

Frequently Asked Questions About Permit Requirements of the SPDES General Permit (GP-02-01) for Stormwater Discharges from Construction Activities

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1. What is the criteria under which an operator of a construction activity would be required to obtain coverage under the SPDES General Permit for Stormwater Discharges from Construction Activity (GP-02-01)?

A: With some exceptions, operators of construction activities that will result in the disturbance of one (1) or more acres of land must obtain coverage under GP-02-01 prior to the commencement of soil disturbance. Also requiring a permit are construction activities disturbing less than 1 acre if they are part of a larger common plan of development or sale with a planned disturbance of equal to or greater than 1 acre, or activities that are designated by the Department. The Department can require a permit for construction activities disturbing less than 1 acre based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the United States.

2. Is permit coverage required if there is no discharge to surface waters; i.e. runoff infiltrates into the ground?

A: If the owner can adequately demonstrate that there is no potential for a discharge from their construction site to Waters of the United States or to a municipal separate storm sewer system that discharges to Waters of the United States, the answer generally is no. Discharges of stormwater to groundwaters are exempt from permitting requirements unless the Department determines that such discharges (or class of discharges) are significant contributors of pollution. To date, the Department has not determined that construction site discharges to groundwater are significant contributors of pollution.

In order to demonstrate that there is no potential for a discharge from a construction site, the owner must perform the necessary modeling and site assessments (soil testing, infiltration test, hydrology, etc.) to support their position. The Department will require that this information be submitted for all construction sites we encounter that have not gained coverage under the general permit.

When making the demonstration that all discharges from the site would be to groundwater, the owner must consider each of the following:

- All phases of construction, including the commencement of soil disturbance with no post-construction controls in place.
- Runoff from all recorded storm events (1yr, 10 yr, 100 yr, etc.).
- Frozen ground conditions if soil disturbance is possible during periods when the ground is frozen.
- Changes in site topography resulting from grading operations (cuts and fills).

Permitted or not permitted, any such discharge that causes or contributes to a violation of a water quality standard (including a groundwater standard) is a violation of State law.

3. Do stormwater discharges from a construction site to catch basins in the street that lead to streams need coverage?

A: Yes, discharges to catch basins that are part of a municipal separate storm sewer system will require coverage under GP-02-01.

4. Does a construction activity that discharges to a combined sewer require coverage under GP-02-01?

A: No, discharges to combined sewers do not require coverage under GP-02-01.

5. Do storm water discharges to separate storm sewer systems need a permit?

A: If the discharge would otherwise be subject to the federal storm water regulations if it were made directly to Waters of the United States, the answer is yes. One way to look at it is to think of the separate storm sewer as merely an extension of the receiving waterway. This is so regardless of whether or not the separate storm sewer system is also subject to the federal storm water regulations.

6. When does an operator of a construction activity that is subject to the Phase II regulations need to obtain coverage under the SPDES General Permit for Stormwater Discharges from Construction Activity (GP-02-01)?

A: Operators of construction activities that commence on or after March 10, 2003 must obtain coverage under GP-02-01 prior to the start of construction . In addition, construction activities that started prior to March 10, 2003 and have not achieved final stabilization of all disturbed areas by the March 10, 2003 deadline must also obtain coverage under GP-02-01 as of March 10, 2003.

To obtain coverage under the general permit, the operator of a construction activity must file a completed Notice of Intent (NOI) with the DEC. Submitting a NOI is an affirmation that a Stormwater Pollution Prevention Plan (SWPPP) has been prepared for the site and will be implemented prior to the commencement of construction activities. Coverage under the general permit will begin either five (5) or sixty (60) business days after receipt of a completed NOI by the DEC.

7. Do the owners of rural tracts of land have to obtain coverage under GP-02-01 at the time they subdivide their land if the subdivision does not involve the construction of new roads?

A: Land owners subdividing a parcel of land after March 10, 2003, where the total anticipated land disturbance for the subdivision is greater than one acre, are not required to obtain coverage under GP-02-01 at the time they subdivide the land provided they meet all of the following conditions:

- the individual lots are for single family homes only,
- the total anticipated land disturbance for the subdivision is less than five acres,
- the subdivision does not require the construction of roads or common driveways,

- the subdivision does not require municipal sewer and/or water system extensions as part of their local approval,
- the subdivision will not connect to an existing subsurface storm sewer system, and
- the owner is not required, as part of their subdivision approval at the local level, to prepare engineering plans showing the individual lot layout (e.g. house, drive, septic system, water supply, etc.).

However, the land owner should notify the purchasers of the individual lots that they must prepare a Stormwater Pollution Prevention Plan (SWPPP) and obtain coverage under GP-02-01 prior to commencing construction (i.e. disturbing soil).

Purchasers of individual lots can refer to the "Erosion and Sediment Control Plan For Small Homesite Construction" section in the Appendices of the final Standards and Specifications For Erosion and Sediment Control when preparing their SWPPP. (Refer to Chapter 9 of the "Draft" New York Standards and Specifications For Erosion and Sediment Control until the final version of the New York Standards and Specifications For Erosion and Sediment Control is available).

8. Define "construction activity".

A: Construction activities can include road building, construction of residential houses, office buildings, industrial sites, commercial sites or demolition. Construction activities may also include clearing, grading and excavating that results in land disturbance. However, construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of a facility.

9. Define "larger common plan" as used in "construction activity that is part of a larger common plan of development."

A: The Department has provided the following definition: "Larger common plan of development or sale" describes a situation in which multiple construction activities are occurring, or will occur, on a contiguous area. In other words, permit coverage is needed if disturbance of one or more acres is occurring or is anticipated to occur in conjunction with the initial disturbance.

For discrete construction projects that are located within a larger common plan of development or sale that are at least 1/4 mile apart, each project can be treated as a separate plan of development or sale provided any interconnecting road, pipeline or utility project that is part of the same "common plan" is not concurrently being disturbed.

10. Regarding those activities disturbing less than five acres of earth and commencing before the March 2003 deadline - what would an operator do to be in compliance with regard to such a project when March 2003 arrives?

A: Phase II (less than five acre disturbance) construction projects do not need permit coverage until March 10, 2003. However, in order to obtain coverage under GP-02-01 as of the March 10, 2003 deadline, a NOI must be submitted to the Department either 5 or 60 business days in advance of the March 10 deadline.

11. What are operators of construction activities that had coverage under GP-93-06 as of January 8, 2003 required to do in order to comply with the Phase II regulations and GP-02-01?

A: Projects that had coverage under GP-93-06 as of January 8, 2003, which have not achieved final stabilization of all disturbed areas and filed a Notice of Termination, must gain coverage under GP-02-01 by filing a new NOI with the Department. These projects may continue to implement the SWPPP that was developed in accordance with GP-93-06 until such time as a Notice of Termination (NOT) is submitted with the Department, GP-02-01 expires or the Department notifies the applicant otherwise, whichever comes first.

Since GP-93-06 required the development of a “Full” SWPPP (includes both erosion and sediment controls and post-construction controls) for all projects, the NOI for any project that did not address post-construction controls must indicate that the SWPPP is not in conformance with the DEC’s technical standards and the project will be subject to the 60 business day review period.

If the project consist of multiple phases/sections (e.g. subdivision), only those phases/sections of the project that were addressed in the original NOI and SWPPP (GP-93-06) will have permit coverage and may continue to implement the SWPPP developed in accordance with GP-93-06. A new NOI must be submitted for any phases that were not covered by the original GP-93-06 submittal. The SWPPP for the new phases must be developed in accordance with GP-02-01 requirements and must include both Erosion and Sediment Controls and Water Quality and Water Quantity Controls (i.e. post-construction stormwater management controls), since the new phase is part of a larger common plan of development.

12. Are subdivisions that were subject to the Phase I regulations (GP-93-06), but did not gain coverage under GP-93-06, required to gain coverage under GP-02-01 if development within the subdivision is on going?

A: If the remaining subdivision development (total build-out) as of March 10, 2003 will disturb one or more acres of land, the owner must submit a NOI to gain coverage under GP-02-01. If a SWPPP was developed in accordance with the requirements of GP-93-06 at the time the subdivision was approved, the owner can continue to implement that SWPPP. If the SWPPP was not developed in accordance with GP-93-06, the NOI must indicate that the SWPPP is not in conformance with the DEC’s technical standards and the project will be subject to the 60 business day review period (see FAQ 11 also). If no SWPPP was developed, the owner must develop a plan that is in accordance with the requirements of GP-02-01. At a minimum, the SWPPP must include Erosion and Sediment Controls. If the remaining subdivision development as of March 10, 2003 will result in a total disturbance of 5 or more acres, the SWPPP must also include Water Quality and Water Quantity Controls (i.e. post-construction stormwater management controls). This applies to all subdivisions with on going development, no matter when the subdivision was approved at the local level.

13. If a small construction activity (i.e. less than 5 acre disturbance) has gone through a local government’s planning, review and approval process prior to the March 10, 2003

deadline for coverage under the Phase II regulations, does the SWPPP need to be modified if it has not been developed in conformance with the Department's technical standards?

A: At a minimum, the SWPPP should be modified to comply with the Department's technical standards for erosion and sediment controls. For projects that require the development of a SWPPP that includes Water Quality and Water Quantity controls (i.e. "Full SWPPP), the Department will exercise discretion, for the 2003 construction season only, and allow these projects to gain coverage under GP-02-01 using their current SWPPP. The operator is required to meet all other requirements of the general permit.

Residential subdivisions with a total land disturbance of less than 5 acres are required to develop a SWPPP that includes just erosion and sediment controls, provided the project is not located in a TMDL watershed or directly discharging to an impaired water identified on the Department's 303(d) list (see "Instruction Manual for Stormwater Construction Permit/ How to Prepare a: Notice Of Intent" for modified list of 303(d) segments).

14. Are silvicultural activities exempt from storm water permitting?

A: Yes, to an extent. §122.26(b)(14)(ii) contains several groupings of activities, including the Major Standard Industrial Classification ("SIC") Group 24, "Lumber and Wood Products, Except Furniture". This major SIC group includes establishments primarily engaged in the cutting of timber and includes, for example, logging establishments and sawmills. Establishments listed under Major SIC Group 08, "Forestry", are not listed as an "industrial activity" under 122.26(b)(14) and, therefore, are not subject to NPDES permitting.

However, 40 CFR 122.27 provides an exemption for nonpoint source silvicultural activities including harvesting operations, nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, surface drainage, and road construction and maintenance, even if the nonpoint runoff results in a point source discharge. This exemption from the NPDES storm water permitting requirements, however, does not preclude the need to obtain other permits which may be necessary such as, for example, a permit under section 404 of the Clean Water Act. Additionally, any such discharge that causes or contributes to a violation of a water quality standard is a violation of State law with a penalty of up to \$37,500 per violation per day.

Silviculture is considered as an on-going practice involving the dedicated and cyclic use of land expressly for the periodic production of timber. The mere harvesting of timber does not constitute silviculture. For example, clear-cutting and the harvesting of timber as a one-time, non-recurring practice, is not considered an exempt silvicultural activity under 40 CFR 122.27 and, in fact, may be an activity identified under 40 CFR 122.26(b)(14) and subject to NPDES permitting if the total land disturbance is one or more acres. Land disturbance for regulated timber harvesting projects is defined as soil exposure resulting from clearing, grading and excavation (cuts and fills). The cutting of trees or brush hogging, with no stump removal, does not constitute a land disturbance.

In order to successfully demonstrate "silviculture", a landowner should present a forest

management plan, prepared by a resource management professional (forester), that shows sound forestry intent, goals, forethought, addresses the condition of the residual stand and makes provisions for future forest regeneration; or they should at least be able to discuss their plans with respect to the future of the property staying in forest use. By providing such acceptable evidence of intent to practice silviculture, or “sustainable forestry”, the landowner then simply needs to adequately protect water and soil resources, as required under Article 15, through use of accepted timber harvesting “Best Management Practices” (BMP’s) , and is not required to prepare a Soil Erosion and Sediment Control Plan or obtain coverage under GP-02-01. Landowners may refer to the “New York State Forestry Best Management Practices for Water Quality” field guide, available from DEC Forestry offices, for advice and guidance on selection and installation of appropriate BMP’s for silvicultural operations.

Exempt silvicultural activities include the felling, skidding, preparation (e.g., delimiting and trimming), loading and initial transport of forest products from an active harvest site. It is also interpreted to include the incidental stacking and temporary storage of harvested timber on the harvest site prior to its initial transport to either an intermediate storage area or other processing site. The processing, sorting, or storing harvested timber which has been transported from one or more active harvesting sites are not silvicultural activities that are exempt from NPDES permitting requirements.

15. What about nursery operations where periodic clearing & disposal to replant is required?

A: Nursery operations are considered silvicultural activities. See answer to previous question.

16. Do gravel mining operations require coverage even if they are already covered by a DEC mining permit?

A: Generally no. Facilities classified as Standard Industrial Classifications 10 through 14 (mining industry) including active or inactive mining operations (except for areas of coal mining operations meeting the definition of a reclamation area under 40 CFR 434.11(1)) do not require coverage as construction stormwater, but instead must obtain coverage as industrial stormwater under GP-98-03.

17. For a construction activity that uses off-site "borrow pits" for excavation of fill material or sand or gravel, should the number of disturbed acres at the borrow pit be added to the number of acres at the construction site to determine the total number of disturbed acres?

A: No. Off-site borrow pits are not considered part of the on-site construction activity. If a borrow pit is specifically used for the removal of materials such as sand, gravel, and clay, the pit is considered a mine and is classified under SIC code 14. Such sites would be regulated as industrial activity as defined at 40 CFR 122.26(b)(14)(iii). However, if the borrow pit is utilized for the removal of general fill material (e.g. dirt) and disturbs one or more acres of land, the pit would be considered a construction activity as defined at 40 CFR 122.26(b)(14)(x).

18. Do any of the following types of Projects need a Stormwater General Permit for

Construction Activities (GP 02-01) if it results in land disturbance of more than one acre?
a. Hazardous Waste Site Remediation (undertaken By Responsible Party or using State Superfund or Federal Super fund)
b. Remedial Work under Voluntary Agreement

A: If such sites have a Department approved work plan under a CERCLA, RCRA or Voluntary Cleanup Agreement and have prepared a SWPPP which meets the substantive requirements of GP 02-01, they do not need to obtain permit coverage. If the project meets Condition A, B or C in Part III.A.1.b of the general permit, the SWPPP must include erosion and sediment controls and water quantity and water quality controls (post-construction stormwater controls).

19. How can operators seeking coverage under the construction permit find out if they are subject to condition A: "the construction site or post construction runoff causes the discharge of a pollutant of concern to a water identified on the 303(d) list or a watershed with an approved TMDL for that pollutant of concern."

A: Interested parties can contact the Department's Division of Water for help. In addition, maps and documentation will be provided in the *Instruction Manual for Construction NOI* and also on the Department's stormwater web page at www.dec.ny.gov/chemical/43133.html

20. What is the purpose of the exemptions in "Condition C" of the flow chart? Does "single family residence" mean one house or does it refer to a particular type of development regardless of how many single family houses (as long as it remains under 5 acres)?

A: The "construction of single family residences" exemption included in the flow chart and in Condition C of the permit (see Part III.A.1.b.) was intended to exclude operators that are constructing subdivisions consisting of single family residential homes, where the overall plan of development will result in a total land disturbance of less than 5 acres, from having to address post-construction water quality and quantity controls in their SWPPP (i.e. "full" SWPPP) because the high percentage of pervious area typically available with this type of land use allows on site runoff control. The overall plan of development can include subdivision road construction and utility installation, provided the total disturbance is less than 5 acres. [Note: This exemption does not exclude operators from having to prepare a "basic" SWPPP (i.e. includes just erosion and sediment controls) and gaining coverage under GP-02-01, if the total land disturbance is one or more acres of land]. This provision does not apply to operators constructing townhouse developments or apartment complexes.

The Department based this exemption on Table 4.2 of the NYS Stormwater Management Design Manual which indicates that residential subdivisions typically have less than 30% impervious cover. At one point the department considered using percent impervious cover as the criteria for exemption under Condition C, but discarded that option as overly complex in implementation.

Where single family developments exceed the 30 % impervious cover, the department may consider requiring such sites to obtain coverage under an individual permit that requires post construction site runoff controls.

21. Clarify additional requirements for SWPPP's for sites meeting Condition A, B, or C in Part III.A.1b of the general permit.

A: Construction activities meeting Condition A, B, or C must develop a SWPPP that includes water quality and water quantity (post-construction stormwater management controls), in addition to erosion and sediment controls.

22. Under the 60 day scenario, are permittees required to wait 60 calendar days or 60 business days?

A: The permit does not provide legal authorization to discharge until the end of the 60 business day review period.

23. After submitting the NOI, does no response from the Department mean approval/move forward with construction?

A: Yes, unless notified by the Department to the contrary, applicants who submit a NOI in accordance with the requirements of the permit can assume coverage at the end of either five (5) or sixty (60) business days. However, the department is mailing acknowledgment letters to permittees that would confirm whether the review period is 5 or 60 days.

24. Will the full sixty-day review period be automatic for all SWPPP's with variances (deviations from State's recommended technical standards), or will shorter periods be possible in some instances?

A: Projects that develop SWPPPs that deviate from the Department's technical standards will not obtain permit coverage until sixty (60) business days after the Department's receipt of a completed NOI.

25. The sixty-day requirement for review of SWPPP's containing variances from the Department's standards appears open ended. Does the clock continue to run while the applicant is seeking to provide the Department with additional information (which may have to be supplied)?

A: No. If the Department requests additional information during the 60 day time frame, the review period is suspended until the applicant provides the information requested. Therefore, the wait period for permit coverage may be longer than 60 business days.

26. Part I.D.7. (Page 5 of 24) of SPDES GP-02-01 indicates that upon satisfaction of SEQRA and issuance of necessary permits, the applicant may submit a Notice of Intent (NOI) to obtain coverage under GP-02-01. Does an applicant have to wait until the other permits have been issued before submitting their NOI ?

A: No. The Department did not intend for applicants to wait and submit their NOI after all other permits have been issued. The purpose of this section was to assure that the requirements of SEQRA are fulfilled before any discharge authorization under GP-02-01 is granted. Applicants should submit applications for all required UPA permits at one time, including the NOI for coverage under GP-02-01. This will allow the Department to perform a concurrent review of the NOI with the other UPA permit applications. However, no construction activities should take place until all approvals are received and all permits have been issued.

27. Each project receiving coverage under the construction permit should be fully reviewed pursuant to SEQRA.

A: A negative determination under SEQRA has been made for all activities covered by the General Permit for construction. This is because the Department found that projects that are solely permitted under this General Permit and that comply with the terms of this permit will have no adverse impact to the environment. If additional permits are needed from the Department, a separate SEQRA determination for the project may be completed as stated in the permit:

“New stormwater discharges from construction activities which require any other Uniform Procedures Act Permit (Environmental Conservation Law, 6 NYCRR Part 621) cannot be covered under this General Permit until the other required permits are obtained. Upon satisfaction of the State Environmental Quality Review Act (“SEQRA”) for the proposed action and issuance of necessary permits, the applicant may submit an NOI to obtain coverage under this general permit.”

What this condition says is that when a project requires permits in addition to coverage by the Stormwater Construction SPDES, then the negative declaration prepared for the Stormwater Construction SPDES is not satisfactory and SEQRA must be satisfied for the entire proposed action.

28. Is there a procedure for notifying DEC when a storm water discharge covered by the general permit has been eliminated?

A: Yes. The general permit includes a procedure for filing a Notice of Termination (NOT) form when there is no longer a potential for storm water discharges associated with construction activity to occur. Operators on construction activities can submit an NOT once they have finally stabilized all areas that were disturbed. For construction activity, final stabilization means that all soil disturbing activities at the site have been completed, and that a uniform perennial vegetative cover has been established or equivalent permanent stabilization measures (such as the use of mulch, rip rap, gabions, or geotextiles) have been employed with a density of eighty percent of the previously existing, background cover for unpaved areas and areas not covered by permanent structures.

29. When should a developer submit a Notice of Termination (NOT) for a residential subdivision?

A: For subdivisions where the operator will construct the infrastructure (roads, utilities, etc.) and houses, the operator should not file the NOT until all construction activity identified in the SWPPP is complete and all disturbed areas have been stabilized in accordance with the SWPPP, this includes the individual lot development (i.e house, drive and lawn construction).

For subdivisions where the operator intends to just construct the infrastructure and then sell lots to private individuals or building contractors, the operator can submit the NOT when the road and infrastructure are complete, provided they properly transfer ownership and responsibility for stormwater runoff to a municipality or another developer. Stormwater discharges from the on-

going individual lot development can impact the post-construction stormwater management controls installed as part of the road and infrastructure construction, therefore, coverage under GP-02-01 must be maintained by a responsible party as long as there is construction activity taking place in areas identified in the SWPPP.

In order to properly transfer ownership and responsibility for stormwater runoff, the original operator must notify the new operator, in writing, of the requirement to obtain coverage under GP-02-01 by submitting a Notice of Intent (NOI) with the Department. Once the new operator obtains coverage, the original operator must then file a completed NOT with the name and permit identification number for the new operator. Before filing the NOT, the original operator must ensure that the road and other areas disturbed by the installation of the infrastructure have been stabilized in accordance with the SWPPP and that the required post-construction stormwater management control practices have been installed and are fully operational. The new operator is required to review and sign the SWPPP and to continue implementation of the SWPPP that was prepared by the original developer [see Part I.D.9 and Part I.E.2 of GP-02-01].

Operators are reminded that it is unlawful to discharge pollutants to waters of the state from any outlet or point source without a SPDES permit, even if the NOT has been filed.

30. When ownership changes, must the old owner do anything besides submitting a Notice of Termination ("NOT")?

A: In order to properly transfer ownership and responsibility for stormwater runoff, the original operator must notify the new operator, in writing, of the requirement to obtain coverage under GP-02-01 by submitting a Notice of Intent (NOI) with the Department. Once the new operator obtains permit coverage, the original operator must then file a completed NOT with the name and permit identification number of the new operator.

31. Please clarify the role of local government. Does a local government have to review SWPPP's before issuing building permits? If they see violations of normal Erosion and Sediment Control practices do they:

- a) read the SWPPP to see if it is being violated?**
- b) call the Department to enforce the General Permit?**
- c) issue a Stop Work Order until the Department resolves the General Permit issue?**

A: It would be a good idea for local governments to review the SWPPP before issuing a building permit, but it is not a state requirement at this time. Municipalities required to obtain authorization to discharge under the permit for Municipal Separate Stormwater Systems (MS4s) will be required to establish and implement programs to control construction stormwater discharges. Review of SWPPPs is likely to be a major component of such a local construction stormwater control program.

If local government detects a violation of the construction stormwater general permit, it would be appropriate to call the department to enforce the general permit, but issuance of stop work orders under the general permit can only be done by the department. Stopping work under local

building codes or other local authority is at the discretion of the local government.

32. Who is responsible for maintenance of permanent stormwater management facilities, and what methods of enforcement exist?

A: The construction general permit contains provisions which require the operator to identify all permanent stormwater management structures and provide an operation and maintenance manual to the owners. Institutional arrangements for ensuring long-term maintenance of stormwater facilities could include, for example, the creation of a homeowners' association, maintenance by the municipality, or creation of a stormwater facilities maintenance special (tax) district.

Many municipalities in New York will, in accordance with the MS4 general permit, be required to ensure control of post construction runoff.

Under the general prohibition against pollution in Environmental Conservation Law Section 17-0501, if a facility causes a water quality problem, then DEC may commence an enforcement action against the entity responsible for maintenance.

33. Is it correct to say that the municipality has no role in review and approval of the NOI and SWPPP, other than to inform developer/contractor that they are required and must be approved by NYSDEC prior to start of work?

A: See answer to question 31. The department sees notification of developer/contractors of requirement to obtain permit coverage as very useful.

34. Who exactly is considered qualified to develop a SWPPP? To certify a SWPPP?

A: The SWPPP should be prepared by a person that is knowledgeable in the principals and practices of erosion and sediment control, and stormwater management; such as a licensed professional engineer, Certified Professional in Erosion and Sediment Control (CPESC), licensed landscape architect or qualified Soil and Water Conservation District staff. However, the design of any stormwater management control practices that require structural components, such as a dam for an impoundment, should be performed by a licensed professional engineer.

If the SWPPP needs to be certified because the project is either located in a TMDL watershed meeting Condition A or the SWPPP was not developed in accordance with the Department's technical standards, the permit requires that a licensed/certified professional provide the certification. This can include a licensed professional engineer, Certified Professional in Erosion and Sediment Control (CPESC), or licensed landscape architect.

35. Who can perform the weekly site self-inspections required by the permit?

A: The inspections shall be performed by a qualified professional knowledgeable in the principles and practices of erosion and sediment control, such as a licensed professional engineer, Certified Professional in Erosion and Sediment Control (CPESC), licensed landscape architect or qualified soil scientist (the department interprets this to include qualified Soil and Water Conservation District staff).

36. Can the weekly site self-inspections be conducted by a technician or junior engineer working under the supervision of a PE?

A: Yes, it is permissible to have someone working under the direction and supervision of a licensed professional engineer or licensed landscape architect perform the inspections, provided that person has experience or training in the principles and practices of erosion and sediment control.

37. What kind of reviews will the Department be doing?

A: When the Department receives an NOI, staff will do an initial completeness review to determine whether all sections of the NOI are completed. If they are, coverage will be granted by an acknowledgment letter. Further staff review will determine whether a project is one for which the department will request a copy of the SWPPP for review.

38. Which local highway department construction activities will require coverage under GP-02-01?

A: Highway projects requiring permit coverage can include any construction activity involving clearing, grading and excavating that results in a land disturbance of 1 or more acres of land.

Exempt from the requirement to obtain a permit is routine maintenance. Routine maintenance is defined as maintenance performed to maintain the original line and grade, hydraulic capacity, or original purpose of a facility where the total land disturbance is greater than 1 acre. Operators/owners are reminded that discharges from this type of activity can still cause or contribute to a violation of a water quality standard and that such violations are punishable under State law. For this reason, operators are encouraged to implement proper erosion and sediment control practices for any construction or maintenance activity that results in land disturbance.

39. Can a municipality get a annual “blanket” permit for local highway construction and reconstruction projects?

A: No, a NOI must be filed for each project that requires permit coverage.

40. Is the repaving of a road or parking lot considered a construction activity that requires permit coverage (GP-02-01)?

A: Repaving, as defined herein, is an activity which does not require permit coverage. Repaving is defined as the resurfacing of an existing pavement/concrete road or parking lot, or resurfacing of a road or parking lot that has under gone grinding or milling operations, where a layer of pavement or concrete remains after the grinding or milling. Construction activity that does not result in land disturbance (soil exposure) is not required to obtain coverage under GP-02-01.

40A. Does road or parking lot reconstruction require permit coverage?

A: Road or parking lot reconstruction is defined as removal of the full depth of the pavement/concrete layer(s) with varying levels of disturbance to the subbase and subgrade layers. Road or parking lot reconstruction may or may not require permit coverage. The need for permit coverage is based on factors such as the type and thickness of the subbase layer and the level of disturbance to the subbase layer. The following criteria should be used to determine

which road and parking lot reconstruction projects are considered regulated land disturbances that require permit coverage:

- If the existing subbase material is not a processed crushed stone, washed stone (e.g. mixed ones and twos), or a material equivalent to NYS DOT subbase course (see Section 304 of NYS DOT Standard Specifications); the project will require permit coverage if the total disturbance (including other site disturbances) is one or more acres.
- If the existing subbase layer on the road or parking lot reconstruction project is less than 6 inches in depth, the project will require permit coverage if the total disturbance (including other site disturbances) is one or more acres.
- If the road or parking lot reconstruction involves the complete removal of the subbase layer or disturbance of the bottom 6 inches of the subbase layer (less than six inches of subbase would remain after removal of pavement/concrete), the project will require permit coverage if the total disturbance (including other site disturbances) is one or more acres.
- If the subbase layer is six inches or more in depth after the removal of the pavement/concrete layer(s) and the subbase material is equivalent to one of the materials specified in the first bullet above, that area is not considered a regulated disturbance and should not be included when calculating the total disturbance.

41. Are two highway projects in the same right of way, but located many miles apart, considered to be part of a larger common plan?

A: Discrete construction projects located within a larger common plan of development or sale that are at least 1/4 mile apart can each be treated as a separate plan of development or sale provided any interconnecting road, pipeline or utility project that is part of the same “common plan” is not concurrently being disturbed.

42. Gravel roads are often reconstructed (i.e. resurfaced, regraded and compacted) every year. Is a permit required each time a gravel road undergoes such extensive maintenance?

A: No. This type of activity is considered routine maintenance and is exempt from the requirement to obtain a permit. Routine maintenance is defined as maintenance performed to maintain the original line and grade, hydraulic capacity, or original purpose of a facility where the total land disturbance is greater than 1 acre. Operators/owners are reminded that discharges from this type of activity can still cause or contribute to a violation of a water quality standard and that such violations are punishable under State law. For this reason, operators are encouraged to implement proper erosion and sediment control practices for any construction or maintenance activity that results in land disturbance.

43. As the regulations were explained, the operator/owner of a site would be responsible for obtaining the permit. When talking about street construction, does that make the street owner responsible (i.e., the County, or Town for public streets)?

A: Yes. The general permit (GP-02-01) requires the “operator” of the construction activity to obtain permit authorization for any discharges. “Operator” is defined as the person, persons, or legal entity which owns or leases the property on which the construction activity is occurring.

44. For projects such as a 100-mile highway construction project, what location should be provided on the Notice of Intent ("NOI")?

A: The midpoint of a linear construction project should be used as the site location on the NOI form.

45. What is the definition of Agricultural Property?

A: The department takes Agricultural Property to mean land used in agricultural production as defined in Ag and Markets Law. While the Ag and Market’s law definition has additional provisions the major provision is as follows:

"Land used in agricultural production" means not less than seven acres of land used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of ten thousand dollars or more; or, not less than seven acres of land used in the preceding two years to support a commercial horse boarding operation with annual gross receipts of ten thousand dollars or more.

46. If a utility company (water, sewer, electric, cable, etc.) is contracted to provide service inside a new development, do they need to obtain a permit coverage under GP-02-01 if they are not the operator/owner, or do they merely have to sign the contractor certification for the developer's permit?

A: If the utility company will have operational control over the construction plans and specifications and/or will have day-to-day supervision and control of a specific phase of the construction activity occurring at a construction site, they would be considered the operator of that specific phase and should obtain coverage under GP-02-01 (see FAQ 47 also). If the utility company can not be considered the operator and obtain coverage under the permit, they must sign the contractor certification statement which says they agree to comply with the terms and conditions of the SWPPP and general permit.

In some cases the operator will be the utility, in some cases it will be the entity that owns the road or other right of way used by the utility. In many cases, utilities will only be required to implement the erosion and sediment controls because of nature of the hydrology of the site when construction is complete.

47. Can an entity other than the owner or lessee of a parcel be considered the operator and obtain permit coverage for construction activities they perform on that parcel if they have an easement, right of way or other instrument (e.g. Highway Work Permit) that provides them with contractual control over the parcel?

A: If that entity will have operational control over the construction plans and specifications and/or will have day-to-day supervision and control of the activities occurring at a construction site, they can be considered the operator of the construction activity and obtain coverage under

GP-02-01.

48. If the construction of cells at an existing landfill disturbs greater than one acre of land, is coverage under DEC's construction general permits required?

A: No. DEC considers construction of new cells to be routine landfill operations that are covered by the landfill's industrial storm water general permit. However, the storm water pollution prevention plan for the landfill must incorporate best management practices (BMPs) that address sediment and erosion control. Where a new landfill is being constructed and one or more acres of land are being disturbed, such activity would need to be covered under DEC's construction general permit until the time that initial construction is completed and industrial waste is received.

49. If a construction activity that disturbs one or more acres commences on a site covered by an existing industrial storm water permit, are the storm water discharges from the construction area covered by the existing permit or is a separate permit required?

A: If the existing permit is an individual permit, then the operator must either request a modification of the existing permit to include the construction storm water discharges or apply for coverage under a separate permit that specifically addresses the construction activity. If the permittee decides to modify the existing individual permit, permit modifications must be approved prior to initiating any construction activity. If the existing permit is a NYS storm water industrial general permit, the operator should submit an NOI for coverage under NYS's storm water general permit for construction activities.

50. Section I.A.1. of the construction permit states "There shall be no increase in turbidity that will cause a substantial visible contrast to natural conditions." How is "substantial visible contrast" defined? Is this subjective? How is "best usage" defined?

A: The term, "substantial visible contrast" is a narrative standard set forth in Part 703 New York States Water Quality Regulations. The term "best usage" is defined in Part 700.1 and means: "those uses determined by the Commissioner in accordance with the considerations prescribed by the Environmental Conservation Law".

51. Would demolition constitute a land disturbing activity and require a storm water construction permit application?

A: The definition of land disturbing activity includes but is not limited to clearing, grading and excavation. At a demolition site, disturbed areas might include the site where building materials, demolition equipment, or disturbed soil are situated, which may alter the surface of the land. Therefore, demolition activities that disturb one or more acres of land would be subject to storm water construction permit application requirements.

52. Where should storm water pollution prevention plans (SWPPPs) be submitted?

A: If a project requires another DEC permit, a copy of the SWPPP containing the information specified in Appendix B of the permit must be submitted to the Department. Otherwise, the SWPPP should not be submitted to DEC or EPA unless specifically requested. However, a copy of the SWPPP must be submitted to the local jurisdiction for their information.

53. What should a facility do when the nature of its activities change?

A: When the nature of a facility's activities change, the owner must modify the Stormwater Pollution Prevention Plan (SWPPP) accordingly.

54. Can I apply for an individual SPDES permit for storm water?

A: Yes, that's an alternative, but dischargers of storm water runoff that need a permit are encouraged to seek coverage under the general permit wherever possible. One reason is that DEC simply cannot process the estimated tens of thousands of applications for individual SPDES permits were they to be made. Additionally, the permit application must be submitted 180 days prior to the commencement of construction. In addition, completing an application for an individual permit requires a federal form 2F which can involve a significant and questionable sampling expense for the applicant. Additionally, the fees associated with individual permits are higher than for general permits. There may also be situations in which the Department, especially because of a concern for water quality, will require a storm water discharger to obtain coverage under a site-specific SPDES permit rather than a general permit.

55. Are guidelines available for maintenance of stormwater management practices?

A: Maintenance guidelines for various practices may be found in the NYS Stormwater Management Design Manual.

56. Are owners/operators required to perform site inspections during winter conditions if soil disturbance activity is completely suspended?

A: See the "Winter Site Stabilization/Site Inspections for Construction Sites under SPDES General Permit for Stormwater (GP-02-01)" guidance document.

57. Is there a permit fee for owners/operators that obtain coverage under the general permit (GP-02-01)?

A: Yes, as of April 1, 2004, there will be a \$50 annual fee, plus an Initial Authorization fee of \$50 per acre of disturbance plus \$300 per acre of future impervious area.