

OFF-SITE DISCHARGES OF STORMWATER TO AREAS THAT ARE NOT SURFACE WATERS

Both construction and post construction stormwater runoff is to be managed through project layout design and best management practices (BMPs) to replicate the stormwater volume, rate and quality of predevelopment conditions. Some sites, after consideration of possible project design and BMP options, do not have direct access to surface waters to discharge stormwater runoff. Applicants for National Pollutant Discharge Elimination System (NPDES) Permits for stormwater discharges associated with construction activities may propose off-site discharges of stormwater to areas that are not surface waters. In these cases, the applicant must have the legal authority to discharge stormwater onto off-site areas. The applicant must also provide documentation that the discharge will not cause accelerated erosion or stormwater damage on the adjacent properties. This documentation is required with the permit application showing that the applicant has avoided, minimized or mitigated accelerated erosion and stormwater impacts.

Off-Site Discharge Analysis for Developers

Persons proposing to discharge must have the authority to discharge through either a common law easement or an express easement. For sites that discharge to existing swales, ditches or similar structures where the new activities will not result in a change in volume or rate of stormwater runoff, the existing common law easement can be relied upon. In cases where an existing swale, ditch or similar structure is not present, an express easement will be necessary when there will be a change in volume or rate of stormwater. If an express easement is necessary, the following information should be obtained by the project applicant:

1. Obtain the names and addresses of all property owners directly receiving stormwater from the project that is not discharged to a surface water;
2. Evaluate stormwater flows (frequency and amount) onto these properties prior to the construction of the project;
3. Evaluate the nature and scope of all changes to the natural drainage characteristics for all stormwater discharged during construction and after construction is completed;
4. Evaluate the volume, rate and frequency of pre-construction, construction and post construction stormwater discharges from the project. Also evaluate the means of flow onto the adjoining properties.

This information should then be utilized by the applicant to obtain the necessary express easements to lawfully discharge the stormwater to off-site areas. If there will be an increase in stormwater to off-site areas and no express easement is obtained, the activity could be found to be a trespass which would nullify permit coverage and could subject the permittee to liability for damages in any private action pursued by adjacent landowners.

Demonstrating that no Accelerated Erosion or Damage from Stormwater will Occur

No matter what type of authorization for easements the applicant obtains for off-site discharges of stormwater, the applicant must also document that the construction and post construction stormwater discharge to areas other than surface waters will not cause accelerated erosion or damage to down slope or adjacent properties. Applicants should use guidance from the *Erosion and Sediment Pollution Control Program Manual* (363-2134-008) and the *Pennsylvania Stormwater Best Management Practices Manual* (363-0300-002) when developing the following information with their NPDES permit applications:

- On the plan drawings, identify all properties and property owners that may directly receive off-site stormwater discharges from the project site.
- On the plan drawings, identify the flow path from discharge point to the confluence with a surface water of Pennsylvania. In addition, identify the soil types, erodibility factors and vegetative cover of the flow path.
- Provide documentation that the proposed volume and rate of stormwater discharging to the flow path will not cause accelerated erosion or sedimentation and/or is consistent with the *Erosion and Sediment Pollution Control Program Manual* (363-2134-008) and the *Pennsylvania Stormwater Best Management Practices Manual* (363-0300-002).
- In the written narrative portion of the plans, provide an analysis that demonstrates how the applicant has avoided, minimized or mitigated stormwater discharges to prevent accelerated erosion or damage to the down slope or adjacent properties.

For more information, visit www.dep.state.pa.us, keyword: NPDES Construction and Erosion Control, or contact your local DEP Waterways and Wetlands program at one of the following regional offices:

WATERWAYS AND WETLANDS PROGRAM

Northwest Regional Office
230 Chestnut St.
Meadville, PA 16335-3481
814-332-6984

*Butler, Clarion, Crawford,
Elk, Erie, Forest, Jefferson,
Lawrence, McKean,
Mercer, Venango and
Warren*

Southwest Regional Office
400 Waterfront Dr.
Pittsburgh, PA 15222-4745
412-442-4315

*Allegheny, Armstrong,
Beaver, Cambria, Fayette,
Greene, Indiana, Somerset,
Washington and
Westmoreland*

North-central Regional Office
208 W. Third St., Suite 101
Williamsport, PA 17701-6448
570-327-0529

*Bradford, Cameron,
Centre, Clearfield, Clinton,
Columbia, Lycoming,
Montour, Northumberland,
Potter, Snyder, Sullivan,
Tioga and Union*

South-central Regional Office
909 Elmerton Ave.
Harrisburg, PA 17110-8200
717-705-4802

*Adams, Bedford, Berks, Blair,
Cumberland, Dauphin,
Franklin, Fulton, Huntingdon,
Juniata, Lancaster, Lebanon,
Mifflin, Perry and York*

Northeast Regional Office
2 Public Square
Wilkes-Barre, PA 18701-1915
570-826-2511

*Carbon, Lackawanna,
Lehigh, Luzerne, Monroe,
Northampton, Pike,
Schuylkill, Susquehanna,
Wayne and Wyoming*

Southeast Regional Office
2 East Main St.
Norristown, PA 19401-4915
484-250-5970

*Bucks, Chester, Delaware,
Montgomery and Philadelphia*

DEP Central Office
Bureau of Waterways Engineering and Wetlands
Division of NPDES Construction and Erosion Control
P.O. Box 8460
Harrisburg, PA 17105-8460
717-787-3411
Fax 717-772-0409