



Owner Responsibilities Under the Construction Stormwater Permit

An Overview

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This fact sheet is meant to provide guidance to property owners who are not familiar with the construction stormwater permitting program. This may include a farmer developing land on his own, a bank taking ownership of an unfinished, foreclosed building project, or an individual purchasing a piece of property to build on, within a larger development.

Defining "owner"

"Owner" means the person or party possessing the title of the land on which the construction activities will occur; or if the construction activity is for a lease, easement, or mineral rights license holder, the party or individual identified as the lease, easement or mineral rights license holder; or the contracting government agency responsible for the construction activity."

The federal Clean Water Act requires permit coverage for any construction activity that disturbs one or more acres, or for a site that is part of a common plan of development or sale in which the entire development is over an acre of soil disturbance. Exceptions include some agricultural- and silvicultural-related soil disturbance.

Environmental protection

Stormwater-related pollution was included as one of Minnesota's top-five environmental stressors, as reported by MPCA in its *2003 Environmental Information Report*.

Sediment-laden runoff carries phosphorus, which encourages algae blooms that

compete with fish for available oxygen. Urban stormwater runoff frequently contain metals, pesticides, animal wastes, oil, and other vehicle fluids.

Sediment in runoff smothers fish spawning areas, abrades fish gills, and harms other organisms.

State requirements

The purpose of the construction-stormwater permit is to insure that soil stays on the site during construction activity. Permit-required best-management practices prevent soil from being washed directly to the lakes, rivers, or wetlands, or indirectly to them through ditches or storm sewers.

The permit also ensures that even as new roads or rooftops cover the land, the increasing stormwater runoff is controlled with permanent stormwater structures designed to slowly release water to the lake, river, or wetland similar to the rate in the natural state before construction.

Permanent stormwater-treatment structures also filter or settle out contaminants picked up from these new surfaces, such as winter sanding of roads.

For some sites, the permit also addresses temperature increases for cold-water fish, like trout. Additionally, erosion-prevention and sediment-control practices serve as wind-erosion protection.

Other local requirements

Be aware that the permit contains only the minimum, state-wide environmental requirements. Check with your local government for any additional permits or requirements.

The MPCA also recommends that owners be familiar with the first part of Chapter 4, "Better Site Design", of the Minnesota Stormwater Manual (www.pca.state.mn.us/water/stormwater/stormwater-manual.html) if they are in a position to influence the initial design of their property.

Scope of owner responsibility

Liability and any enforcement fines for permit non-compliance and environmental damages are shared by the property owner and the contractor who jointly sign the permit application.

In many cases the site owner may also be the contractor. Situations such as this include:

- A person who is building their own home and acting as the prime contractor
- A person who plans on building in the future but hasn't determined who the contractor will be
- A bank that repossess land under construction in which the site is idle but not finished.

While many of the permit requirements may be delegated to the contractor, it is the owner's responsibility to set the site up for success. Owner responsibilities specifically include:

Getting permit coverage

For new coverage, owners must submit a permit application (including fee),

For sites bought during construction or are part of a larger development, new owners/contractors for a site must sign the *Notice of Termination/Permit Modification* form to obtain permit coverage (no fee associated for sites previously covered under another owner).

Writing a Stormwater Pollution Prevention Plan (SWPPP)

Owners must prepare a Stormwater Pollution Prevention Plan to meet permit requirements (and your contract ensures that the contractor complies with the plan)

For new sites, a consultant can develop, or for small sites, the owner can use the MPCA template (www.pca.state.mn.us/publications/wq-strm2-12.doc),

For existing sites, the SWPPP developed by the previous owner or for the larger development may be used. The new owner may want to get assurances that the SWPPP meets the permit requirements for their particular site or have a third party audit the SWPPP. A new owner can always have a new SWPPP developed.

Training contractors

Owners must ensure that their contractors are trained according to the permit (required after Feb. 2010) either by direct oversight or by contract, as a condition of employment.

Terminating permit coverage

Finally, owners must ensure that permit coverage is terminated (using the MPCA's *Notice of Termination/Permit Modification Form*) when construction is complete and the site is stabilized to prevent additional contamination from leaving the site and construction is ceased.

Retaining records for three years

Owners must keep records for three years after submittal of the *Notice of Termination*.

Expert advice

Owners may not have experience in sediment- and erosion-control practices to evaluate bids on what is adequate, so it is important that an experienced consultant develop a SWPPP with the stormwater practices itemized, including estimated quantities, for contractors to then bid upon.

After construction starts, owners should be aware that environmental protection may be the first thing cut by a low-bid contractor, making them jointly liable for the ensuing environmental damage.

Owners should be prepared to fund additional or more expensive practices should their contractor determine they are needed because of changing site conditions during construction activities.

Contact us

For more information, call the Stormwater Program at 651-757-2119 or toll-free at 800-657-3804.