

Frequently Asked Questions on EPA's NPDES 2012 Construction General Permit (CGP)

1. What is the National Pollutant Discharge Elimination System (NPDES) Program?

The National Pollutant Discharge Elimination System (NPDES) is a federal permitting program under the authority of the Clean Water Act (CWA) that establishes controls on point source discharges of pollutants to waters of the United States. Point sources are defined at CWA section 502(14) and, generally speaking, are discrete conveyances including but not limited to any pipe, ditch, channel, or conduit from which pollutants are or may be discharged.

2. What is the EPA Construction General Permit (CGP)?

The EPA Construction General Permit (CGP) is an NPDES permit issued under the authority of the Clean Water Act and associated regulations. At present, EPA administers the CGP in four states (Idaho, Massachusetts, New Hampshire, and New Mexico), the District of Columbia, Puerto Rico, all other U.S. territories with the exception of the Virgin Islands, areas in four states (Colorado, Delaware, Vermont, and Washington) subject to construction by Federal Operators, most Indian Country lands and a few other specifically designated activities in specific states. The CGP regulates the discharge of stormwater from construction sites that disturb one acre or more of land, and from smaller sites that are part of a larger, common plan of development. This permit requires operators of such construction sites to implement stormwater controls and develop stormwater pollution prevention plans (SWPPPs) to minimize the amount of sediment and other pollutants associated with construction sites from being discharged in stormwater runoff.

3. Why is it necessary to regulate stormwater from construction sites?

As stormwater flows over a construction site, it can pick up pollutants like sediment, turbidity, debris, nutrients, and/or chemicals and transport these to receiving waterbodies. Stormwater discharges containing sediment and turbidity can cause an array of physical, chemical, and biological impacts on receiving waters. In addition to sediment and turbidity, a number of other pollutants (e.g., metals, organic compounds and nutrients) are preferentially absorbed or adsorbed onto mineral or organic particles found in fine sediment. The sediment, turbidity, and other pollutants entrained in stormwater discharges associated with construction activity contribute to aquatic ecosystem degradation, increased drinking water treatment costs, and impairment of the recreational use and aesthetic value of impacted waters. Sediment can also accumulate in rivers, lakes, and reservoirs, leading to the need for dredging or other mitigation in order to prevent reduced water storage or navigation capacity. The requirements in the CGP for construction site stormwater discharges are

reasonably necessary to minimize erosion and sediment transport within construction sites in order to minimize the discharge of sediment and other construction site pollutants in stormwater to surface waters.

4. Who is eligible for coverage under EPA's CGP?

Operators of construction activities that will disturb one or more acres of land (or that will disturb less than one acre but are part of a common plan of development or sale that will ultimately disturb one acre or more) in an area where EPA is the NPDES permitting authority can apply for coverage under EPA's CGP. Operators requiring NPDES permit coverage include any party associated with a construction activity that meets either of the following two criteria: (1) The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or (2) The party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the permit). Where there are multiple operators associated with the same project, all operators are required to obtain permit coverage.

To be authorized under the CGP, the operator must meet the eligibility requirements specified in Part 1.1 of the permit. The operator must also submit a Notice of Intent (NOI), which provides certification that the eligibility requirements have been met and that permit requirements will be complied with.

5. What is an NOI? Who is required to submit an NOI and what does submittal of an NOI mean?

EPA's CGP relies on the submission of an electronic document called a Notice of Intent (NOI) to provide coverage under its permit. An NOI for a general permit is notice to the NPDES permitting authority (EPA in this instance) of an operator's intent to be covered under a general permit. An NOI typically contains basic information about the site and the proposed discharge. By signing and submitting the NOI, the operator is certifying that the information submitted is true, accurate, and complete, that the operator has met the eligibility requirements, and that, if covered, the operator will comply with the permit conditions and effluent limitations. A fraudulent or erroneous NOI invalidates permit coverage. An incomplete NOI delays permit coverage until such time as the NOI has been completed.

6. How do I submit an NOI?

Operators required to submit an NOI under EPA's CGP must do so using EPA's online electronic Notice of Intent system, or eNOI, accessible at www.epa.gov/npdes/stormwater/cgpenoi, unless the relevant EPA Regional Office specifically approves the use of a paper NOI on a case-by-case basis.

7. What is the deadline for submitting an NOI for my construction activities and when is my official start date for permit coverage after submitting my NOI?

Your deadline for submitting your NOI varies depending on whether the project is a “new project,” an “existing project,” or an “emergency-related project,” or if you are a “new operator of a new or existing project.” See the following table for a list of applicable deadlines for submitting your NOI and the official start date for permit coverage:

Type of Construction Project	Deadlines for Operators to Submit NOI	Official Start Date for Permit Coverage
New project	<p>You must submit your NOI at least 14 calendar days prior to commencing earth-disturbing activities.</p> <p><i>Exception:</i> If your project qualifies as an “emergency-related project” under Part 1.2.1, you must submit your NOI by no later than 30 calendar days after commencing earth-disturbing activities.</p> <p><i>Exception:</i> If you are scheduled to commence construction activities on or after February 16, 2012, but no later than March 1, 2012, you must submit your NOI by no later than 30 calendar days after commencing earth-disturbing activities.¹</p>	<p>You are considered covered under this permit 14 calendar days after EPA has acknowledged receipt of your NOI on the Agency’s website (www.epa.gov/npdes/stormwater/cgpnosearch), unless EPA notifies you that your authorization has been delayed or denied.</p> <p><i>Exception:</i> If your project qualifies as an “emergency-related project” under Part 1.2.1, you are considered provisionally covered under the terms and conditions of this permit immediately, and fully covered 14 calendar days after EPA has acknowledged receipt of your NOI, unless EPA notifies you that your authorization has been delayed or denied.</p> <p><i>Exception:</i> If you are scheduled to commence construction activities on or after February 16, 2012, but no later than March 1, 2012, you are considered provisionally covered under the terms and conditions of this permit immediately, and fully</p>

¹ For new projects located in the following areas, if you are scheduled to commence construction activities on or after May 9, 2012, but no later than June 8, 2012, you must submit your NOI by no later than 30 days after commencing earth-disturbing activities: the Fond du Lac Band and Grand Portage Band of Lake Superior Chippewa in Minnesota; and the Bad River Band and Lac du Flambeau Band of Lake Superior Chippewa in Wisconsin. For new projects in the State of Idaho (except Indian country), if you are scheduled to commence construction activities on or after April 9, 2012, but no later than May 9, 2012, you must submit your NOI by no later than 30 calendar days after commencing earth-disturbing activities. For new projects in areas in the State of Washington (except for Indian country) subject to construction activity by a Federal Operator, if you are scheduled to commence construction activities on or after April 13, 2012, but no later than May 13, 2012, you must submit your NOI by no later than 30 calendar days after commencing earth-disturbing activities.

Type of Construction Project	Deadlines for Operators to Submit NOI	Official Start Date for Permit Coverage
		covered 14 calendar days after EPA has acknowledged receipt of your NOI, unless EPA notifies you that your authorization has been delayed or denied. ²
Existing project	You must submit your NOI by no later than May 16, 2012. ³ However, if you have not previously obtained coverage under an NPDES permit, you must submit your NOI immediately.	You are considered covered under this permit 14 calendar days after EPA has acknowledged receipt of your NOI on the Agency's website (www.epa.gov/npdes/stormwater/cgpnosearch), unless EPA notifies you that your authorization has been delayed or denied. ⁴
New operator of a new or existing project	You must submit your NOI at least 14 calendar days before the date the transfer to the new operator will take place.	You are considered covered under this permit 14 calendar days after EPA has acknowledged receipt of your NOI on the Agency's website (www.epa.gov/npdes/stormwater/cgpnosearch), unless EPA notifies you that your authorization has been delayed or denied.

² For new projects in the State of Idaho (except Indian country), if you are scheduled to commence construction activities on or after April 9, 2012, but no later than May 9, 2012, you are considered provisionally covered under the terms and conditions of this permit immediately, and fully covered 14 calendar days after EPA has acknowledged receipt of your NOI, unless EPA notifies you that your authorization has been delayed or denied. For new projects in areas in the State of Washington (except for Indian country) subject to construction activity by a Federal Operator, if you are scheduled to commence construction activities on or after April 13, 2012, but no later than May 13, 2012, you are considered provisionally covered under the terms and conditions of this permit immediately, and fully covered 14 calendar days after EPA has acknowledged receipt of your NOI, unless EPA notifies you that your authorization has been delayed or denied. For new projects located in the following areas, if you are scheduled to commence construction activities on or after May 9, 2012, but no later than June 8, 2012, you are considered provisionally covered under the terms and conditions of this permit immediately, and fully covered 14 calendar days after EPA has acknowledged receipt of your NOI, unless EPA notifies you that your authorization has been delayed or denied: the Fond du Lac Band and Grand Portage Band of Lake Superior Chippewa in Minnesota; and the Bad River Band and Lac du Flambeau Band of Lake Superior Chippewa in Wisconsin.

³ For existing projects located in the State of Idaho (except Indian country), NOIs must be submitted by no later than July 8, 2012. For existing projects located in areas in the State of Washington (except for Indian country) subject to construction activity by a Federal Operator, NOIs must be submitted by no later than July 12, 2012. For existing projects located in the following areas, NOIs must be submitted no later than August 7, 2012: the Fond Du Lac Band and Grand Portage Band of Lake Superior Chippewa in Minnesota; and Bad River, Lac Du Flambeau, and Sokaogon Chippewa (Mole Lake) Community in Wisconsin.

⁴ Note that if you are currently covered under the 2003 or 2008 CGP, this coverage continues until your coverage under this permit begins, provided you have submitted an NOI by the deadline.

8. What type of information must be submitted in an NOI?

You are required to provide the following in your NOI:

- NPDES permit number;
- Operator information;
- Project/site information;
- Discharge information;
- Chemical treatment information, if applicable;
- SWPPP information;
- Threatened and endangered species information;
- Historic preservation information;
- Certification of NOI; and
- Contact information for NOI preparer.

A copy of the NOI is included as Appendix J of the permit.

9. How does EPA's Construction and Development Effluent Limitations Guideline and New Source Performance Standards (C&D rule) relate to the CGP?

EPA finalized the Effluent Limitations Guidelines and New Source Performance Standards for the construction and development industry (i.e., the C&D rule) on December 1, 2009. The C&D rule became effective on February 1, 2010, after which all NPDES construction stormwater permits are required to incorporate the C&D rule requirements. EPA's 2012 CGP includes language that implements the C&D rule requirements

10. What does the C&D rule require?

The requirements in the C&D rule include a suite of non-numeric effluent limitations that apply to all permitted construction sites. (See 40 CFR 450.21.) The non-numeric effluent limits include requirements for:

- Erosion and Sediment Controls;
- Soil Stabilization;
- Dewatering;
- Pollution Prevention Measures;
- Prohibited Discharges; and
- Surface Outlets.

The C&D rule also included a numeric limit for turbidity. However, the Agency has issued a stay for the numeric limit for turbidity so that the limit can be recalculated. Thus the 2012 CGP does not contain a numeric limit for turbidity.

EPA published a Federal Register notice on January 3, 2012 requesting additional data on the performance of technologies in controlling turbidity in stormwater

discharges from construction sites. The notice also requests information on other topics relevant to establishing numeric effluent limitations for stormwater discharges from these sites, including sample collection, applicability to linear electric transmission line construction, cold weather considerations, and the ability of small sites to meet a numeric standard.

11. Why has EPA finalized the CGP without the numeric limit for turbidity in the C&D rule?

Because the numeric limit for turbidity has been stayed, the EPA and authorized states are no longer required to incorporate the numeric turbidity limitation and monitoring requirements into their permits.

12. How does the 2012 CGP differ from the 2008 CGP?

The 2012 CGP includes a number of new provisions implementing the C&D rule, as well as other provisions to provide enhanced protections for impaired or other sensitive waters. In addition, the permit has been modified from the existing 2008 permit to improve its readability, clarity, and enforceability.

Some of the significant permit modifications in the CGP include new requirements for:

- Eligibility for emergency-related construction;
- Ineligibility for coverage under CGP where cationic treatment chemicals will be used, unless specific authorization is provided by EPA;
- Increased usage of the electronic Notice of Intent process;
- Increased review period from 7 days to 14 days for operators seeking permit coverage;
- Sediment and erosion controls;
- Natural buffers or alternative controls;
- Soil stabilization;
- Pollution prevention;
- Water quality-based effluent limits;
- Site inspections;
- Corrective action;
- Stormwater Pollution Prevention Plans (SWPPPs); and
- Permit termination.

13. What are the new buffer requirements in the 2012 CGP and how do I determine my requirements?

The C&D rule includes a non-numeric effluent limitation that operators of construction sites “provide and maintain natural buffers, unless infeasible”; however, it does not specify what size buffer is necessary to meet the requirement, but rather leaves this and other related determinations up to the NPDES permitting authority. In drafting the requirements for the 2012 CGP, EPA felt it was necessary to add specificity to the C&D rule buffer requirement to improve its clarity and to ensure consistent implementation where EPA is the permitting authority.

To provide the maximum flexibility for permittees, EPA developed buffer compliance alternatives in the 2012 CGP. One alternative allows permittees to provide a minimum undisturbed natural buffer width of 50 feet around any surface waters occurring within 50 feet of the construction site. Alternatively, the permittee can choose to establish a smaller buffer or no buffer, if establishing a buffer is infeasible, as long as other controls are implemented that ensure that the equivalent level of sediment load reduction is achieved as the 50-foot natural buffer. EPA has also established more flexible compliance alternatives for linear facilities and for small residential lots. To learn more about EPA's buffer requirements and how to comply with them, see the fact sheet for the permit and the buffer appendix (Appendix G).

14. Why do I have to obtain specific authorization to use cationic treatment chemicals in the 2012 CGP?

EPA's proposed permit included a number of provisions related to the use of treatment chemicals. A common theme among the comments received on the requirement regarding treatment chemicals was that EPA should take extreme precaution when authorizing the use of cationic chemicals, especially in light of data suggesting that they are acutely toxic to aquatic species and the fact that the use of chemicals on construction sites is far different from the type of highly engineered systems used for water or wastewater treatment. In response to the comments received on the use of these chemicals, EPA conducted additional research regarding the relative toxicity of cationic chemicals for aquatic species. EPA confirmed that cationic chemicals have been found to be acutely toxic to some species. EPA's research is encapsulated in a memorandum entitled *Literature Survey of Polymer Toxicity for Construction General Permit (CGP) Work Group* (Office of Research & Development, November 2011), which is available in the docket for the final permit.

In addition to the public comments and the Agency's aquatic toxicity research, EPA also considered approaches that state permitting programs have taken to regulate cationic treatment chemicals. EPA found that where cationic chemicals are specifically addressed, the use of these chemicals is heavily regulated. These considerations have led EPA to the conclusion that the use of cationic treatment chemicals at construction sites is best managed if its proposed use is subject to a greater degree of individualized federal review. For that reason, EPA requires specific authorization if a site intends to use cationic treatment chemicals during construction. Where use of such chemicals is approved, EPA may impose additional requirements in order to ensure the protection of applicable water quality standards.

The 2012 CGP authorizes the use of other, anionic polymers, flocculants, or other treatment chemicals at sites provided operators using such measures comply with the requirements in Part 2.1.3.3 of the permit. Sites that plan to use cationic treatment chemicals are only eligible for coverage under the CGP if specific EPA authorization is provided; otherwise, an individual permit is required in order to use such chemicals.

15. What are the new water quality-based requirements in the 2012 CGP?

The 2012 CGP includes requirements that are intended to protect impaired waters that receive construction site stormwater discharges. Sites that discharge to sediment- or nutrient-impaired waters must comply with more rapid site stabilization requirements and increased site inspections.

Sites that discharge to high quality waters (i.e., Tier 2, 2.5, or 3 waters) must also comply with the requirements for more rapid site stabilization and increased site inspections.

16. What will be the economic impacts to the construction industry from the 2012 CGP?

For the most part, the provisions in the 2012 CGP are very similar to those in the 2008 CGP, but include additional specificity to make permit compliance and enforceability more clear and consistent. The significant new requirements in the 2012 CGP are primarily included to implement the C&D rule. For more information regarding potential economic burdens associated with the C&D rule requirements, see

http://water.epa.gov/scitech/wastetech/guide/construction/upload/2009_12_8_guide_construction_files_economic.pdf. EPA also conducted an economic

analysis for the 2012 CGP to show where and to what extent the 2012 CGP includes requirements that impose an incremental increase in costs on permittees above and beyond costs that are already accounted for in the 2008 CGP or in the C&D rule requirements. This analysis is available on the public docket for the permit on regulations.gov.

17. Do state-issued permits have to be the same as the EPA-issued permits for stormwater discharges from construction activities?

No. Nothing in the Clean Water Act precludes a state from adopting or enforcing requirements that may be more appropriate to address discharges in their state, or that are more stringent or more extensive than those required under the NPDES regulations while still meeting their obligations under the Clean Water Act. Whether EPA, a state, or a tribe issues the general permit, the CWA and EPA regulations require that NPDES permits include technology-based effluent limitations (CWA section 301(b)(1)(A); 40 CFR section 122.44(a)). In addition, where technology-based effluent limitations are insufficient for the discharge to meet applicable water quality standards, the permit must contain water quality-based effluent limitations as necessary to meet those standards (CWA section 301(b)(1)(C); 40 CFR section 122.44(d)). States are free to incorporate additional requirements that they feel are reasonably necessary and/or helpful to adequately protect water quality in their respective jurisdictions.

Although states may issue permit requirements that differ from EPA, the Agency recognizes that many state-issued permits follow EPA's permit and content.