

# TECHNICAL PERSPECTIVES@ellisassoc.com

## The ABCs of Stormwater Permitting and Compliance

NPDES, BMPs, SWPPP, DEP, EPA, WMD, FS, CFR, CWA, MS4, ERP, NOI, NOT. What do all these acronyms have in common? All are contained within a few pages of *Florida's Generic Permit for Stormwater Discharge from Construction Activities*. Add this to the several other separate but related surface water and stormwater permit programs that regulate construction sites, dewatering activities, and completed developments, and there is little wonder that even those who are regulated by these rules are confused by the requirements for permitting and compliance. Unfortunately for those who do not comply with the rules (even when from a lack of understanding), their lack of compliance can be costly in time delays and dollars when regulatory agencies bring enforcement actions against them.

The primary focus of this article is to provide an explanation of the rules detailed in *Florida's Stormwater Permitting and Compliance for Construction Activities* program, but I will provide a list of other related permit requirements at the end of this article for the benefit of those with overlapping compliance requirements.

The Florida Department of Environmental Protection (DEP) was delegated the authority to implement the National Pollutant Discharge Elimination System (NPDES) stormwater permitting program by the United States Environmental Protection Agency (EPA) in October 2000. The major "pollutants" addressed by the stormwater portion of the construction activities program (as opposed to chemical discharges from industrial facilities, for example) are soils that

are caught up in stormwater runoff from construction sites with no sediment controls, which causes turbidity when carried to surface water bodies.

The DEP is, therefore, the authority responsible for permitting, compliance, and enforcement of the regulations for *Stormwater Discharge from Construction Activities*. Permitting is handled out of the DEP's Tallahassee headquarters office; however, each of the DEP's six district offices, as well as municipalities, brings a local presence to compliance inspections and enforcement activities. Generally speaking, the DEP's permitting program regulates construction activities that:

- Discharge stormwater to surface waters of the State or into a municipal separate storm sewer system (MS4).
- Disturb one or more acres of land. Also regulated are parcels that are less than one acre if several parcels are part of a larger development that make up an area totaling more than one acre.

Several hoops need to be jumped through to meet the permit requirements. Some of the hoops are one time events; others continue throughout the life of construction. Here are the requirements:

- Preparation of a *Stormwater Pollution Prevention Plan* (SWPPP). This plan must be completed prior to application to the DEP for the permit. The Plan must include details for managing stormwater runoff from the site, methods of erosion control to be utilized, Best Management Practices (BMPs), a maintenance and

inspection schedule, and the record keeping process, among other things.

- A Notice of Intent (NOI) to be covered under the permit, along with a permit fee of \$150 or \$300, dependent upon the size of the site, must be submitted to the DEP.
- Regular inspections of erosion control features by a certified inspector hired by the owner or contractor must be conducted for the life of the project. These inspections must be completed at least weekly, but also after each rainfall event of one-half inch or more.
- A Notice of Termination (NOT) must be filed with DEP at the end of the project.

These are the basic requirements. Not included in the list, but probably the most onerous aspect of the permit requirements, are maintenance and repairs of control features, such as silt fencing, berms, and exit controls. How many times have you driven by a construction site with silt fenced knocked down or damaged, or a trail of soil from truck tires on the roadway exiting the construction site? If you drive the same roads I do, you see it all the time, yet these are the exact types of conditions that result in fines to contractors and site owners when the DEP makes a site inspection.

Another typical problem is stormwater discharge that remains turbid at the discharge point even when stormwater controls are in place. This condition is generally the result of fine soil particles (based on local soils conditions) that are suspended in the runoff. This is another major hot button for regulatory agency action. The good news is that there are a number of cost-effective techniques for solving this problem.

It is also important to keep good records of all the compliance activities, particularly copies of the NOI and all inspection reports, on-site, so they are easily available when

an unannounced inspection by the DEP takes place. A well-recorded paper trail goes a long way in satisfying regulatory agency concerns about your overall attention to compliance issues.

The bottom line is that, none of the compliance activities described here is particularly difficult or costly, but all of them must be included to ensure a high-quality compliance program.

There are a number of other water permitting programs that may affect your project. The following is a brief summary of the programs:

| Permit Type   | Description of Regulated Activity   | Regulatory Agency   |
|---|---|---|
| Surface Water Discharge Permit                        | Permit required for any dewatering activity that discharges to waters of the state. Generally speaking, this means any discharges that will leave the site. This is a <u>project-specific permit</u> .  | Florida Department of Environmental Protection  |
| General Permit for Short term Construction Dewatering | Authorizes contractor to draw water from the aquifer with certain limits and compliance requirements. General permit - good for entire water management district.   | Water Management District   |
| Industrial Wastewater Permits                         | Permits required for discharge of industrial water and stormwater discharged from industrial sites. Site specific.  | Florida Department of Environmental Protection  |
| Discharge of groundwater to sanitary sewer            | In cases where groundwater discharge is planned to go to sanitary sewer (as in contaminated groundwater)  | Local Sanitary Sewer Utility  |
| Environmental Resource Permit (ERP)                   | Regulates activities involving the alteration of surface water flow. This includes new activities in uplands that generate stormwater runoff from upland construction, as well as dredging and filling in wetlands and other surface waters. Site specific. | Florida Department of Environmental Protection or Water Management District                   |
| Wetland Resource Permitting Program (WRP)             | Similar to ERP, but only regulates Florida panhandle. Site specific.  | Florida Department of Environmental Protection or Northwest Florida Water Management District |
| Municipal Separate Storm Sewer Systems (MS4s)         | Regulates publicly owned stormwater systems (city, county, military bases, etc) designed to discharge to waters of the state.   | Florida Department of Environmental Protection  |