

Nebraska Department of Environment and Energy

NPDES and State Permits Section

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Fact Sheet
General NPDES Permit Authorizing Storm Water Discharges
Associated with Construction Sites
State of Nebraska
NPDES NER210000

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A. Introduction

The Nebraska Department of Environment and Energy (NDEE) is reissuing the construction storm water general permit, or CSW general permit, that authorizes discharge under the National Pollutant Discharge Elimination System (NPDES). The CSW general permit covers discharges from storm water and non-storm water that may transport pollutants associated with both small and large construction activity. This permit provides coverage from construction and support activity that causes land disturbance of equal to or greater than one acre and less than one acre if the construction activity is part of a common plan of development or sale. 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. This CSW general permit replaces the previous CSW general permit that was issued November 1, 2016.

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 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.

B. Summary of Proposed Changes from 2016 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. Content clarifications are made.
2. Permit numbers have been changed to correspond with anticipated issue year.
3. Nebraska Department of Environmental Quality (NDEQ) has been updated to the Nebraska Department of Environment and Energy (NDEE).
4. NDEQ Title 119 – *Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System* references have been updated to correspond with the July 2, 2017 revision of NDEE Title 119.
5. Site inspection schedules have been updated to include “every seven (7) days” and “excluding nonbusiness hours.”
6. Electronic reporting language provisions have been updated.
7. All forms are now required to be submitted electronically on the NDEE website.
8. Part VI.C. has been updated to remove “CSW Transfer form” from the general permit and revised for the updated transfer of permit requirements.
9. Concrete and asphalt batch plants have been removed from allowable stormwater discharge for support activities.
10. SWPPPs are now required to be submitted with the NOI.
11. Game and Parks CERT reviews are now required to be submitted with the NOI.
12. Language in Part VI.C.d has been revised for clarification.
13. Typographical, grammar, and formatting errors are corrected.
14. Definitions have been updated to correspond to with the EPA CSW general permit and NDEE regulations

C. Coverage Provided by General Permits

NDEE 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. NDEE Title 119, Chapter 10 sets forth requirements for construction storm water discharges.

This regulation set forth in 64 FR 68722, 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; or
- Other construction activities designated by the Department 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 (NDEE Title 119, Chapter 10).

D. Coverage and Eligibility

1. Introduction

The Department is making this permit available, consistent with NDEE Title 119, Chapter 10 for storm water discharges from any other construction activity designated by the NDEE based on the potential for contribution to violation of a water quality standard or from significant contribution of pollutants to waters of the State.

2. Permit Area

This permit provides coverage for construction and support activity throughout the State of Nebraska excluding tribal land as set forth in NDEE 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 NDEE 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 NDEE 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(l)(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.

4. Allowable Storm Water Discharges

This permit authorizes all discharges of storm water from construction activities described in NDEE Title 119, Chapter 2, 002, Title 119, Chapter 10, 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

NDEE 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. NDEE 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 NDEE, are required to obtain permit coverage (NDEE 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 NDEE specifically notifies the discharger that an individual permit application must be submitted. Only the NOI application provided on the NDEE website is valid. When applicants sign and date the NOI form on the NDEE website, they are certifying that they agree to the terms and conditions of the NPDES Construction Storm Water General Permit. These conditions include eligible discharges as described in Part I.C Eligibility.

1. Notice of Intent Contents

A 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 NDEE 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 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 2016 CSW general permit have 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 NDEE 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, the permit allows 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.

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

1. Requiring an Individual Permit or an Alternative General Permit

The NDEE may determine that an applicant's construction activities are ineligible for coverage under the general permit, and that an individual application as set forth in NDEE 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, NDEE 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 NDEE 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 NDEE.

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 NDEE 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 2017 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 NDEE website that is signed and certified according to Part VI.B of the CSW general permit when one or more of the conditions contained in Part VI.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 NDEE website.

If the Certifying Official changes or the CSW permit is transferred to a new Certifying Official, the permittee must complete a new CSW- NOI on the NDEE website within (7) calendar days of the change/transfer. Once the new CSW-NOI has been submitted and approved by NDEE, the previous CSW permit can be closed by submitting a CSW-NOT, in accordance with Part VI.D.6 of the permit.

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 NDEE Title 119, Chapter 14. This period may be extended on request by NDEE.

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 NDEE Title 119, Chapter 24.

8. Standard Permit Conditions

The Federal regulations require all NPDES permits to contain the standard conditions specified in NDEE 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 reports from the permitted facilities. Facilities must submit electronic 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. NDEE Title 117, *Nebraska Surface Water Quality Standards*, June 24, 2019.
2. NDEE Title 118, *Ground Water Quality Standards and Use Classifications*, March 27, 2006.
3. NDEE Title 119, *Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System*, July 2, 2017.
4. NDEE Title 197, *Rules and Regulations for the Certification of Wastewater Treatment Facility Operators in Nebraska*, April 6, 2020.
5. NDEE, *2018 Water Quality Integrated Report*, April 1, 2018.
6. *National Pollutant Discharge Elimination System General Permit for Discharges from Construction Activities* (EPA-HQ-OW-2015-0828, modified June 27, 2019, referred to as “Construction General Permit” or “CGP”).
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.

