

Fisher Insight

How does the recently updated NYSDEC SPDES Permit (GP0-20-001) Impact your Energy Projects?



The New York State Department of Environmental Conservation (NYSDEC) recently updated the State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity (General Permit) to replace the current General Permit (GP-0-15-002). **The new General Permit (GP-0-20-001) will take effect on January 28, 2020**, the date that the current permit expires. In general, the new permit remains relatively unchanged from the previous version, with some exceptions. It is important to understand the changes for your energy related projects moving forward as the new permit will be active for the next 5 years.

These major edits include the following:

1. Effluent Limitation Guidelines Applicable to Discharges from Construction Activities

The current General Permit has always included criteria under "Erosion and Sediment Controls" (Part I.B.1.a) to comply with the Environmental Protection Agency (EPA) Effluent Limitation Guidelines (ELG) (40 CFR 450.21). The major changes incorporated into GP-0-20-001 now include the requirement to **control peak flow rates**, as well as the previous requirement to control stormwater volume to minimize channel and streambank erosion and scour in the immediate vicinity of the discharge points. In addition, you must now **minimize dust** through the appropriate application of water or other dust suppression techniques to control the generation of pollutants that could be discharged from the site (Part I.B.1.a. (ix)). As done previously, the control measures specified in the New York State Standards & Specifications for Erosion & Sediment Control ("Blue Book") dated November

2016 are still used to meet the EPA requirements and must be documented in the SWPPP.

2. Activities which are Ineligible for Coverage under the General Permit

Construction activities are now **ineligible** for coverage under the General Permit if they meet the following three conditions:

1. The discharges from the construction activities are tributary to waters of the state classified as AA or AA-S, and
2. The construction activities are undertaken on land with no existing impervious cover, and
3. The construction activities disturb 2 or more acres of land with United States Department of Agriculture (USDA) soil slope phase of D, provided the map unit name is inclusive of slopes greater than 25%, or E or F, or a combination of the three designations.
"D" soils with a 25% slope designation was added to address "steep slope" areas that are found in some of the mountain areas across New York State. Note that the activity must meet all 3 conditions as well as disturbed area requirements to be deemed ineligible.

3. Notice of Intent (NOI) Submittal

The NOI may be submitted either electronically or via paper version until **December 21, 2020**. After that date, all NOI submissions must be made electronically through the [NYSDEC nForm Portal](https://www.dec.ny.gov/pubs/95925.html) (<https://www.dec.ny.gov/pubs/95925.html>) with a NY.gov account.

4. Permit Authorization

The General Permit was modified to clarify that **Part II.C.2 must be satisfied prior to** being authorized to discharge stormwater from the construction activity. Part II.C.2 requires the owner or operator obtain any Department certifications from any New York State agency prior to proceeding with activities covered under the General Permit. This will ensure protection of New York's air, water, minerals, and biological resources that may be subject to the requirements of the Uniform Procedures Act (UPA).

5. Change of Owner or Operator

The owner or operator is now required to notify the Municipal Separate Storm Sewer System if there is a change in ownership or operation of a construction activity. As required previously, a Notice of Termination (NOT) must be filed with the NYSDEC to identify the new owner or operator.

6. General SWPPP Requirements

As required by the previous General Permit, the SWPPP must be kept current at all times and must document the erosion and sediment control practices and all stormwater management practices that are being used on the site. In addition to these SWPPP modifications, the new General Permit requires that the Construction Drawings must also be modified and kept current for these features.

GP-0-20-001 clarifies that the owner or operator must amend the SWPPP and construction drawings to document the final construction conditions. These amendments/updates can be used by the owner or operator to document compliance with GP-0-20-001 and the SWPPP and for long term operation and maintenance of any post-construction control practices that were constructed as part of the construction activity.

7. Definitions – Appendix A

A few definitions that may impact your Energy related project have been added or modified within the new General Permit to help clarify areas of confusion that have occurred in the past. The following have been added or modified.

1. **Qualified Inspector/Trained Contractor**
– A person who is a Certified Professional in Erosion and Sediment Control (CPESC) can also be considered a Qualified Inspector or Trained Contractor.
2. **Regulated, Traditional Land Use Control MS4**
– the update for this definition includes the

City of New York's Municipal Separate Storm Sewer System, which is considered a "large MS4" that is authorized to discharge under an individual SPDES Permit (NY-0287890).

3. **Steep Slope** – This includes the USDA Phase "D" soils with a 25% or greater slope as previously mentioned.

8. Required SWPPP Components by Project Type: Appendix B

Tables 1 and 2 of Appendix B have been updated to include additional types of construction activities and clarify required SWPPP components for several of the existing types of construction. These changes will help project owners develop and implement the SWPPP.

9. 303(d) Segments for Construction Activity: Appendix E

Appendix E has been modified to only include the streams or waterbodies included within "The Final New York State 2016 Section 303(d) List of Impaired Waters Requiring a TMDL/ Other Strategy" dated November 2016 that are impaired by pollutants related to construction activities. Notably excluded from the updated list is the Lake Ontario Shoreline.

A summary of changes can also be found in the NYSDEC Fact Sheet by [clicking here](https://www.dec.ny.gov/docs/water_pdf/20draftgpcnstrfact.pdf). (https://www.dec.ny.gov/docs/water_pdf/20draftgpcnstrfact.pdf)



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