

Developer Update on Reissuance of Nebraska's Stormwater Construction General Permit

Nebraska is in the process of reissuing its general permit authorizing storm water discharges from construction sites disturbing one acre or more. A draft permit was put out for review by the Nebraska Department of Environmental Quality in late 2006 and early 2007 and a public hearing was held on February 22, 2007. The agency is currently considering changes to the draft permit based on the concerns of developers. These changes include language to clarify owner/operator responsibility for independent third party activities on site (such as utility work within easements), to clarify owner/operator responsibility with regard to the transfer or partial transfer of permits (of particular concern in large projects), and to clarify the meaning of the term "Qualified Local Program" (none currently exists in Nebraska). After revisions are made, the revised draft will be available for review and comment. Once the final permit is issued, parties covered under the existing permit will be required to submit a new Notice of Intent within 180 days of the new permit issuance date.

By issuing a general permit covering construction sites, Nebraska meets a portion of its stormwater requirements under the National Pollutant Discharge Elimination System of the federal Clean Water Act. The key pollution prevention aspect of the general permit is the requirement that covered parties prepare and implement a Stormwater Pollution Prevention Plan (SWPPP) to mitigate site erosion and runoff of polluted stormwater. The purpose of a general permit, under which parties obtain coverage by submitting a Notice of Intent rather than going through the process of getting an individual permit, is to streamline the permitting of large categories of similar activity. Certain activities identified in the draft general permit require agency consultation and may not be eligible for coverage under the general permit. These include runoff within 2,500 feet of receiving waters with a defined Total Maximum Daily Load or a number of other designated waters.

The construction portion of Nebraska's stormwater program originally applied only to land disturbance of five or more acres, but federal regulations coming into effect in 2003 lowered the threshold to one acre. This increased the number of covered projects fourfold.