

Construction Stormwater General Permitting on Contaminated Sites: Minimizing Permitting Delays and Administrative Orders

Introduction

This guidance is intended to help WSDOT projects prepare for the National Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit ([CSWGP](#)) Notice of Intent (NOI) submittal when contaminated soils or groundwater is known within project boundaries.

Use this guidance during the project design phase, once the location and extent of earthwork is known (e.g., excavation, dewatering, shaft drilling, installation of foundations or footings). This guidance will help projects:

- Understand how existing site contamination might impact the permitting process.
- Determine when and how to coordinate with the Department of Ecology (Ecology).
- Prepare for additional information requests from Ecology.
- Reduce potential permitting delays and Administrative Orders (AOs).
- Ensure the “Site/Project Info” section of the NOI is filled out correctly.
- Prevent complications with unanticipated discovery of contamination during construction.

Background

Construction projects applying for CSWGP coverage must submit a NOI to Ecology (Step 5 below) at least 60 days before construction. WSDOT’s Temporary Erosion and Sediment Control ([TESC Manual](#)) **recommends projects apply for coverage 90 days before the project is expected to go on advertisement to allow adequate time to deal with issues that may arise during the permitting process.** As part of the NOI submittal, projects must disclose known site contamination. WSDOT projects must perform due diligence to disclose information about known contamination. For this purpose, “contaminated” and “contamination” means any hazardous substance (defined in WAC 173-340-200) that does not occur naturally or occurs at greater than natural background levels. If contamination is known within the project boundaries, Ecology requires detailed information (as known and readily available) be provided during the NOI process about site contamination and management strategies. This requirement to provide additional information can cause permitting delays if projects have not prepared correctly.

For sites that will encounter contaminated soil or groundwater, another potential outcome of the permitting process is being issued an Administrative Order (AO) by Ecology. The AO will include additional requirements that will likely affect project planning, cost and work activities. Delays in construction can occur if there is not enough lead time to incorporate the additional requirements from an AO into the contract or site management plans.

Steps for Reducing Risks

Step 1. Research Site Contamination

Research existing information about site contamination:

- **WSDOT Environmental Review Summary (ERS) and Environmental Classification Summary (ECS).** The ERS or ECS contains a section with an informal review of contamination within or near the project.
- **WSDOT Hazardous Materials Analysis (Hazmat Analysis).** WSDOT prepares a HazMat Analysis when warranted by a project’s environmental requirements and site conditions.

- **Department of Ecology (Ecology) Facility/Site Database.** Ecology maintains a database that contains information about contaminated sites that are part of various Ecology cleanup programs.

The information in the above sources may be hard to access or may not reflect the most recent information (e.g., project scope or design changes may not be reflected in ERS/ECS), when in doubt, contact a HazMat Specialist for assistance with this step. Contact information for the HazMat Specialists can be found on the [Hazardous Materials webpage](#).

Step 2. Review the NOI Questions and Determine if HazMat Assistance is Needed

Based on the research performed in Step 1, projects must deliberate on how the questions in the “Site/Project Info” section of the NOI regarding site contamination will need to be answered. This step is intended to help a project determine if early coordination should be initiated with Ecology (prior to submitting the NOI). This step is important if contaminated soil will be disturbed or contaminated groundwater has the potential to discharge during construction.

Review the three questions from the “Site/Project Info” section of the NOI (shown below) during the project design phase once the location and extent of earthwork is known (e.g., excavation, dewatering, shaft drilling, installation of foundations or footings):

- 1. Are you aware of contaminated soils present on the site? Yes or no*
- 2. Are you aware of groundwater contamination located within the site boundary? Yes or no*
- 3. If you answered yes to questions 1 or 2, will any contaminated soils be disturbed or will any contaminated groundwater be discharged due to the proposed construction activity? Yes or no*

Projects that answer “yes” to the third question must prepare to provide additional information to Ecology as part of the NOI submittal and are at risk of being issued an AO. Additional planning efforts will likely be necessary to manage risks associated with encountering contamination. Projects should work with a [HazMat Specialist](#) to ensure appropriate contract language is incorporated.

Work with a HazMat Specialist to incorporate inadvertent discovery contract requirements if the project:

- Is aware of contamination within the site boundaries but will not disturb or discharge it due to work activities or contract requirements¹.
- Has reason to expect contamination may be encountered during construction due to close proximity of known contamination to project boundaries or work activity².

¹This scenario will result in a “yes” answer to either of the first two questions and a “no” answer for the third question.

²This scenario will result in “no” answers for all questions.

Step 3. Preparing for Early Coordination with Ecology

Ecology encourages coordination prior to submitting the NOI to expedite the permitting process on projects with known contamination. Projects with known contamination should work with a HazMat Specialist to compile additional information and determine if/when early coordination with Ecology should be initiated. Failure to submit additional information or to initiate early coordination can lead to permitting delays or AOs that can create construction delays.

Special Condition 2.A.1.f of the CSWGP includes examples of the types of additional information Ecology is interested in during the permitting process:

- Data about the contamination (as known and readily available):
 - List of known contaminants and concentrations.
 - Identification of the contaminated media (soil, groundwater, or both).
 - Sample depths and sample locations (preferably on a map).
- Relevant sections of the Temporary Erosion and Sediment Control (TESC) plan, Spill Prevention Control and Countermeasures (SPCC) plan, or other relevant plan that outlines how the project will control contamination.
- Contract language used to ensure appropriate controls and disposal methods will be used.
- Dewatering or contingency plan(s).

Work with a HazMat Specialist prior to and throughout the early coordination efforts with Ecology. If the project has additional information (not listed above) that demonstrates the contamination management strategy, that information could also be provided to Ecology during the early coordination efforts. Ecology will review the information provided by the project and determine if environmental risks are adequately managed under the proposed plans and contract language. There will likely be some back and forth with Ecology during this step. Ecology's determination as to whether an AO is necessary will depend on the following:

- The type, extent and location of the known site contamination.
- The proposed construction work (e.g., depth and extent of excavation, wet season work).
- The methods and controls being proposed to control the contamination.
- Coordination with the project prior to issuing the CSWGP.

If Ecology determines an AO is necessary, please notify your HazMat Specialist immediately. Ecology may cover the entire site or large sections of the project by the AO. Their approach may seem overly conservative for projects with minimal contamination related risks. If the project and the HazMat Specialist believe that adequate controls can be implemented, a memorandum to Ecology may be warranted clarifying WSDOT's justification for why an AO is not needed. Some factors that might be included in this memorandum may include:

- Lack of definitive contamination data, or additional sampling data.
- Contract language or plans (e.g., HazMat Management Plan).
- Chemical treatment plans, sanitary sewer permits, direct haul.
- Plans for inadvertent discovery of contamination during construction.

Step 4. Preparing for an Administrative Order (AO)

AOs will likely contain some or all of the following requirements, some of which may require submittals to Ecology prior to beginning certain aspects of construction (e.g., excavation, dewatering, discharge from the site or from a treatment system):

- Contaminated stormwater and dewatering containment systems.
- Pre-treatment and treatment system design information prior to installation (flow-through treatment systems are optional, but if used design information and an engineering report will be required prior to installation).
- A Request for Chemical Treatment Form prior to use of chemical treatment.
- Indicator Levels (numeric effluent limits) that must be met prior to a discharge.
- Sampling and reporting requirements for monthly Discharge Monitoring Reports (DMRs).
- Use of registered or accredited laboratory to test samples.
- Contingency plans if Indicator Levels cannot be met (e.g., sanitary sewer or off-site disposal).
- Contaminated soil and sediment segregation or direct haul to off-site disposal facility.

Incorporating AO requirements into the project design and contract can be a time consuming effort. The two biggest challenges for WSDOT have been related to unclear submittal review timelines and the treatment system design documentation expectations. Ecology hopes to improve the guidance available to help projects determine what treatment to use for specific contaminants and how the treatment systems should be designed (so treatment system design information or engineering report submittals can be compiled by the project in a way that meets Ecology's expectations).

Step 5. Completing the NOI

Submitting the NOI must be done online using Ecology's eNOI process through a [Secure Access Washington](#) (SAW) account. Known contamination in soil or groundwater must be disclosed in the "Site/Project Info" section of the NOI (new eNOI system users should watch Ecology's [eNOI video tutorials](#)). If early coordination does not occur as this guidance recommends, additional information requests during the NOI process may leave very little time before construction to incorporate Ecology expectation into the contract or site management plans. Ecology does not consider the NOI submittal to be complete (60-day NOI review period doesn't begin) until they have received all additionally requested information. Additional guidance about the NOI process can be found on the [Erosion Control Policies & Procedures website](#).

Transferring the CSWGP to the Contractor

It is standard practice for WSDOT to transfer CSWGP coverage to the Contractor prior to construction. This means that WSDOT still applies for (submit the NOI) and obtains coverage under the CSWGP. Then prior to construction, a Transfer of Coverage form is submitted to Ecology. When CSWGP coverage is transferred, Ecology will automatically transfer any associated AO's along with it. Additional guidance about the transfer process can be found on the [Erosion Control Policies & Procedures website](#).