

Frequently Asked Questions Construction Storm Water Permits *May 8, 2007*

Applicability

1. What is the definition of a “construction activity”?

Construction activities are defined as any soil-disturbing activity including clearing, grading, excavating, and demolition. Examples of construction include, but are not limited to, road building, construction of residential houses, office buildings, industrial sites, commercial sites, and demolition of existing structures.

Construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of a ditch, channel, or other similar storm water conveyance. Also, construction activity does not include the routine grading of existing dirt roads, asphalt overlays of existing roads (and repaving when asphalt is removed but the base is not disturbed), routine clearing of existing right-of-ways, and similar maintenance activities.

2. What is the difference between large and small construction sites?

Large construction sites are projects that disturb five acres or more of land. This also includes all smaller construction activities (those disturbing less than five acres individually) that are part of a common plan of development or sale which, collectively, will result in the disturbance of five or more acres at the site.

Small construction sites are projects that disturb at least one acre but less than five acres of land. This includes smaller construction activities (those disturbing less than one acre individually) which, collectively, will result in the disturbance of at least one acre but less than five acres at the site.

3. What is a “common plan of development or sale”?

A common plan of development or sale is a contiguous area where multiple, separate and distinct, construction activities may be taking place either simultaneously, or on different schedules, but they are directed toward the completion of a single overall project. Evidence supporting separate activities that are part of a common plan of development or sale may be found in documentation such as plats, blueprints, marketing plans, contracts, building permits, public notice or hearing, zoning requests, and other similar documentation.

An example of a common plan of development or sale would be documentation describing the construction of a residential subdivision. Each construction activity taking place during the completion of the subdivision, including the initial grading of the property, street construction, house construction, park construction, and other similar activities are a part of the common plan of development for that subdivision. The common plan also includes the activities scheduled to occur in “phases” at a site.

4. How are construction activities at a residential subdivision considered when construction is planned on a few remaining lots (“infill”) in a common plan of development (i.e. subdivision) where no construction activity has occurred for a period of time?

If all construction activities have been completed for an identifiable period of time, and all areas of disturbed soil have been finally stabilized, then future construction on the remaining lots may be considered separately from the original common plan of development for the purposes of calculating the acreage disturbed and for determining permit requirements.

To determine if the activity is a small or large construction activity, subject to storm water permitting requirements, or if an activity is not subject to the requirements, you must total the acreage of all of the remaining undeveloped lots (whether owned by the applicant, or not).

- If five or more acres remain available for development to build out the original “common plan,” then construction on a lot is considered a large construction activity and permit coverage is required.
- If less than five acres, but at least one acre remains available for development, then construction on a lot is considered a small construction activity and permit coverage is required.
- If less than one acre remains of the original common plan, then construction on the remaining lots would not require storm water permit coverage.

5. Are construction activities at a private residence considered to be activities that are a part of the common plan of development for the entire subdivision?

After a home is constructed and the property is transferred to the homeowner, all subsequent development or redevelopment of that lot would be regarded as a new plan of development. Permit coverage would only be required if further construction on that lot resulted in the disturbance of one or more acres

6. What if the extent of a construction activity is not immediately known, such as an example where a second phase may be contingent on the financial success of the first planned phase?

In determining the “common plan of development” and storm water permitting requirements, you must consider all planned phases, and obtain the necessary authorization prior to commencing the initial construction. If you are not sure exactly how many acres will be disturbed, you should make the best estimate possible. If a project is determined to qualify as a small construction activity, but mid-project it is apparent that the amount of disturbed soil will cause it to become a large construction activity, the permittee(s) should submit a notice of intent(s) (NOI) as soon as becoming aware of the increased amount of disturbed area.

7. My construction activity is directly involved with building a retention pond to catch and retain the storm water from a completed development activity. Do I still need to meet the requirements of the CGP?

If the construction is not a part of the common plan of development for the site, it may be considered separately and would only require coverage if it results in the disturbance of one or more acres.

8. What is the definition of “start of construction” or “commencement of construction”?

The start or commencement of construction begins when the construction activity results in the exposure of soil and includes clearing, grading, excavating, or demolition activities. This also includes soil-disturbing activities relating to the construction project as a result of surveying, geo-technical assessments, or environmental assessments.

9. When does the operator of a construction site have to apply for permit coverage?

Operators of large construction sites must submit their NOI at least two days (48 hours) prior to the start of construction if the application is submitted by mail, overnight delivery, or in person. Discharges eligible for coverage are conditionally authorized 48 hours from the time that the NOI is postmarked for delivery to the TCEQ.

If an NOI is submitted online, then provisional authorization begins 24 hours from the time that the NOI is submitted electronically. A part of the application process requires that a copy of the NOI must be posted at the construction site, in a location where it is readily available for viewing, prior to the start of construction, and that a copy must be provided to the operator of any MS4 that directly receives the discharge.

Operators of small construction sites are authorized as soon as they post the construction site notice (included as an attachment to TPDES General Permit TXR150000) and provide a copy of the notice to the operator of any MS4 that receives the discharge.

10. How can I submit my NOI electronically?

The State of Texas Environmental Electronic Reporting System (STEERS) allows for electronic submittal of the NOI via the internet once the applicant has registered with the program. You can access the STEERS Participation Agreement (SPA) online at www.tceq.state.tx.us/permitting/steers/steers.html. Complete and print out the SPA and send it to the TCEQ at the following address:

Texas Commission on Environmental Quality
STEERS
P.O. Box 13087 MC144
Austin, TX 78711-3087

11. Is permit coverage required if there is no discharge of storm water from the site?

No. Permit coverage is not required if all storm water associated with construction activities is captured and retained on the site, and is not allowed to enter surface water in the state.

Storm water might conceivably be collected in a manmade retention pond and allowed to evaporate, soak into the ground on-site, or used for on-site dust suppression or irrigation without runoff. Prior to relinquishing control of the site, the construction site operator must ensure that all storm water associated with construction activity has been properly disposed of and that there would be no subsequent overflow of a retention pond or other discharge of the water.

Be aware, if a construction site operator does not obtain permit coverage and a significant storm event occurs that results in a discharge from the site, then the operator would be in violation of the Texas Water Code.

12. Do storm water discharges from construction sites to municipal separate storm sewer systems (MS4s) need permit coverage?

Yes. Although the discharge isn't directly to surface water in the state, the MS4 will eventually drain to surface water in the state. Therefore, permit coverage is required for large and small construction sites, as defined in the general permit, and the operator of the MS4 must be notified of the discharge.

13. Do storm water discharges from the construction site to the public street need coverage?

Yes. A public street contains curbs and gutters which are a part of an MS4.

14. If a utility company (water, sewer, electric, cable, etc.) plans service inside a new development, does it need to obtain permit coverage under the CGP if it is not the operator/owner?

Any party which meets the definition of operator as listed in the CGP would need to apply for permit coverage. However, utility installers in a new development are not typically in control of the project. Therefore, they would not be considered an operator. In these situations, utility companies should coordinate with permittees and abide by the site's SWP3 provisions as they conduct work on these sites.

15. Is the clearing of lands specifically for agricultural purposes required to be authorized under the construction general permit?

No. Although the clearing of land may disturb more than an acre, if the activity is related directly to agricultural purposes it is not considered a regulated activity under the storm water regulations. Section 402(1)(1) of the 1987 Water Quality Act exempts agricultural storm water discharges from NPDES permitting requirements, including storm water permitting. This exemption only applies if the clearing of land is solely for agricultural purposes.

Discharges of storm water from the clearing of agricultural land for non-agricultural purposes must be authorized.

16. If I am constructing an Animal Feeding Operation (AFO), do I need a construction permit?

Yes. If more than one acre of land is disturbed to build the AFO, which would include poultry farms, feedlots, dairies, etc., permit coverage is required. Once the AFO is constructed and final stabilization is achieved, the AFO would need to be authorized in accordance with Title 30 Texas Administrative Code, Chapter 321, Subchapter B.

17. Would building demolition constitute a land-disturbing activity and require a storm water construction permit application?

Yes. Activities at a demolition site that could result in disturbed soil include the footprint of the demolished building, material storage areas, equipment storage areas, and other activities/areas related to demolishing and removing a structure.

18. If a construction activity disturbing one or more acres occurs on an industrial site covered by an industrial storm water permit (such as the TPDES multi-sector general permit, or MSGP, permit number TXR050000), are the storm water discharges from the construction activity covered by the existing permit?

No. Storm water runoff associated with construction activities must be covered under a separate permit. The MSGP only provides coverage for discharges from industrial activities. If industrial discharges from the site are covered by an individual wastewater permit, then the discharger must either obtain separate coverage under the CGP, or amend the individual wastewater permit to specifically include discharges of storm water from construction activities at the industrial site.

19. Gravel roads are often reconstructed (i.e., resurfaced, regarded, and compacted) every year. Is a permit required each time a gravel road undergoes such extensive maintenance?

No. The general permit specifically excludes from permitting requirements the routine grading of existing dirt roads or gravel roads, as these are considered maintenance activities (rather than construction activities). Any widening of these roads would be considered construction and subject to the permitting requirements.

20. If a construction activity includes the use of off-site "borrow pits" for excavation of fill material, sand or gravel, should the number of disturbed acres at the borrow pit be added to the number of acres at the construction site to determine the total number of acres where construction activities occur?

The operation of a borrow pit is an industrial activity subject to TPDES storm water requirements if the pit is not directly supporting a construction site, and the operation of the pit would fall under Sector J of the MSGP, "Mineral Mining and Dressing." However, the

CGP (Part II.A.2.) states that storm water runoff from construction support activities located within one mile of a construction site, including borrow pits which directly support the construction activity, may be authorized under the CGP.

Dirt, rock, gravel and similar materials carried to the construction site, or temporarily stored at a location within one mile of the site, must be considered when determining the total number of acres disturbed by the construction activity if they are authorized under the CGP. If these areas are located more than one mile from the site, then they are not required to be considered (and potentially authorized) as part of the construction activity and may require additional separate coverage (depending on the area disturbed) under the CGP or under the MSGP.

21. Do mining, quarrying, or landfill operations require coverage under the CGP?

The initial construction of a mine, quarry, or landfill is subject to the CGP. Once the site becomes operational, authorization to discharge storm water associated with the industrial activity is required. Future construction of landfill cells or additional mining and quarrying areas are considered routine industrial operations and may be authorized under the facility's industrial storm water permit. If additions are made at the site based on an expansion of the activity that would require a major amendment to the wastewater or solid waste permit, then the construction of the new cells or mining/quarry areas may require CGP coverage since it would be considered "new" construction.

NOI Completion

22. Are there any fees associated with coverage under the CGP?

Yes, operators of large construction activities must submit an application fee of \$100 with each Notice of Intent (NOI). All operators of active construction activities will pay a \$100 annual Water Quality Fee. Annual fee invoices are usually mailed in November and payment is due 30 days from the invoice date. A penalty of 5 percent is assessed when the payment is late. Fees are not required for submission of a Notice of Termination (NOT), Notice of Change (NOC), or for the authorization of a small construction activity.

23. What if the application fee is paid one month before the Water Quality Fee is due, am I still required to pay the Water Quality Fee as well?

Yes. Application fees are separate from the Water Quality Fee.

24. How should the physical location be described on the NOI for linear construction projects, such as construction along a 100-mile stretch of highway?

The mid-point of a linear construction project should be used in the determination of latitude and longitude. However, the physical location should be described as a range describing the site boundaries (for example, approximately 100 miles along IH-10 from mile marker 557 to 656).

25. How do I determine the latitude and longitude coordinates of the site?

You can obtain this information by using the TCEQ’s Geographic Information Systems (GIS) map at <www.tceq.state.tx.us/gis/drgview.html> by focusing in on your area, then choosing the exact location of your site. You can also obtain this information from other sites, including a search at <www.teraserver.microsoft.com/address.aspx>.

26. Do I still need to satisfy eligibility requirements related to endangered species?

The CGP does not require a construction site operator to submit information to the TCEQ on issues related to endangered species. However, this does not exempt a construction site operator’s responsibility to protect endangered species as required by the U.S. Fish & Wildlife Service (USFWS) and to comply with the requirements of the Endangered Species Act. Construction site operators should identify whether endangered species or critical habitat occur in the vicinity of the construction activity and coordinate with the USFWS. Failure to comply with the Endangered Species Act may result in enforcement action from the USFWS.

27. Who is required to sign the NOI?

The NOI must be signed in accordance with Title 30 Texas Administrative Code (TAC) §305.44(a)(1).

- Corporations:
Any corporate representative may sign the NOI so long as the authority to sign such a document has been delegated to that person in accordance with corporate procedures. By signing the NOI you are certifying that such authority has been delegated to you. The TCEQ may request documentation demonstrating such authority.

- Partnerships or Sole Proprietorships:
A general partner or the proprietor.

- Municipality or Other Government Entity:
Only a ranking elected official or principal executive officer may sign the NOI. Persons such as a mayor or county commissioner will be considered ranking elected officials. In order to identify the principal executive officer of your government entity, it may be beneficial to consult your city charter, county or city ordinance, or the Texas statute(s) under which your government entity was formed. An NOI or similar document that is signed by a government official who is not a ranking elected official or principal executive officer does not conform to §305.44(a)(3).

The signatory requirements may not be delegated to a government representative other than those identified in the regulation. By signing the NOI you are certifying that you are either a ranking elected official or principal executive officer as required by the administrative code. Documentation demonstrating your position as a ranking elected official or principal executive office may be requested by the TCEQ.

Changes to Project (Notices of Change)

28. I need to change the billing address that I submitted on my NOI. Where can I find the form?

You can submit a letter to the TCEQ that contains this change. Please write “Notice of Change” in the subject line of the letter and include your permit number if one has been assigned. In the future, the TCEQ may develop an NOC form that can be used to make this change. Letters may be sent to the following address:

Texas Commission on Environmental Quality
Storm Water & Pretreatment Team
P.O. Box 13087 (MC 228)
Austin, TX 78711-3087

29. I am finished with half of the houses in my development, so I need to change the number of acres disturbed from eight acres to four acres. How do I make this change?

You do not need to submit a notice of change to the TCEQ for this type of change; but you do need to make sure that your SWP3 is updated to include the revised acreage. When you are finished with all of the construction activity, then you may submit a Notice of Termination.

SWP3 Development

30. Can I delegate a lower-ranking employee to sign reports required by the CGP?

Yes. Any official eligible to sign the NOI, as listed in Question 24 above, may designate a lower-ranking employee to sign all reports by notifying the executive director in writing. A copy of this letter must also be retained in the SWP3. Operators of large construction sites or small construction sites must mail this notification to the TCEQ, even if they are not required to submit an NOI. Letters may be sent to the following address:

Texas Commission on Environmental Quality
Storm Water & Pretreatment Team
P.O. Box 13087 (MC 148)
Austin, TX 78711-3087

31. Do I have to submit a copy of my SWP3 to the TCEQ?

No. The TCEQ does not require permittees to submit copies of their SWP3 to obtain permit coverage. You must keep the SWP3 on-site or if there is no on-site location to store the plan, you must post a notice describing the location of the SWP3. The SWP3 must remain readily available at the time of an on-site inspection by the EPA, TCEQ or any local or municipal authority. The permit holder should also check with the city or county in which the activity is

taking place in the event that they have additional requirements related to application or plan submittals.

32. What is the definition of “readily available” as it pertains to providing the SWP3 during an inspection?

Response 151 in the Executive Director’s Response to Comments for CGP states, “If the document is maintained on-site, the operator should be able to produce the SWP3 the same day as the request. If the SWP3 is maintained off-site, then it should be made available as soon as is reasonably possible. In most instances, it is reasonable that the document should be made available within 24 hours of request. Many site investigations performed by the TCEQ will be arranged in advance and, therefore, the SWP3 is expected to be available at the time of the inspection.”

33. Do I have to hire an engineer or consultant to develop or sign my SWP3, or perform my site inspections?

No. The SWP3 should be prepared and site inspections should be conducted by a person who is knowledgeable about the CGP requirements and familiar with the construction project, but a licensed registered professional engineer is not required.

34. I am working on a linear construction project (installing new water lines). The project covers approximately two miles; where should I post my construction notice?

Operators of linear construction projects should post their NOI or Construction Site Notice where soil-disturbing activities are currently taking place and where it may be visible to the public or to the TCEQ. You may need to move the posted notice several times throughout construction, or post multiple signs.

35. Can multiple operators (permittees) at a single site share an SWP3?

Yes. Each operator must obtain separate permit coverage but they are able to share an SWP3. The SWP3 must clearly indicate which operator is responsible for satisfying each shared requirement of the SWP3. If the responsibility for satisfying a requirement is not described in the plan, then each permittee is entirely responsible for meeting the requirements within the boundaries of the construction site where they perform construction activities.

The SWP3 must clearly describe responsibilities for meeting each requirement in shared or common areas and describe the areas of the site where each operator is the sole responsible operator. Each participant in the shared plan must also sign the SWP3.

Terminating Coverage

36. Is there a procedure for notifying the TCEQ when activities authorized under the general permit have been eliminated?

Yes. The general permit includes procedures for filing a Notice of Termination (NOT) form when the site reaches final stabilization or when the site has been transferred to another permitted operator. If an operator fails to submit the NOT prior to September of each year, the operator will receive a bill for the annual water quality fee for the next fiscal year.

37. When should a construction site operator submit a Notice of Termination (NOT) for a permitted construction activity?

Each operator that has submitted an NOI for authorization under this general permit must apply to terminate that authorization using an NOT within 30 days of:

- final stabilization being achieved on all portions of the site that are the responsibility of the permittee, **or**
- when another operator has assumed control over all areas of the site that have not been finally stabilized, **and**
- all silt fences and other temporary erosion controls have either been removed, scheduled for removal or transferred to a new operator, if that new operator has applied for permit coverage.

Erosion controls that are designed to remain in place for an indefinite period, such as mulches and fiber mats, do not require removal or schedule for removal.

Final stabilization is achieved when all soil disturbing activities have been completed and a uniform (e.g. evenly distributed, without large, bare areas) perennial vegetative cover with a density of 70 percent of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

For individual lots in a residential construction site:

- the homebuilder completes final stabilization as listed above; or
- the homebuilder establishes temporary stabilization for an individual lot prior to the time of transferring ownership of the home to the buyer and after informing the homeowner of the need for and benefits of final stabilization.

For construction activities on land used for agricultural purposes (for example, pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use.

Parallel Applicability with other State Requirements

38. If I am in compliance with the current TPDES Construction Storm Water Permit, am I also “automatically” in compliance with the Edwards Aquifer Protection Program requirements?

No. The Edwards Aquifer Protection Program regulates construction activities occurring on the recharge, transition, and contributing zones of the Edwards Aquifer. The Edwards Aquifer rules affect eight Central Texas counties: Williamson, Travis, Hays, Comal, Bexar, Medina, Uvalde, and Kinney. If construction activities are occurring in the above listed areas, you must get approval from the Edwards Aquifer Protection Program prior to the start of construction activities. The CGP may also be applicable.

The Edward's Aquifer rules are defined in Title 30 TAC Chapter 213. For more information on complying with the Edwards Aquifer Protection Program rules please visit its web site at <www.tceq.state.tx.us/compliance/field_ops/eapp/program.html> or contact the TCEQ Austin or San Antonio Regional offices.

Austin Regional Office	512-339-2929
San Antonio Regional Office	210-490-3096

Local Programs and the EPA

39. Do local governments, such as cities or counties, have storm water permitting requirements in addition to the state permitting requirements?

Possibly. Local governments can adopt the state's storm water requirements or enact local ordinances that are more restrictive than state requirements. Operators of construction sites should be aware of local regulations regarding storm water runoff.

Compliance with Permit Requirements

40. Part III, Section D (2) of the CGP requires the operators of a large construction site to post their NOI and a construction site notice near the main entrance to the construction site. Is the main entrance considered the entrance to the overall project (common plan of development) or the main entrance to each operator's site within the common plan of development?

The Executive Director's Response to Comments, Response 97 states, "The site notice must be readily available for viewing by the general public, local, state, and federal authorities," so as long as the notice is easily seen by the public, it could be posted either at the front of the entire development or at the main entrance to each operator's site. If the notice is posted at the main entrance of the overall project, it is suggested that all lots under the builder's responsibility are listed on the site notice to easily determine which builder owns specific lots.