



Who Needs an NPDES Permit?

For Construction Activities

Dan Bogoevski
Ohio EPA
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Local MS4 vs Ohio EPA

- Obtain local approvals from MS4
 - May include zoning review, planning commission review, SWPPP review, grading permits, building permits, etc.
- Obtain NPDES permit from Ohio EPA
 - Submit Notice of Intent (NOI)
 - MS4 operator should ensure submittal of NOI



What is Required of MS4?

- Review SWPPP for sites where larger common plan disturbs ≥ 1 acre
- Inspect sites for compliance with SWPPP at least once per month
- Take enforcement action to achieve compliance where non-compliance exists

What is an NPDES Permit?

- Authorization to discharge pollutants to waters of the state from a specific source
- National Pollutant Discharge Elimination System (NPDES) permit program
 - Established under Federal Clean Water Act and in Ohio under Ohio Revised Code 6111
 - Applied to storm water discharges since 1992
 - Includes runoff from most construction starts

What is Construction Activity?



Clearing



Grubbing



Grading



Excavating



Filling

Does not have
to be
associated
with building
construction



When Must I Obtain NPDES Permit?

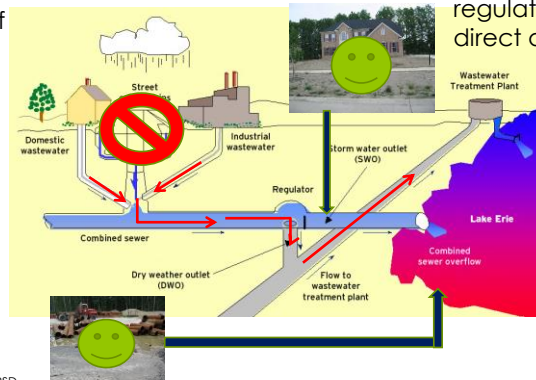
- Larger common plan (LCP) of development or sale disturbs ≥ 1 acre
- Discharge is to an MS4 or water of the state
 - Definitions in ORC 6111.01(H) and OAC 3745-39-01(B)(9)
- Is not an exempt activity
 - Oil & Gas Exploration exemption (CWA Section 402(l)(2))
 - Agricultural disturbance
 - Silvicultural land disturbance
 - See Ohio EPA Fact Sheets posted for this workshop at www.neohiostormwater.com (Past Trainings/Workshops)



Discharges in Combined Sewer Communities

NPDES storm water permit not required if discharge is upstream of regulator

NPDES storm water permit is required downstream of regulator and direct discharges



CSO Image courtesy NEORS

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Other Considerations for Permitting

- Small Construction NPDES Permitting Waivers (LCP disturbs ≥ 1 ac, but < 5 ac)
 - "Routine Maintenance" vs. Construction Activity
 - Ditch cleaning or pond maintenance to restore original line, grade or capacity
 - See Ohio EPA Fact Sheet at www.neohiosstormwater.com under materials for this workshop (Past Trainings/Workshops)
 - Erosivity factor ("R") in Revised Universal Soil Loss Equation (RUSLE) < 5
- For public road projects, if Total Earth Disturbing Area (EDA) ≥ 1 acre and is not "routine maintenance" as defined above, NPDES permit is required
 - Total EDA = Project EDA + Contractor EDA

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Who Must Obtain an NPDES Permit?

- All “operators” must obtain NPDES coverage
 - Control over site plans
 - Control over day-to-day operations required to comply with SWPPP or permit
- This will typically include the developer, the homebuilder, general contractor and construction site management firm



How to Obtain NPDES Permit

- New STREAMS system now available
 - Allows electronic submittal of all general permit forms and fastest turnaround times
- Paper forms
 - Being phased out...
- Details in presentation to follow



How Do Operators Obtain Permit?

- Notice of Intent (NOI)
 - Submitted by "developer"
 - Submit ≥ 21 days prior to start of construction
 - Fee based on acreage disturbed
- Co-Permittee NOI
 - Submitted by contractor and/or construction management firm
 - No fee



How Do Operators Obtain Permit?

- Individual Lot NOI
 - Submitted by homebuilder or entity purchasing a parcel within subdivided development
 - Submit ≥ 7 days prior to date they accept responsibility for activities on lot
 - No fee



Authorized Discharges

- Operator receives Director's Authorization letter in response to NOI submittal
 - Includes Facility Permit Number ("3GC" number)
- Each NOI has an associated SWPPP
 - Only runoff from the construction activities depicted in the SWPPP are authorized
 - Disturbing beyond the limits shown in SWPPP = violation for unauthorized discharge
 - Discharging runoff from a different construction activity within the limits shown in SWPPP = violation for unauthorized discharge



A Word About Land Clearing...

- If developer wants to clear land in anticipation for development, but SWPPP for subsequent development is not complete, more than one NOI should be submitted
 - NOI #1 – Land Clearing
 - SWPPP should address controls required during land clearing process only
 - Stabilize site at completion of activity and submit NOI
 - Post-construction BMPs not expected at this stage
 - NOI #2 - Subsequent Land Development
 - Post-construction BMPs required if plan creates or re-establishes impervious surfaces



Transferring Permit Coverage

- If original developer sells project, in whole (not parcel-by-parcel), to another developer
 - NPDES permit coverage must be transferred
 - Required in foreclosure situations as well
- Submit General Permit Transfer Form
 - Details in presentation to follow



Terminating Permit Coverage

- When to terminate
 - Upon "final stabilization" or,
 - You are no longer an operator
- How to terminate
 - Submit Notice of Termination (NOT) or,
 - In the case of Individual Lot NOIs, submit the Individual Lot NOT
 - Submit forms within 45 days of completing permit requirements



What is “Final Stabilization”?

- Final stabilization means:
 - Construction activities in SWPPP are complete
 - Vegetative cover \geq 70% growth density
 - All temporary sediment and erosion controls are removed
 - Post-construction BMPs, if applicable, are installed



What is “Final Stabilization”?

- For individual lots in residential construction, either
 - The homebuilder has completed final stabilization as described on prior slide, or
 - The homebuilder establishes temporary stabilization and perimeter sediment controls and informs homeowner of final stabilization requirements



What is “Final Stabilization”?

- On agricultural lands, e.g., to install a pipeline
- Return disturbed areas to their pre-construction agricultural use



Larger Common Plans

Of Development or Sale

What is "Larger Common Plan"?

- "Larger common plan of development or sale" means
 - Any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or
 - Physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) or
 - Indicating construction activities may occur on a specific plot
- Is a contiguous area where multiple, separate and distinct construction activities are taking place at different times on different schedules under one plan

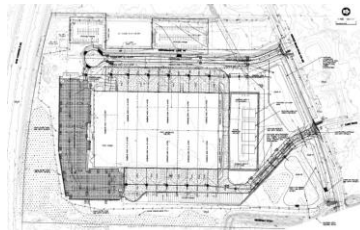


Examples of Common Plans

Residential Subdivisions



Commercial Development with Outlots



Example: Lot Split on Existing Frontage



SITE DESCRIPTION

FACILITY NAME: JAEGER ROAD
 NPDES PERMIT #: PENDING

- a. DESCRIBE THE NATURE AND TYPE OF CONSTRUCTION ACTIVITY: SITE WILL BE CLEARED, GRADED AND PREPARED FOR CONSTRUCTION OF 4 FUTURE RESIDENTIAL SUBLOTS
- b. TOTAL AREA OF THE SITE EXPECTED TO BE DISTURBED: 1.98 ACRES

4 Lot Split	Parcel Size
Lot 1	0.49 ac
Lot 2	0.46 ac
Lot 3	0.46 ac
Subtotal	1.41 ac
Lot 4	1.12 ac
Total	2.53 ac



Yes, an NPDES permit is required.



Example: Business Expansion



Parcel Size = 7.25 ac



In 2012, the business wants to expand within the same parcel...

1994 Aerial



Was NPDES Permit Required?

- Yes, if ≥ 1 acre was disturbed to make improvements to property
 - Areas not previously developed were cleared, graded and paved

Bonus Question: Is Expansion "Large" or "Small" Construction?

Answer: Small Construction – < 5 ac disturbed

Per US EPA website: After the initial "common plan" construction activity is completed for a particular parcel, any subsequent development or redevelopment of that parcel would be regarded as a new plan of development.

Example: Expansion with Subsequent Land Acquisition



2012 Aerial



2015 Aerial

Was NPDES Permit Required?

- Yes, the area disturbed was ≥ 1 acre
 - Must develop SWPPP and submit for review/approval to MS4
 - Need to submit NOI to Ohio EPA

Bonus Question: Is this construction activity part of a larger common plan that includes the 7.25-ac parcel?

Answer: No. Land acquisition was outside the scope of the original 1994 plan of development. This is an independent small construction activity.



Super Bonus Question

- Is the facility required to provide post-construction water quality practices to address the 2014 expansion?

Answer: Yes. However, as a small construction activity, the facility would have more options on how to meet requirements. Although Ohio EPA recommends that BMPs in Table 2 of Part III.G.2.e of the NPDES permit be utilized, local MS4 can approve use of an alternative practice on small construction sites.

Super Duper Bonus Question: What if expansion disturbed ≥ 5 ac?

Ohio EPA approval for alternative practices is required for large construction activities. MS4 should ensure Ohio EPA has approved the alternative BMP before giving final SWPPP approval.



Example: Multiple Parcels

Aerials Prior to Development



West Parcel Size = 2 ac



East Parcel Size = 1 ac

Common owner with one plan of development



Example: Multiple Parcels

2005 Aerial



NPDES Required?

- Yes. Even though separate parcels, 1 or more acre was disturbed under one plan



Example: Subsequent Redevelopment

2005 Aerial



2010 Aerial



2015 Aerial



No change since 2005



Subsequent Redevelopment

- In 2017, the owner decides to replace the parking lot on the West Parcel with additional storage units. This will result in 0.47 ac of disturbance.

Question: Is an NPDES permit required?

Answer: No. Initial construction activities in 2005 were completed and disturbed areas stabilized. Thus, subsequent redevelopment is viewed as an independent construction activity. The subsequent construction disturbs < 1 acre, thus NPDES permit is not required.



Example: Construction Not Completed

- Now, suppose the 2005 plan of development shows that storage units were to be built on the West Parcel, but due to market conditions, owner delayed construction until 2017.

Question: Is NPDES Permit Required?

Answer: Yes. In this case, the original construction activity was simply incomplete. Since authorization under original NPDES permit is > 5 years old, a new NOI is to be submitted to Ohio EPA and SWPPP to MS4.



For More Information

- Websites
 - Ohio EPA – www.epa.ohio.gov/dsw/storm/index.aspx
 - US EPA – www.epa.gov/npdes
- Northeast District Office Contacts
 - E-mail at firstname.lastname@epa.ohio.gov or call

Contact	County	Phone
Dan Bogoevski	Cuyahoga, Geauga, Lake & Lorain	(330) 963-1145
Molly Sunkle	Summit, Medina, Portage & Wayne	(330) 963-1215
Chris Moody	Ashtabula, Trumbull, Mahoning & Holmes	(330) 963-1118
Laura Barrett	Stark, Columbiana & Carroll	(330) 963-1136