

**AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
WATERSHED MANAGEMENT DIVISION
1 NATIONAL LIFE DRIVE
MONTPELIER, VERMONT 05620-3522**

FACT SHEET

**REISSUANCE AND AMENDMENT OF GENERAL PERMIT 3-9020 FOR
STORMWATER RUNOFF FROM CONSTRUCTION SITES**

DRAFT GENERAL PERMIT 3-9020 (2019)

I. Background

The Vermont Agency of Natural Resources (Agency) is proposing to issue a general permit for stormwater runoff from construction sites. The draft permit is referred to as General Permit 3-9020 (2019).

On September 13, 2006, the Agency issued General Permit 3-9020 (2006) for Stormwater Construction Runoff from Construction Sites. In February 2008, the Agency amended General Permit 3-9020 to the current version which expired on February 5, 2013 and is now valid through a continuation clause of the general permit. Coverage is required under General Permit 3-9020 (2006), as amended February 2008, for discharge of stormwater runoff from construction activities involving one (1) or more acres of land disturbance, including construction activities when the disturbance is less than one acre, but is part of a larger “common plan of development”, if the common plan will ultimately result in the disturbance of one or more acres. The general permit authorizes permittees to discharge stormwater runoff from construction activities provided the project is in compliance with the requirements of the general permit.

The Agency proposes to reissue the construction general permit, General Permit 3-9020 (2019), with applicability and changes as described in this Fact Sheet. In addition to the changes noted in this Fact Sheet, the new general permit also incorporates minor corrections, clarifications, and format changes that do not alter the terms and conditions of the most recent general permit.

II. General Permit Authority

The draft General Permit 3-9020 (2019) is issued pursuant to the Vermont Water Pollution Control Statute, 10 V.S.A. Chapter 47, specifically §§ 1258 and 1264 and the rules adopted thereunder; the Vermont Water Pollution Control Permit Regulations (Environmental Protection Rules, Chapter 13), the federal Clean Water Act (CWA), as amended, 33 U.S.C. § 1251 *et seq.*; and related regulations of the United States Environmental Protection Agency (U.S. EPA) at 40 C.F.R. Part 122.

The draft General Permit is also consistent with the recent rulemaking for the Vermont Stormwater Permitting Rule (amendment of Environmental Protection Rules, Chapter 22), effective March 15, 2019.

III. Purpose of the General Permit

The Construction General Permit is the State of Vermont's primary regulatory tool for managing discharges of stormwater from construction sites. When vegetation is cleared from a construction site the exposed soils are susceptible to erosion and transport to a surface water, where they can affect water quality. Unmanaged construction sites can contribute sediment and pollutants associated with construction activities to surface waters resulting in impacts to those waters. This permit establishes the controls necessary to minimize the discharge of pollutants to surface waters from construction sites through a risk-based approach that accounts for the relative risk to water quality that a given construction site poses.

IV. Applicability of General Permit

Coverage under the proposed General Permit 3-9020 (2019) must be obtained for:

1. Construction activities that result in a total earth disturbance of equal to or greater than one acre of land area;
 2. Construction activities that result in a total earth disturbance of less than one acre that are part of a larger "common plan of development" that will ultimately disturb equal to or greater than one acre of land area;
 3. For construction activities that result in a total earth disturbance of less than one acre, the discharge of stormwater designated by the Secretary or EPA Regional Administrator as needing a stormwater permit under the following provisions:
 - a. 40 C.F.R. § 122.26(a)(9)(i)(C), for a discharge that requires stormwater controls based on wasteload allocations that are part of TMDLs that address the pollutant(s) of concern; or
 - b. 40 C.F.R. § 122.26(a)(9)(i)(D), for a discharge, or category of discharges within a geographic area, that contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the States;
 4. Support activities (such as construction staging areas, material storage areas, excavated material disposal areas and borrow areas) in accordance with Subpart 1.6 of the general permit.
- B. Construction activities or portions of construction activities that have achieved final stabilization as of September 13, 2006 shall not be considered for purposes of determining what constitutes disturbance under a common plan of development that requires coverage under the general permit.

V. General Permit Organization

The proposed General Permit is organized into sections that define general permit conditions for all construction activities under the permit and into sections specific to low risk construction activities and to moderate risk construction activities.

Part 1, Coverage Under this Permit, applies to both low and moderate risk construction activities and identifies the activities that require permit coverage, those activities that are not eligible for permit coverage, and other related items.

Part 2, Authorization for Discharges of Stormwater from Low Risk Construction Activities, identifies the applicant, application, public comment, and erosion control requirements for low risk construction activities.

Part 3, Authorization for Discharges of Stormwater from Moderate Risk Construction Activities, identifies the applicant, application, public comment, and erosion control requirements for moderate risk construction activities.

Part 4 establishes the erosion prevention and sediment control plan requirements, introduces the on-site plan coordinator, and establishes winter construction and record keeping requirements for moderate risk construction activities.

Part 5 deals with changes to projects for both low and moderate risk construction activities and establishes when an amendment to a discharge authorization is required.

Part 6 outlines the inspection, maintenance, corrective action, record keeping, and sampling requirements for both low and moderate risk construction activities.

Part 7 deals with renewals, transfers, and termination of authorizations, as well as establishes a process for adding co-permittees after issuance of an authorization.

Part 8 identifies the legal authorities under which the general permit is administered.

Part 9 relates to impaired waters and waters with a Total Maximum Daily Load.

Part 10 describes the Anti-degradation policy utilized in the general permit.

Part 11 establishes that additional permit conditions are contained in Appendix D.

Part 12 addresses permit violations and enforcement authority.

Part 13 describes the appeal process for the general permit and authorizations under the general permit.

Part 14 establishes the effective date and term of the general permit.

Appendix A introduces the risk-based approach to permitting used in the general permit and includes a questionnaire for determining the risk of the proposed construction activity. Appendix A also includes filing directions for permit applications.

Appendix B establishes the erosion prevention and sediment control plan requirements for moderate risk construction activities, which include a project description, and pre-construction, construction, and stabilization plans.

Appendix C sets forth definitions for terms used in the general permit.

Appendix D establishes additional permit conditions, including continuation of the expired general permit, revocation of an authorization to discharge under the general permit, and signatory requirements.

VI. Summary of Proposed Changes for General Permit 3-9020 (2019)

The proposed changes to General Permit 3-9020 are:

1. Subpart 1.4.A.5 – Recognizes properly managed/controlled construction dewatering water as an allowable non-stormwater discharge.
2. Subparts 2.1.A and 3.1.A – Specify that in the case of municipal, state and/or regional transportation or utility projects crossing one or more properties, the applicant(s) shall be the municipal, state and/or regional transportation or utility authority that controls the project area by ownership, easement, right-of-way or legal access agreement, rather than each of the often multiple landowners involved in these projects.
3. Subparts 2.1.B and Part 4 of Appendix A – Site plan requirements for Low Risk projects have been added to the general permit. Low Risk site plans will be comprised of a map or aerial image depicting the project limits of disturbance, buffers, and waters of the state.
4. Subpart 2.3 and 3.3 – Specify that public notice of an NOI and attachments shall comply with the requirements established in 10 V.S.A. Chapter 170.
5. Subpart 2.4.B – Low Risk projects would be authorized for a period of five years. Low Risk authorizations were previously only issued for a period of two years under the most recent general permit, which often resulted in projects having to reapply before even commencing construction after obtaining all other necessary project approvals (e.g. Act 250, local permitting, which often depend upon applicant first obtaining other necessary permits).
6. Subpart 2.5.A – The maximum concurrent disturbance area for low risk projects has been decreased from 7 acres to 5 acres.
7. Subparts 2.5.B and 3.5.B – The stabilization schedule has been revised from a variable 7, 14, or 21 days based on response to pertinent questions in the Appendix A to a standardized 14 days for all projects under the general permit.

8. Subpart 2.6 Requirement for Low Risk projects to post the Notice of Authorization issued by the Secretary. This condition was not in the previously issued general permit.
9. Subparts 2.6 and 3.6 – The stabilization exemption has also been simplified to require stabilization in advance of any runoff producing event outside of the initial 14-day stabilization schedule.
10. Part 5 – Part 5 has been simplified to more explicitly identify project changes that require permit amendment and those that do not.
11. Subpart 6.1 – Low Risk projects will now be required to maintain a copy of the Low Risk Handbook and other applicable records (e.g. co-permittee addition) on-site.
12. Subpart 6.1 – Low Risk inspection requirements have been expanded to include an inspection report and documentation requirements.
13. Subpart 9.2 – Discharges into State Waters that are Listed on the EPA approved State of Vermont 303(d) list as Impaired Due to Sediment, Stormwater, or Nutrients and that do not have an Approved TMDL – This section was modified to incorporate impairments for nutrients, in addition to stormwater and sediments as previously written in the 2006 and 2008 general permit.
14. The Appendix A – Risk Evaluation was modified to be more explicit regarding directions for scoring projects and the implications of scoring on an authorization.
15. The Appendix A – Risk Evaluation Parts I and II were modified to remove reference to Part A of the EPA-approved Vermont 303(d) list.
16. The Appendix A – Risk Evaluation Part I now excludes previously established Criterion 5, “*Will the project have more than five acres of disturbed earth at any one time?*” which had no bearing on Part I – Basic Risk Evaluation for determining if projects qualified as Low Risk.
17. The Appendix A – Risk Evaluation Part I Criterion 3 and Part II Criterion A now considers a buffer of 100 feet and is broadened to specifically include wetlands, in addition to lakes, ponds, rivers, and streams.
18. The Appendix A – Risk Evaluation Part I Criterion 3 and Part II, Criterion A no longer allows applicant to exclude disturbance for the installation of stormwater treatment infrastructure as previously written in the footnote for Criterion A.
19. The Appendix A – Risk Evaluation Part II Criteria C and H have been clarified to consider disturbance on slopes both in the existing and proposed conditions.
20. The Appendix A – Risk Evaluation Part II Criteria D and I contain additional information for determining soil erodibility.
21. The Appendix A – Risk Evaluation – Previous Part I Criterion 4 and Part II Criteria D and J have been removed from the risk analysis due to the change described in item 5 on this list.
22. The Appendix A – Risk Evaluation Part IV was modified to supplement filing directions for Low and Moderate Risk projects and provides additional guidance on application submittal for projects that do not qualify for coverage under the general permit and must submit an individual permit application.
23. Appendix B was modified to include pollution prevention requirements.
24. Appendix B was modified to reflect changes in site plan requirements for low risk applications.

25. Appendix B was modified to remove the requirement that EPSC Summary Forms be completed and submitted as part of an application for moderate risk projects. The summary forms will continue to be made available as a tool for application preparers but will no longer be a required application material.
26. Appendix C was modified to provide a definition for “Active Stormwater Treatment”, “Borrow Area”, “Dewatering”, “Discharge”, “Earth Disturbance”, “Hazardous Substance”, “Point Source”, “Pollution”, “Receiving Water”, “Winter Construction” and to revise the definitions of “Best Management Practices”, “Construction Activity”(formerly “construction and construction-related activities”), and “Operator”.
27. The Vermont Standards and Specifications for Erosion and Sediment Control has been revised to include new erosion and sediment control practices, including filter socks, straw wattles, erosion control berms, and water bars, as well as to include pollution prevention requirements.
28. The Low Risk Site Handbook for Erosion Prevention and Sediment Control has been revised to include new erosion and sediment control practices including filter socks, straw wattles, and erosion control berms, as well as new requirements related to dust control, concrete washout, storm inlet protection, water bars, and pollution prevention.
29. CGP 3-9020 (2019) includes a clause (Subpart 1.2) that continues permit coverage to permittees that had been granted permit coverage under CGP 3-9020 (2008) provided their authorization does not expire and provided they comply with CGP 3-9020 (2008) and the authorization under that general permit.

VII. Public Notice and Comment Period

Written public comments on the proposed permit are invited and must be received on or before Friday May 3, 2019. Comments may be submitted through the Department of Environmental Conservation’s Environmental Notice Bulletin (<https://enb.vermont.gov/>). When registering on the ENB, be sure to sign up for notices related to “Stormwater Runoff from Construction Sites General Permit 3-9020 (CGP)” under the Watershed Management Division Stormwater heading. All comments received by the above date will be considered in formulation of the final General Permit 3-9020 (2019).

Public Meeting

A public meeting has been scheduled for 10:00 a.m. on Thursday, April 25, 2019 in the Montpelier Room in the National Life Complex Davis Building located at 1 National Life Dr., Montpelier, VT 05620. Please RSVP to kevin.burke@vermont.gov and bring photo ID if planning to attend the public meeting. For additional information on the draft permit please contact Kevin Burke at 802-490-6168 or by email at kevin.burke@vermont.gov. A remote access option (Skype) will be made available if requested at least 48 hrs. prior to the meeting start time.

Hard copies of the general permit and related documents may be obtained upon request.

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