

Frequently Asked Questions Concerning Storm Water Permitting At Construction Sites

Introduction:

This document is meant as a tool for individuals involved with construction activities on DoD installations. The questions and answers are based on the Federal Construction General Permit issued by the Environmental Protection Agency (EPA). The EPA has delegated authority for administering construction site storm water permitting to many of the states. The state programs must be at least as stringent as the federal requirements, so ensure you supplement this information with installation specific requirements. Installations or individuals can modify this tool to their specific circumstance and procedure.

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Q 1. Am I required to get a permit for my construction site?

A 1. Under the National Pollution Discharge Elimination System (NPDES) permitting program authorized by the Clean Water Act (CWA), you are required to obtain a permit for each construction site that:

1. Disturbs more than one acre and discharges storm water to surface waters or storm sewers that discharge to water of the United States.

2. Disturbs less than one acre, but is part of a larger "common plan" of development. A common plan of development can be considered several small, unrelated projects taking place in one area of the installation (road work and utility upgrades) or can be one project taking place over a semi-dispersed area (landscaping projects at several locations).

If you have questions if your project is part of a common plan of development contact your installation Water Program Manager for assistance.

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Q 2. Who issues the permit?

A 2. The first step in obtaining a permit is to determine the appropriate permitting/regulatory agency for your installation.

Federal: The Federal EPA has the primary responsibility for implementing and enforcing the CWA within the United States. The EPA can delegate regulatory authority for administering the CWA to individual states if the state program is at least as stringent as the federal.

States: Most states do have regulatory authority for administering the CWA in their state.

Local: Some states have even delegated construction site storm water permitting to the local level such certain locations in the San Antonio, Texas region. Your installation Water Program Manager can provide additional information concerning the construction site storm water permitting agency for your installation.

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Q 3. What types of permits are available?

A 3. Once you determine your permitting agency, you must determine the permit requirements for your project. Some permitting authorities have special requirements and permits for small construction activities (sites that disturb more than one acre but less than 5 acres) and large construction activities (greater than 5 acres). The Federal Construction General Permit is the for both small and large construction activities. Most regulatory agencies have developed a general permit for construction activities.

A general permit is the easiest for both the permit requester and regulatory agency because it applies to a wide range of individuals. Under a general permit, the regulatory agency develops a standard permit that applies to most situation and operators apply for coverage under that permit.

An individual permit is customized to the operation, facility, and activities of the permit holder. Individual permits take a long time to develop and are usually much more restrictive than a general permit.

If your project does not qualify for coverage under a general permit (your project does not meet the standards for which the permit was created), you must obtain an individual permit. Your project will almost always qualify for coverage under a general permit.

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Q 4. How do I obtain permit coverage under a General Construction permit?

A 4. For general permits, one permit is issued that covers a wide range of situations and you apply for coverage under that permit. To apply for coverage you must complete a Notice of Intent (NOI) form (or equivalent used by your regulatory agency) and submit it in accordance with the permit requirements.

Under the Federal Construction General Permit, the NOI must be complete and submitted to the EPA no later than 7 days prior to construction beginning. Other regulatory agencies have different submittal requirements such as Ohio, which requires NOI submission 21 days prior to construction start. The NOI contains information concerning your specific construction project to ensure that you will qualify for coverage under the general permit.

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Q 5. Who must sign the Notice of Intent?

A 5. The signatory requirements for the Notice of Intent are spelled out in the permit. The Federal Construction General Permit requires one of the following individuals sign the NOI

1. For a corporation: By a responsible corporate officer. For the purpose of this Part, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

2. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or

3. For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this Part, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator of EPA).

Under these definitions, installation commanders are required to sign the NOI. You must also ensure that construction contractors have the appropriate level of signature for permits. Under the Federal permit, signatory requirement/authority for NOIs cannot be delegated down to lower levels. Some states and local permitting authorities have slightly different signatory requirements and some do allow for delegation, but that is not typical.

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Q 6. Who must file a Notice of Intent (NOI) and obtain permit coverage?

A 6. Under the Federal Construction General Permit, you must submit an NOI and obtain permit coverage for your construction project if you are an operator at the construction site. You are an operator if you meet **EITHER** of the following two definitions:

1. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
2. The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a SWPPP for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions). This definition is provided to inform permittees of EPA's interpretation of how the regulatory definitions of "owner or operator" and "facility or activity" are applied to discharges of storm water associated with construction activity.

Under these definitions, more than one entity maybe required to get a permit for a single project. Under the first definition, the installation will need to get permit coverage because they control the specifications and modifications as well as oversee the construction project.

In cases where an outside party (contractor) is performing the construction project, that party would meet the second definition and be required to get their own permit coverage for the same project.

When dealing with MILCON projects where your installation is using the Army Corps of Engineers or Navy Facilities Command as your construction agent, they will meet the definition under Item 1 and be required to obtain the permit. Some state and local regulatory agencies require the installation to also obtain the permit because they are the owner of the site, so you could have three permits issued for one MILCON project.

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Q 7. How will I know when my NOI has been approved and I have permit coverage for my project?

A 7. The regulatory agency determines the approval method for permit coverage. This information is usually contained in the permit itself.

Under the Federal Construction General Permit, you have a 7 day waiting period once you submit your NOI for the EPA, US Fish and Wildlife, and others to review your NOI and provide feedback. If by the end of 7 days, the EPA has not declined your NOI, you are granted permit coverage. To say this another way, if the EPA does not tell you NO within 7 days, your permit application (NOI) is approved. It is important to document when your NOI was submitted to EPA. When applying for coverage under the Federal Construction General Permit, you can use the EPA's e-NOI submittal system. This system allows you to electronically generate, sign and submit your NOI to the EPA. This electronic system monitors your submission date as well as when permit coverage is granted. The e-NOI system can be accessed at the following web-site: <http://cfpub.epa.gov/npdes/stormwater/enoi.cfm>. If you submit a hard copy of your NOI be sure to send certified mail or get some confirmation from the regulatory agency that they received the NOI.

Some state and local regulatory agencies have different requirements. Ohio for instance will send you a letter of approval for your NOI. You must have this letter of approval prior to commencement of construction activities. Other states require notice 48 hours prior to starting the construction project. Review your permit to ensure that you meet the specific submission and approval requirements for your regulatory agency.

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Q 8. What are the typical permit requirements for my construction site?

A 8. Generally, storm water permits for construction sites require you to identify potential storm water pollutants on your site and how you will manage these pollutant sources to reduce or eliminate their movement to a receiving waterbody.

The measures taken at your site to protect the storm water are called Best Management Practices. The primary contaminant of concern at construction site is sediment, but there are other contaminants you must consider such as fuel, paint, solvents, etc. Permits typically require the development of a site-specific Storm water Pollution Prevention Plan (SWPPP).

The SWPPP identifies site characteristics, sources of stormwater pollutants, BMPs that will be implemented on site, inspection and maintenance requirements, and any other site activities required to meet the permit conditions. The SWPPP is how the site is going to comply with the permit.

Typically permit compliance is measured by compliance with the SWPPP, if you violate the SWPPP, you are in violation of your permit and subject to Notices of Violation.

While most regulatory agencies require a SWPPP some permits refer to these plans by different names such as Sediment and Erosion Control Plan or Storm water Management Plan. The underlying premise is still the same, identify pollutant sources and put measures in place to control those sources.

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Q 9. What information is typically contained in the site Storm water Pollution Prevention Plan (SWPPP)?

A 9. The content of the SWPPP generally follows the following outline:

1. Site and Activity Description – This section details the who, what, when and where information about the construction site including maps, sequence of activities, flow of storm water, and receiving waterbody.
2. Controls to Reduce Pollutants – This section details the potential sources of pollutants on site and Best Management Practices that will be used to control these pollutants. Since sediment is one of the contaminants of concern at the site, this section will detail major grading and clearing activities that will take place as well as sediment and erosion controls to minimize sediment transmission.
3. Maintenance of Controls (BMPs) – This section will explain how you will operate and maintain your site BMPs. You have a responsibility, and permit requirement, to properly operate and maintain your BMPs. An example would be repairing silt fence or removing sediment collected in a sediment trap.
4. Documentation of eligibility related to Endangered Species Act (ESA) and Total Maximum Daily Loads (TMDLs) – This section discusses how your project relates to

ESA and TMDLs. Your SWPPP must document your activities related to endangered species. If there are no endangered species or habitat in your project area, you must document that in your SWPPP. If you have the potential to impact an endangered species or habitat, you must document the concerns; consultation with US Fish and Wildlife, and controls you will utilize to protect the species, if any. If you are discharging to a waterbody that has an established TMDL, you may have to meet certain provisions to comply with the TMDL. Just like endangered species, you must document even if you don't have a TMDL concern. If your storm water is discharging to a waterbody with a TMDL, you must determine and document how you are going to meet those TMDL requirements at your site.

5. Inspections – This section details how you will meet your permit required inspections including who will perform the inspection and frequency.

6. Plan updates – Any changes or modifications to the plan based on changes to the project or changes to the plan based on inspection results.

7. Signature, Plan Review, and Making Plans Available – All SWPPP must be signed and certified, made available to the regulatory agency and the public, and available on-site.

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Q 10. What are the typical inspection requirements?

A 10. Inspection of the site is a condition of all storm water permits. Inspection requirements will be detailed in the permit.

The Storm water Pollution Prevention Plan will detail how inspections will be accomplished on-site. Under the Federal Construction General Permit, inspections are accomplished in one of two ways:

1. At least once every 7 calendar days, or
2. At least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.

It is up to the operator of the site to determine which option to use. Inspection frequency can be reduced if the site is temporary stabilized, runoff is unlikely due to winter conditions, or construction is taking place during seasonal arid periods. Ensure you look at your permit requirements for inspection frequency as some states have different requirements than the Federal permit.

Inspections must include all areas with exposed soil, BMPs, site entrances/exits, storage areas exposed to storm water, and discharge locations. These inspections must assess the operation and effectiveness of the BMP as well as evidence of contaminants being discharged to a receiving waterbody.

There are special conditions for linear construction projects, such as utility line installation, where inspections can be performed at representative locations of the project rather than inspecting every area. See your permit for specific requirements. All inspections must be documented to show compliance with permit and SWPPP conditions.

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Q 11. Who performs the inspections?

A 11. Inspections must be performed by a “qualified individual.” The term “qualified individual” can vary by regulatory jurisdiction.

Under the Federal permit, qualified individual means “a person knowledgeable in the principles and practices of erosion and sediment controls who possesses the skills to assess conditions at the construction site that could impact storm water quality and to assess the effectiveness of any sediment and erosion control measures.”

Some states such as Florida and Virginia have more restrictive requirements on inspectors. Some states require the inspectors to be certified. You must ensure the inspectors at your site meet the qualifications of your regulatory agency.

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Q 12. Who signs and certifies the Storm water Pollution Prevention Plan (SWPPP)?

A 12. Unlike NOIs in which there is typically no delegation authority, SWPPPs and associated reports can be signed and certified by a duly authorized individual of the person who signed the NOI. This delegation must meet the following criteria:

1. Made in writing by the person who signed the NOI
2. The authorization specifies an individual or position
3. A copy of the authorization is kept in the SWPPP and submitted to the regulatory agency as appropriate.

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Q 13. What actions are required when I have completed my construction project?

A 13. Once you have completed your construction activity, you must complete final stabilization at the site. Final stabilization conditions will be defined in your permit. The most commonly applied definition is the following:

All soil disturbing activities have been completed and either

- a. Vegetative cover with a density of 70% of native background cover has been established on all unpaved areas
- b. Equivalent permanent stabilization measure (such as rip rap or geotextiles) have been employed

There are permit provisions for arid environments or places where native vegetation coverage is sparse so review your permit for applicability to your site.

Once the site, or all portions of the site for which you have control, meets the definition of "final stabilization" you must submit a Notice of Termination (NOT). Just like the NOI in which you apply for permit coverage, the NOT ends permit coverage for your site.

There are timelines associated with filing your NOT so review your regulatory requirement. Under the Federal Construction General Permit, the NOT must be filed within 30 days of final stabilization.

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Q 14. Who must sign the Notice of Termination (NOT)?

A 14. Just like the NOI, the NOT must be signed by one of the following individuals:

1. For a corporation: By a responsible corporate officer. For the purpose of this Part, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
2. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or
3. For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this Part, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator of EPA).

Under the Federal permit, the signatory requirement can not be delegated to another individual, but some state and local regulatory agencies may allow for delegation.

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Q 15. What are the most common problems at installation construction sites?

- A 15.
1. NOI not submitted prior to the start of construction activities.
 2. No storm water permit coverage
 3. No site specific storm water pollution prevention plan (or regulatory equivalent)
 4. Lack of proper Best Management Practices
 5. Un-qualified personnel performing inspections
 6. Not performing or documenting inspections
 7. SWPPP Omits other pollutants of concern on the at the site such as fuel tanks, solvents, oils, etc.
 8. Incorrect NOI/NOT signature

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