



DEP ISSUE PROFILE

Overview of the Requirements of the Maine Construction General Permit

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Background

As of March 10, 2003, certain construction activities in Maine will require coverage under the Maine Construction General Permit (MCGP). The MCGP is based on the federal National Pollutant Discharge Elimination System (NPDES) Stormwater program that applies nationwide. The federal Environmental Protection Agency has delegated its authority to administer this program to the Maine Department of Environmental Protection (DEP). The program provides that certain discharges are not allowed unless they are licensed, and the DEP is licensing certain discharges of stormwater from construction activities when the requirements of the MCGP are met.

The MCGP sets standards for managing stormwater that may pick up pollutants, including soil, and discharge them to waters of the State, such as lakes, streams, and wetlands. The requirement for a MCGP is triggered by the amount of disturbed area created during construction, and whether the site will directly discharge to surface waters of the state. In contrast to Maine's existing Stormwater Law, the MCGP applies solely to construction activity and not to ongoing stormwater management following construction. Also in contrast to the Stormwater Law, the MCGP applies in both organized and unorganized areas of Maine.

This Issue Profile explains when a MCGP is required and describes the permit process. It provides general information to prospective applicants, and it is not meant as a substitute for the law, rules, and general permit.

Who comes under the Maine Construction General Permit?

Stormwater that flows over disturbed areas as a result of rain and snowmelt will pick up pollutants, including soil. These runoff flows are likely to concentrate, resulting in a direct discharge of pollutants to wetlands and waterbodies of the State. Given soil, weather, and widespread water resources in Maine, the Department expects most construction sites disturbing an acre or more of land to potentially create a direct discharge. Some areas, such as internally drained gravel pits, will not. A landowner, contractor, or developer may need coverage under the MCGP if his or her construction project will directly discharge to a surface waterbody, and the construction will result in any of the following:

- ☛ one acre or more of disturbed area;
- ☛ a common plan of development located in an area subject to LURC jurisdiction and requiring a LURC permit; *or*
- ☛ a common plan of development located outside LURC jurisdiction and requiring a Stormwater Law or Site Location of Development Law permit.

What is "disturbed area"?

“Disturbed area” includes all areas where soil is cleared, graded, and excavated. Cutting trees alone, without grubbing, removing stumps, disturbing or exposing soil, etc. is not considered disturbed area. Disturbed area does not include routine maintenance, but does include redevelopment. Routine maintenance is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of the facility.

What is a “common plan of development”?

A “common plan of development” means a subdivision as determined by the Land Use Regulation Commission (LURC) if located in an unorganized area, or by the municipality where the subdivision is located. Under this definition, a subdivision will usually, but not always, consist of 3 or more lots. A common plan of development requires coverage under the MCGP because, over the life of the project including work on the lots, at least one acre of land is expected to be disturbed.

How do I apply for a Maine Construction General Permit?

Maine’s CGP process has been modeled after the Permit-by-Rule (PBR) process under the Natural Resources Protection Act. Like PBR, the Notice of Intent (NOI) for the MCGP is a one page form filed with the DEP. The NOI must be filed and approved *prior to* any disturbance or construction. Using the NOI form, you will provide information including, but not limited to, your address, the project location, the size of the disturbed area and a brief description of the project. By signing the NOI, you are agreeing to meet the requirements of the general permit, including standards for erosion and sedimentation control; inspection and maintenance of any stormwater control practices; and “housekeeping” (ex. preventing fuel spills and controlling dust on the construction site). Specific standards for these activities are found in the MCGP. When you have completed your project and the disturbed areas have been permanently stabilized, you must submit a Notice of Termination (NOT) and photos to the DEP. Notification forms and copies of the MCGP can be obtained by calling your regional DEP office or on the web at the following address:
<http://www.state.me.us/dep/blwq/docstand/stormwater/construction.htm>.

What else do I need to send with my Notice of Intent?

All NOI forms must be accompanied by a site plan for your project. The site plan must show the extent of the disturbed area(s), identify nearby wetlands and waterbodies, and the location of downgradient vegetated buffers. Vegetated buffers are known to be useful for filtering stormwater and should be preserved wherever possible. If buffers cannot be retained, you must explain why. For projects that do not require Stormwater or Site Law permits, these plans do not have to be professionally drawn. However, the plan must be legible, reproducible, and drawn to scale. Written approval from the Department of Inland Fisheries & Wildlife (IF&W) must accompany your NOI if your project is located in an essential habitat area. Maps showing these areas are available from the IF&W and at DEP regional offices.

In addition to the site plan, certain projects require an erosion and sedimentation control plan (ESC) to be submitted with the NOI.

Who needs to do an erosion and sedimentation control plan?

You must complete and maintain an ESC plan if your project includes any of the following involving:

Disturbed area if:

- ☛ one acre or more will be disturbed in the watershed of an impaired waterbody (C); *or*
- ☛ three acres or more will be disturbed in any watershed;

A common plan if:

- ☛ the common plan of development drains to an impaired waterbody (C), *and* also requires a Stormwater Law, Site Location of Development Law, or LURC permit; *or*
- ☛ the common plan of development does not drain to an impaired waterbody (C), will include 3 acres or more of disturbed area, *and* also requires a Stormwater Law, Site Location of Development, or LURC permit.

What is an impaired waterbody (C)?

An “impaired waterbody” is a waterbody that is not meeting water quality standards, as determined by the DEP. If construction activity in a watershed may cause or contribute to the existing impairment of the river, stream or great pond, the waterbody is designated as “impaired waterbody (C)”. "C" stands for "construction." The list is included in Appendix D of the MCGP.

What is an erosion and sedimentation control plan?

In addition to the information shown on the site plan, an erosion and sedimentation control plan also must show the locations of sediment barriers, water diversions, temporary stockpiles, constructed ditches and swales, and culverts. The plan must also include permanent stabilization measures for each disturbed area and slope. When an erosion and sedimentation control plan is required in conjunction with an NOI, the plan must include control and stabilization measures for all disturbed areas associated with the development, including lots if the project is a common plan of development (i.e. subdivision). Erosion control during construction and stabilization after construction should use Best Management Practices (BMPs). When carried out properly, these general BMPs are intended to meet the standards of the CGP. More site specific BMPs may be required for sites with additional constraints. Guidance on standard BMPs for projects not requiring a Stormwater or Site Law permit can be found in Volume III: A Citizens Guide to Best Management Practices for Use with Maine’s Construction General Permit, available from the regional offices of the DEP and on the web at:

<http://www.state.me.us/dep/blwq/docstand/stormwater/construction.htm>.

Is the DEP the only authority that can approve my erosion and sedimentation control plan?

No. If your project includes three acres or more of disturbed area and directly discharges to a waterbody that is not impaired, your erosion and sedimentation control plan can be signed by a qualified individual who certifies that the plan meets the standards of the general permit. Qualified individuals include: a person certified in erosion control practices or a “professional in erosion and sedimentation control” so designated by the Maine Nonpoint Source Training and Resources Center; a Maine registered professional engineer knowledgeable in stormwater and erosion and sedimentation control; and Soil and Water Conservation District staff trained to develop erosion and sedimentation control plans, working in a District with which the DEP has an agreement concerning review of these plans. A list of certified persons can be found at:

<http://www.state.me.us/dep/blwq/training/ccec.htm>

However, the plan must be submitted to the DEP for review:

- (1) if your project includes one acre or more of disturbed area discharging to an impaired waterbody (C); or
- (2) if your project includes three acres or more of disturbed area, discharging to any other waterbody, and your plan has not been certified.

Is there a fee for a Maine Construction General Permit?

Yes. A fee of \$75 is charged for an MCGP that does not require submittal of an erosion and sedimentation control plan. If an erosion and sedimentation control plan is submitted for review, the fee for an MCGP is \$100. These fees are charged to cover program costs.

How long will it take the DEP to process my permit?

An NOI is considered approved 14 days after DEP receives a complete and accurate form *if* the DEP does not notify you otherwise. If the notice is found to be deficient, the DEP *will notify* you within 14 days of receiving it. This period may be extended if the NOI is combined with an application with a longer review period. You may begin work after waiting the 14 days unless otherwise notified.

How long is the Maine Construction General Permit valid?

The Maine CGP will expire July 1, 2004, therefore all MCGPs will be valid until that date. Prior to that date, DEP will develop a general permit or other mechanism to replace the MCGP.

Does the Maine Construction General Permit replace or affect existing Stormwater Law, Site Law, or LURC requirements?

No. However, the DEP is in the process of consolidating application requirements to better coordinate some of these programs. If your project also requires a Stormwater or Site Law permit, you may reference material submitted with those applications provided that it substantively addresses the standards of the MCGP. If not all the standards are addressed, supplementary material should be provided with the NOI. If you wish the Department to rely in whole or part on a submission that is part of a Site Law or Stormwater Management Law application, submit a letter with the NOI describing the previous submission and the extent to which it should be relied upon, and listing the standards addressed by any supplementary material.

If my project site is located in an unorganized area, where do I file my notifications?

All notifications for LURC territories will be processed by the DEP through the Eastern Maine Regional Office (address below).

Are there exemptions under the Construction General Permit?

Yes. Examples of the exemptions include:

- ☛ *Forest management activities*
- ☛ *Normal farming activities*
- ☛ *Normal maintenance activities*

(Headquarters)
Central Maine Regional Office
17 State House Station
Ray Building, Hospital Street
Augusta, Maine 04333
(207) 287-2111 or
toll free at **1-800-452-1942**

Eastern Maine Regional Office
106 Hogan Road
Bangor, Maine 04401
(207) 941-4570 or
toll free at **1-888-769-1137**

Northern Maine Regional Office
1235 Central Drive
Presque Isle, Maine 04769
(207) 764-0477 or
toll free at **1-888-769-1053**

Southern Maine Regional Office
312 Canco Road
Portland, Maine 04103
(207) 822-6300 or
toll free at **1-888-769-1036**