

Frequently Asked Questions About Permit Requirements Discharges  
from  
Construction Activity that Results in a Disturbance of One Acre or More  
Covered by SPDES General Permit: GP-02-01

Version 1.0 - May 22, 2003

Please note that there is or will also be a document answering questions on application of technical standards with which compliance is required under GP-02-01

For additional clarifications on the storm water regulations visit the following EPA site and click on "Draft General Permit Factsheet" under the February 4, 2003 listing:  
[http://cfpub1.epa.gov/npdes/whatsnew.cfm?program\\_id=6](http://cfpub1.epa.gov/npdes/whatsnew.cfm?program_id=6)

**1. 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 commences. Coverage under the general permit will begin either five (5) or sixty (60) business days after receipt of a completed NOI by the DEC.

**2. 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.

**3. Does no response 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 or 60 business days. However, the department is mailing acknowledgment letters to permittees that would confirm whether the review period is five or 60 days.

**4. 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.

**5. 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, “small” construction activity (i.e. activities that ultimately will result in a land disturbance of equal to or greater than 1 acre and less than 5 acres) does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of a facility.

**6. 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.

**7. 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”.

**8. What are operators of construction activities that have 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 will not achieve final stabilization of all disturbed areas by August 1, 2003 and file 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.

**9. 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).

**10. 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, 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.

Silviculture is considered as an on-going practice involving the dedicated and cyclic use of land expressly for the 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.

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.

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

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

**12. 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.

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

A: Generally 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. Permitted or unpermitted, 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.

**14. 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 which meets the substantive requirements of GP 02-01, they do not need to obtain permit coverage.

**15. 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.state.ny.us/website/dow/toolbox/instr\\_man.pdf](http://www.dec.state.ny.us/website/dow/toolbox/instr_man.pdf)

**16. 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).**

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 residences, 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. 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.

**17. Clarify additional requirements for SWPPP's for sites meeting Condition A, B, or C.**

A: See the permit language in Part III.D. *General Contents of SWPPP's* to provide further clarification of the SWPPP requirements for the different categories of construction activity identified in the permit. This section was revised to provide clearer information as a result of public comment. Specifically Part III.D.2.(b) and 3. pertain to additional requirements for sites meeting conditions A, B, or C.

**18. 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.

**19. 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)?**

B: 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.

**20. 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.

**21. 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.

**22. 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.

- 23. 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.

- 24. 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.

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

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.

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.

- 25. 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 23. The department sees notification of developer/contractors of requirement to obtain permit coverage as very useful.

**26. 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.

**27. 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).

**28. 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.

**29. 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.

**30. If there is no stormwater discharge to “waters of the United States” from the construction activity, is the operator still required to obtain permit coverage under the Phase II Regulations?**

A: The Phase II regulations only apply to stormwater discharges to “waters of the United States” and discharges to a municipal separate storm sewer system.

**31. 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.

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

A: Yes, inform the new owner, if any, of the need to seek permit coverage for their storm water discharge.

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

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 and less than 5 acres (i.e. “Small Construction Activity”). 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.

**34. 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.

**35. Does construction activity include the repaving of roads?**

A: Repaving of roads is not considered to require permit coverage because it does not disturb soil.

However, road reconstruction projects where pavement is removed to the gravel subbase will require permit coverage if the disturbance is one or more acres.

**36. 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.

**37. 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 and less than 5 acres (i.e. “Small Construction Activity”). 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.

**38. 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.

**39. 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.

**40. 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.

**41. 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 we merely have to sign the contractor certification for the developer's permit?**

A: No, the utility company would not be required to obtain permit coverage. However, they would be required to sign the contractor certification as part of the operator's permit requirements.

Utility companies disturbing more than one acre in an area that has already obtained permit coverage, must wait until the "operator" for that area obtains permit coverage. In some cases the operator will be the utility, in some cases it will be the locality 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.

**42. Do stormwater discharges from the construction activity to catch basins in the street that lead to streams need coverage?**

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

**43. If the construction of cells at a landfill disturbs greater than five acres 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 five 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.

**44. 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.

**45. 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).

**46. 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.

**47. 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.

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

A: When the nature of a facility's activities change, the facility must modify the pollution prevention plan accordingly.

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

A: Yes. The general permits include procedures for filing a Notice of Termination (NOT) form when there is no longer a potential for storm water discharges associated with industrial 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.

**50. 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 United States Waters, 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.

**51. 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.

**52. Are guidelines available for maintenance of stormwater management practices?**

A: Maintenance guidelines for various practices may be found in "Reducing the Impacts of Stormwater Runoff from New Development".