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Construction Storm Water Permit Requirements for Agricultural Projects

After March 10, 2003, anyone wishing to complete construction activities that will result in the disturbance of one or more total acres must obtain construction storm water permit coverage under the National Pollutant Discharge Elimination System (NPDES) program.

However, the 1987 Water Quality Act states that pollutants from nonpoint source agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands and forest lands, are exempt from storm water regulations. The exemption does not apply to Animal Feeding Operations (AFO) or to the construction of buildings.

Although exempt from storm water regulations, agricultural and silvicultural activities still contribute sediment and silt to Ohio's streams and waterways. Various conservation practices and tools are often used in an effort to control runoff and reduce pollution from these activities.

However, because the construction of conservation tools such as filter strips, grassed waterways and storm water ponds frequently result in the disturbance of more than one acre of land, there is often a question about whether these activities should indeed be covered by an NPDES permit.

This fact sheet contains some commonly asked questions and answers to help project planners determine what types of agricultural projects need an NPDES construction storm water permit and how to obtain permit coverage.

Do I need a permit to construct a manure lagoon at an AFO?

If the construction area of the lagoon disturbs an acre or more, you must obtain an NPDES permit. The construction area includes spoil piles and roads/traffic areas.

Do I need a permit to construct a storm water pond that also will be used for irrigation at a nursery, orchard or on crop land?

If the primary purpose of the pond is irrigation, an NPDES permit is not needed. However, if the pond is at an AFO or is primarily for pollution control then you must obtain an NPDES permit.

Do I need a permit to construct an aquaculture pond?

Yes. Due to the industrial nature of their operations and the ability of those operations to negatively impact waterways, U.S. EPA views aquaculture as a point source and, therefore, you must obtain an NPDES permit.

Do I need a permit to construct a pond for recreation or aesthetic use?

If the construction area of the pond disturbs an acre or more, you must obtain an NPDES permit. The construction area includes spoil piles and roads/traffic areas.

Do I need a permit to construct an access road to my farm fields?

U.S. EPA has defined the construction of farm access roads as an exempt nonpoint source activity. Therefore, you do not need to obtain an NPDES permit.

Do I need a permit to construct conservation practices such as filter strips and grassed waterways?

If the installation is at an AFO, you must obtain a permit. For all other projects, if conservation practices are installed in accordance with Natural Resources Conservation Service (NRCS) guidance and associated with crop production or silviculture, you do not need to obtain an NPDES permit.

Exempt practices include the installation of grassed waterways, filter strips, diversions, terraces, grade stabilization structures and lined waterways.



Agricultural Project Permit Requirements

Do I need a permit to construct a new barn or demolish an existing barn?

If the construction or demolition will disturb an acre or more, you must obtain an NPDES permit. The construction area includes spoil piles and roads/traffic areas.

Are there any other permitting requirement exemptions?

There are two permit waivers for small construction sites (one to five acres). However, it is expected that the conditions under which these waivers can be granted will not occur very often.

One waiver, based on the universal soil loss equations, is for situations where little or no rainfall is expected during the construction activity.

The other waiver is for situations where a specific analysis (called a total maximum daily load analysis) indicates that sediment controls on construction sites are not needed to protect water quality.

If you have questions about whether your site qualifies for a permit exemption, contact the Division of Surface Water (DSW) at (614) 644-2001.

Do I need a permit to construct drainage improvements on an open ditch or stream? What about performing maintenance work on existing ditches, culverts, fences and similar features?

Clean outs of channelized waterways not currently under routine maintenance require a construction site storm water permit if an acre or more of ground is disturbed. Any drainage project on a natural stream or waterway would also be subject to this requirement.

Routine maintenance, performed by a local government or by a landowner, that maintains the original line and grade, hydraulic capacity, or original purpose of the open ditch, does not need a construction site storm water permit unless the acreage of ground disturbance reaches five acres or more. The five acre threshold also applies to maintenance of culverts, fences, etc. Prior to initiating the project the contractor, landowner or government agency is responsible for estimating the acreage of disturbed ground. The project should begin only after authorization for permit coverage is obtained from Ohio EPA.

Are there any other permits that I may need?

Even in instances where an NPDES permit is not needed, you still may need another type of permit. Additional permits that may be needed include a permit-to-install (PTI) or a 401 wetlands certification.

To ensure that you comply with all permitting requirements, please contact the Division of Surface Water directly at (614) 644-2001 if you have any questions.

For More Information

Ohio EPA's Web site has more information about the permitting requirements for various projects. To view this information, go to <http://www.epa.state.oh.us/dsw/>.

To contact someone directly with your questions or if you need more information, contact DSW by phone at (614) 644-2001 or by mail through the address below.

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