



Fact Sheet and Rationale For NPDES General Permit for Stormwater Discharges from Construction Activities

Note: This fact sheet has been updated as of January 29, 2021 to reflect changes made to the permit following public notice and department review of comments. Any updates are noted in this document as a red/strikeout.

Introduction:

This fact sheet describes the South Carolina Department of Health and Environmental Control's (DHEC or Department) basis and procedures for reissuance of a National Pollutant Discharge Elimination System Permit (SCR100000) for discharge of Stormwater from Construction Activities, CGP or permit.

DHEC has been delegated authority by EPA to implement the NPDES program within the state of South Carolina, including on Indian Lands. DHEC issued the first NPDES general permit covering stormwater discharges on September 11, 1992. The permit was subsequently reissued in 1998, 2006, and 2012.

The 2012 NPDES General Permit for Stormwater Discharges from Construction Activities (2012 CGP) expired on December 31, 2017. However, the permit continues in effect in accordance with section 6.1 of the permit and under South Carolina Regulation 61-9, Water Pollution Control Permits, item 122.6, and will do so until this proposed permit becomes effective, with any appropriate changes based on public participation.

Background:

Since 1990, EPA has issued a series of rules regulating the discharges of storm water runoff from construction activities and other sources under the NPDES program. The first rule, which was promulgated by EPA in November of 1990, is known as the "Phase I" rule. This rule contained requirements for operators of certain categories of industrial activities to obtain NPDES permit coverage for their discharges. One of the categories listed (commonly referred to as "large" construction activities) encompass construction activity as described below:

Construction activity including clearing, grading, and excavation, except operations that result in the disturbance of less than five acres of total land area.

Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;

On December 8, 1999, EPA issued a second rule, commonly referred to as the “Phase II” rule, which lowered the acreage threshold for construction activities whose stormwater discharges require coverage under an NPDES permit. These rules became effective on March 10, 2003 and cover “small” construction activities including:

- Construction activities, statewide, including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres
- In coastal counties, construction activities including clearing, grading, and excavating that result in any land disturbance less than five acres when the activity is located within one-half (1/2) mile of a receiving water body (but not for single-family homes which are not part of a subdivision development).
- Land disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres.

The regulations cited above have been promulgated into South Carolina Regulation 61-9 (Water Pollution Control Permits) under §122.26(b)(14)(x) and §122.26(c)(1).

On December 1, 2009, EPA promulgated regulations addressing stormwater discharges from construction activities. Contained in this rulemaking, known as the Construction and Development Rule or “C&D rule” are non-numeric effluent limitation guidelines (ELGs) and new source performance standards for the stormwater discharges from construction sites. The final rule was subsequently challenged by the Wisconsin Builders Association, National Association of Homebuilders and the Utility Water Act Group. The suit was resolved through a settlement agreement requiring EPA to issue amendments to the C&D Rule. The Final Rule became effective on May 5, 2014. A link to the final rule can be found at:

<https://www.federalregister.gov/documents/2014/03/06/2014-04612/effluent-limitations-guidelines-and-standards-for-the-construction-and-development-point-source>

Permit Basis:

This permit is based on requirements in the Federal Clean Water Act, 33 U.S. Code §§ 1251 et seq., and the South Carolina Pollution Control Act, S.C. Code Sections 48-1-10 et seq., that discharges of pollutants apply for and receive permits for the discharges. Additional requirements are established in South Carolina Regulation 61-9, Water Pollution Control Permits, especially S.C. R.61-9.122.26 Storm Water Discharges; South Carolina Regulation

72-300, Standards for Stormwater Management and Sediment Reduction; and South Carolina Coastal Zone Management Act.

Activities Covered by the Permit:

This permit authorizes discharges of stormwater from construction activities including clearing, grading, filling, demolition, excavating and other land disturbing activities that result in the land disturbance of:

- One acre or more, statewide
- Less than one acre when the activity is located within one-half (1/2) mile of a receiving water body within coastal counties (but not for single-family homes which are not part of a subdivision development)
- Land disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre
- Other land disturbance activities designated by DHEC as needing a stormwater permit under §122.26(a)(1)(v) or §122.26(b)(15)(ii) of Regulation 61-9.

Sediment generated by construction activity has the potential to cause impacts to Waters of the State and adjacent properties. These impacts can result in impairment of the receiving waters that can threaten aquatic species, limit navigation, and increase the cost of treatment for drinking water plants and industry. The CGP outlines requirements for the proper design, installation, and maintenance of sediment and erosion control Best Management Practices (BMPs) to control stormwater discharges from construction activities.

Obtaining Coverage under the Permit:

The CGP outlines requirements that owners or operators of construction activity must follow in order to obtain authorization to discharge their site's construction stormwater. Section 2.1 of the permit contains procedures for the submittal of a Notice of Intent (NOI) and outlines information required to be submitted with the NOI.

New Projects: Construction sites that propose to commence their land disturbance activities after the effective date of this CGP must submit an NOI and be authorized to discharge by the Department prior to the initiation of construction activity. If a site is located in an area of the state with a Municipal Separate Storm Sewer System (MS4) or local government delegated by DHEC to review stormwater management and sediment and erosion/ control plans, then that entity must first review and grant approval of the SWPPP prior to the NOI being submitted to DHEC.

Permitted Ongoing Projects: Construction sites that were granted coverage under the 2006 CGP are automatically granted coverage to discharge under the new permit. Unless specifically requested by the Department, these sites are **not** required to submit a new NOI. The SWPPP for these sites must be updated consistent with requirements found in Section 3.1.1.F. If the owner/operator (entity to whom permit coverage was granted) of a construction site has changed since coverage was granted, then a new NOI must be submitted. NPDES permit coverage is issued to a “discharger” and not to the site itself. As defined in R.61-9.122.2(b) a discharger is any person, corporation, government agency, etc. who discharges any treated or untreated or untreated sewage, industrial wastes or other wastes, including stormwater, into Waters of the State. For the purpose of this permit, an owner or operator of a construction site is a discharger.

New Owner/ Operator of Ongoing Projects: If the owner/operator changes after DHEC grants coverage under the CGP, the new owner/operator must submit a new NOI.

Major Changes incorporated into the Draft Permit

Following is a list of substantive amendments proposed under the draft permit.

- Automatic Coverage for Small Sites located within South Carolina’s eight coastal counties – 2019 CGP Section 1.3.1B – The proposed permit expands the provisions for automatic coverage for certain small construction activities located in the Coastal Zone. The 2012 permit included provisions for automatic coverage for projects with planned construction activities of 0.5 acres or less. The proposed permit provides for automatic coverage on sites resulting in land disturbance 1.0 acre or less without submitting a Notice of Intent. The Department has deemed activities such as this a de minimis source of pollutants to Waters of the State. These sites remain subject to all applicable provisions found in the proposed permit.

- Automatic Coverage Certain Individual Lots within a Larger Common Plan of Development or Sale (LCP) – 2019 CGP Section 1.3.1.C – The proposed permit allows for automatic coverage of certain individual lots located within residential developments approved prior to the effective date of the date of the South Carolina Stormwater Management and Sediment Reduction Regulations in 1992. The proposed permit allows for coverage of these lots when no more than 5 contiguous lots remain for home construction, and no more than 5 acres of potential construction activities remain within the development. The proposed permit requires the operators of these activities to install and maintain appropriate BMPs for sediment control, erosion protection, stormwater management, and pollution prevention during construction activities. The Department has deemed activities

such as this a de minimis source of pollutants to Waters of the State. These sites remain subject to all applicable provisions found in the proposed permit.

- Allowable Non-stormwater – 2019 CGP Section 1.3.1.G - The addition of an “at our discretion” option under the Allowable Non-Stormwater. This option will allow certain non-stormwater discharges to be authorized by the CGP that meet the general spirit of the other discharges stated in 1.3.2. Inclusion of this language allows the Department to have flexibility in cases where the existing list of allowable discharges does not clearly and explicitly match the situation in question but does meet the intent. A written submittal to the Department will be required, as will a written confirmation from the Department, before the discharge is allowed under the CGP.

- Discharges of potentially contaminated groundwater – 2019 CGP Section 1.3.3.D -The proposed permit provides for the department to evaluate the discharge of groundwater that has potentially been contaminated by past activities at the site. In order for these discharges to be covered, the department must evaluate the presence of potential contaminants and determine if the SWPPP for the project includes appropriate controls such that the discharge will not cause or contribute to a violation of state water quality standards.

- Late Notification during Public Emergency – 2019 CGP Section 2.4.A - The proposed permit includes a late notification allowance so that construction activities may commence prior to the submission of a Notice of Intent (NOI) during a public emergency. If you are conducting construction activities in response to a public emergency (hurricanes, earthquake, extreme flooding conditions or other widespread disruption in essential public services) to avoid imminent endangerment to human health, public safety, or the environment, or to reestablish essential public services.

- E-Permitting – Throughout the proposed permit, allowances have been made for the use of the Department’s E-Permitting system for the receipt of NOIs, NOTs, and other information.

- Amendments to Construction and Development Rule Non-Numeric Effluent Limits - 2019 CGP Applicable Portions of Section 3.2 - In March 2014, EPA published a Final Rule amending the 2009 Construction and Development Rule. These amendments provide clarifications on applicability; flexibility for permitting authorities to implement some of the rule requirements and for permittee compliance; and clarifies the requirement for permittees to provide and maintain buffers around

many surface waters at construction sites. The proposed permit incorporates these changes.

- Inspection Frequency – 2019 CGP Section 4.2.B – The proposed permit includes a requirement that no more than 9 days may lapse between inspections. In addition, the permit reiterates that if the entire site has reached final stabilization, yet no Notice of Termination (NOT) has been filed, that monthly inspections must continue until such time as the operator files the NOT.
- Linear Site Inspection Frequency – 2019 CGP Section 4.2.C. The proposed permit includes a requirement that qualified inspectors must inspect where the construction activity crosses Waters of the State or Waters of the United States.
- ~~Rain Gauge – 2019 CGP Section 4.2.D – The proposed permit eliminates the allowance from the previous permit to utilize rainfall data from a “certified weather record located within a reasonable proximity to the construction site”. Each construction site must provide a rain gauge(s) on-site.~~
- Inspection Reports – 2019 CGP Section 4.2.F – The proposed permit adds the following items to the required inspection:
 - Inspection of **All** discharge points identified in the SWPPP
 - Total rainfall since last inspection
 - Determination if the construction sequence is being followed
 - Status of corrective actions undertaken following the previous inspection to include date(s) each item was addressed
 - List of items that have carried over from previous inspection reports that were not addressed.
- Corrective Action Documentation – 2019 CGP Section 4.3.A – The proposed permit requires the operator of construction activities to provide documentation when maintenance to BMPs must take longer than 7 days to complete. This should include an estimation of the timeframe to complete required actions.
- References to Projects under SCDOT’s Jurisdiction – Throughout the term of the past permit, many projects being undertaken by local governments within SCDOT right-of-way have pursued coverage under the CGP. Because SCDOT is not the operator of the construction activities, these projects are ineligible for coverage under the NPDES General Permit for Stormwater Discharges from South Carolina Department of Transportation Construction Activities (SCR160000). These projects, are however, subject to the design standards and criteria for water quantity and water quality found in the South Carolina Standards for Stormwater Management and Sediment Reduction, Regulations 72-405 thru 72-445. The proposed permit adds references

throughout Section 3.2.6 to these design standards, in lieu of the standards applicable for those site subject to Regulation 72-300.