

Agricultural Conservation Practice Projects

Guidance regarding NPDES/SDS Construction Stormwater Permit Requirements

Use this guidance to determine whether the construction of certain agricultural practices are exempt under the Clean Water Act [40 CFR § 122.3(e)] and does not require coverage under the National Pollutant Discharge Elimination System (NPDES)/State Disposal System (SDS) General Stormwater Permit for Construction Activity (NPDES permit).

Background

Construction activity that disturbs one or more acres of land, along with smaller sites that are part of a larger development disturbing one or more acres of land, requires coverage under the NPDES permit. Construction activities include practices such as clearing, grading, and excavation.

This fact sheet clarifies the use of the federal exclusion for agricultural activities outlined in the Clean Water Act at 40 CFR Part 122.3(e). The Clean Water Act states that pollutants from non-point source agricultural and silvicultural activities, including stormwater runoff from orchards, cultivated crops, pastures, rangelands, and forestlands, are excluded from stormwater regulations.

Types of projects excluded

Construction activities that are associated with the installation of certain conservation practices associated with non-point source agricultural activities, that are for the purpose of soil erosion prevention and sedimentation reduction, are not required to obtain NPDES/SDS construction stormwater permit coverage. Examples of these practices may include:

- Grassed waterways
- Diversions
- Water and sediment control basins
- Terraces
- Grade stabilization structures
- Lined waterways

Landowners and contractors who work on these types of projects conducted under state and federal conservation programs must follow the applicable construction standards and specifications required by those programs for erosion prevention and sediment control Best Management Practices (BMPs) during construction.

Feedlot construction sites at non-concentrated animal feeding operations (CAFOs) with less than 1,000 animal units are required to follow applicable erosion prevention and sediment control BMPs defined in guidance at: <https://www.pca.state.mn.us/sites/default/files/wq-f6-75.pdf>, in order to avoid the requirement to have a construction stormwater permit.

Types of projects that require a permit

The federal exclusion does not apply to CAFOs. Minnesota NPDES/SDS General Permit for Livestock Production includes construction stormwater permit requirements and coverage.

Agricultural conservation practices that: a) disturb one or more acres of land and do not meet the exclusion criteria above, or b) are located in or adjacent to a stream, river or lake and would have a high potential to violate state water quality standards during construction, are required to obtain NPDES/SDS construction stormwater permit coverage. For more information, contact the Minnesota Pollution Control Agency (MPCA) office located near you. Further information

General information:

- Please call the Stormwater Program at 651-757-2119. Also, visit the MPCA construction stormwater website: <https://www.pca.state.mn.us/business-with-us/construction-stormwater>
- For drainage ditch projects, see applicable guidance: <https://www.pca.state.mn.us/sites/default/files/wq-strm2-17.pdf>
- Stormwater Compliance Assistance Tool Kit for Small Construction Operators, MPCA, <https://www.pca.state.mn.us/sites/default/files/wq-strm2-09.pdf>
- Natural Resources Conservation Service and Soil and Water Conservation District offices can also answer questions about construction site erosion and sediment control practice