

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM GENERAL
PERMIT FOR STORMWATER DISCHARGES FROM CONSTRUCTION ACTIVITY
FACT SHEET

NPDES Construction General Permit (CGP)
State Permit Number: WPCC 3082/20
NPDES CGP Permit No. DE 0051268

Applicant(s) & Activity Description

The Delaware Department of Natural Resources and Environmental Control (herein after the Department) has reached a final determination to issue the National Pollutant Discharge Elimination System (NPDES) Construction General Permit (CGP) for stormwater discharges from construction activity. The Department intends to issue the CGP with an effective date of March 11, 2021, and a term of five (5) years.

Areas that engage in construction activities that result in land disturbance equal to or greater than one (1.0) acre that discharge stormwater to Waters of the State are to be covered under the NPDES CGP. This CGP will provide permit coverage for a broad range of construction projects that meet the minimum land disturbance threshold as defined by the Federal CGP.

This CGP covers all new and existing stormwater discharges that are composed in whole or in part of discharges from construction activity as defined by 40 CFR §122.26 and 40 CFR Part 450 as well as State Requirements described under 7 **Del.C.** Chapter 60, Environmental Control, 7 Del. Admin. C. 7201 subsection 9.2, *Regulations Governing the Control of Water Pollution, Part 2 – Special Conditions for Stormwater Discharges from Construction Activities*, and 7 Del.C. Chapter 40, Erosion and Sedimentation Control, 7 DE Admin. Code 5101, *Sediment and Stormwater Regulations*.

Purpose/Authority

The purpose of the Federal NPDES stormwater program is to control pollution generated from runoff associated with industrial activity, including construction, and municipal separate storm sewer systems. An individual or general permit is required for all construction activity in the State of Delaware with a planned total disturbance of one (1.0) acre or greater as well as activities that are less than one acre but part of a larger common plan of development or sale where the total disturbance is greater than one acre.

Conditions of the CGP include compliance with the requirements of the approved sediment and stormwater management plan as well as visual monitoring/inspections, recordkeeping, and

reporting requirements. This CGP authorizes stormwater discharges from construction activities with land disturbance equal to or greater than one (1.0) acre. Sediment is the primary pollutant to be controlled from construction sites. The volume of stormwater discharge from construction sites varies and will depend on the size of the site, weather conditions, as well as other factors.

Statutory authority for permit issuance of Delaware's NPDES CGP is provided through Section 402 of the Federal Clean Water Act (CWA) as amended, and 7 **Del.C.** Chapter 60, Section 6003 and the MOA authorizing Delaware to implement the NPDES program. This CGP is a State permit that is subject to both Federal and State Regulations. The CWA and federal regulations provide the Federal permit requirements.

The CGP shall be administered in accordance with the following State requirements:

- 7 Del. Admin. C. 7201 subsection 9.2, Regulations Governing the Control of Water Pollution Part 2 – Special Conditions for Stormwater Discharges from Construction Activities
- 7 **Del.C.** Ch. 60, Environmental Control
- 7 **Del.C.** Ch. 40, Erosion and Sedimentation Control
- 7 DE Admin. Code 5101, *Delaware Sediment and Stormwater Regulations* (DSSR)
- Delaware Erosion & Sediment Control (ESC) Handbook as amended

Permit History

The previous CGP for stormwater discharges associated with construction activity was a permit by regulation. 7 Del. Admin. C. 7201 subsection 9.2, Regulations Governing the Control of Water Pollution, Part 2 – Special Conditions for Stormwater Discharges from Construction Activities was the regulation that served as the CGP. The Department's Sediment and Stormwater Program drafted a new CGP that takes effect March 11, 2021 and expires March 10, 2026. The Department revised the language in 7 Del. Admin. C. 7201 subsection 9.2 to be consistent with that of the new CGP.

General Permit Approach

A general permit for construction activities is an appropriate approach for the following reasons:

1. A general permit is an efficient method to establish the essential regulatory requirements for a broad range of construction activities under differing site conditions;
2. A general permit is the most efficient method to handle the large number of construction stormwater permit applications;
3. The application process for coverage under a general permit is far less onerous than that for individual permits and hence more cost effective;
4. A general permit is consistent with EPA's four-tier permitting strategy, the purpose of which is to use the flexibility provided by the CWA in designing a workable and efficient permitting system; and
5. A general permit is designed to provide coverage for a group of related facilities or operations of a specific industry type or group of industries. It is appropriate when the discharge characteristics are sufficiently similar, and a standard set of permit requirements can effectively provide environmental protection and comply with water quality standards

for discharges. In most cases, the general permit will provide sufficient and appropriate management requirements to protect the quality of receiving waters from discharges of stormwater from construction sites.

There may be instances where a general permit is not appropriate for a specific construction project or the project does not meet the eligibility requirements. In those instances, the Department may require any discharger to apply for and obtain an individual permit. The Department must determine that this CGP does not provide adequate assurance that water quality will be protected, or there is a site-specific reason why an individual permit should be required.

Eligibility Conditions for Coverage under the DE CGP

Operator(s) who have control of permitted activities on the construction site are eligible for coverage under this CGP. Control of permitted activities can include, but is not limited to, authority to direct those working on the site to take actions to comply with the CGP, correct violations including the repair or installation of erosion and sediment controls, and/or halt construction activity until violations of the CGP are corrected.

The CGP covers all areas of the State of Delaware except for Federal facilities that are authorized by EPA that must seek coverage under the EPA CGP. The CGP covers those construction sites that engage in clearing, grading, and excavating activities that will result in land disturbance equal to or greater than one (1.0) acre. This also includes construction sites where the disturbance of less than one (1.0) acre of land occurs but is part of a larger common plan of development or sale which will ultimately disturb more than one (1.0) acre.

The construction site must function under an approved Sediment and Stormwater Management Plan designed by a Licensed Professional in the State of Delaware. To satisfy Delaware Sediment and Stormwater Regulations (DSSR), each construction site must have Responsible Personnel on-site at least daily who have successfully completed the Contractor Training Program sponsored by the Department's Sediment and Stormwater Program.

Discharges from support activities and certain non-stormwater discharges are covered under the CGP in accordance with Part 1.B.2 and Part 1.B.3 of the CGP, respectively. The CGP also identifies prohibited discharges that are not covered under the permit as detailed in Part 1.B.4.

Notice of Intent (NOI)

Hardcopy submissions of NOIs and NOTs are no longer accepted by the Department as of January 1, 2019. All NOIs for CGP coverage must be completed and submitted electronically on the electronic Notice of Intent (eNOI) database located on the Department's Sediment and Stormwater Program website. Upon Department acceptance of the eNOI, a NPDES Permit Identification Number will be assigned to the project submitted. All NOIs submitted for coverage under the CGP will be subject to an annual renewal fee for as long as permit coverage is active.

A sign or other notice of permit coverage must be posted at a safe, publicly accessible location in close proximity to the construction site. The notice must be located so that it is visible from the public road that is nearest to the active part of the construction site, and it must be in large enough font to be viewed readily from a public right-of-way. If the construction site is not visible from a

public road, then the posting of permit coverage must be in a position that is visible from the nearest public road and as close as possible to the construction site. Minimum requirements for posting a notice of permit coverage are detailed in Part 1.C.10 of the CGP.

Notice of Termination (NOT)

Once the construction activity is complete as defined in the permit at Part 1.F.2 and is verified by the appropriate approval agency, a NOT can be submitted to the Department to terminate CGP coverage and cease the annual renewal fee.

For existing projects that have met the project closeout requirements of the Sediment and Stormwater Program, an electronic Notice of Termination (eNOT) must be filed. The eNOT form is accessible through the eNOI database located on the Department's Sediment and Stormwater Program webpage.

Shared Operational Control (Co-Permittee Status)

For the purposes of this CGP and in the context of stormwater discharges from construction activity, an operator is any party associated with a construction project that meets either of the following two (2) criteria:

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 that are necessary to ensure compliance with the permit conditions.

It is the Department's interpretation based upon EPA's definition of "Operator" that construction activities at a permitted site may become the responsibility of multiple operators when more than one (1) operator has shared operational control of the site. When multiple operators maintain shared operational control, all are considered Co-Permittees of the site and must file an eNOI as a Co-Permittee. It is the original permittee's responsibility to familiarize the subsequent Co-Permittees with the program, ensure that proper training has been obtained, and provide a copy of the approved Sediment and Stormwater Management Plan.

Effluent Limitations

All stormwater discharges from construction activities must meet and achieve the Federal Effluent Limitations in accordance with 40 CFR 450.21. Achievement of these effluent limitations shall be attained by the permittee by selecting, installing, implementing, and maintaining Best Management Practices (BMPs) approved in the DSSR and regulatory guidance documents that utilize the Best Available Technology (BAT) for erosion and sediment control and stormwater management.

The EPA has already established limitations, known as effluent limitation guidelines (ELGs), for some permitted industrial categories. In the case of construction related stormwater discharges, the EPA has not established numeric effluent limitations. In the case where there are no ELGs, the permit writer is to use best professional judgement to establish requirements that the discharger must meet using BAT. This CGP contains only narrative effluent limitations and does not contain

numeric effluent limitations.

Part D of the CGP identifies applicable Federal Effluent Limitations in accordance with 40 CFR 450.21 as well as specific requirements of the permittee to minimize pollutants in the permitted discharge in order to meet applicable water quality standards.

The Department expects that compliance with the conditions of the CGP will result in stormwater discharges being controlled to meet applicable water quality standards. The Department may insist on the installation of additional controls, in order to meet water quality-based effluent limitations, on a site-specific basis, if discharges are not adequately controlled to meet applicable water quality standards. This includes situations where additional controls are necessary to comply with a waste load allocation in an EPA established or approved Total Maximum Daily Load (TMDL). The Department reserves the right to require the discharger to apply for and obtain an individual permit if discharges are not able to meet applicable water quality standards after additional controls have been installed.

Sediment and Stormwater Management Plan (Plan)

The owner of the project is responsible to have a Delaware Licensed Professional design a Sediment and Stormwater Management Plan (Plan) for the construction site which is reviewed and approved by an appropriate approval agency that has been delegated authority to administer the DSSR. The owner is responsible to ensure the active construction site has an approved Plan on-site at all times. Pollution Prevention Measures in accordance with the Delaware Erosion and Sediment Control (ESC) Handbook standard and specifications for Construction Site Waste Management and Spill Control are incorporated into the Plan for construction activity. The approved Plan is equivalent to the Stormwater Pollution Prevention Plan (SWPPP) required by the EPA CGP.

Plans are valid for five (5) years from the stamped approval date issued by the appropriate plan approval agency. The Plan will remain valid for five (5) years following the date of approval which may not necessarily coincide with the expiration date of the CGP. If construction activities continue beyond the original five (5) year approval timeframe, the Plan may be extended by the appropriate plan approval agency. Unless the Plan is extended, it is considered expired and any construction activity that occurs after the expiration date is in violation. The Plan must be approved and the eNOI accepted by the Department prior to the onset of construction activity at the site for which CGP coverage is granted.

During active construction, the most recent approved Plan must be on-site at all times.

Monitoring of the Construction Site

The permittee must conduct certain visual monitoring activities in accordance with the CGP. The construction site review requirements of the DSSR may fulfill some or all of the visual monitoring requirements of the CGP. The weekly construction site reviews must be conducted by Responsible Personnel or a Certified Construction Reviewer (CCR) that has successfully completed a Department sponsored certification course. The permittee is responsible for ensuring the qualifications of the person(s) conducting the weekly construction reviews.

Construction site reviews must be conducted at least once every seven (7) calendar days. Part 1.E.6.3 and E.6.4 in the CGP detail the areas that must be reviewed as well as the requirements for the construction site reviews.

Delaware has elected the option to conduct construction site reviews at least once every seven (7) calendar days in lieu of once every 14 calendar days and within 24 hours of the occurrence of a storm event of 0.25 inches or greater. The construction site review frequency of every seven (7) calendar days is consistent with the requirements for CCR reporting for those sites required to employ a CCR.

Recordkeeping

Retention time for all records required by the CGP is a minimum of three (3) years following the Department's acceptance of the NOT. Permittees subject to this CGP also shall maintain all inspection reports, notices of violations, enforcement actions, and correspondence issued by the Department, its authorized agents, the appropriate approval agency, or a CCR for a minimum of 3 years from acceptance of the NOT.

During construction, the operator(s) must maintain at the site, written reports of all inspections conducted in accordance with the minimum elements detailed in Part 1.E.2 of the CGP.

Corrective Actions & Deadlines

Corrective action measures must be taken and corrected in accordance with the requirements detailed in Parts 1.E.7.1 and E.7.2 of the CGP.

Effective Date of CGP Coverage

Coverage under the CGP is initiated for a construction site once the eNOI has been submitted and accepted by the Department and a Sediment and Stormwater Management Plan has been approved by the appropriate approval agency.

Coverage under the CGP continues until a NOT has been submitted to the Department and it is determined by the Department or appropriate plan approval agency that all items and conditions of the Plan have been satisfied in accordance with the Sediment and Stormwater Regulations, all post construction verification documentation has been submitted to the appropriate plan approval agency, and all final stabilization criteria has been achieved.

Special Conditions

Special Conditions in National Pollutant Discharge Elimination System (NPDES) permits require sites to undertake activities designed to reduce the overall quantity of pollutants being discharged to Waters of the State. Special Conditions address unique situations and incorporate preventative requirements to reduce the potential for discharge of pollutants.

The Federal CGP recognizes some areas of the country may be subject to periods of very low rainfall, thus allows for a Low Erosivity Waiver if it can be shown that the proposed construction activity will occur solely within that period. Delaware has done an analysis and determined that,

as a humid region, the applicable period of low erosivity is so short that a typical project would not be able to meet the conditions. Thus, Delaware has elected not to offer the Low Erosivity Waiver as an option.

There are currently no special conditions applicable with this CGP.

Public Notice and Process for Reaching a Final Decision

The public notice of the Department's proposed CGP and revisions to 7 Del. Admin. C. 7201 subsection 9.2, *Regulations Governing the Control of Water Pollution, Part 2 – Special Conditions for Stormwater Discharges from Construction Activities* as outlined herein was published in the Wilmington News Journal and the Delaware State News on November 8, 2020. Interested persons were invited to submit their written views on the draft permit and the proposed revisions to the regulation made with respect to this NPDES general permit. The Department held a public hearing on the proposed CGP and revised regulation on December 1, 2020. All comments received by the close of business on December 16, 2020, have been considered by the Department in preparing the final permit.

A summary of comments received and the resultant modifications to the CGP language are as follows:

1. Parts 1.D.1.4.d and 1.D.1.5.d contained language that was in conflict with Part 1.B.3.h which prohibits discharge of "pavement wash waters directly into any water the U.S., storm drain inlet, or stormwater conveyance, unless the conveyance is connected to a sediment basin, trap, or similarly effective control" with the emphasis being on the use of a sediment basin, trap, or similarly effective control. In response, Parts 1.D.1.4.d and 1.D.1.5.d have been amended with this same language to allow these sections to be consistent.
2. The term "appropriate plan approval agency" was used throughout the CGP in different forms, including "plan approval agency" and "appropriate approval agency" and has been made consistent throughout the document as "appropriate plan approval agency", which references the Department's Sediment and Stormwater Program and the delegated agencies of Department that implement the Sediment and Stormwater Program locally within their jurisdictions.

In addition, comments were received that were taken into consideration but did not result in changes to the permit language:

1. Comments were received on Part 1.C.10 regarding the posting of the notice of permit coverage at the site, Part 1.D.1.8.b regarding sediment accumulation adjacent to inlet protection, and Part 1.E.7 regarding the use of the term "corrective action". The language in the Delaware CGP in these sections are the same as language included in the Federal CGP. Delaware's CGP has been reviewed and approved by EPA; therefore, no change has been made to this CGP.
2. Several comments were received with respect to Part 1.D.4 Pollution Prevention Measures in the Delaware CGP. This section of the CGP have been written to be consistent with the

Department's standard detail for Construction Site Waste Management and Spill Control. This standard detail is included on all detailed Sediment and Stormwater Management Plans approved in Delaware. No change to the CGP is proposed.

3. Comment received on Part 1.E.3 recommended language to allow for electronic storage of weekly inspection reports. The current language allows for either physical printed copies or electronic copies of reports available at the construction site. No change to the CGP is proposed.
4. A comment was made to include the certification requirement for responsible personnel in the definition of responsible personnel. The definition for Responsible Personnel contained in G. Definitions is the definition of Responsible Personnel contained in 7. Del C. Ch 40 and 7 Del Admin Code 5101 Sediment and Stormwater Regulations. The 5101 Sediment and Stormwater Regulations further define responsible personnel as having completed the Department sponsored Contractor Training Program. Responsible personnel are defined in the Delaware CGP B. Eligibility Conditions in the same way. No change to the CGP is proposed.
5. A comment was made that the ability to obtain responsible personnel certification is limited due to huge demand and infrequent certification courses as well as the inefficient logistics of having to attend and in person course. The Department has developed the Contractor Training Program to certify individuals as responsible personnel as an online, on-demand training course available in the first quarter of 2021, to coincide with the effective date of the CGP.
6. Confirmation of co-permittee responsibilities were the source of comments. In Part C.8 it is stated that all conditions and obligations of the CGP, which includes fees, apply to co-permittees. A co-permittee may submit an eNOT once their portion of the project meets the termination requirements. The termination requirements must be confirmed by the appropriate plan approval agency prior to the Department accepting the eNOT for a co-permittee.
7. Comments were received regarding maintaining documentation of the NOI and the approval plan at the site and how that NOI is to be maintained at the site. The maintenance of the plan on site is a requirement of the Delaware Sediment and Stormwater Regulations and the maintenance of the NOI on site is a requirement of the CGP and federal requirements. The NOI must be posted in paper form on the site and is expected to be kept on site at all times during construction. No change to the CGP is proposed.
8. Comment was received on Part C.5 regarding continuation of coverage. Currently, stormwater discharges from construction sites are covered under a permit by regulation. With the issuance of an eNOI, permittees and co-permittees certify to implement approved plans in accordance with the current CPG. The certification is renewed through the annual billing process. Thus, when the CGP is reissued, coverage will continue for new and on-going projects.

Water Pollution, Part 2 – Special Conditions for Stormwater Discharges from Construction Activities are published in the March 1, 2021 Delaware Register of Regulations. The final CGP is published in the General Notices section of the same document. The CGP having an effective date of March 11, 2021 to coincide with the effective date of the 7 Del. Admin. C. 7201 subsection 9.2 regulations reflects the Department's responses to comments received as stated above.

Department Contact for Additional Information

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