

901:10-3-11

Stormwater permits general and individual.

(A) Definitions.

~~{Comment: the~~The following definitions shall apply specifically to stormwater. All other definitions contained in this rule and not otherwise defined below shall retain the meaning in the rules contained in definitions rule 901:10-1-01 of the Administrative Code and in Chapter 903. of the Revised Code.}

- (1) Best management practices for stormwater means erosion control, sediment control and water quality management practices that are the most effective and practicable means of controlling, preventing and minimizing degradation of surface water, including construction-phasing, minimizing the length of time soil areas are exposed, prohibitions and other management practices published by the state or other agencies, such as "Rainwater and Land Development, Ohio's Standards for Storm Water Management, Land Development and Urban Stream Protection, Third Edition, 2006," prepared by the Ohio department of natural resources, division of soil and water conservation.
- (2) Construction activity means clearing, grading, excavation, grubbing and filling.
- (3) Erosion means the wearing away of soil by rainfall, surface water runoff, wind or ice movement.
- (4) Erosion control means methods employed to prevent erosion. Examples include soil stabilization practices, horizontal slope grading, temporary or permanent cover and construction phasing.
- (5) Exposed soil area means all areas of the construction site where the perennial vegetation (including trees, shrubs and brush) has been removed. This includes topsoil stockpile areas, borrow areas and disposal areas within the construction site.
- (6) Final stabilization means that all soil disturbing activities at the site have been completed and that a uniform perennial vegetative cover with a density of seventy percent of the cover for unpaved areas and areas not covered by permanent structures has been established or equivalent permanent stabilization measures have been employed.
- (7) First order stream means all streams identified on a United States geological survey seven and five tenths minute topographical map by either a dashed or blue solid line.

- (8) Impervious surface means a constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas, and concrete, asphalt or gravel roads.
- (9) "National Pollutant Discharge Elimination System" (NPDES) means the program for issuing, modifying, revoking, reissuing, terminating, monitoring and enforcing permits under the Clean Water Act (Sections 301, 318, 402 and 405), ~~and 33 USC 1317 (February 4, 1987), 33 USC 1328 (December 27, 1977), 33 USC 1342 (February 7, 2014), 33 USC 1345 (February 4, 1987)~~ United States Code Title 33, sect. 1317, 1328, 1342, and 1345.
- (10) Permanent cover means final stabilization including, but not limited to, grass, gravel, asphalt and concrete.
- (11) Sediment means solid material, both mineral and organic, that is in suspension, is being transported or has been moved from its site of origin by air, water, gravity or ice and has come to rest on the earth's surface.
- (12) Sediment control means methods employed to prevent sediment from leaving the site. Sediment control practices include filter strips, silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, storm drain inlet protection, and temporary or permanent sedimentation basins.
- (13) Soil means the unconsolidated, erodible earth material consisting of minerals or organics.
- (14) Stabilized means the exposed ground surface has been covered by staked sod, rip rap, wood fiber blanket, or other material, which prevents erosion from occurring. Grass seed by itself is not stabilization.
- (15) Stormwater means the precipitation runoff, stormwater runoff, snowmelt runoff and any other surface runoff and drainage defined in 40 CFR section 122.26(b)(13) (November 16, 1990). Stormwater does not include construction site dewatering or agricultural stormwater discharges.

Stormwater resulting from an animal feeding facility includes immediate access roads and rail lines used or traveled by carriers of raw materials, products, waste materials, or by-products used or created by the facility, sites used for handling material other than manure, refuse sites, sites used for

storage and maintenance of material handling equipment, shipping and receiving areas, and under the control of the owner or operator. All areas that fall within the meaning of production area are excluded from this definition.

- (16) Temporary protection means temporary methods employed to prevent erosion. Examples of temporary protection include: straw, wood fiber blanket, wood chips and erosion netting.
- (17) Waters of the state means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems and other bodies or accumulations of water, surface and underground, natural or artificial which are situated wholly within, partly within or border upon this state or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural surface or underground waters.
- (18) Wet weather discharge refers collectively to point source discharges that result from precipitation events, such as rainfall and snowmelt. Wet weather discharges include stormwater runoff, combined sewer overflows and wet weather sanitary sewer overflows. Stormwater runoff accumulates pollutants such as oil and grease, chemicals, nutrients, metals and bacteria as it travels across land.

(B) Permit requirements.

- (1) General stormwater requirements. No person shall discharge stormwater resulting from an animal feeding facility without first obtaining a NPDES permit issued by the director of agriculture in accordance with rules when such a permit is required by the act. The director may designate a stormwater discharge as a point source subject to a NPDES permit. In addition, any person may petition the director to require a NPDES permit for a discharge which is composed entirely of stormwater which contributes to a violation of water quality standards or is a significant contributor of pollutants to waters of the United States. Persons that have been issued a NPDES permit by the director of the Ohio environmental protection agency for the discharge of storm water from an animal feeding facility prior to the date on which the USEPA approved the NPDES program submitted by the director of agriculture under this section may continue to operate under that permit until it expires or is modified or revoked. Such a permit shall be enforced by the director of agriculture upon the transfer of authority to enforce the terms and conditions of the permit.
- (2) Construction stormwater requirements. No person shall discharge stormwater resulting from an animal feeding facility that is undergoing construction

activities that include clearing, grading, excavating, grubbing and/or filling activities that result in the disturbance of one or more acres unless the person first obtains a NPDES permit issued by the director of agriculture in accordance with rules when such a permit is required by the Act. Persons that have been issued a NPDES permit by the director of the Ohio environmental protection agency for the discharge of stormwater from an animal feeding facility prior to the date on which the USEPA approved the NPDES program submitted by the director of agriculture under this section may continue to operate under that permit until it expires or is modified or revoked. Such a permit shall be enforced by the director of agriculture upon the transfer of authority to enforce the terms and conditions of the permit.

(C) Individual permit or general permit.

- (1) The director may require an owner or operator to apply for and obtain either an individual NPDES permit or coverage under a NPDES general permit. Any interested person may petition the director to take action under circumstances listed below. An individual NPDES permit may be required under the following circumstances:
 - (a) A discharge exists and is a significant contributor of pollutants;
 - (b) Noncompliance with the conditions of a NPDES general permit;
 - (c) Noncompliance with the rules; or
 - (d) Receiving streams not meeting applicable water quality standards;
 - (e) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
 - (f) Effluent limitation guidelines are promulgated for point sources covered by a general NPDES permit;
 - (g) A water quality management plan containing requirements applicable to such point sources is approved; or
 - (h) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.

- (2) The director may require the owner or operator authorized to discharge by a general permit to apply for an individual NPDES permit only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application and a statement setting a deadline for the owner or operator to file the application and a statement that on the effective date of the individual permit, coverage under this general permit shall automatically terminate. The director may grant additional time to submit the application upon request of the applicant. If an owner, operator or developer fails to submit in a timely manner an individual NPDES permit application required by the director under this paragraph, then the applicability of this general permit to the individual NPDES permittee is automatically terminated at the end of the day specified for application submittal.
 - (3) Any owner or operator authorized by general permit may request to be excluded from the coverage of a general permit by applying for an individual permit. The owner or operator shall submit an individual application with reasons supporting the request to the director in accordance with the requirements of 40 CFR section 122.26 (November 16, 1990). The request shall be granted by issuance of an individual permit if the reasons cited by the owner or operator are adequate to support the request.
 - (4) When an individual NPDES permit is issued to an owner or operator otherwise subject to a general permit, or the owner, operator or developer is approved for coverage under an NPDES general permit, the applicability of a general permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of approval for coverage under the general permit, whichever the case may be.
- (D) Requirements for stormwater discharge associated with construction activity.
- (1) Application. Individuals who intend to obtain coverage for a stormwater discharge associated with construction activity shall submit an application for a permit at least thirty days prior to the commencement of new construction activity. Application requirements for stormwater discharges associated with construction activity include a summary of the following:
 - (a) The location (including a scaled map) and the nature of the construction activity;
 - (b) The total area of the site and the area of the site that is expected to undergo excavation, grubbing and filling during the life of the permit;

- (i) The owner or operator's name, address, telephone number, and manager's name (if applicable);
 - (ii) The proposed start and end date of the project;
 - (iii) An estimate of the area to be disturbed;
 - (iv) Proposed measures, including best management practices to control pollutants in stormwater discharges during construction;
 - (v) Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed;

~~{Comment: These measures should~~ must be compatible with paragraph (F) of rule 901:10-2-04 of the Administrative Code.}
 - (vi) An estimate of the runoff of the site and the increase in the impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and
 - (vii) The name of the receiving water.
- (2) Fees. A one-time fee must be submitted with the application in accordance with rule 901:10-1-04 of the Administrative Code. The owner or operator will indicate on the application whether the stormwater permit is to be a general or individual permit.
- (3) Transfer. A stormwater permit is transferable if the owner or operator notifies the department of agriculture in writing sixty days prior to any proposed transfer. The transferee must inform the department of agriculture in writing that he or she will assume the responsibilities of the original transferor. The director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the act.
- (4) Record keeping.
- (a) For construction stormwater requirements, the facility's final plans and specifications, which incorporate the requirements of the erosion and sediment control plan must be:

- (i) Available at the construction site in either the field office, the inspector's vehicle, or contractor's vehicle; and
 - (ii) Available to federal, state and local officials for inspection for the duration of this permit.
- (b) The following plans and records must be made available to federal, state, and local officials within twenty-four hours of request for the duration of this permit:
 - (i) The erosion and sediment control plan.
 - (ii) Records of all inspections. Records shall include:
 - (a) The dates and times of inspections;
 - (b) Findings of inspections;
 - (c) Corrective actions taken (including dates and times); and
 - (d) Documentation of changes to the erosion and sediment control plan made during construction.
 - (iii) Dates of all precipitation events exceeding one-half inch.
 - (iv) The owner or operator shall retain records for a period of five years after the completion of the construction activity.
- (c) The notice of the general stormwater permit coverage card or individual stormwater permit shall be posted at any of the following locations:
 - (i) Construction site entrance and visible from the nearest public roadway;
 - (ii) Visible from nearest public roadway, if no construction site entrance exists;
 - (iii) Field office, (if applicable); or

- (iv) For linear utility and noncontiguous projects, at the office responsible for project administration.

(5) Sediment control

(a) Stabilization and nonstructural practices. A description of control practices designed to preserve existing vegetation where attainable and revegetation of disturbed areas as soon as practicable after grading or construction shall be provided. Such practices may include: temporary seeding, permanent seeding, mulching, matting, sod stabilization, vegetative buffer strips, phasing and protection of trees. The owner or operator shall initiate appropriate vegetative practices on all disturbed areas within seven days if they are to remain dormant for more than forty-five days. For areas within fifty feet of any stream, first order or larger, soil stabilization practices shall be initiated within two days on all inactive, disturbed areas. Permanent or temporary soil stabilization shall be applied to disturbed areas within seven days after final grade is reached on any portion of the site. When seasonal conditions prohibit the application of temporary or permanent seeding, non-vegetative soil stabilization practices such as mulching and matting shall be used.

(b) Structural practices. A description of structural practices that shall store runoff allowing sediments to settle and/or divert flows from exposed soils or otherwise limit runoff from eroding exposed areas of the site shall be provided. Structural practices shall be used to control erosion and trap sediment from all sites remaining disturbed for more than fourteen days. Such practices may include, but are not limited to, sediment traps, sediment basins, silt fences, earth diversion dikes, check dams and storm drain inlet protection.

Timing. Sediment control structures shall be functional throughout earth disturbing activity. Sediment ponds and perimeter sediment barriers shall be implemented as the first step of grading and within seven days from the start of grubbing. They shall continue to function until the upslope development area is restabilized.

(c) Settling ponds. Concentrated stormwater runoff from disturbed areas flowing at rates which exceed the design capacity of sediment barriers shall pass through a sediment settling pond. The facility's storage capacity shall be a minimum of sixty-seven cubic yards per acre of drainage area.

(d) Sediment barriers. Sheet flow runoff from denuded areas shall be

intercepted by sediment barriers. Sediment barriers, such as silt fences or diversions directing runoff to settling facilities, shall protect adjacent properties and water resources from sediment transported by sheet flow.

- (e) Stream protection. Structural practices shall be designed and implemented on site to protect all adjacent streams, first order and larger, from the impacts of sediment runoff.

Other erosion and sediment control practices shall prevent sediment laden water from entering storm drain systems, unless the storm drain system drains to a settling pond. These practices shall divert runoff from disturbed areas and steep slopes where practicable and stabilize channels and outfalls from erosive flows.

- (6) Post construction stormwater pollution prevention. A description of measures that will be installed during the construction process to control pollutants in stormwater discharges that will occur after construction operations have been completed shall be provided. Such practices may include among others: infiltration of runoff, flow reduction by use of open vegetated swales and natural depressions and stormwater retention and detention ponds.

{~~Comment:~~ These measures ~~should~~ must be compatible with paragraph (F) of rule 901:10-2-04 of the Administrative Code.}

- (a) Where such controls are needed to prevent or minimize erosion, velocity dissipation devices shall be placed at the outfall of all detention or retention structures and along the length of any outfall channel as necessary to provide a non-erosive flow velocity from the structure to a watercourse. Justification shall be provided by the owner or operator for rejecting each practice based on site conditions.

- (7) Surface water protection. If the project site contains any streams, rivers, lakes, wetlands or other surface waters, certain construction activities at the site may be regulated under the act. Sections 404 and 401 of the act regulate the discharge of dredged or fill material into surface waters and the impacts of such activities on water quality, respectively. Construction activities in surface waters which may be subject to regulation include, but are not limited to: sewer line crossings, grading, backfilling or culverting streams, filling wetlands, road and utility line construction, bridge installation and installation of flow control structures.

- (8) Other controls.

- (a) Waste disposal. No solid, (other than sediment), or liquid waste, including building materials, shall be discharged in stormwater runoff.
- (b) Off-site vehicle tracking of sediments shall be minimized.
- (c) The plan shall ensure and demonstrate compliance with applicable state or local waste disposal, sanitary sewer or septic system regulations.

(9) Maintenance

- (a) All temporary and permanent control practices shall be maintained and repaired as needed to assure continued performance of their intended function.
- (b) The pollution prevention plan shall be designed to minimize maintenance requirements. The owner or operator shall provide a description of maintenance procedures needed to assure the continued performance of control practices.

(10) Inspections

- (a) Procedures in a plan shall provide that all erosion and sediment controls on the site are inspected at least once every seven calendar days and within twenty-four hours after any precipitation event greater than one-half inch of precipitation in a twenty-four hour period. In addition, qualified inspection personnel provided by the owner or operator shall conduct a weekly inspection of the construction site to identify areas contributing to stormwater discharges associated with construction activity and evaluate whether measures associated with erosion and control of pollutant loadings identified in a stormwater pollution prevention plan are adequate and properly implemented. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly. Discharge locations shall be inspected to determine whether erosion and sediment control measures are effective in preventing significant impacts to the receiving waters. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site vehicle tracking.

(11) Notice of termination.

(a) Once the construction activity is completed, the permittee shall submit notice to the department of agriculture within thirty days after final site stabilization has been achieved. Final site stabilization is considered achieved once all temporary erosion and sediment control practices are removed and disposed of and all trapped sediment has been permanently stabilized to prevent further erosion.

(b) The stormwater pollution prevention plan shall contain the following:

(i) Erosion and sediment control practices;

(ii) Permanent stormwater management practices to be used to control pollutants in stormwater after construction operations have been completed.

~~Comment:~~ These measures ~~should~~ must be compatible with paragraph (F) of rule 901:10-2-04 of the Administrative Code.}

(c) The owner or operator shall amend the plan whenever there is a change in design, construction, operation or maintenance, which has a significant effect on the potential for the discharge of pollutants to waters of the state and shall record such changes in the operating record required by rule 901:10-2-16 of the Administrative Code. If the stormwater pollution prevention plan proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activity, the owner or operator may change the plan, provided such changes are recorded in the operating record.

(d) The owner or operator shall inform all contractors and subcontractors who will be involved in the implementation of the stormwater pollution prevention plan of the terms and conditions of the permit that authorizes the discharges.

(E) Requirements for general and individual stormwater permits.

(1) A stormwater pollution prevention plan shall be developed for the production area of each facility required to have a stormwater permit.

(a) The stormwater pollution plan shall comply with and be submitted as part of paragraph (F) of rule 901:10-2-04 of the Administrative Code and the application for a permit to install. The stormwater pollution plan shall contain spill prevention and good housekeeping techniques, along

with plans to divert clean water. Spill prevention and good housekeeping techniques, along with diversion of clean water, shall be used to ensure that uncontained storm water from the production area is not contaminated by manure and to ensure that storm water discharges from the following areas maintain Ohio water quality standards in the receiving waters of the state: immediate access roads and rail lines used or traveled by carriers of raw materials, products, waste material, or by-products used or created by the CAFO; refuse sites; sites used for the storage and maintenance of material handling equipment; and shipping and receiving areas. Storm water that is contaminated by manure or raw materials, (such as silage), is process wastewater, which is included in the definition of manure and may only be discharged in accordance with a NPDES permit.

- (b) The stormwater pollution plan shall be included with the conditions of a NPDES permit which shall require compliance with the stormwater pollution plan as expeditiously as practicable, but in no event later than three years after the date of issuance of the permit.
- (2) Fees. A one-time fee must be submitted with the application in accordance with rule 901:10-1-04 of the Administrative Code. The owner or operator will indicate on the application whether the stormwater permit is to be a general or individual permit.
 - (3) Transfer. A stormwater permit is transferable as part of a NPDES permit. The owner or operator shall notify the department of agriculture in writing sixty days prior to any proposed transfer. The transferee must inform the department of agriculture in writing that he or she will assume the responsibilities of the original transferor.
 - (4) Inspections and record keeping. The facility shall implement the best management practices, including inspections, in rule 901:10-2-08 of the Administrative Code and shall maintain records specified in rule 901:10-2-16 of the Administrative Code.

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Certification

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