

## **NPDES PERMITS FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES**

### **BACKGROUND**

In 1990, the U.S. 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 required permit coverage for all operators of large construction activities proposing to disturb five or more acres of land. Effective Oct. 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 November 19, 2010, the Pennsylvania Department of Environmental Protection (DEP) requires that a person proposing an earth disturbance activity that involves equal to or greater than one acre of earth disturbance, or an earth disturbance on any portion, part or during any stage of a larger common plan of development or sale that involves equal to or greater than one acre of earth disturbance, shall obtain an individual NPDES permit or coverage under a general NPDES Permit for Stormwater Discharge Associated with Construction Activities prior to commencing the earth disturbance activity.

### **NPDES CONSTRUCTION PROGRAM ADMINISTRATION**

The DEP primarily administers the NPDES Construction Permit Program through delegation agreements with the 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 92a, 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 state. Chapter 92a regulations provide for the development and use of individual and general NPDES permits, applications and Notice of Intent (NOI), and they describe 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 and Post-Construction Stormwater Management (PCSM) Plans for earth disturbance activities.

### **NPDES GENERAL PERMITS – PAG-02**

This NPDES general permit can be used for most construction activities that require authorization. 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 92a, and
3. Activities otherwise listed in the PAG-02 General Permit as ineligible.

The NOI for a NPDES general permit should be submitted to the district at least 180 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 dependent upon the complexity and thoroughness of the application and E&S 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, to be 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 submit their application no later than 180 days prior to the commencement of earth disturbance activities.

DEP recommends that a preapplication meeting be held between the applicant, consultant, district and DEP staff for complex projects to ensure quality plan submittals. A pre-construction meeting is required unless waived by DEP.

All projects must demonstrate that the Best Management Practices (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-02 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 BMPs. Guidance for preparing an E&S plan, as well as BMP specifications that meet the Chapter 102 requirements, can be found in DEP's "Erosion and Sediment Pollution Control Program Manual" (363-2134-008). The 25 Pa. Code Chapter 102 regulations identify 15 components that each E&S plan must contain. Since this is a BMP-driven program, narrative-based effluent limits rather than specific numeric effluent limits are included in the permit.

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

A PCSM plan must be prepared and implemented to identify the BMPs that will be installed to manage and treat the stormwater discharge to protect water quality after construction activities are terminated. Such BMPs should be designed to meet the requirements contained in Chapter 102. Such requirements include maximizing volume control technologies, eliminating (where possible) or minimizing point source discharges to surface waters, preserving the integrity of stream channels, and protecting 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 areas where such plans exist and are supported by local ordinances, the applicant must also 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 (NOT) of this permit. For more information on PCSM plans, refer to the Pennsylvania Stormwater Best Management Practices Manual (363-0300-002).

## **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 DEP 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 DEP's or authorized 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 an NOT form that must be used by permittees or co-permittees when:

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

## **FOR MORE INFORMATION, PLEASE CONTACT:**

The local county conservation district office, or the DEP Waterways Engineering and Wetlands Program at one of the following regional offices:

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| ● Northwest Region<br>230 Chestnut St.<br>Meadville, PA 16335-3481<br>814-332-6984      | ● Northcentral Region<br>208 West Third St.<br>Williamsport, PA 17701-6448<br>570-327-0529 | ● Northeast Region<br>2 Public Square<br>Wilkes-Barre, PA 18701-1915<br>570-826-2511 |
| ● Southwest Region<br>400 Waterfront Drive<br>Pittsburgh, PA 15222-4745<br>412-442-4315 | ● Southcentral Region<br>909 Elmerton Ave.<br>Harrisburg, PA 17110-8200<br>717-705-4707    | ● Southeast Region<br>2 East Main St.<br>Norristown, PA 19401-4915<br>484-250-5970   |

or

Department of Environmental Protection, Bureau of Waterways Engineering and Wetlands, Division of Wetlands, Encroachments and Training, P.O. Box 8460, Harrisburg, PA 17105-8460, 717-787-3411.

For more information, visit [www.dep.state.pa.us](http://www.dep.state.pa.us), keyword: NPDES Construction.