

New Requirements on Construction Site Stormwater

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EPA has issued a five-year renewal of its General Permit for construction site stormwater, superseding the 2008 version. Both new projects and projects still proceeding under the 2008 permit should pay prompt and close attention to the 2012 permit.

The [2012 permit](#) took effect upon issuance on February 16, 2012 and applies wherever EPA retains direct authority for the National Pollutant Discharge Elimination System. Thus all of Massachusetts and New Hampshire are covered by the 2012 permit.

The structure and requirements of the 2012 permit largely follow the 2008 version. Coverage still is obtained by filing a Notice of Intent (NOI) with EPA; projects still must develop and implement Stormwater Pollution Prevention Plans (SWPPPs); and implementation of best management practices remains as the key standard.

There are many important new requirements, though, as well as the deferral of a burdensome requirement for meeting numeric turbidity standards.

Deadlines for New and Still Proceeding Projects

Generally, authorization under the 2012 permit is required for any construction activity affecting more than one acre within states where the permit applies. This is the same as the 2008 permit.

As with the 2008 permit, coverage is obtained by filing a notice of intent with the EPA, which can be done using EPA's eNOI electronic filing system. The 2012 permit makes using eNOI the default system; paper NOIs now can be filed only with special permission.

For new projects that commence activities after February 16, coverage under the 2012 permit is acquired 14 days after receiving EPA's acknowledgement of the filing of an NOI, unless EPA notifies a filer of a delay or denial. EPA expanded that 14-day notice period from the 7-day period under the 2008 permit in order to provide itself more time to evaluate NOIs regarding Endangered Species Act and other issues.

For projects that are still proceeding under the 2008 permit and now must comply with the 2012 permit, an NOI must be filed no later than May 16, 2012. As long as the deadline is met, a project

remains authorized under the 2008 permit until the new authorization takes effect.

Coverage for Activities Associated with Public Emergencies

A useful avenue is added by the 2012 permit. If there is a public emergency as defined in the permit — e.g., a natural disaster or widespread disruption in essential services — construction activities may commence immediately. The activities will become authorized as long as a SWPPP is prepared and an NOI is filed within 30 days of the commencement of earth-disturbing activities.

More Detailed Standards – Buffer Zones

The 2012 permit contains many, much more detailed standards than the 2008 permit. For example, the new permit includes specific quantitative requirements for the removal of sediment buildup against sediment barriers. Most significantly, the new permit includes requirements for maintaining a 50-foot “undisturbed natural buffer zone” or equivalent controls if surface water is located within 50 feet of construction activities.

Many of the increased requirements stem from EPA’s court-ordered issuance in 2009 of effluent limitations guidelines (ELGs) and new source performance standards (NSPS) for the construction industry that EPA needed to incorporate when it issued the 2012 permit.

Tighter Standards for Impaired Waters and High Quality Waters

The 2012 permit further tightens the standards — such as deadlines to complete post-construction stabilization — if a construction activity involves discharges to a water body that a state has designated as high quality or impaired for sediment-related parameters or for nutrients. In Massachusetts, for example, these higher requirements apply to discharges of construction stormwater to the many streams that are classified as tributaries to public water supplies, and many larger water bodies are so classified as impaired.

Screening for Endangered Species and Historic Sites

The 2012 permit includes revised methods for project sponsors to conduct pre-NOI screening to determine whether a construction activity will impact endangered species or historic sites. In practice, this screening often involves retention of experts and may lead to consultation with state and tribal historic preservation offices, and means some projects must undertake substantial planning well ahead of filing an NOI.

Increased Inspection Frequency

The 2012 permit increases the frequency of inspections that project operators must perform and record on a regular basis and after precipitation events.

Deferral of Numeric Standards for Turbidity

When EPA promulgated the ELGs and NSPS for the construction industry in 2009, it included a numeric standard for turbidity in stormwater discharges. Subsequently EPA withdrew that standard due to an acknowledged error in the calculation method. Perhaps not incidentally, the standard also was heavily criticized by the construction industry and utilities. In issuing the 2012 permit, EPA noted

that history and elected to defer a numeric standard.

Conclusion

The 2012 permit includes many new requirements not listed here. Persons responsible for new or still proceeding projects, their engineers and attorneys should carefully review and update their plans or their existing SWPPPs while preparing the NOIs required to obtain coverage.

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