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## **Wisconsin Pollutant Discharge Elimination System (WPDES) General Permit for Storm Water Associated with Land Disturbing Construction Activity, Permit No. WI-S067831-6: Fact Sheet – September 2021**

The landowner of a construction site where one acre or more of land will be disturbed must apply for and obtain coverage under the WPDES General Permit for Storm Water Associated with Land Disturbing Construction Activity (Permit No. WI-S067831-6) from the Wisconsin Department of Natural Resources (department). This general permit regulates the discharges of pollutants to waters of the state as provided in s. 283.33, Wis. Stats., and subch. III of ch. NR 216, Wis. Adm. Code.

The department is reissuing the WPDES General Permit for Storm Water Associated with Land Disturbing Construction Activity (“general permit”). This state-wide general permit authorizes storm water discharges to waters of the state from construction sites. The general permit requires the permittee to implement best management practices to control storm water runoff in accordance with site-specific erosion control and storm water management plans to reduce sediment and other pollutants from entering waters of the state. Waters of the state include surface waters, groundwater, and wetlands.

This factsheet highlights and summarizes the most significant changes from the previous version of the general permit. This factsheet does not describe all conditions of the general permits as many of them are self-explanatory.

### **The Department's Authority to Issue WPDES Permits**

The Federal Water Pollution Control Act of 1972 (Public Law 92-500), also called the Clean Water Act, requires that all point sources discharging pollutants to waters of the U.S. obtain a wastewater discharge permit. These permits specify the conditions under which wastewater can be discharged so that water quality standards for receiving waters are met. In 1974, the United States Environmental Protection Agency (USEPA) delegated the authority for issuing these permits in the State of Wisconsin to the department. The department exercises its permitting authority through the WPDES permit program authorized under ch. 283, Wisc. Stats.

The department has the authority to issue two types of permits for the discharge of pollutants to waters of the state: 1) Individual WPDES permits and 2) general WPDES permits. The department issues individual WPDES permits when the interaction between pollutant discharges and water quality is complex. These permits require scrutiny and must be tailored to the specific conditions of the facility with the discharge. The department issues general WPDES permits to broad classes of dischargers where environmental protection can be achieved through a set of general provisions that apply to all dischargers in that category. The WPDES General Permit for Storm Water Associated with Land Disturbing Construction Activity is a general permit.

### **The Department's Regulation of Storm Water Associated with Land Disturbing Construction Activity**

In Wisconsin, WPDES permits are issued by the department with federal oversight from the USEPA. The department is responsible for the issuance, reissuance, modification, and enforcement of all WPDES permits issued for discharges into the waters of the state, except discharges occurring in Indian Country which are regulated directly by the USEPA. No person may legally discharge to waters of the state without a WPDES permit issued under this authority.

In 1987, Congress amended the Clean Water Act, authorizing a national program of comprehensive storm water pollution control for municipal separate storm sewer systems, certain industries, and construction sites. In 1993, ch. 147, Wisc. Stats., (now ch. 283, Wisc. Stats.) was amended to include storm water as a "point source" discharge and to require that the department promulgate administrative rules for permitting the discharge of storm water. As a result, the department created ch. NR 216, Wis. Adm. Code, for permitting storm water discharges from certain municipalities that own or operate municipal separate storm sewer systems, storm water discharges associated with industrial activity, and storm water discharges associated with land disturbing construction activity. These rules set the framework for the department to issue this general permit for the discharge of storm water associated with land disturbing construction activity.

Under ss. NR 216.43 and 216.44, Wis. Adm. Code, the landowner of a construction site where land disturbing construction activities will disturb one acre or more of land is required to obtain general permit coverage by submitting a completed Notice of Intent (NOI) to the department. The NOI shall be submitted to the department at least 14 working days prior to the commencement of any land disturbing construction activities on forms available from the department and shall include the appropriate application fee.

### **General Permit Requirements**

Chapter NR 216, Wis. Adm. Code, defines the conditions under which storm water associated with land disturbing construction activity can be discharged so that waters of the state will be protected. The general permit contains the requirements as established in subch. III of ch. NR 216, Wis. Adm. Code.

The reissued general permit will be used by the department to authorize and regulate storm water discharges from both new and currently permitted eligible construction sites. Unless notified by the department to the contrary, the effective date of coverage under the general permit is 14 working days after an applicant's complete NOI has been received by the department. General permit coverage continues until submittal of a Notice of Termination for a project and terminates upon written confirmation by the department. The maximum period of general permit coverage for any project is limited to 3 years per NOI submission. Therefore, general permit coverage terminates unless another NOI for the original project, including the application fee, is submitted to retain coverage under the general permit or a reissued version of the general permit.

The general permit will not be used to provide permit coverage to a storm water discharge within Indian Country. Permit coverage is required from the USEPA for construction site storm water discharges within Indian County. Information on such permitting is available at: <https://www.epa.gov/npdes/stormwater-discharges-construction-activities>.

In summary, the general permit requires landowners of regulated construction sites to:

- Develop and implement erosion control and post-construction storm water management plans in accordance with subch. III of ch. NR 216, Wis. Adm. Code, and the applicable performance standards of ch. NR 151, Wis. Adm. Code.
- Electronically submit a complete NOI, to the department at least 14 working days prior to the commencement of land disturbing construction activities.
- Conduct inspections of implemented erosion and sediment best management practices at least weekly and after a rainfall event of 0.5 inches or greater, and repair or replace erosion and sediment best management practices as necessary.
- For any permanent storm water management structures, develop a long-term storm water maintenance agreement.
- Electronically submit a complete Notice of Termination to the department after the construction site has undergone final stabilization.

### **Summary of Key Changes from the Previous Version of the General Permit**

This reissued general permit, Permit No. WI-S067831-6, will replace the previous version of the general permit, Permit No. WI-S067831-5. Key changes to the general permit include the following (numbering system used below corresponds with the sections in the general permit):

**1.1 Eligibility:** Language has been renumbered in section 1.1.2 to be consistent with expectations for pit and trench dewatering activity that may be covered under the general permit. The department has added that pit trench dewatering is allowed under the general permit provided the dewatering activity is not subject to remedial action operations or an area where contamination that would be subject to remedial action operations exists. Note<sup>4</sup> was added under this section for additional clarifications following public comment, and a cross reference to the definition of “remedial action” in chapter 292, Wis. Stats., was provided.

**1.2 Exclusions:** A definition of Indian Country has been further clarified in section 1.2.1 and note under this section provides more information on the USEPA's construction general permit. Section 1.2.2 includes language that a landowner applying for permit coverage shall provide information in the storm water management plan to the department the technical basis for chosen best management practices.

**1.6 Authorized Local Program:** The department has included a note that additional applications for the authorized local program will not be evaluated until changes in ch. NR 216, Wis. Adm. Code, have been promulgated. Section 1.6.1 has been updated to include information on Waukesha County's ordinances. The department has clarified that a landowner regulated by an authorized local program shall comply with those ordinances established which have been reviewed by the department as part of the establishment and management of the authorized local program.

**2.1 Application Procedures:** Language has been added to section 2.1.1 stating that an applicant is to submit the NOI electronically through the department's electronic application process. Additional details on the types of information requested in the NOI have been included in this section. Section 2.1.2 has been added to provide clarity on the erosion control and storm water management plans required under Section 3 of the permit and in accordance with s. NR 216.44(2), Wis. Adm. Code.

**2.2 Permit Certificate.** Permittees are required to post a permit certificate in a conspicuous place of the construction site. Section 2.2 has been amended to include a note clarifying 'conspicuous place' on the construction site along with recommendations on appropriate posting locations.

**2.7 Notice of Termination.** The section has been renumbered and language updated requiring the submittal of electronic Notices of Termination inserted in lieu of mailing Notices of Termination to the appropriate regional staff indicated on the form. The department has provided a note applicable for applicants with no computer capability, that the department may accept a paper version of the NOT on a case-by-case basis. The paper form must be obtained directly by contacting the department at 888-936-7463 or by writing to the Wisconsin DNR, Storm Water Program – WT/3, Box 7921, Madison, Wisconsin 53707-7921. Submittal of the paper form must be accompanied by a letter from the department approving its use.

**2.9 Minimum Storm Water Control Requirements:** Section 2.9.1 (Evaluation and Implementation of BMPs) and Section 2.9.2 (BMP Design) have been created from the previous permit conditions to clarify that evaluation and implementation of BMPs differ from BMP Design. Section 2.9.1.1 was added limiting the size and duration of exposed soil areas subject to erosion via staging of land disturbance. This includes temporary stabilization of areas not subject to further land disturbance during winter months. These provisions align with the requirements found in ss. NR 151.23(4m) 3. and 4., Wis. Adm. Code. A note was added to section 2.9.4.2 clarifying that a permittee's operator may assist a permittee to comply with these provisions where the operator has a contract or other agreement with the permittee to meet these requirements.

**3.1 Erosion Control Plan Requirements:** Section 3.1.1 has been amended to include a note that the mapping requirement can be met for applicants using the department's electronic permit submittal process that includes an outline of the disturbed area as part of the application process, or submits a shapefile with the outline as required in the application process. Section 3.1.2 has also been amended to include a note encouraging inclusion of a staging map, dividing sites into smaller areas with proposed dates for start of land disturbance in each area, start of temporary stabilization, and final stabilization for each area on the map. This staging map is strongly encouraged for all projects expected to have more than 50 acres of land disturbance or land disturbance extending more than 24 months from initial disturbance to final stabilization. Section 3.1.6 has been shortened and re-worded. Section 3.1.7 has been amended to include language to prevent or reduce pollutants from reaching waters of the state.

**3.2 Erosion Control Map:** The requirements of the erosion control map have been included in section 3.2.

**3.3 Erosion and Sediment Control Plan Implementation Requirements:** The implementation requirements for erosion and sediment control have been incorporated into section 3.3.

**3.4 Storm Water Management Plan Requirements:** A note has been incorporated into section 3.4.3 providing

applicants guidance on the storm water management post-construction technical standards developed per Subch. V NR 151, Wis. Adm. Code.

**3.5 Amendments:** A note has been added to section 3.5.2 clarifying that for construction sites for which there has been earlier department review of the erosion control and storm water management plans that have land disturbance outside the limits depicted in those plans, have an increase in proposed impervious area, or changes to the design of post-construction site treatment practices typically require changes to the erosion control or storm water management plans. The department may require a permittee to file a new notice of intent if the amended site requires resource screening of additional area, the amended site no longer meets an exemption from post-construction performance standards under ss. NR 151.121 to 151.125, Wis. Adm. Code, the plans do not meet one or more requirements of sub. III of NR 216, Wis. Adm. Code, or the conditions of a permit issued pursuant to this subchapter.

**4.3.2 Fish and Aquatic Life Waters:** Section 4.3.2. was amended to include the requirements of s. NR 207.04 (c) 1., Wis. Adm. Code, if a discharge results in the significant lowering of water quality.

**5.6 Enforcement:** The department has incorporated standard permit language and reporting in section 5.6.1 where permit noncompliance occurs.

**5.7 Petition to Move to Individual Permit Coverage:** Any person may submit a written request to the department to withdraw coverage under this general permit and to replace it with an individual storm water permit under s. NR 205.08(5), Wis. Adm. Code.

### **Additional Information**

Further information on this general permit and the department's storm water permit program is available online at <https://dnr.wisconsin.gov/topic/Stormwater/construction>, or by contacting the appropriate department regional office or the department's Central Office at <https://dnr.wisconsin.gov/topic/Stormwater/contacts.html>.

Other useful links:

- Construction site storm water permit forms: <https://dnr.wisconsin.gov/topic/Stormwater/construction/forms.html>
- Construction site erosion & sediment control technical standards: [https://dnr.wisconsin.gov/topic/Stormwater/standards/const\\_standards.html](https://dnr.wisconsin.gov/topic/Stormwater/standards/const_standards.html)
- Storm water post-construction technical standards: [https://dnr.wisconsin.gov/topic/Stormwater/standards/postconst\\_standards.html](https://dnr.wisconsin.gov/topic/Stormwater/standards/postconst_standards.html)
- Storm water publications/guidance: <https://dnr.wisconsin.gov/topic/Stormwater/publications.html>

*This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.*