COVERAGE UNDER THE EPA NPDES GENERAL PERMIT FOR PROJECTS LOCATED ON TRIBAL INDIAN LANDS IN NEW YORK

BACKGROUND

The United States Environmental Protection Agency (EPA) published Final Rules in the September 25, 1992 Federal Register issuing a final National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges from construction sites on Tribal Indian lands in New York State. Copies of the Federal Register notice have been given to and are maintained by the Regional Environmental Contact.

The NYS Department of Conservation does not have jurisdiction over Tribal Indian lands in New York under the State Pollutant Discharge Elimination System (SPDES) Program and the DEC/DOT Memorandum of Understanding (MOU) does not apply to NYSDOT projects on Indian lands. The "disturbance of five acres or more of total land area" is not limited to existing vegetated areas as it is on non-Indian lands under the DEC/DOT MOU.

GUIDELINES

Eligibility - Coverage under the NPDES permit is required for all projects that will result in a disturbance of five or more acres total land area on Indian lands in New York after September 25, 1992 and involve a stormwater discharge to surface Waters of the United States, either indirectly through stormwater sewers or directly to waterways.

If the project involves a disturbance of less than five acres on Indian lands and a five acre or greater disturbance on non-Indian lands (pursuant to the DEC/DOT MOU), then coverage under the DEC SPDES general permit is required. If a five acre disturbance occurs on both Indian and non-Indian lands, then coverage must be sought under both the EPA NPDES general permit and the DEC SPDES general permit.

Coverage is obtained by the DOT Region filing a Notice of Intent (NOI) at least 2 days prior to when the operator (NYSDOT's contractor) commences work at the site. In practice however, the NOI should be sent to the following address at the time the PS&E package is submitted to the Design Quality Assurance Bureau (DQAB):

Storm Water Notices of Intent,
PO Box 1215
Newington, VA 22122

NOIs must be signed by the Regional Director or official designee. Any DOT person signing documents (NOIs, NOTs, plans, reports) pursuant to the NPDES permit and all contractors and subcontractors implementing the projects stormwater pollution prevention control plan must sign the certification statements contained in the September 25, 1992 Federal Register Public Notice.
Unless notified by the EPA Director to the contrary, DOT is authorized to discharge stormwater from construction sites under the terms of the EPA general permit 2 days after the date that the NOI is postmarked. The Director may deny coverage under the general permit and require submittal of an application for an individual NPDES permit based on a review of the NOI or other information.

A copy of the NOI and a brief description of the project must be posted at the construction site in a prominent place for public viewing.

A storm water pollution prevention plan shall be developed for each construction site covered by the permit prior to submittal of the NOI. Contents of the stormwater plan are described in the September 25, 1992 Federal Register Public Notice. The permittee shall make plans available upon request to the Director, EPA. Do not routinely send plans to EPA.

Questions concerning coverage under the EPA NPDES stormwater general permit on Tribal Indian lands should be directed to the Water/Ecology Section of the Environmental Analysis Bureau.