COVERED UNDER THE NYSDEC STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM (SPDES) STORMWATER GENERAL PERMIT GP-93-06

BACKGROUND

In New York State, the United States Environmental Protection Agency (EPA) authorized the New York State Department of Environmental Conservation (NYSDEC) to administer the National Pollution Discharge Elimination System (NPDES) program on October 28, 1975. Pursuant to the Federal Clean Water Act, EPA published Final Rules on November 16, 1990 dealing with storm water discharges to surface waters of the United States, either indirectly through separate storm water sewer systems or directly to waterways.

On October 15, 1992, EPA approved New York State's NPDES program authorizing NYSDEC to issue general permits. New York State Law at ECL Subsection 70-0110(6) and 70-011(7) authorized NYSDEC to issue general permits under the State Pollution Discharge Elimination System (SPDES) Program. NYSDEC issued SPDES Stormwater General Permit No. GP-93-06 effective August 1, 1993 and expires August 1, 1998 (see 4.3.B.2). The permit applies to both private and public storm water dischargers within New York State, not just NYSDOT.

The Environmental Analysis Bureau negotiated a Memorandum of Understanding (MOU) with NYSDEC (see 4.3.B.1) to help clarify applicability of the Stormwater General Permit to NYSDOT projects. Where the permit and the MOU differ, the MOU takes precedence.

GUIDELINES

Design, construction, and maintenance staff should carefully read the SPDES Stormwater General Permit, its appendices, and the NYSDEC/NYSDOT MOU. The following information is intended to supplement, highlight, and clarify some key requirements of the Permit and the MOU. Other provisions of the permit still apply, but are not highlighted herein. The headings, page numbers, and section references below correspond to those sequentially found in the General Permit.

Part I. COVERAGE UNDER THE SPDES STORMWATER GENERAL PERMIT

Eligibility - Projects regulated and requiring processing under the SPDES Stormwater General Permit are those at any "site or plan of development" where project activities will result in a "disturbance of five or more acres total land area" (page 4, B.1.) and where there is a stormwater discharge to surface waters of the United States either indirectly through stormwater sewers or directly to waterways.
As it pertains to NYSDOT projects, the "site or plan of development" refers to the area within the contract limit lines. The "disturbance of five or more acres total land area" refers to the cumulative disturbance during the life of the contract by clearing and grubbing, excavation, and grading that disturbs existing vegetated areas. Thus, previously paved travel lanes and shoulder areas are not included in the five acre threshold. Furthermore, the cleaning/shaping of existing ditches that will remain after construction is completed and the area covered by the placement of granular shoulder backing material will not be included in the calculated five acre threshold.

**Not Regulated** - Projects disturbing less than five acres are not regulated and do not require processing under the SPDES Stormwater General Permit. Furthermore, projects are not regulated where there is no stormwater discharge to a surface waterbody (including wetlands) even where there is a five acre or greater disturbance.

Projects that involve stormwater discharges that are likely to adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat are not covered by the Stormwater General Permit (page 4, C.4.). NYSDOT should modify the project so as to not adversely affect such species or critical habitat to the satisfaction of NYSDEC.

**Authorization**

Each NYSDOT Region is considered the "operator and permittee" under the permit. For all projects let after April 1, 1994, the Region must submit a completed Notice of Intent (NOI) at the time the final PS&E package is submitted to the Design Quality Assurance Bureau (page 5, D.1.). NOIs shall be signed by the Regional Director, or official designee, and sent to:

Storm Water Notice of Intent  
PO Box 1215  
Newington, Virginia 22122

Prime contractors are required to sign certification statements agreeing to comply with the Stormwater Pollution Prevention Control Plan (see page 16, Part III.E. of the permit) in order to be authorized to discharge stormwater. See Section 4.3.B.3. NYSDOT CERTIFICATION FORMS for a copy of the Bidder's Certification Form which, when signed, becomes the prime contractor's certification statement.

A copy of the NOI and a brief description of the project (as taken from the Design Report) shall be posted at the construction site in a prominent location for public viewing (page 6, D.4.).

NOIs do not need to be submitted to the local governing body. NYSDOT is not required to comply with local stormwater ordinances when the State is performing governmental functions (page 6, D.5.).
Part II. SPECIAL CONDITIONS AND PROHIBITIONS

Certain non-stormwater discharges are authorized by the permit and must be included in the Stormwater Pollution Prevention Control Plan required for the project. These include, but are not limited to, waters used to wash vehicles or to control dust, pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred, and uncontaminated foundation or footing drain flows. (page 7, A.)

The discharge authorized by the permit shall neither cause nor contribute to a violation of water quality standards, including but not limited to the following:

1. There shall be no increase in turbidity that will cause a substantial visible contrast to natural conditions;

2. There shall be no suspended, colloidal and settleable solids that will cause deposition or impair the waters best usages; and

3. There will be no residue from oil and floating substances; no visible oil film; globules; or grease.

The determination as to whether or not a violation of these water quality standards exists is up to the discretion of the NYSDEC Conservation Officer. (page 7, B.)

Part III. STORMWATER POLLUTION PREVENTION CONTROL PLANS

A Stormwater Pollution Prevention Control Plan (SWPPCP) shall be developed by the Region for each project to be covered by the general permit. (page 7) NYSDOT does not have to submit the SWPPCP in advance to NYSDEC for approval. However, NYSDEC may come on the project site at any reasonable time to ascertain compliance with the permit. NYSDEC staff may ask to see the documentation that constitutes the SWPPCP.

Each SWPPCP will be composed of erosion and sediment control practices, and where applicable, stormwater management practices, including those for control of the first flush, peak flow attenuation and control of thermal discharges.

Control of the "first flush" means that the first one half inch of rainfall runoff per acre of land area made more impervious from pre-project conditions must be retained on-site, either through infiltration or a retention facility (e.g., pond or created wetland).

Peak flow attenuation is only required if the proposed project will increase the peak stormwater runoff beyond the thresholds identified in UNDERSTANDINGS 7.a) of the MOU unless NYSDEC has identified a significant concern for a the given waterbody.
Control of thermal discharges to cold water fisheries streams from warmed highway runoff will be controlled where NYSDEC has identified it as a potential problem during project coordination activities. Control of thermal discharges will generally be accomplished through similar practices used to control first flush.

**Deadlines For Plan Preparation and Compliance**

For projects let after April 1, 1994, the SWPPCP shall be developed prior to the submittal of the NOI and compliance with the terms and schedule of the SWPPCP must begin with the initiation of construction activities. (page 8, B.2.)

**Signature and Plan Review**

The Regional Director's, or official designee's, signature on the contract plans, on the Notice of Intent, and on the required certification satisfies the signatory requirements of the operator/permittee. (page 8, B.1.)

NYSDOT will not routinely submit Stormwater Pollution Prevention Control Plans for NYSDEC or local government review and approval. However, DOT may choose to share information contained in the SWPPCPs with NYSDEC and local municipalities consistent with current practice and SEQR coordination requirements. (page 8, B.2.)

NYSDOT must make required changes to the SWPPCP within seven days of notification if notified by NYSDEC that the NYSDOT is not meeting the permit requirements. The Region must prepare a written certification to NYSDEC that the requested changes have been made. (Page 8, B.3.)

**Keeping Plans Current**

The EIC is responsible for amending the SWPPCP whenever project conditions change, the plan isn't working, or when contractors change. (page 9, C.1.,2.,3.)

**Contents of the Plan**

Pursuant to the MOU, NYSDOT SWPPCPs will consist of copies of the following elements and will be kept at the project site by the DOT Engineer-In-Charge (EIC):

a) a Notice of Intent (NOI), filed prior to the project letting;

b) the stormwater management and erosion and sediment control plans, details, notes and specifications developed by the design team and included in the contract documents;

c) the EIC approved contractor's written schedule and measures for temporary and permanent
erosion and sediment control work and schedule of operations as required by Section 209 of NYSDOT's Standard Specifications and required certifications statements;

d) relevant sections of any state and federal water related permits required for the project, including COE Individual or Nationwide Section 404 Permits, USGS Section 9 Permits, NYSDEC Article 25 tidal and Article 24 freshwater wetlands permits, and NYSDEC Section 401 Water Quality Certifications; and

e) other relevant information, including any drainage studies prepared by the design team and a copy of the project Design Report, Environmental Assessment or Final Environmental Impact Statement, as appropriate.

The information collectively contained within elements a) thru e) above shall meet the permit contents requirements of the SWPPCP. (page 9, 10 & 11, D.1., D.2. and D.3.)

**Stormwater Management**

Stormwater management controls must conform to the extent practicable with the MOU and the technical standards established in Appendix D of the Permit. This includes addressing such issues as peak flow attenuation, control of the first flush or 1/2" of rainfall per acre of land made more impervious by the project, and control of thermal discharges to cold water fisheries streams from highway stormwater runoff. Where NYSDOT cannot fully meet these technical standards, NYSDOT regional design and construction staff will document this in the project files and will so inform the NYSDEC Regional Permit Administrator at regularly scheduled interagency coordinations meetings prior to submittal of the PS&E package. (page 12, c.1.)

Stormwater management practices may include infiltration measures, detention ponds and retention ponds. This may impact the need for new right-of-way and thus stormwater management must be considered early in project development.

**Approved Local or Regional Control Plans**

NYSDOT is not required to comply with local ordinances in developing the SWPPCP. However, NYSDOT design and construction personnel will consider local ordinances and concerns in developing and enforcing SWPPCPs. (page 13, D.2.e.)

**Maintenance**

Post-construction operation and maintenance responsibilities for installed structural controls for stormwater management after construction is completed should be identified in the design approval document. (e.g., Regional maintenance will be responsible for operating and maintaining the retention pond). (page 14, D.3.)
**Inspections**

The EIC is responsible for inspections of disturbed areas that have not been finally stabilized, storage areas, and vehicles access locations at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. (page 14, D.4.)

Remediation of identified pollution and erosion and sedimentation problems and written modification of the SWPPCP must occur within seven calendar days of the inspection. (page 15, D.4.b.)

An inspection summary report and written certifications must be prepared by the EIC for the project and shall be retained as part of the SWPPCP records for at least three years from the date the project is finally stabilized. (page 15, D.64.c.)

**Contractors - Bidder's Certification Form**

The SWPPCP must clearly identify the contractor(s) or subcontractor(s) that will implement each stormwater management measure identified in the plan. (page 15, E.1.)

All prospective prime contractors must sign a copy of the BIDDER'S CERTIFICATION FORM” (see 4.3.B.3.) agreeing to comply with the terms and conditions of the SWPPCP. (page 16, E.2.)

The Design Quality Assurance Bureau (DQAB) will insert the BIDDER'S CERTIFICATION FORM as a shelf note into the certification section of the bid package. This will be done when the Region fills out and submits the SPECIAL NOTES - STORMWATER POLLUTION PREVENTION CONTROL PLAN form (see 4.3.B.3) to DQAB as part of the special notes section of the PS&E package. The special notes form will become part of the contract proposal.

**Part IV. RETENTION OF RECORDS**

DOT must retain copies of the SWPPCP and all reports required by the permit for at least three years following final stabilization of the site. (page 16, A.)

Except for the filing of NOIs and the Notices of Termination (NOTs), all written correspondence under the permit should be directed to the appropriate NYSDEC Regional Permit Administrator.

**Part V. STANDARD PERMIT CONDITIONS**

**Duty to Provide Information**

DOT is not required to provide local governments information which is requested by them to determine DOT compliance with the permit. (page 17, E.)

**Signatory Requirements**
Regional Directors, or their official designees, must sign the Notices of Intent, Notices of Termination, and the "CERTIFICATION BY THE NYS DOT REGIONAL DIRECTOR" form. Regional Design Engineers (RDE) must sign the contract plans. The RDE's signature on the plans affirms that stormwater management and erosion and sediment control have been adequately addressed in the design of the project. The Engineer-In-Charge for each project must sign all field reports required by the permit and the CERTIFICATION BY THE NYS ENGINEER-IN-CHARGE form (page 18 & 19). Sample forms are found in Section 4.3.B.3. NYSDOT CERTIFICATION FORMS.

Signed copies of the "CERTIFICATION BY THE NYS DOT REGIONAL DIRECTOR" form and the "CERTIFICATION BY THE NYS DOT ENGINEER-IN-CHARGE" form shall be placed in the project files at each project site.

**Requiring An Individual Permit or An Alternative General Permit**

NYSDEC has agreed that DOT projects with a five acre or greater disturbance will be routinely processed under the SPDES Stormwater General Permit except under unusual circumstances. No individual SPDES permits for DOT projects will be requested by NYSDEC unless required by the NYSDEC Director of the Division of Water or his designee. (page 19, J.1.)

**Inspection and Entry**

NYSDEC may enter DOT project sites at reasonable times to examine the SWPPCP, any records kept under the conditions of the permit, and the project facilities or equipment to determine compliance with the permit.

**Part VI. TERMINATION OF COVERAGE**

A Notice of Termination (NOT) must be completed and signed by the Regional Director, or designee, and must be filed at the completion of the project. (page 21)