



New general permit for construction activity: Some major changes are ahead

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Stormwater discharges from certain construction activities (including discharges through a municipal separate storm sewer system, or MS4) are unlawful unless authorized by a National Pollutant Discharge Elimination System (NPDES) permit or by a state permit program. New York's State Pollutant Discharge Elimination System (SPDES) is a NPDES-approved program with permits issued in accordance with the environmental conservation law. An owner or operator of a construction activity must obtain coverage either through an individual SPDES permit that addresses the stormwater discharges, or obtain coverage under the new SPDES general permit for stormwater discharges from construction activity prior to the commencement of construction activity.

The proposed DRAFT SPDES general permit for stormwater discharges from construction activity (GP-0-08-001) will be effective on January 8, 2008 and includes a number of changes. The new five-year permit replaces the previous permit (GP-02-01) and covers new and existing discharges of stormwater to surface waters of the state from construction activities as defined in 40 CFR Part 122.26(b)(14)(x) and (b)(15)(i-ii).

In accordance with 6NYCRR 750-1.11(a)(5) and (9) and 40 CFR 122.44(d), SPDES permits must address discharges with the reasonable potential to cause or contribute to an in-stream excursion above the allowable ambient concentration of standards and guidance values set forth or calculated in accordance with 6NYCRR Part 700 to 706. Permits for discharges with such a reasonable potential must include requirements to enhance pollutant reductions.

In each of the watersheds subject to additional requirements in the draft permit, discharges of stormwater have already caused excursions or have the reasonable potential to cause them. In some cases, the reasonable potential occurs where the discharge reaches classified waters of the state. In other cases, the reasonable potential may occur further downstream. It is not practical or achievable, however, to set traditional, outfall-specific, effluent limitations to control these discharges. There are far too many outfalls, and their contributions of pollutants occur primarily during storm events, making the analysis more difficult than it has been for the relatively fewer traditional industrial and municipal steady state discharges.

Instead, the proposed draft permit proposes enhanced pollution controls in the watersheds where stormwater discharges are identified as having the reasonable potential to cause or contribute to excursions in the stream in which the discharge occurs. These pollution controls are expected to be the necessary first steps toward preventing and eliminating excursion, and their success eventually will be evaluated. If they are found to fall short in preventing and eliminating water quality excursions, further enhanced controls will be applied.

In the East of Hudson New York City Watershed the controls proposed are based in large part on recommendations from the Center for Watershed Protection (CWP) report entitled

"Recommendations for Developing an NPDES Phase II Stormwater General Permit for Municipal Separate Storm Sewer Systems in the East of Hudson Watershed."

The CWP report recognizes that the East of Hudson Watershed is among the most sensitive watersheds in New York state, supplying drinking water to millions of people while also experiencing substantial development pressure. Because the needed reductions will be so difficult to attain, and protection of drinking water is at the top of the environmental protection hierarchy, the conditions that apply to the East of Hudson Watershed are the most rigorous to be included in GP-0-08-001.

The draft permit also includes requirements for other phosphorus watersheds, e.g. Onondaga Lake and Greenwood Lake, where protections are to ensure fishing and swimming best uses, although the watersheds are not to be used as a source of drinking water.

There are three major changes in the proposed draft permit:

The first involves construction activities located in the New York City Watershed East of the Hudson that disturb between 5,000 s/f and one acre. Owners or operators of these construction activities will be required to gain coverage under the new general permit before commencing activity. However, they will typically only have to develop a Stormwater Pollution Prevention Plan (SWPPP) that includes erosion and sediment controls.

The New York State Department of Environmental Conservation (NYSDEC) made this a requirement in the draft permit because of the potential for these projects to be a significant contributor of pollutants to the New York City water supply. Pursuant to 40 CFR Part 122.26(b)(15)(ii), the department can require an operator to obtain coverage under a SPDES permit for stormwater discharges based on the potential for contribution to a violation of the water quality standards or for significant contribution of pollutants to surface waters of New York state.

The second major change involves construction projects located in the East of Hudson Watershed, Onondaga Lake Watershed and Greenwood Lake Watershed that are required to develop a SWPPP that includes post-construction stormwater management practices. Under the draft permit, the owner or operator of these construction activities will be required to prepare a SWPPP that includes post-construction stormwater management practices designed in conformance with the Enhanced Phosphorus Removal Design Criteria included in the New York State Stormwater Management Design Manual (Design Manual) dated August, 2003, or the most current version.

The third major change involves construction activities that are tributary to waters of the state classified as AA and AA-s and will disturb land areas where the Soil Slope Phase is identified as E or F (generally those exceeding 25% slope) on the USDA soil survey for the county where the project is located. Those activities are ineligible for coverage under the general permit and would need to obtain coverage under an individual SPDES permit. NYSDEC made this a requirement in the new permit because of the increased potential for these construction activities to be a significant contributor of silt and sediment to drinking water supplies. For such sites, the department believes it appropriate to apply the higher level of oversight associated with an individual permit.

Other significant changes in the proposed draft permit include:

An owner or operator of a construction activity that is subject to the requirements of a regulated, traditional land use control MS4 shall have their SWPPP reviewed and accepted by the MS4 before submitting the Notice of Intent (NOI) to NYSDEC. The owner or operator shall have the principal executive officer or ranking elected official from the regulated, traditional land use control MS4, or a duly authorized representative of that person from the regulated, traditional land use control MS4, sign the "MS4 SWPPP Acceptance" form and then submit that form along with the NOI to NYSDEC.

An owner or operator of a construction activity with a SWPPP that has not been prepared in conformance with the technical standards referenced in the general permit will be authorized to discharge in five business days from the date NYSDEC receives a complete NOI, provided the SWPPP has been reviewed and accepted by a regulated, traditional land use control MS4.

Pursuant to 6 NYCRR Part 750-1.21(d)(2), an owner or operator of a construction activity with coverage under the existing SPDES general permit for stormwater discharges from construction activity (GP-02-1) as of the effective date of GP-0-08-001 shall be automatically permitted to discharge in accordance with GP-0-08-001, unless otherwise notified by NYSDEC. These owners or operators may continue to implement the technical/design components of the SWPPP that was developed in accordance with the requirements of the previous permit; however, they will be subject to the provisions of the proposed draft permit.

Construction activities that require the preparation of a SWPPP that only includes erosion and sediment control practices are identified in table 1 of appendix B of the permit. Construction activities that require the preparation of a SWPPP that also includes post-construction stormwater management practices are identified in table 2 of appendix B.

Under the proposed draft permit, the qualified inspector shall conduct at least one site inspection every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater. (The required frequency of inspections under the existing permit is one inspection every seven calendar days.) For construction sites where active construction has been suspended, inspection frequency can be reduced to once every 30 days, provided temporary stabilization measures have been applied to all disturbed areas.

The owner or operator shall have the qualified inspector perform a final site inspection before submitting the Notice of Termination (NOT) to NYSDEC. The qualified inspector shall certify that all disturbed areas have achieved final stabilization; all temporary, structural erosion and sediment control measures have been removed; and that all post-construction stormwater management practices have been constructed in conformance with the SWPPP by signing the "Certification of Final Stabilization and Post-Construction Stormwater Management Practice" section on the NOT.

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