



Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.



Matthew H. Mead, Governor



Todd Parfitt, Director

FACT SHEET

State of Wyoming

LARGE CONSTRUCTION GENERAL PERMIT

for

Storm Water Discharges

Associated with Large Construction Activities

(Permit WYR100000)

Renewal

Changes to the draft permit

Changes to the draft permit as a result of comments received are noted below in italics. Only one party submitted comments and only two changes were made as a result of those comments.

Barb Sahl
April 7, 2016

Introduction

This general permit will replace the current permit which was issued in 2011 and will expire March 15, 2016. This permit regulates storm water discharges from all construction activities that disturb five or more acres. Also covered are discharges from smaller construction activities if they are part of a larger common plan of development or sale that will ultimately disturb five or more acres. Storm water discharges from small construction activities (disturbance of one to five acres) are covered under a separate permit called the small construction general permit (WYR10-A000).

Background

Congress amended the CWA in 1987 to establish a comprehensive framework for addressing storm water discharges under the National Pollutant Discharge Elimination System (NPDES) program. On November 16, 1990, the Environmental Protection Agency (EPA) published "Phase 1" regulations requiring all storm water discharges associated with industrial facilities, including construction projects where five or more surface acres are disturbed, to obtain NPDES permits. In Wyoming the program is known as the Wyoming Pollutant Discharge Elimination System or WYPDES. Wyoming storm water regulations are found in the Wyoming Water Quality Rules and Regulations, Chapter 2. WYPDES storm

water permits require the operator to minimize or eliminate pollutants, including sediment, in storm water runoff from the permitted facility.

General Permits

A “tool” which can be used to issue a large number of permits with a relatively small administrative burden, is the “general permit.” Under the general permitting approach, a single generic permit is issued to cover a large number of similar discharges within a geographic area. Since 1992 the WDEQ has authorized more than 5300 construction projects to discharge storm water under general permits. At this time, there are over 700 active large construction sites covered under the current permit.

Discharges Covered

WDEQ will be issuing this new general permit to dischargers of storm water associated with large construction activities. Specifically, this permit will cover storm water discharges from any clearing, grading or excavation project which will disturb five or more (not necessarily contiguous) surface acres and smaller disturbances which are part of a larger common plan of development or sale. Discharges of storm water from associated asphalt batch plants, concrete batch plants, and sand and gravel operations may be covered by this permit under the limited conditions described in Part 1.2.2 of the permit. Construction site dewatering of collected storm water and minor amounts of ground water may also be discharged under this permit provided the requirements of Part 7.13 are met. Discharges of **process** water from asphalt and concrete batch plants and sand and gravel operations **cannot** be authorized by this permit. Non-storm water discharges require coverage under another WYPDES permit.

Obtaining Coverage

Under the permit, “operators” who are required to obtain a WYPDES permit to discharge storm water must prepare a Storm Water Pollution Prevention Plan (SWPPP) and submit it along with a Notice of Intent (NOI) to the WDEQ 30 days before beginning construction activities. The SWPPP describes potential pollution sources and the best management practices (BMPs) which will be used to prevent storm water contamination. The NOI describes the construction project and route(s) that storm water may take from the construction site to surface waters of the state. WDEQ reviews the NOI to determine if the operator may discharge storm water under the general permit, or if an individual WYPDES permit is required.

For those facilities that may discharge storm water to class 1 waters, a pre-authorization site visit may be required prior to covering the project.

Permit Requirements

Operators covered under this permit ensure, through implementation of the facility SWPPPS, that storm water discharges from their facility do not cause a violation of state surface water quality standards as defined in Chapter 1 of the Wyoming Water Quality Rules and Regulations. Furthermore, storm water discharges shall not cause pollution, contamination or degradation to waters of the state.

Operators are required to periodically inspect the BMPs they use to minimize offsite transport of pollutants. The results of inspections must be documented and, if necessary, changes made to site BMPs to address deficiencies in pollutant removal.

Coverage must be continued by the operator until the construction site is “finally stabilized.” Final stabilization means that areas of the construction site that do not have permanent structures such as buildings or roads must be revegetated with perennial vegetation to a uniform 70% of natural background cover. For example, a disturbed area where the normal vegetative cover is 50% must be revegetated to a uniform cover of 35%; (70% of 50%).

Notable Changes from the Previous Permit

A number of changes and clarifications have been made to the permit with the goal of improving permittee compliance. A summary of notable changes is provided below.

The title of the permit has been slightly modified to more closely align to the name it’s commonly known by. It is now the Large Construction General Permit to Discharge Storm Water Associated with Large Construction Activity (Signature page).

The permit term is proposed to be only four years. Shortening the term to four years (from the typical five year term) for this version will allow the department to spread out general permit expiration dates so that only one storm water general permit expires in any calendar year. It is expected that the mineral mining permit will also have a shortened term so that all general storm water permits will then expire in separate years (Signature page).

Though not based on a comment, the permit expiration date has been moved to February 1, 2020 from March 15, 2020 in order to avoid more early construction season activities during the 2020 renewal.

A preamble has been added to the permit to provide a brief synopsis for the public of the major requirements of the Large Construction General Permit.

A paragraph was added to make clear to applicants that, while not under the purview of the WDEQ, an applicant may be subject to the federal National Environmental Policy Act, Endangered Species Act, Wild and Scenic Rivers Act, and the National Historic Preservation Act. It is the responsibility of the applicant to know if other statutes or regulations apply to their project and to comply with those requirements. (Part 1.3.5)

A brief description of the state’s new online application for most WYPDES general permits was added (Part 2.10). More information regarding the nForm system may be found in Parts 3.5, 3.7, and 3.8.

Web links were updated throughout the document.

Obtaining Authorization to Discharge

Part 3 was updated to describe additional uses of Notices of Intent (NOIs). In addition to obtaining new coverage for storm water discharges from a project, the NOI has been modified to renew coverage under an existing authorization where an early expiration date (selected by the permittee) is not adequate for the project to achieve “final stabilization.”

The minimum information required on an NOI has also been updated (Part 3.6). Section numbers have been modified as needed.

- Operators may now renew an existing authorization where a previously selected early expiration date does not allow adequate time for the covered project to achieve finally stabilized status (Part 3.6.1).
- This section clarifies that the permittee is the same as the operator (as defined in Part 2.11) (Part 3.6.2).
- The paragraph requiring information on a “fee contact” has been deleted. The WYPDES program no longer sends invoices to permittees as fees are paid at the time of application.
- Because fees are paid at the time of application and the amount will vary with the length of permit coverage, information is now required regarding the time of NOI submission and the requested expiration date. This information is used to verify that the permittee has submitted the correct permit fee. Note that the expiration date must align with the date the permittee expects the project to be “finally stabilized.” The expiration date should not be the date the permittee expects to leave the site. If the authorized project has not achieved final stabilization at the time contractor (or other permittee) leaves the site, the authorization should be transferred to the new operator. This section also requires the amount submitted and, if available, the check number. Online payment is not available as of this writing (Part 3.6.4).

Sage Grouse Core Area Determination. The Governor’s Executive Order 2015-4 provides for the protection of the Greater Sage Grouse and its habitat. To that end, state agencies are required to coordinate permitting actions (and other relevant actions) with the Wyoming Game and Fish Department (WGFD). Applicants must identify if any part of their project lies within Sage Grouse Core Area, Sage Grouse Connectivity Area, or within a Winter Concentration Area. For the purposes of this permit, all areas are collectively referred to as Sage Grouse Core Area (SGCA) and are treated the same. Proponents of projects in SGCA, must coordinate with the WGFD prior to submitting an NOI to the Storm Water Program. Proponents whose project falls within SGCA must provide documentation from the WGFD with their application packages that verifies the proposed project is either consistent with E.O. 2015-4 or is considered *de minimus* to be eligible for coverage under the LCGP. Projects within SGCA that do not have such documentation will not be eligible for coverage under this general permit. Proponents that are not eligible for coverage under this permit may apply for coverage under an individual storm water permit which will incorporate the safeguards necessary to meet the requirements of the Executive Order. (Parts 3.6.5 and 3.7.4)

A minor modification was made to further clarify that lumping Sage Grouse Core Area, Sage Grouse Connectivity Area, and Winter Concentration Areas is done only for the purposes of

addressing the Governor's Sage Grouse Executive Order 2015-4 under this permit. Aggregation of these areas is not intended to be extrapolated to other permits or programs.

For Wyoming Department of Transportation (WYDOT) projects, the previous permit required only that the WYDOT project number be provided on the NOI. This permit will also require the name of the WYDOT Resident Engineer (RE) in charge of the project. WYDOT projects comprise a large portion of the permitted projects under the LCGP. Knowing the RE will allow the Storm Water program to better coordinate with both the project contractor and the project sponsor. (Part 3.6.6)

The permit requires project location data expressed as quarter/quarter, section, township, and range or a street address. Some road project contractors have been submitting highway miles markers *in lieu* of Public Lands Survey data or street address. A clarification was added to make it clear that mile markers are not an acceptable substitute. (Part 3.6.7)

To facilitate geospatial data entry, the permit is now requiring lat/long information be submitted as decimal degrees instead of degrees, minutes, and seconds. Accuracy to a minimum of five decimal places is required. (Part 3.6.8)

The previous permit required estimated dates that the covered project would start and would be completed. The term 'completed' was not defined. To clarify that project completion means the project has been finally stabilized the permit language was changed. The NOI now requires that the estimated date of final stabilization be reported. In most cases, the selected expiration date should not be earlier than expected final stabilization. (Part 3.6.9)

Delegation of signature authority is no longer a requirement in the NOI. Applicants were not required to complete this section and the delegated individuals/positions often change through the life of a project. The WQD has decided that delegation should be handled as a separate process; either as a letter from the permittee or through a new delegation form. (Part 3.5.14 from the 2011 permit omitted in this draft.)

Part 3.7 addresses the requirements for applying for new coverage for a project that does not currently have coverage. New in this section is the availability of the option to use nForm, an online application process. Also in this section is the requirement, for projects in SGCA, to attach appropriate documentation from the Wyoming Game and Fish Department stating that the project is consistent with Executive Order 2015-4 or that the project is considered *de minimus* under the Executive Order.

Part 3.8 addresses renewing an existing authorization with an "early" expiration date. When applying for new coverage, an applicant may choose an expiration date that is earlier than that of the master general permit. If, when that expiration date is reached, the construction site is not "finally stabilized," the authorization to discharge storm water must be renewed before the current authorization expires. Late submittal to renew will result in the NOI being processed as a new application and will assign a new authorization number. Renewal using nForm is an option.

Part 3.9 addresses the renewal of an authorization when the master general permit is expiring and the covered project is not yet finally stabilized. The Administrator may (and generally does) provide an alternative form for permittees to renew coverage. Late submittal to renew will result in the renewal form being processed as a new application and WDEQ will assign a new authorization number. Renewal using nForm is an option.

Transfers

The section regarding transfers and name changes has been reorganized and updated with several clarifications and additions. (Part 4)

Part 4.1 addresses the transfer of the entire area covered under one authorization from one operator to another. This section is largely the same as under the previous permit except for the clarification that the current permittee remains responsible for permit compliance until the transfer has been completed by the WDEQ. (Part 4.1.2.2)

When a company's name changes, but it is still the same company, that name change must be reported to the WDEQ Storm Water Program through submission of a Notice of Transfer and Acceptance (NOTA). Emails, letters, or other forms of notification are not acceptable. This is a new addition to the permit, but not a new practice. (Part 4.2)

Partial transfers are to be allowed with the use of a new form called a Notice of Partial Transfer (NPT). Like the NOTA, the NPT will be completed by relinquishing and receiving parties. The new permittee portion will request the same information as a Notice of Intent as upon submission of an NPT the WDEQ will issue a new Letter of Authorization for the transferred parcels to the new permittee. The new permittee must submit appropriate permit fees with the NPT since the NPT is essentially a new application for the permittee. This part also includes a provision for the original permittee to remove the transferred lots from his permit should cooperation of the receiving party not be forthcoming. (Part 4.3)

Termination of Coverage

Additional information has been added to the Notices of Termination section to clarify when unbuilt lots sold to an individual who may plan to build a home in the future, that individual will need to maintain storm water permit coverage. If an individual buys a lot from a developer that has not reached final stabilization, then the new owner is expected to take over permit coverage on that lot. The permit can, and in most cases should, be transferred to the homebuilder prior to home construction. The requirement is not new, but is being stated more clearly to encourage better compliance and quicker stabilization by developers. (Part 5.3.4)

Permit Fees

The section on permit fees has been completely rewritten to reflect changes made to the Environmental Quality Act that restructured how fees must be paid and collected. As of July 1, 2013, all WYPDES permit fees must be paid upfront with the permit application. (Part 6)

Effluent Limits

Language was added to make clear that all storm water discharges covered under this permit and that may reach a surface water with an approved Total Maximum Daily Load (TMDL) for sediment, total suspended solids, or turbidity, must be consistent with the requirements of the TMDL. In most cases, compliance with the provisions of the LCGP will be adequate to meet this standard. The WDEQ may require an individual permit should compliance with the LCGP be insufficient to meet relevant waste load allocations. (Part 7.5)

The comment received on Part 7.6.1 (where offsite sediment must be recovered before the next precipitation event or within seven days, whichever is sooner) expressed concern that meeting the 7-day/precipitation event window may simply be impossible in certain situations. WDEQ acknowledges that this concern is valid in some situations. Language was added to allow Storm Water Program staff to alter the 7-day/precipitation event window after consultation with the permittee and for good cause. The state removal window will not be modified as a matter of mere inconvenience on the part of the permittee and the permittee is expected to modify existing BMPs or install new BMPs as necessary to protect surface waters of the state while waiting to rectify the situation.

Permittees wishing to discharge accumulated storm water under this permit must meet certain conditions to ensure that the discharge does not cause or contribute to a water quality impairment or standards violation. A new condition has been added to this section. Part 7.14.2.4 prohibits discharges that lead to the deposition of sediment within storm water conveyance systems. Sediment deposited in such systems is likely to reach state surface waters.

The previous permit required that the permittee initiate temporary or permanent stabilization measures in any area where soil disturbing activities have permanently or temporarily ceased for 14 days. There was no required time frame for completing the stabilization measures. The current permit corrects this deficiency and requires that installation of temporary or permanent stabilization measures be completed within 14 days of initiation. (Part 7.15.6) WDEQ realizes that factors outside the control of a permittee may preclude meeting the 14 day completion requirement. Part 7.15.7 allows WDEQ to amend the final stabilization criteria upon good cause and after consultation with the permittee.

Storm Water Pollution Prevention Plan

Part 8.1.4 provides permittees until October 1, 2016 to update SWPPPs for projects that were originally permitted under the LCGP that was issued in 2011 and that will operate under renewed coverage under this reissued permit.

Facilities with approved alternative inspection schedules are allowed reduced inspection frequency below the typical 30-day requirement in remote areas with limited accessibility during inactive construction. The approved alternative schedule is reflected in the facility storm water pollution prevention plan (SWPPP). Part 8.1.5.5 has been added to make it clear that amendments to the SWPPP that alter the schedule approved by the storm water program must be resubmitted to the

storm water program for evaluation. The amended plan will be subject to the same approval standards as the original plan.

Language was added to the description of SWPPP administrator that makes it clear this position or individual is responsible for implementing the SWPPP from the initial ground disturbance through final stabilization. The original SWPPP administrator may change as personnel change or an authorization is transferred from one entity to another. (Part 8.2.1)

The previous permit required the SWPPP provide an estimate of the “planned completion date.” That language has been changed to an estimate of when “final stabilization” is expected to be achieved. This change is a result of several applicants requesting coverage only for the time they expected to be on the jobsite. This resulted in coverage expiring long before these projects were stabilized. The term of coverage must reflect a reasonable estimate of coverage needed for the life of the project; from initial disturbance through final stabilization. (Part 8.2.2.2)

The previous permit required preconstruction topography. It has proved to be difficult to obtain this information. Because we also allow the use of arrows to depict site drainage, the decision was made to no longer require preconstruction topography. Site topography may still be used *in lieu* of drainage arrows to indicate runoff directions. (Part 8.2.3.1)

Part 8.2.3.11 required the permittee to map all storm water discharge locations in their SWPPP map. A requirement to also map all storm water run on locations has been added to this section. The issue of run on has only occasionally been addressed by permittees in their SWPPPs even though managing off-site run on may be as important or more important to pollution control as managing runoff. Being aware potential run on issues and planning to manage significant run on is a critical component of any SWPPP.

Part 8.2.4.1.c (Stabilization measures) has two minor modifications. The previous language called for permittees to describe “temporary or permanent stabilization measures” to be employed at the construction site. “Or” was replaced in this phrase with “and” to clarify the importance of both temporary and permanent measures. Permittees are also asked to provide an estimated schedule for installation of stabilization BMPs.

To reflect the new time frame for completing installation of temporary or permanent stabilization measures, permittees must have completed installation of stabilization measures prior to reducing inspection frequencies from 7 or 14 days (described in Parts 9.2.1.1 and 9.2.1.2 respectively) to the inactive construction schedule of 30 days. The WDEQ believes that reducing inspection frequencies to the inactive schedule is not prudent until all stabilization measures are installed and functional. (Part 9.2.2)

Part 10.7, Signatory requirements, was modified to add Notices of Partial Transfer (NPT) to the list of documents that require appropriate signature by the permittee.

Several new acronyms were added to Appendix B.

Appendix C, 1.6 addresses a minimum spacing for BMPs that are installed to maintain sheet flow on slopes. The previous permit language indicated only that slopes of 3:1 or greater should have a BMP spacing no greater than 75 feet. Additional language is added to this permit that requires permittees to use a closer spacing if slope, soil type/condition, expected flow volumes and velocities warrant closer spacing in order to maintain sheet flow and minimize erosion.

Appendix C, 1.9. The previous permit provided language setting a general standard where a vegetated buffer could be used as a primary BMP or, failing that standard, when other BMPs must be used to supplement a vegetated buffer. Because the stipulated conditions are rare in Wyoming this paragraph has been deleted. This section now recommends buffers only as a “final finishing” component of a well-designed and implemented BMP “treatment train.” A BMP treatment train consist of a series of BMPs in a single flow line such that each BMP receives water that was treated by all the upstream BMPs. With each step, runoff is cleaner than the previous step. Another primary function of vegetated buffers is simply to act as a setback from a surface water that essentially limits how close land disturbance can be to a surface water.

Effluent Limits

The permit does not establish numeric effluent limits. However, the permit does require that the quality of storm water discharges associated with construction activity reflect the best which is attainable through the proper implementation of all items in the facility SWPPP. Additionally, the control measures specified in the SWPPP shall be consistent with the narrative effluent limits found in Part 7 and ensure that storm water discharges from the facility do not cause a violation of state water quality standards as defined in Chapter 1 of the Wyoming Water Quality Rules and Regulations.

Location of Covered Discharges

The permit applies to all areas within the State of Wyoming except areas within the Wind River Indian Reservation where the State does not have jurisdiction.

Expiration

The proposed general permit will expire March 15, 2020.

Barb Sahl

January 22, 2016

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