

WYPDES Storm Water Permits and the Oil and Gas Industry Including Coalbed Methane



What is a storm water permit and when is coverage required?

The storm water permitting program is part of the Wyoming Pollutant Discharge Elimination System (WYPDES) developed under Chapter 2 of the Wyoming Water Quality Rules and Regulations, the Wyoming Environmental Quality Act and the federal Clean Water Act. The program is intended to eliminate or minimize pollutants in storm water runoff from regulated activities, including construction activities that disturb an acre or more.

Storm water discharges from construction projects that clear, grade, excavate, or otherwise disturb one or more acres must be covered under a construction general permit. The disturbance does not need to be contiguous nor does the disturbance need to occur all at one time. A phased project that will ultimately disturb one or more acres must be covered at the start of construction. The requirement for permit coverage is based solely on the size of land disturbance and not in any way on the type of activity causing the disturbance.



What is included in calculating disturbed acres?

An operator should include disturbed areas from all activities associated with the construction project. These activities may include, but are not limited to, land-clearing associated with:

- Access roads, new or improved
 - Include roads that are built, modified or improved for access to the well or construction site
 - Do not include existing roads if they are used “as is”
- Gravel pits or borrow areas - Pits must have storm water permit coverage. If a pit is opened for one project and then closed it may be covered under the construction storm water permit for that project. If the pit serves more than one project, then it must get separate coverage under the mineral mining general permit for storm water discharges.
- Well pad construction
- Mud pit excavation
- Stockpiles or storage areas
- Parking areas
- Installation of pipelines for water discharge or gas gathering
- Any other activities that result in disturbed soil



My cleared area will be one acre or more. What do I need to do?

The operator of the site must obtain coverage under the one of DEQ’s two WYPDES general construction storm water permits prior to disturbing any soil at the site. If the disturbance will be more than one acre, but less than five, you need coverage under the small construction general permit (SCGP). Disturbances of five or more acres should be covered under the large construction general permit (LCGP).

If your project is part of a **larger common plan of development or sale** you may need permit coverage even if your part of the project is smaller than one acre. For example, a homebuilder who buys a ½ acre lot in a 10 acre subdivision will need coverage under the LCGP even though his disturbance is only going to be ½ acre. If the lot was in a 4 acre subdivision the builder would need coverage under the SCGP. If the builder's ½ acre disturbance is not part of a common plan then no permit coverage is required since the total disturbance will be less than 1 acre. So you must look at the overall disturbance of the entire project and then decide which permit you need.

For permitting purposes, the operator is the company, individual, or organization that has day-to-day supervision and control of activities occurring at the construction site. This can be the owner, developer, the general contractor, or, in some cases, the agent of one of these parties. The operator is responsible for ensuring compliance with all conditions of the permit and the storm water pollution prevention plan (SWPPP).



How do I obtain permit coverage?

- ❑ **For both permits.** Prepare a storm water pollution prevention plan (SWPPP) in accordance with the requirements of the general permit. In general, the SWPPP is intended to identify potential sources of pollutants and describe best management practices (BMPs) that will be employed to prevent transport of pollutants off site. With most construction the primary pollutants of concern are sediments, fuels, and lubricating oils.
 - Copies of the permits can be found on the DEQ website at:
http://deq.state.wy.us/wqd/WYPDES_Permitting/WYPDES_Storm_Water/stormwater.asp.
 - Specific SWPPP requirements are in found in Part 7 of the LCGP and Part 8 of the SCGP.

- ❑ **For the Large Construction Permit (LCGP).** Complete and submit a Notice of Intent (NOI).
 - The NOI is really an application that requests DEQ to grant coverage to a project under the existing general permit. It is also found on web site note above.
 - The NOI must be completed and signed by a principal officer of the organization requesting coverage.
 - Submit the NOI at least 30 days prior to the start of construction activity to:

WYPDES Storm Water Permits
DEQ/WQD
Herschler Building, 4-W
Cheyenne, WY 82002

Shorter submission times may be accommodated with cause. Call Barb at 307-777-7570 or John at 307-777-5622 to determine if your project can qualify.

- ❑ **For the Small Construction General Permit (SCGP).** Unlike the LCGP, there is no notice of intent or application to obtain coverage. Coverage under this permit is automatic when its provisions are met. It does require that a SWPPP be completed and implemented and it requires

periodic inspections similar to those found in the LCGP. By simply following the permit a project is covered.



When does coverage under the general construction storm water permit begin?

- For the LCGP.** Coverage under this permit begins only after the applicant receives an authorization letter from the DEQ authorizing coverage under the general permit. The letter is a one page document that lists the name of the permittee, the project name, the project location, and assigns a permit number. Processing time is typically two to four weeks. However, processing times may be longer or shorter.
- For the SCGP.** Once you've met the requirements of the permit your project is covered automatically.



How long is coverage required?

Coverage under both permits must be maintained until the site is “finally stabilized.” To meet the definition of final stabilization the following conditions must be met:

- All soil disturbing activities are complete.
- A uniform perennial vegetative cover with a density of at least 70% of the native background cover has been established on all disturbed areas that have not been paved over or covered by permanent structures.
- See Part 5.3.3 of the large construction general permit for additional information regarding final stabilization for well sites with producing oil and gas wells.

Meeting these two conditions may take just one growing season or several years depending on local growing conditions and site preparation.

For the LCGP. Once the site is “stabilized” the operator must submit a Notice of Termination (NOT) certifying that the site is stabilized in accordance with the requirements of the permit. Permittees will receive correspondence from DEQ confirming that coverage under the general permit has been terminated.

For the SCGP. The operator must document in their final inspection that the site meets the condition of final stabilization. Because no application is filed with DEQ, there is no requirement to submit an NOT.



Someone else has taken over the project and I am no longer the operator. What now?

The operator often changes during the life of a project. For example, a driller or general contractor may be the operator during construction. Once the contractor finishes the project and leaves the site, then the party who has control over the site is the new operator. The new operator will most likely be either the well operator, the mineral lease holder or any other person or organization that has day-to-day control

over the site. The new operator must take responsibility for the storm water permit until the site sufficiently stabilized to terminate coverage.

For the LCGP. To transfer a permit the new operator and former operator must submit a Notice of Transfer and Acceptance (NOTA). The NOTA has parts for both parties to complete and sign. The previous operator should provide a copy of the SWPPP to the new operator. The new operator will receive a new certification letter that reflects the transfer and the previous operator will receive conformation that the authorization has been transferred.

For the SCGP. When responsibility for storm water discharges from a small construction activity changes from one operator to another, the current permittee must provide the new permittee with copies of all documents relevant to the implementation of the site SWPPP and compliance with this permit.



Ok, I have my storm water permit coverage, what do I do now?

You must implement your SWPPP and ensure that it is effective in reducing or eliminating offsite transport of pollutants.

You should also read your permit and become familiar with its requirements. There are a number of requirements beyond what has been documented here, including periodic site inspections, alternative inspection schedules for remote areas and provisions specific to oil and gas for final stabilization. A permittee is responsible for all permit requirements.



I've heard that the oil and gas industry is exempt from storm water permitting under the Energy Act of 2005. What's the story?

In Wyoming, where the Department of Environmental Quality is the permitting authority, Chapter 2, Section 6 of the Wyoming Water Quality Rules and Regulations requires permit coverage for storm water discharges from all construction activities disturbing one or more acres. The type of facility being constructed does not change the requirement to obtain permit coverage. As such, construction of oil and gas facilities still requires storm water permit coverage in the state of Wyoming.

However, passage of the Energy Bill does affect storm water permitting for the oil and gas industry in areas of the Wind River Indian Reservation where the state does not have jurisdiction and EPA is the permitting authority. For more information contact Greg Davis at EPA Region 8 (303-312-6314).



I still have questions. Who can I call?

Please contact Barb Sahl at 307-777-7570 (bsahl@state.wy.us) or John Gorman at 307-777-5622 (jgorma@state.wy.us).