

Nebraska Department of Environmental Quality

Wastewater Section

1200 'N' Street, Suite 400, The Atrium
PO Box 98922
Lincoln, NE 68509-8922
Tel. (402) 471-4220
Fax (402) 471-2909

Fact Sheet

General NPDES Permit Authorizing Storm Water Discharges Associated with Construction Sites State of Nebraska NPDES NER160000

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A. Introduction

The Nebraska Department of Environmental Quality (NDEQ) is reissuing the general permit that authorizes discharges from construction sites of storm water or non-storm water that may transport pollutants. This permit is known as the “construction storm water general permit” or “CSW general permit.” The CSW general permit upon reissuance covers storm water discharges associated with both small and large construction activity. Small construction activity was added in response to the Phase II Storm Water regulations promulgated on December 8, 1999 (64 FR 68722). Specifically, the Phase II regulations add permitting requirements for storm water discharges from construction activities that disturb from one (1) to less than five (5) acres. Phase I Storm Water regulations promulgated on November 16, 1990 (55 FR 47990) established permitting requirements for storm water discharges from construction activities that disturb five (5) acres or more. Covered construction activity includes a disturbance to land that results in a change in the land topography or existing soil cover (both vegetative and non-vegetative) that may cause storm water runoff sediment from erosion or other pollutants to be transported into the waters of the state or urban drainage systems. Permit covered construction activity includes the disturbance of less than one (1) acre of total land area that is a part of a larger common plan of development sale if the larger common plan will ultimately disturb one (1) acre or more. In addition, offsite areas that support construction activities must be aggregated to the total acres when determining the total acres disturbed. Moreover, offsite support activity sites are covered by the permit when it is issued. This CSW general permit replaces the previous CSW general permit that was issued January 1, 2008.

B. Summary of the Changes from 2008 CSW General Permit

The highlights of the proposed draft permit requirements are summarized below. See the attached general permit for specific information on the permit conditions.

1. Oil and gas field activities or operations, formally exempt from coverage under a CSW permit under the 2008 CSW under Part I.C.3.i, are no longer exempt and must obtain a permit.
2. Content clarifications are made.
3. SWPPP requirements changed to correspond with requirements set forth in 40 CFR Part 450.
4. Typographical, grammar, and formatting errors are corrected.
5. Definitions have been updated to correspond to with the EPA CSW general permit and NDEQ regulations.
6. All forms must be submitted electronically on the NDEQ website. Paper forms for NOIs, CSW-Transfers, and NOTs are no longer accepted.
7. Website links have been removed.
8. Coverage of existing permits has been extended from 90 to 180 days before reapplication is needed under the proposed general permit.
9. Electronic reporting language provisions have been added.
10. NPDES permit terms and conditions have been included in Appendix A.
11. Permit numbers have been changed to correspond with anticipated issue year.

C. Coverage Provided by General Permits

NDEQ Title 119 provides that the storm water discharges associated with construction activity that discharges to waters of the State must be authorized by a National Pollutant Discharge Elimination System (NPDES) permit. NDEQ Title 119 Chapter 10 sets forth requirements for construction storm water discharges.

On November 16, 1990, EPA published regulations under the NPDES program that defined one facet of the phrase “storm water discharges associated with construction activity” as including discharges from construction sites that disturbed of five (5) or more acres of total land area from activities that include clearing, grading, and excavation. This area includes smaller areas that are part of a larger common plan of development or sale. In addition, this area includes activities at support sites offsite from the construction site. These are commonly referred to as Phase I construction activities or “large construction activities”.

The regulation titled “National Pollution Discharge Elimination System – Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges” (64 FR 68722) was published by the U.S. Environmental Protection Agency (EPA) on December 8, 1999. This regulation, known as Phase II of the storm water program, expands the existing NPDES storm water program to address discharges that result in land disturbance of:

- Equal to or greater than one (1) or less than five (5) acres
- Less than one (1) acre if part of a larger plan of development or sale that disturbs between one to less than five acres
- Other construction activities designated by the NDEQ based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to water of the United States (NDEQ Title 119, Chapter 10)

D. Coverage and Eligibility

1. Introduction

The NDEQ is making this permit available, consistent with the NDEQ Title 119, Chapter 1, Paragraph 118 for storm water discharges from any other construction activity designated by the NDEQ based on the potential for contribution to violation of a water quality standard or from significant contribution of pollutants to waters of the State. This permit continues and expands coverage from the 2008 CSW general permit for small and large construction activities.

2. Permit Area

This permit provides coverage for construction and support activity throughout the State of Nebraska excluding tribal land as set forth in NDEQ Title 119, Chapters 2 and 3. Construction storm water discharges are covered by this permit rather than the EPA *National Pollutant Discharge Elimination System General Permit for Discharges from Construction Activities* as the EPA permit covers states without a local department of environmental protection as well as tribal lands. As Nebraska environmental protection is regulated through NDEQ permits, construction sites discharging storm water and not requiring an individual permit are covered under this general permit.

3. Eligibility

Only construction activities that meet the eligibility conditions in the CSW general permit Part I.C are covered by this permit. If a construction activity is not covered and an applicant files a Notice of Intent (CSW-NOI) requesting coverage for a discharge, then the discharge is considered to be unpermitted and in violation of the NDEQ’s Title 119 and the Federal Clean Water Act (CWA). Conversely, once a CSW general permit has been issued, if the permittee does not comply with the requirements of the CSW general permit, then the permittee may be in violation of the CSW general permit.

In 1987, Section 402(1)(2) was added to the CWA. This section designates that the EPA and States cannot require NPDES permits for construction storm water discharges from oil and gas exploration, production, processing, treatment operations, or transmission facilities. This was further defined and supported by Section 323 of the Energy Policy Act of 2005. On June 12, 2006 the EPA published a rule addressing these provisions, exempting oil and gas activities from requiring a NPDES CSW permit. However, the Natural Resources Defense Council petitioned the Ninth Circuit Court of Appeals to review the EPA exemption. On May 23, 2008 the Ninth Circuit vacated this rule, further held by a denial of an EPA appeal on November 3, 2008. This removes the exemption of oil and gas activities from requiring a CSW permit, and the 2008 CSW Part I.C.3.i has been removed from the draft permit.

4. Allowable Storm Water Discharges

This permit authorizes all discharges of storm water from construction activities described in NDEQ Title 119, Chapter 2 Paragraph 2, Title 119, Chapter 10, Paragraph 003, and in 40 CFR Part 450. Onsite support activities are covered under the CSW general permit.

5. Allowable Non-Storm Water Discharges

This permit authorizes certain non-storm water discharges associated with construction activity, provided that the non-storm water component is in compliance with the eligibility section of the permit. Specifically, operators are required to identify in the SWPPP all allowable sources of non-storm water

discharges and must identify and ensure the implementation of appropriate pollution prevention measures for these discharges. Allowable non-storm water discharges include those listed in the Part I.C.2 of the CSW general permit.

6. Prohibited Non-Storm Water Discharges

This permit prohibits non-storm water discharges following the requirements set forth in 40 CFR Part 450.21(e).

7. Limitations on Coverage

NDEQ Title 119 Chapter 10 specifically excludes post construction discharges, discharges covered under other permits, and other non-storm water sources unless identified and authorized in this permit. NDEQ Title 119 Chapter 3 also prohibits discharge if conditions cannot ensure compliance with applicable water quality requirements.

8. Endangered and Threatened Species and Critical Habitat Protection

The operator must ensure and document that discharges do not result in adverse modification or destruction to habitat designated as critical by state and federal authorities under the Endangered Species Act (ESA).

9. Historic Properties

Operators are reminded that they must comply with applicable state, tribal, and local laws concerning the protection of historic properties and places.

10. Period of Coverage

The CSW general permit is effective for a period of five (5) years from the issuance date after 40 CFR Part 122.46. Delays or extensions of permit coverage are based on Part I.C.4 of the CSW general permit.

E. Authorization for Discharges of Storm Water from Construction Activity

Construction activities with land disturbances of greater than one (1) acre, or construction activities otherwise designated by NDEQ, are required to obtain permit coverage (NDEQ Title 119, Chapter 10). Submission of a complete and accurate Notice of Intent (CSW-NOI, or NOI) eliminates the need to apply for an individual permit for a regulated discharge, unless the NDEQ specifically notifies the discharger that an individual permit application must be submitted. Only the NOI form provided on the NDEQ website is valid. When applicants sign and date the NOI form on the NDEQ website, they are certifying that they agree to the terms and conditions of the NPDES of the Construction Storm Water General Permit. These conditions include eligible discharges as described in Part I.C Eligibility.

1. Notice of Intent Contents

An online NOI must be submitted by owners/operators seeking authorization for storm water discharges from a construction site under the CSW general permit. Those required to obtain an individual storm water permit may not use a NOI, but must instead use the forms as described in Part IV.A of the permit. Applicable requirements are set forth in the NDEQ Title 119, Chapter 25.

2. Submission Deadlines

Operators of new projects (e.g., construction activity commenced after the effective date of this permit) must submit an online NOI form at least seven (7) days prior to commencement of construction activities, a timeline that has not changed from the previous general permit. Applicants with continuing construction activities covered by the 2008 CSW general permit have one hundred and eighty (180) days from the issuance date of the new CSW general permit to submit a CSW-NOI under the new permit or terminate coverage on their site.

F. Storm Water Pollution Prevention Plan (SWPPP)

The requirements set forth in this section were based on NDEQ Title 119, Chapter 10, 40 CFR Part 450, and the EPA document, *Developing Your Stormwater Pollution Prevention Plan* (EPA-833-R-06-004, May 2007). The SWPPP requirements in this section are largely unchanged from the previous general permit with a few content and language clarifications. One such clarification, permits two or more construction site operators working at the same site to fill out a single SWPPP if the SWPPP covers a given operators activities. In addition, the definition of Certified Professional in Erosion Prevention and Sediment Control (CPEPSC) has been updated.

G. Special Conditions, Management Practices, and Other Non-Numeric Requirements

1. Requiring an Individual Permit or an Alternative General Permit

The NDEQ may determine that an applicant's construction activities are ineligible for coverage on the general permit, and that an individual application as set forth in NDEQ Title 119, Chapter 10, 003.01 is required. An individual permit may be called for in circumstances that have a potential to contribute to a water quality excursion such as numeric effluent limitations resulting from a total maximum daily load [TMDL] of an impaired water way. If a permittee is currently discharging under the CSW general permit, NDEQ will provide written notification of the reasoning for this decision, an application form, and a deadline for filing the application.

2. Oil and Hazardous Substances / Spill Notification

The construction general permit requires the operator to prevent the discharge of hazardous substances or oil from a site in accordance with the SWPPP. Furthermore, if a permitted discharge contains a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under NDEQ Title 126 – *Rules and Regulations Pertaining to the Management of Waste* and federal reporting requirements of 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302, the permittee must notify the NDEQ.

3. Attainment of Water Quality Standards after Authorization

The permittee shall not discharge pollutants to waters of the State that cause a violation of the standards established in NDEQ Titles 117 and 118. All discharges to waters of the State shall be free of toxic substances (acute or chronic) which alone or in combination of other substances, create conditions unsuitable for aquatic life outside the appropriate mixing zone. The EPA's 1996 *Interim Permitting Approach for Water Quality-Based Effluent Limitations on Storm Water Permits* (EPA 833-D-96-001), has determined that BMPs, when properly selected, installed, implemented, and maintained, do provide effluent quality that can meet water quality standards.

4. Discharges Disturbing Endangered or Threatened Species, Historical Places, or Archeological Sites and Discharges Applicable to Other Regulations

Requirements in this section are based on the EPA 2012 Construction General Permit for storm water.

5. Termination, Transfer, or Reassignment of Permit Coverage

Permittees must submit a completed Notice of Termination (CSW-NOT) available on the NDEQ website that is signed and certified according to Part V.B of the CSW general permit when one or more of the conditions contained in Part V.A of the permit have been met. The requirement for a CSW-NOT to be submitted within 30 days after termination of construction activities and final stabilization was added to the permit. In the previous permit, this requirement was only listed in the fact sheet. The CSW-NOT is available on the NDEQ website.

The Notice of Transfer (CSW-Transfer) is used when all or part of the permit coverage is to be transferred to another permittee as per Part V.C of the permit. The CSW-Transfer must be filled out by both the current permittee and the new permittee. The form is available on the NDEQ website. If coverage is transferred, the new permittee must complete a NOI on the NDEQ website.

6. Retention of Records

The permit requires that all records and reports required by the CSW general permit be retained, including SWPPPs and information used to complete the NOI, for at least three (3) years from the termination of coverage or expiration of the permit as per NDEQ Title 119, Chapter 14. This period may be extended on request by NDEQ.

7. Re-Opener Clause

This permit contains a re-opener clause allowing the permit to be re-opened and modified during the term of the permit consistent with NDEQ Title 119, Chapter 24.

8. Standard Permit Conditions

The Federal regulations require all NPDES permits to contain the standard conditions specified in NDEQ Title 119, Chapter 14. This section of the permit references those conditions in Part VI of the CSW general permit.

9. Electronic Reporting

On October 22, 2015, EPA published the Clean Water Act National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule, which requires electronic reporting of NPDES information rather than the currently required paper based reports from the permitted facilities. Facilities must submit electronically information required in Appendix A of 40 CFR Part 127, 40 CFR 122.26(b)(15), and 40 CFR 122.26(b)(14)(x).

H. Supporting Documentation

The following documents and regulations were used in the preparation of the draft permit.

1. NDEQ Title 117, *Nebraska Surface Water Quality Standards*, December 13, 2014.
2. NDEQ Title 118, *Ground Water Quality Standards and Use Classifications*, March 27, 2006.
3. NDEQ Title 119, *Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System*, May 16, 2005.
4. NDEQ Title 197, *Rules and Regulations for the Certification of Wastewater Treatment Facility Operators in Nebraska*, March 13, 2006.
5. NDEQ, *2014 Water Quality Integrated Report*, April 1, 2014.
6. *National Pollutant Discharge Elimination System General Permit for Discharges from Construction Activities* (EPA-HG-OW-2010-0782, February 16, 2012, referred to as “Construction General Permit”).
7. *Technical Support Document for Water Quality-based Toxic Control* (EPA 505/2-90-001 PB91-127415, March 1991).
8. *Developing Your Stormwater Pollution Prevention Plan* (EPA 833-R-06-004, May 2007).
9. 40 CFR Parts 122, 124, and 125, NPDES Regulations.
10. 40 CFR Part 450, Construction and Development Point Source Category.

I. Information Requests

Inquiries concerning the draft permit, its basis or the public comment process may be directed to:

Lisa Giesbrecht Tel. (402) 471-8830 or (402) 471-4220 Fax: (402) 471-2909

Individuals requiring special accommodations or alternate formats of materials should notify the Department by calling (402) 471-2186. TDD users should call (800) 833-7352 and ask the relay operator to call the Department at (402) 471-2186.

Copies of the application and other supporting material used in the development of the permit are available for review and copying at the Department's office between 8:00 A.M. and 5:00 P.M. on weekdays.

Office Location: The Atrium, 1200 N Street, Suite 400, Lincoln, NE

Mail Address: NPDES Permits Unit, Nebraska Department of Environmental Quality, PO Box 98922;
Lincoln, Nebraska 68509-8922

J. Submission of Formal Comments or Requests for Hearing

The date on which the public comment period ends is specified in the public notice. During the public notice period, the public may submit formal comments or objections, and/or petition the Department to hold a public hearing concerning the issuance of the draft permit. All such requests need to: be submitted in written form, state the nature of the issues to be raised, and present arguments and factual grounds to support them. The Department shall consider all written comments, objections and/or hearing petitions, received during the public comment period, in making a final decision regarding permit issuance.

Formal comments, objections and/or hearing requests need to be submitted to:

Lisa Giesbrecht; NPDES Permits Unit

Mailing Address: Nebraska Department of Environmental Quality
PO Box 98922
Lincoln, Nebraska 68509-8922

Location Address: Nebraska Department of Environmental Quality
The Atrium, 1200 N Street, Suite 400
Lincoln, Nebraska