

EPA's Updated Construction General Permit: Questions and Challenges

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By now, most of us in the site development design community are aware that, on February 16, 2012, the Environmental Protection Agency (EPA) signed and issued an updated version of the National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges from Construction Sites. This permit is typically referred to as the Construction General Permit (CGP) and supersedes the previous version of the permit, which was issued on June 30, 2008.

The 2012 CGP includes a number of modifications to the 2008 CGP, as well as some additional requirements for current construction projects.

Summary of the 2012 CGP Modifications and Requirements

1. Projects under construction are required to submit a new Notice of Intent (NOI) by May 16, 2012.
2. New projects must submit an NOI at least 14 calendar days prior to earth disturbing activities (was previously 7 days).
3. All projects are required to use the EPA's electronic NOI system (eNOI).
4. If a problem is observed with an erosion and sediment control (needs repair or replacement), work must be initiated immediately to fix the problem and be completed by the end of the next work day. If the repair or replacement is more substantial, it shall be completed within 7 calendar days from the time of discovery.
5. In general, the erosion and sediment control requirements (Sections 2.1.2 and 2.1.3) are more detailed and thorough (buffers, sediment removal, slope disturbance, and more).
6. Soil stabilization measures shall be initiated immediately when earth-disturbing activities have permanently or temporarily ceased for a period of 14 or more calendar days.

7. Stabilization activities shall be completed within 14 calendar days after the initiation of soil stabilization measures; 7 days for sites that discharge to sensitive waters.
8. In general, the pollution prevention standards (Section 2.3.3) are more detailed for activities such as fueling and maintenance of vehicles, storage and disposal of construction materials, and washing of materials used for painting and concrete installation.
9. Site inspections are now triggered by a quarter-inch storm event (previously half-inch).
10. For sites that discharge to sensitive waters, inspections shall be conducted once every 7 calendar days and within 24 hours of the occurrence of a storm event 0.25 inches or greater.
11. Stabilized portions of a site shall be inspected at least one per month (previously no inspections were required).
12. If discharge of stormwater is occurring during an inspection, the location and quality of the discharge shall be noted as well as the effectiveness of erosion and sediment controls.
13. Separate corrective action reports are now required to document conditions identified and the measures taken to correct them.
14. Staff training requirements (Section 6) are more thoroughly described.
15. All changes listed above shall be incorporated into the Stormwater Pollution Prevention Plan (SWPPP) where applicable.
16. Termination of permit coverage requires removal of all construction materials, equipment and vehicles; temporary erosion and sediment controls; and potential pollutants and pollutant-generating activities.

While the EPA has refined the design and inspection parameters, these revisions leave many questions regarding overall responsibility

and enforcement unanswered. The role of the design profession and how the SWPPPs are now referenced in permitting documents creates several layers of questions and responsibilities. Some questions that come to mind are:

- Who is preparing the SWPPP—the design professional, owner or contractor?
- What is the design professional, owner, and contractor actually responsible (and liable) for?
- How much detail should the SWPPP provide?
- What is means and methods and what is the design professional's responsibility concerning their erosion control plans, details and specifications?
- Will the EPA be increasing their enforcement activities?
- Will the EPA require record audits after project completion?
- Should the engineer of record be conducting inspections or a certified (by whom?) erosion control specialist or PE?
- What are the engineer of record's risks in conducting these inspections? Does it conflict with the their responsibilities to the client?
- Who do we report noncompliance activities to? The contractor? The owner? The EPA?
- What are our best industry practices? Are they necessary? Should Massachusetts develop a guidance manual for SWPPPs similar to those of other states or update the current "Erosion And Sediment Control Guidelines" from 1983?

Let's work together as an industry to ensure we're united in addressing these questions when they are asked by contractors, owners, and regulatory personnel.

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