

EPA's Phase II Storm Water Program: Construction General Permit Requirements for Idaho (Update)

The Phase II Environmental Protection Agency's (EPA) Storm Water Program is promulgated under the Clean Water Act (CWA). Phase I of the Storm Water Program required a National Pollution Discharge Elimination System (NPDES) permit for construction activity disturbing 5 acres of land or greater. Phase II of the NPDES Storm Water Program covers small construction activities disturbing between 1 and 5 acres. Final procedural guidelines became available the summer of 2003. Fact sheets describing the Phase II program are available on the EPA web site <http://cfpub.epa.gov/npdes/stormwater/swfinal.cfm>.

The Phase II Storm Water Program in Idaho requires small construction sites (1 to 5 acres) to comply with conditions of EPA's "Construction General Permit" and implement practices to minimize pollutant runoff. The Construction General Permit was updated in 2008 and currently applies to Idaho (EPA administers the NPDES permitting program in Idaho and four other states without "primacy."). Specific information about the Construction General Permit (CGP) can be accessed at <http://cfpub.epa.gov/npdes/stormwater/cgp.cfm>, and is summarized below:

- Submission of a Notice of Intent (NOI) that provides general information and a certification that the activity will comply with any existing TMDL and will not impact endangered or threatened species. If a TMDL has been established for the stream, lake, or river where storm water will discharge, the storm water discharger should contact Idaho Department of Environmental Quality to determine if there are specific TMDL storm water requirements.
- The development and implementation of a Storm Water Pollution Prevention Plan (SWPPP) with appropriate BMPs to minimize the discharge of pollutants from the site.
- Submission of a Notice of Termination (NOT) when final stabilization of the site has been achieved as defined in the permit.

Storm water pollution prevention for construction activities considers the following basics:

- Minimize disturbance of vegetated areas
- Minimize cut and fill
- Minimize impacts to sensitive areas, including steep or unstable slopes, surface waters and wetlands, erodible soils, or existing drainage channels.

Typical practices include mulching, hay bales or silt fences as sediment barriers, use of temporary diversions, and sediment basins. The NRCS National Engineering Handbook (Part 642, *Specifications for Contracting*) provides a Pollution Control Specification which addresses short-term impacts during construction activities. It can be used as a reference for landowners

and contractors in the use of storm water BMPs and the development of the SWPPP. An example of a SWPPP is attached that shows the required content. An electronic template is also available.

The EPA Storm Water Phase II permit process exempts traditional agricultural actions (e.g., tillage). Some construction activities that could require a permit include ponds, CAFO/AFO waste management systems, streambank stabilization with riparian impact, and wetland restoration when the construction site is greater than 1 acre and has the potential to discharge to waters of the US. A waiver to the CGP can be obtained if the RUSLE Rainfall Erosivity Factor (R factor) is determined to be less than five during the period of construction. An online calculator for the R factor can be found at: <http://ei.tamu.edu/index.html>. This exemption has been included by EPA to encourage construction during appropriate times of the year. As an example, much of southern Idaho meets this exemption from July 1 through September, and many areas in northern Idaho are well below 5 in August.

The EPA has developed an “Electronic Notice of Intent” (eNOI) which will streamline the permit process. The landowner or contractor can locate this form at <http://cfpub.epa.gov/npdes/stormwater/enoi.cfm>. **CGP compliance is the responsibility of the landowner or operator or contractor – those individuals responsible for operational control over the construction plans and specifications, and/or those that control the day-to-day activities at a project site.** It is no different that other permitting and legal requirements we currently advise our clients about (e.g., water rights or 404 permits). Statewide, we expect that only a handful of projects will need the CGP annually.

The required procedures for compliance by the landowner or contractor are:

- 1) Read the CGP and determine project eligibility.
- 2) Develop a Storm Water Pollution Prevention Plan before construction begins.
- 3) Submit a Notice of Intent (paper copy or on-line).
- 4) Implement the pollution prevention plan.
- 5) Begin construction not less than 7 days after your NOI information is posted on the EPA on-line database (<http://cfpub.epa.gov/npdes/stormwater/noi/noisearch.cfm>)
- 6) After construction is completed and the site is stabilized, submit a “Notice of Termination” (paper copy or on-line) to EPA.
- 7) Keep all records at least 3 years from date that site is stabilized.

NRCS personnel can assist the landowner or contractor in understanding the requirements of the CGP.