

Construction Storm Water General Permit FAQs
For February 9, 2019 General Permit

For Potential Applicants:

1. How do I know if I need to apply for construction storm water coverage?

Any activity that disturbs one (1) acre or more of land, or for projects that disturb less than one (1) acre of land that are part of a larger common plan of development that will disturb one (1) acre or more of land, are required to have construction storm water coverage from a National Pollutant Discharge Elimination System (NPDES) permit.

2. What counts as a disturbance of land?

Hawaii Administrative Rules (HAR) Chapter 11-55, Appendix C (i.e., the Construction Storm Water General Permit) defines disturbance of land in Section 1.4 as:

"Disturbance of land" refers to the penetration, turning, or moving of soil or resurfacing of pavement with exposure of the base course or the exposure of bare soil or ground surface, including the land surface exposed by construction roads, baseyards, staging areas, demolition, headquarters, and parking areas. It does not include grass or weed cutting, bush or tree trimming or felling that leaves soil or ground intact. It includes "grubbing" in its normal meaning of the use of equipment to knock down and push vegetation out of the way, typically uprooting vegetation and disturbing the ground surface.

Land disturbing activities that must be included in the disturbance area calculation include, but are not limited to:

- Installation of Best Management Practices (BMPs) (e.g., silt fence, retention/detention basins, dust fence, etc.);
- Clearing and grading;
- Demolition of existing structures;
- New houses, buildings, additions, expansions, garages or any other new building footprint added to the site;
- Access pathway for construction equipment (e.g., backhoe, bobcat, wheelbarrows, etc.);
- Area for construction dumpster;
- Storage or set-down areas for construction materials (roof trusses, prefabricated materials, etc.);

- Grading for drainage;
- Soil (fill or excavated) storage areas;
- New concrete or asphalt concrete paved areas including areas for concrete formwork, frame-up, if required, and washout;
- Vehicle/equipment staging and parking areas (paved and unpaved);
- Trenching or excavation for the installation, replacement, removal or capping of underground utility lines related to the land development project, including any land disturbing activities within the County right of way;
- New (paved or unpaved) sidewalks and paths or stairs; and
- Landscaped areas.

Here are some general guidelines on how to quickly estimate the total disturbed area of a project. Use the total area within the project's boundary/property line or add up the following areas:

- The area of any proposed building addition or stand-alone structure and any other improvement [landscaping (hard or soft), stairs, driveway, patio, etc.] that will result in land disturbance;
- A 10-foot wide minimum work zone around the perimeter of the proposed structure, except:
 - o When the distance between the property line and the proposed structure is less than 10-feet, that distance may be used.
 - o For construction of improvements such as paved driveways, sidewalks, and ground level decks, a minimum of a 5-foot wide work zone around the structure may be used.
 - o For the installation, removal or capping of underground utility lines, a minimum of a 5-foot work zone centered on the utility line.
- A 10-foot wide minimum work zone around any portion of the existing structure that will have an additional story added;
- Areas used for staging and stockpiling, including the access from the improvement area to the stockpile area, as well as the entire stockpile area itself;
- Paved and unpaved areas that will be used as access to the proposed construction work area. A minimum 10-foot wide path from the street or driveway to the work area should be included in the disturbed area calculation;

- Paved and unpaved areas that will be used as access to the proposed construction work area, staging and storing of materials, including dumpsters, gravel, stone, masonry, lumber and construction equipment;
- For trenching activities, the area disturbed by the trench and the access pathways (10-foot minimum width) used by equipment;
- Vehicle parking areas (paved and unpaved); and
- Areas over which excavated soil will be spread, that are not included in any of the above areas.

You are required to determine whether or not a proposed project or activity meets this one (1) acre or more criteria.

3. What is a larger plan of development?

HAR Chapter 11-55, Appendix C defines a larger common plan of development or sale in Section 1.5 as:

A "larger common plan of development or sale" means a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan. "Common plan" is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot.

You are required to determine whether or not a proposed project or activity meets this larger plan of development criteria.

4. I'm conducting an activity/project that does not disturb one (1) acre or more of land and is not part of a larger plan of development that will disturb one (1) acre or more of land, and therefore do not need NPDES permit coverage. Do I need to notify the Clean Water Branch (CWB) of this determination?

You do not need to notify the Clean Water Branch of this determination, however, the CWB does recommend that you keep the following in mind:

- The CWB highly recommends that if a project is very close to disturbing one (1) acre or more of land, that you apply for permit coverage. If it is later discovered that at any point during the project/activity that one (1) acre or more of land was disturbed, you would be in violation of State law.

- Even though you are not required to get an NPDES permit, you must still implement Best Management Practices (BMPs) to minimize pollutants generated by the project/activity from entering State waters.
- Not being required to obtain permit coverage does not absolve you from possible enforcement action if the project/activity is found to have caused water quality issues or violated any other State Water Pollution Control laws.
- The CWB will still respond to complaints of water pollution that are a result of any project/activity, regardless of whether or not NPDES permit coverage was required.

5. What kinds of activities are covered under this general permit?

HAR Chapter 11-55, Appendix C Section 1.1 specifies:

This general permit covers discharges composed entirely of storm water runoff associated with construction activities, including, but not limited to, clearing, grading, excavation, and construction support activities that result in the disturbance of one acre or more of total land area. This general permit also covers activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area.

Construction support activities include, but are not limited to, concrete or asphalt batch plants, rock crushing plants, equipment staging yards/areas, material storage areas, excavated material disposal areas, borrow areas, etc. Coverage under this general permit for construction support activities is allowed provided that the support activity is directly related to the construction site required to have permit coverage for storm water discharges; is not a commercial operation, nor does it serve multiple unrelated construction projects; does not continue to operate beyond the completion of the construction activity at the project it supports; and storm water controls are implemented in accordance with this section and if applicable, section 6, for storm water discharges from the support activity areas.

HAR Chapter 11-55, Appendix C Section 1.2 also specifies:

This general permit covers all areas of the State except natural freshwater lakes, saline lakes, and anchialine pools.

6. My construction support activity does not meet one or more of the requirements above. Am I unable to get general permit coverage?

If the construction support activity does not meet one of the requirements above, it cannot be included in the coverage issued for the construction site required to have permit coverage for construction storm water discharges.

If the construction support activity cannot be included in the coverage issued for the construction site, the construction support activity will be required to obtain separate coverage for either construction storm water or industrial storm water if the activity is a regulated industrial sector. See the industrial storm water page at: <https://health.hawaii.gov/cwb/permitting/industrial-storm-water/> for additional industrial storm water information.

- 7. So, if my project/activity will discharge to a natural freshwater lake, saline lake, and/or anchialine pool, I can't get coverage under the general permit. Do I still need to get storm water coverage if the project/activity disturbs one (1) acre or more of land and/or is part of a larger plan of development that will disturb one (1) acre or more of land? If so, how do I get coverage if I can't apply for general permit coverage?**

You would still need to get construction storm water coverage for the project/activity. Since the project/activity would be unable to get general permit coverage, you would have to apply for individual permit coverage. To apply for an individual NPDES permit, go to the e-Permitting Portal at: <https://eha-cloud.doh.hawaii.gov/epermit/> and complete and submit a CWB Individual NPDES Form.

- 8. My project/activity does disturb one (1) acre or more of land and/or is part of a larger plan of development that will disturb one (1) acre or more of land. How do I apply for NPDES general permit coverage?**

First you must determine whether the project/activity can comply with the general permit for construction storm water. The general permit is in HAR Chapter 11-55, Appendix C, available here: <https://health.hawaii.gov/cwb/hawaii-administrative-rules-har/har-11-55/>.

General permits are permits that the CWB issues that cover a specific category of discharge. These permits are not issued to any single discharger or legal entity, rather, it provides specific requirements and criteria for controlling potential pollution from the category of discharge and allows applicants to request coverage under the general permit. This request is called a Notice of Intent or NOI. To request coverage under a general permit, a project/activity must be able to provide any required information in the application and certify that the project/activity will comply with all applicable requirements specified in the general permit. Inability to comply with any applicable requirement in the general permit disqualifies the project/activity from coverage under the general permit.

To submit an NOI, go to the e-Permitting Portal at: <https://eha-cloud.doh.hawaii.gov/epermit/> and use the form finder to find the CWB NOI Form. Follow all instructions on the form to complete and submit an NOI to the CWB. In the discharge specific attachments section, you will need to fill out and upload a completed NOI Form C.

If the CWB grants the project/activity general permit coverage, you will be issued a Notice of General Permit Coverage (NGPC). The NGPC is not the permit. The NGPC is a notice that the project is now covered under the Construction Storm Water General Permit, and must comply with its requirements (i.e., must comply with HAR Chapter 11-55, Appendix C).

Please note that if a project/activity is unable to comply with the requirements of the general permit and must have NPDES permit coverage, you must apply for an individual NPDES permit. To apply for an individual NPDES permit, go to the e-Permitting Portal and complete and submit a CWB Individual NPDES Form.

- 9. Hawaii Administrative Rules (HAR) 11-55, Appendix C requires the Storm Water Pollution Prevention Plan (SWPPP) to be developed prior to Notice of Intent (NOI) submission and the SWPPP is not submitted with the NOI. During the NOI processing, will the Department of Health (DOH) perform periodic checks to make sure the SWPPP was prepared?**

Yes. You may be contacted by phone and asked to email the SWPPP by the end of the next working day. The Certifying Person may also be asked to certify that the SWPPP was already prepared prior to NOI submittal and asked to submit a hard copy within 7 calendar days. If DOH finds that someone submitted an NOI without preparing a SWPPP, their request for coverage under the NPDES general permit may be denied with prejudice, and DOH may pursue criminal enforcement action.

- 10. I have a construction project that is disturbing more than one (1) acre. The project will be done in phases and will have different contractors. Can I cover my entire project under one (1) Notice of Intent (NOI) for coverage under Hawaii Administrative Rules (HAR) 11-55, Appendix C?**

If you have all of the NOI information required in HAR 11-55, Appendix C, your entire construction project can be covered under one (1) NOI, regardless of the number of phases or the different contractors.

- 11. My construction project is in response to an “emergency” and must be commenced as soon as possible. Is there an exemption to NPDES storm water coverage requirements for projects that are in response to “emergencies”?**

The general permit does provide automatic coverage for discharges of storm water from construction activities in response to a specific type of “emergency”.

From HAR Chapter 11-55, Appendix C Section 1.3:

1.3.

This general permit shall automatically cover discharges of storm water from construction activities in response to a public emergency proclaimed by the President of the United States or State Governor if all of the following conditions are met:

1.3.1.

The earth-disturbing activities are in response to a public emergency (e.g., natural disaster, widespread disruption in essential public services); and the related work requires immediate authorization to avoid imminent endangerment to human health, public safety, or the environment, or to reestablish essential public services; and

1.3.2.

Provide documentation to substantiate the issuance of the public emergency proclamation by the President of the United States or State Governor.

If the project meets these requirements, it can be automatically covered under this general permit, and work can commence immediately (provided that you comply with all other applicable laws and regulations).

Please note the following regarding this automatic coverage:

- a. This automatic coverage is to allow for the work to begin immediately (provided that you comply with all other applicable laws and regulations), without waiting for approval of an NOI from the CWB. The project must still comply with requirements of the general permit.**
- b. You must still complete and submit a CWB NOI Form for construction storm water discharges through the e-Permitting Portal located at: <https://eha-cloud.doh.hawaii.gov/epermit/>. Please be sure to fill out the Emergency-Related Construction Activities Section when completing this form. You must submit this form within 30 calendar days after the start of construction activities for an official emergency declaration.**

12. The Governor has declared a public emergency and has suspended several environmental laws in their emergency proclamation. Does this mean I am not required to get NPDES permit coverage for discharges to State waters and applicable construction projects that are in response to the emergency?

The legal State regulations that govern the NPDES program in Hawaii are found in Hawaii Revised Statutes (HRS) Chapter 342D. If the emergency proclamation suspends HRS Chapter 342D, you would not be required to get NPDES permit coverage for discharges related to the emergency.

Please note that you must still comply with all other applicable laws and regulations that have not been suspended, and with the conditions outlined in the emergency proclamation as applicable. This is only applicable for as long as the emergency proclamation is in effect. Discharges that continue past the expiration of the emergency proclamation and the re-instatement of HRS Chapter 342D will need to have NPDES coverage to continue to discharge.

For Current NGPC Permittees:

1. **How do I submit new/updated information and/or required notifications to the CWB (e.g., new contact information, Notification of Start, Notice of Cessation)?**

New/updated information and required notifications can be submitted to the CWB by submitting a CWB Compliance Submittal Form for Individual NPDES Permits and NGPCs through the e-Permitting Portal located at:

<https://eha-cloud.doh.hawaii.gov/epermit/>. Fill out the applicable portions of the form and follow the instructions to fully submit.

2. **My Certifying Person has changed and is no longer the same as the individual identified on my issued NGPC. Do I need to get a revised NGPC that is addressed to the new Certifying Person?**

No, you do not need a new NGPC that is addressed to the new Certifying Person. However, you will need to submit new contact information for the new Certifying Person by submitting a CWB Compliance Submittal Form for Individual NPDES Permits and NGPCs through the e-Permitting Portal located at:

<https://eha-cloud.doh.hawaii.gov/epermit/>. Fill out the applicable portions of the form and follow the instructions to fully submit. **Please note that the new Certifying Person must sign the “Transmittal Requirements and Certification Statement for E-Permitting NPDES/NGPC Compliance Submissions” form.**

3. **How do I authorize a new Authorized Representative or submit new Authorized Representative information after my NGPC is issued?**

You will need to submit a CWB Compliance Submittal Form for Individual NPDES Permits and NGPCs through the e-Permitting Portal located at:

<https://eha-cloud.doh.hawaii.gov/epermit/>. Fill out the applicable portions of the form by putting in the updated information (either authorizing a new individual or updating the currently authorized individual’s new information) and follow the instructions to fully submit. **Please note that the Certifying Person must sign the “Transmittal Requirements and Certification Statement for E-Permitting NPDES/NGPC Compliance Submissions” form for this type of submission.**

4. **The legal name of my company (i.e., the Owner of the NGPC) will change and no longer match the name identified in the issued NGPC. Do I need to do something?**

Yes. NGPCs are no longer allowed to be modified. An owner name change on an NGPC will require a new NOI, filing fee, and NGPC.

5. My company wants to legally transfer ownership of my project/activity (including its NGPC) to another legal entity. Are there any requirements from the CWB regarding this transfer?

Yes. If you can meet the requirements for an automatic transfer in 40 Code of Federal Regulations (CFR) 122.61(b) and HAR Chapter 11-55-34.08(i)(2), you can complete and submit the Transfer of Ownership section in the CWB Compliance Submittal Form for Individual NPDES Permits and NGPCs through the e-Permitting Portal located at: <https://eha-cloud.doh.hawaii.gov/epermit/>. You must submit this form at least 30 calendar days in advance of the proposed transfer date.

If you cannot meet these requirements, you will need to submit a new NOI to the CWB. You will also need to submit a Notice of Cessation to terminate the current NGPC once the new NGPC is issued.

6. Can I make changes to my Storm Water Pollution Prevention Plan (SWPPP) including changes to my Best Management Practices (BMPs)? How do I make these changes, and do I need to notify the Department of Health (DOH)?

Yes. You can make changes to your SWPPP. Do not notify the DOH. Please follow the requirements in HAR Chapter 11-55, Appendix C to make changes to your SWPPP.

7. Hawaii Administrative Rules (HAR) 11-55, Appendix C, Section 9.1.7.1 requires inspection reports to be completed within 48 hours. Section 9.1.7.2 requires all inspection reports to be signed by the Certifying Person or Authorized Representative. What can I do if I can't get these people to sign in 48 hours?

In many cases, the Certifying Person may be someone who is not readily available to sign inspection reports (e.g., governmental agency directors, commercial business executives, etc.), so in many instances, designating an Authorized Representative is the easiest option, and has the least impact on operations. Authorized Representatives must meet the requirements in HAR Chapter 11-55-07(b). CWB recommends that if multiple individuals meet the requirement for an Authorized Representative, that accessibility becomes the deciding factor.

Please note that HAR Chapter 11-55-07(b) allows the designated Authorized Representative to be a position (e.g., Project Manager), as well as a specific individual (e.g., Mr. John Doe). Often, the easiest way to ensure compliance with this requirement is to designate a *position* that is easily accessible to serve as the Authorized Representative, rather than a specific individual. In instances where a position is the Authorized Representative, you can have different individuals signing as the Authorized Representative, provided they are officially

in that position (acting or permanent) at the time they sign. Please note that when signing for a position, please also provide the name of the individual signing.

If the Authorized Representative is an individual and someone is officially acting in that individual's position (e.g., as a temporary assignment), you can put the printed name of the Authorized Representative and the acting individual may sign for this person. The Certifying Person determines who can sign for the Authorized Representative. As a reminder, the Authorized Representative is designated during the NOI submittal process, or by submitting a compliance submission and designating a new Authorized Representative.

If your organization does not allow this and you cannot meet the 48-hour requirement, you may not be covered under this NPDES general permit.

8. The scope of my project has changed and will now disturb additional area and/or add new discharge points to State waters. Can I send in a revised NOI to get this new work covered under my issued NGPC?

No. NGPCs only authorize the scope of work specified in the corresponding NOI. Any additional disturbance areas and/or discharge points must be covered under a new NGPC. You have two (2) options in this situation:

1. Submit a new NOI that requests coverage for only the new work/disturbance areas and/or discharge points.
 - a. You would still need to have a SWPPP prepared prior to submitting the NOI. You may update your current SWPPP to include the required information for the additional area, however, you must clearly specify what part(s) of your SWPPP apply to each (or both) NGPCs.
2. Submit a new NOI that requests coverage for the work in your current NGPC and the new work/disturbance areas and/or discharge points.
 - a. You would need to update your SWPPP to include the required information for the additional area prior to submitting the new NOI.
 - b. You must also specify in your NOI that your application is for a previously issued NGPC and provide the file number for your currently issued NGPC. Once the CWB issues the new NGPC, the previous NGPC will be terminated.

The CWB suggests that applicants choose option 2 when in this situation, to minimize the number of NGPCs (and resulting duplication of compliance costs) associated with a single project.

9. Do I still need to comply with the above even if the additional area is less than an acre?

Yes.

10. My project has finished. How do I terminate my NGPC?

You must submit a Notice of Cessation by filling out and submitting a CWB Compliance Submittal Form for Individual NPDES Permits and NGPCs through the e-Permitting Portal located at: <https://eha-cloud.doh.hawaii.gov/epermit/>. Fill out the applicable portion of the form and follow the instructions to fully submit. Please note that you are required to submit the Notice of Cessation at least seven (7) calendar days after the end of the month that activities have ceased.

How can I contact the CWB if I have additional questions?

The CWB can be contacted by email at: CleanWaterBranch@doh.hawaii.gov. The CWB can also be contacted by phone at (808) 586-4309, Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m.