notice process and program coordination, applicants should allow at least 90-120 days for the processing of an individual permit application.

The department recommends that a preapplication meeting be held between the applicant, consultant, district and DEP staff for complex projects to ensure quality plan submittals.

All projects must demonstrate that the BMPs utilized will protect and maintain water quality designated and existing uses in accordance with the antidegradation requirements of Chapter 93. The E&S Plan must include measures that will

promote the maintenance and protection of existing water quality and its uses.

#### PERMIT COVERAGE AND APPROVALS

Persons conducting construction activities may not begin earth disturbance activities until after they receive their notice of permit coverage under the PAG-2 or the individual permit.

#### EROSION AND SEDIMENT CONTROL (E&S) PLANS

NPDES Construction Permits emphasize pollution prevention through the use of erosion and sediment control best management practices (BMPs). Guidance for preparing an E&S plan, as well as BMP specifications that meet the Chapter 102 requirements, can be found in the department's "Erosion and Sediment Pollution Control Program Manual" 363-2134-008). The 25 Pa. Code Chapter 102 regulations also identify 11 components that each E&S plan must contain. Since this is a BMP driven program, specific numeric effluent limits are not included in the permit and water quality sampling is not required.

#### POST CONSTRUCTION STORMWATER MANAGEMENT (PCSM) PLANS

A PCSM plan must be prepared and implemented to identify the BMPs to be installed to manage and treat the stormwater discharge protecting water quality after construction activities are terminated. Such BMPs should be designed to maximize infiltration technologies, eliminate (where possible) or minimize point source discharges to surface waters, preserve the integrity of stream channels, and protect the physical, biological and chemical qualities of the receiving surface water. Some counties have adopted Act 167 Stormwater Management Plans that incorporate measures to protect and maintain existing uses and to protect and maintain water quality in order to maintain those existing uses. Some municipalities control stormwater discharges through a Municipal Separate Storm Sewer System (MS4) NPDES Permit. In these areas where such plans exist and are supported by local ordinances, the applicant must design the PCSM plan in accordance with these ordinances. Permittees and co-permittees are responsible for proper installation of the PCSM plan BMPs prior to the submission of the Notice of Termination of this Permit. For more information on PCSM plans please refer to the DEP Comprehensive Stormwater Management Policy (392-0300-002). The department will presume that permittees utilizing the PCSM plan approach outlined in the NOI at Section E, demonstrate that the post construction BMPs utilized will protect and maintain water quality designated and existing uses in accordance with the antidegradation requirements of Chapter 93.

#### PREPAREDNESS, PREVENTION, & CONTINGENCY (PPC) PLANS

If the potential exists for causing accidental pollution of air, land, or water, or for causing endangerment of public health and safety through accidental release of toxic, hazardous, or other polluting materials, the permittee or co-permittee must develop a PPC plan. The PPC plan shall be developed in accordance with department regulations at 25 Pa. Code Section 91.33 and 91.34. The PPC plan shall identify areas which may include, but are not limited to, waste management areas, raw material storage areas, temporary and permanent spoils storage areas, maintenance areas, and any other areas that may have the potential to cause non-compliance with the terms and conditions of this permit due to the storage, handling, or disposal of any toxic or hazardous substances such as oil, gasoline, pesticides, herbicides, solvents, etc.

BMPs shall be developed and implemented for each identified area. The PPC plan shall be maintained on site at all times and shall be made available for review at the department's or authorized county conservation district's request. For more information on PPC plans please refer to the DEP technical guidance document, "Guidelines for the Development and Implementation of Environmental Emergency Response Plans" (400-2200-001).

#### WHO IS THE RESPONSIBLE PARTY?

The operator of the construction activity is responsible for obtaining the NPDES stormwater permit and is the party or parties that either individually or collectively meet the following criteria:

1. Has oversight responsibility of earth disturbance activity on a project site or a portion thereof and has the ability to make modifications to the E&S plan or site specifications;  
and/or
2. Has day-to-day operational control over earth disturbance activity on a project site or a portion thereof to ensure compliance with the E&S plan.

Operators can include, but are not limited to: the landowner, the developer, general contractor or individual contractor.

Operational control can be shared or transferred between the landowner, developer and contractor. DEP has developed "Transferee/Co-Permittee" forms to allow for the flexibility of sharing the permit or the transfer of permit responsibilities.

DEP has also developed a "Notice of Termination (NOT)" form to be used by permittees or co-permittees when:

1. The operator is no longer responsible for the permitted activity;  
or
2. Stormwater discharges from the construction activity at the site have been terminated, and the site has been permanently stabilized.

#### FOR MORE INFORMATION, PLEASE CONTACT:

Your local county conservation district office, or the DEP Soils and Waterways Section at one of the following regional offices:

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| ● Southcentral Region<br>909 Elmerton Avenue<br>Harrisburg, PA 17110<br>717-705-4707     | ● Northeast Region<br>2 Public Square<br>Wilkes-Barre, PA 18711<br>717-826-2511    |
| ● Northcentral Region<br>208 West Third Street<br>Williamsport, PA 17701<br>717-327-3574 | ● Southwest Region<br>400 Waterfront Drive<br>Pittsburgh, PA 15222<br>412-442-4000 |
| ● Southeast Region<br>2 East Main Street<br>Norristown, PA 19401<br>484-250-5970         | ● Northwest Region<br>230 Chestnut Street<br>Meadville, PA 16335<br>814-332-6942   |

or

Department of Environmental Protection  
Bureau of Watershed Management  
Division of Waterways, Wetlands and Stormwater Management  
P.O. Box 8775  
Harrisburg, PA 17105-8775  
717-787-6827

For more information, visit DEP's website at [www.state.pa.us](http://www.state.pa.us), Keyword: "DEP Stormwater."