

EPA Promulgates New Construction Stormwater General Permit which Requires Filings in Massachusetts by November 3, 2003

October 2003

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The EPA has re-issued a general permit authorizing storm water discharges from construction activities, commonly known as the NPDES (National Pollution Discharge Elimination System) General Permit, which became effective in Massachusetts as of August 4, 2003. This construction stormwater general permit replaces the previous construction general permit that expired in February of 2003. Under this revised permit, certain filings for Massachusetts projects, including ongoing projects, must be made by November 3, 2003.

The revised general permit includes certain features which differ from the previous general permit. Of greatest significance are (1) extending the permit requirements to small construction sites disturbing between one and five acres or less than one acre if the site is part of a larger common plan of development; however, these sites may qualify for a waiver if they do not have an adverse impact on water quality, based on a low predicted rainfall erosivity or lack of water quality impacts, (2) requiring the filing of a Notice of Intent at least seven (7) days before construction commences (rather than two (2) days as under the previous general permit), (3) adding uncontaminated excavation dewatering and irrigation runoff to the list of discharges that are covered by the general permit, and (4) encouraging electronic submission of Notices of Intent. The new form of Notice of Intent and explanatory materials will be found on the internet at <http://cfpub.epa.gov/npdes/stormwater/cgp.cfm>.

Developers with ongoing or new construction projects should be aware of the following:

- **If a Developer has filed a Notice of Intent under the previous general permit for an ongoing project, does a new Notice of Intent need to be filed?**

Yes. Operators of ongoing projects in Massachusetts must file a new Notice of Intent and update their Storm Water Pollution Prevention Plans ("SWP3") as necessary to comply with the new General Permit by November 3, 2003. In most other states, this deadline was September 29, 2003.

- **If a Developer is now required to file a Notice of Intent for an ongoing project which was not required to file a Notice of Intent under the previous general permit, by what date is such Notice of Intent required to be filed?**

Operators of ongoing projects in Massachusetts who were not required to file a Notice of Intent under the previous general permit but who are required to do so under the revised general permit are also required to file the Notice of Intent and to prepare an interim SWP3 by November 3, 2003. In most other states, this deadline was September 29, 2003.

- **Is the Developer or the Contractor responsible for filing the Notice of Intent?**

Both. The party with control and approval rights over the plans and specifications (typically the owner or developer) and the party with day to day operational control over the activities at the site (typically the general contractor) are each responsible for filing a Notice of Intent. Although the new general permit requires each party to file a separate Notice of Intent, the EPA is encouraging the use of one comprehensive SWP3 for each project.

- **If a Developer has sold a portion of a site since it filed a Notice of Intent under the previous general permit, who is required to file the new Notice of Intent?**

Once a portion of a site which is part of a larger common plan of development has been sold, the new owner is responsible for filing the new Notice of Intent for the purchased portion before November 3, 2003 (for projects in Massachusetts begun before July 1, 2003) or at least seven (7) days before the new owner commences construction activities (for projects begun after July 1, 2003). The previous owner must file a Notice of Termination within thirty (30) days after the new owner has assumed control of the portion of the site that has been sold.

• **If the Developer has changed its general contractor during the project, is the new general contractor required to file a Notice of Intent?**

Yes. If the general contractor has filed a Notice of Intent for the project and is later replaced with a new general contractor, the new general contractor is responsible for filing a new Notice of Intent before November 3, 2003 (for projects in Massachusetts begun before July 1, 2003) or at least seven (7) days before the new general contractor commences construction activities (for projects begun after July 1, 2003). The previous general contractor must file a Notice of Termination within thirty (30) days after the new general contractor has taken over operations at the site.

• **When is a construction project no longer considered an ongoing project?**

A construction project is no longer considered an on-going project when "final stabilization" is achieved for the portion of the site for which the permittee is responsible. A permittee must file a Notice of Termination with EPA within thirty (30) days after "final stabilization" is achieved. For most areas, "final stabilization" means the completion of all soil disturbing activities and the establishment of a uniform perennial vegetative cover with a density of 70% of the native background vegetative cover for the area on all unpaved areas and areas not covered by permanent structures (or equivalent permanent stabilization measures such as the use of riprap).

• **When will the EPA's electronic system for filing a Notice of Intent become available?**

The EPA had anticipated that the electronic submission system for Notices of Intent would be available at the beginning of October. Due to problems discovered during testing, the EPA is now anticipating that the system will be available by the end of October. Information on the roll-out date for the electronic filing program will be updated on the internet at <http://cfpub.epa.gov/npdes/stormwater/cgp.cfm>.

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