Washington State Department of Transportation

CONSTRUCTION BULLETIN

State Construction Office
Engineering and Regional Operations

Temporary Erosion and Sediment Control Inspection

Date: May 16, 2017

Purpose

This Construction Bulletin seeks to clarify expectations and improve the compliance and enforcement of temporary erosion control work performed under the Construction Stormwater General Permit (CSWGP). It is important that Project Engineers and their staff understand WSDOT's roles and responsibilities thus ensuring consistent enforcement of the contract specifications for this work.

Background

In January 2015, transferring coverage of the CSWGP to the contractor became WSDOT's standard practice for design-bid-build projects. The contractor's compliance with the CSWGP is critical in ensuring water quality protection, permit compliance, and for reducing WSDOT's liability for non-compliant events. Project Delivery Memo #15-01 outlines how WSDOT's roles and responsibilities have changed since transfer of coverage (TOC) became standard practice.

Guidance

While WSDOT staff no longer direct the specific methods of erosion control work when the CSWGP has been transferred to the Contractor, compliance with the permit is a contract requirement and it is the responsibility of the Project Engineer (PE) to enforce the contract requirements for erosion control as they would for any other contract requirement. Should the contractor fail to comply with the contract requirements the PE may need to impose a suspension of work in accordance with Standard Specifications Section 1-08.6 to prevent threats to human health and the environment.

Inspection of erosion control work is a specialized task and it is important that the PE allocates adequate project inspector resources and provides proper training for enforcement of this contract work. The following are some of the key training and inspection requirements recommended for erosion control inspection:

- Inspector attendance in WSDOT's Construction Site Erosion and Sediment Control course in accordance with the TESC Manual 3109.01, and other relevant training opportunities.
- Review of the contractor's submittals related to CSWGP compliance to help verify quality (e.g., Discharge Monitoring Reports, weekly TESC site inspection reports, written correspondence with the Department of Ecology, Environmental Compliance Assurance Procedure documentation, Notice of Termination etc.).
- Inspect the contractor's implementation of the temporary erosion and sediment control (TESC) plan in the field to verify best management practices (BMPs) are functioning as required.
- Review the site log book to verify site documentation is maintained as required.

For TOC-related questions refer to the Project Delivery Memo #15-01, or contact either the Environmental Services Office's Erosion Control program (Jeannie McCully) or the Assistant State Construction Engineer for the PE office.

Implementation Plan

The guidance above will be incorporated into the WSDOT Construction Manual. This is anticipated to happen with the Construction Manual update that will be effective on January 2, 2018.

Resources

Project Delivery Memo #15-01
WSDOT Erosion & Sediment Control intranet page (Appendix 1)
TOC FAQs (Appendix 2)

Contact Information

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Environmental Services Office
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Erosion Control

WSDOT's focus on protecting the environment and complying with federal and state regulations is the foundation of the Environmental Services Office (ESO) Erosion Control program. The ESO Erosion Control program works to develop processes and policies to protect water quality during highway construction, as well as provide technical assistance to WSDOTs regional offices. The Erosion Control website is a resource intended to help WSDOT staff understand and prepare for erosion related environmental commitments and manage them throughout construction.

Construction Stormwater General Permit

The Construction Stormwater General Permit (CSWGP) is administered by the Washington State Department of Ecology (Ecology) as part of the National Pollutant Discharge Elimination System (NPDES) permitting program intended to protect water quality. Basic compliance activities require projects covered by a CSWGP to:

- Develop and maintain a Stormwater Pollution Prevention Plan (SWPPP) – fulfilled through WSDOT's Temporary Erosion and Sediment Control (TESC) and Spill Prevention Control and Countermeasures (SPCC) plans
- Collect discharge samples and submit monthly Discharge Monitoring Reports (DMRs)
- Conduct site inspections and adaptively manage on-site best management practices (BMPs) to minimize polluted discharges.

Temporary Erosion and Sediment Control (TESC) Planning

The TESC plan is developed by WSDOT staff during project design. WSDOT's TESC Manual M 3109 outlines the TESC planning requirements. Regional project offices can use this WSDOT TESC plan template (docx, 55 kb) or they can use their regional templates if they meet CSWGP planning requirements. Projects that disturb soil but do not trigger CSWGP coverage must develop an abbreviated TESC plan (template)(docx, 42 kb) to ensure controls are used to protect surface water quality.

A TESC Plan Review Checklist (pdf, 165 kb) helps developers assess the content in the TESC plan, ensuring the plan and plan sheets meet permit requirements.

The TESC Manual Listserve is for internal and external users who wish to receive e-mail announcements for updates to the TESC Manual.

Spill Prevention, Control and Countermeasures (SPCC) Planning

The Contractor is required to prepare the SPCC Plan in accordance with Standard Specification 1-07.15(1). For more information refer to the Hazardous Materials webpage.

To the Top

CSWGP Notice of Intent (NOI)

Construction projects applying for CSWGP coverage must submit a Notice of Intent (NOI) to Ecology. This must be done online using

This silt fence breach illustrates the need for proactive source control and Temporary Erosion and Sediment Control (TESC) planning on construction projects.

CSWGP Notice of Intent (NOI)
Chitosan Enhanced Sand Filtration (CESF)

Ecology's electronic NOI (eNOI) system. Ecology has helpful video guidance for using the eNOI system. The internal CSWGP NOI Guidance (pdf 418 kb) provides additional guidance to help ensure the NOI is complete and accurate. Certain responses within the NOI application can trigger Ecology to request additional information, potentially causing permitting delay if projects are not prepared. The following guidance documents elaborate on specific sections of the NOI application that may trigger a request for additional information by Ecology.

- Onsite Contamination (Existing Site Conditions) – If known contamination resides within the project footprint, additional information may be requested by Ecology prior to issuing the CSWGP. If Ecology requests additional information, they do not consider the NOI complete until all requested information has been provided, which can lead to permitting delays. In addition, Ecology may decide to issue an Administrative Order (AO) as a way to increase compliance requirements rather than issuing an Individual permit. Because of these reasons it is very important for projects with known contamination to coordinate with Ecology early (prior to submitting the NOI). A NPDES Permitting on Contaminated Sites (pdf, 147 kb) guidance document elaborates on how these issues should be identified and handled during the NOI permitting process. [Searching the Ecology Facility/Site Database (pdf, 1457kb)]
- Location of Outfall into Surface Water Body – Identifying all potential outfall locations is critical to ensure all construction discharges are permitted. Only outfalls specified on the NOI are authorized to be discharged into during construction. See the Identifying Potential Outfall Locations for Temporary Construction (pdf, 274 kb) guidance document for assistance in completing this section of the NOI application. Environmental commitments may differ on projects that discharge to an impaired water body (303(d) listed or covered by a Total Maximum Daily Load (TMDL)). If a project identifies an outfall to an impaired water body on the NOI application, Ecology will require an additional form be completed and submitted (Proposed New Discharge to an Impaired Water Body form) before they issue the CSWGP. The WSDOT TMDL program has Impaired Waters (pdf, 210 kb) guidance to help projects complete this form. Additional guidance for water body impairments can be found on the TMDL webpage.

Monthly Discharge Monitoring Report (DMR) Procedures

Monthly DMR requirements begin as soon as the CSWGP is issued to a project, even if construction has not started and no discharge has occurred. CSWGP issuance status can be found in Ecology's Permit and Reporting System (PARIS). The monthly DMR is due the 15th of the following month.

For example, data collected in January must be entered into the DMR and submitted by February 15th. Permits that will be transferred to the contractor will need to have the DMR submitted by WSDOT until the Permit is officially transferred to the contractor. Use the Monthly DMR Procedures (pdf, 298kb) guidance to ensure reporting requirements are met.

CSWGP Transfer of Coverage (TOC) Guidance

The Transfer of Coverage (TOC) process allows CSWGP holders to transfer permit coverage to another party. It is now a standard practice for WSDOT to transfer the CSWGP to the Contractor on all projects that

will be covered by this permit. Project Delivery Memo #15-01 explains WSDOTs role when the CSWGP has been transferred. Use the TOC guidance document (pdf, 459 kb) to ensure the TOC form is filled out and routed correctly. A Contract Requirements Checklist to Transfer the CSWGP (pdf, 97 kb) is available to help those developing contracts navigate the General Special Provisions and contract documents needed for inclusion with the contract. Using the checklist can help prevent construction delays and insulate WSDOT from a Contractor making a claim for damages.

Since the release of the Project Delivery Memo, we've been compiling Frequently Asked Questions (pdf 160kb) that will be updated as we get more questions.

To the Top

Additional Guidance

Chitosan Enhanced Sand Filtration (CESF)

Advanced chemical treatment such as CESF may be used to prevent environmental impacts during construction. Additional guidance on using CESF (pdf, 274 kb) should be considered in both design and operation of these systems. Ecology requires a Request for Chemical Treatment before using any approved advanced chemical treatment technologies (look under the construction tab) for construction site discharges.

Miscellaneous Guidance

- Highway Runoff Manual
- Calibrating the Hach 2100P Turbidity Meter (pdf 1.87 mb)

Who can I contact for more information?

For more information on WSDOT's Erosion Control Program contact Elsa Pond, 360-570-6654 or Jeannie Hoxer, 360-570-6646.
To the Top

Transferring NPDES Construction Stormwater General Permit Coverage to the Contractor: Frequently Asked Questions

Content:

General Information:

Transfer of Coverage Process

What is meant by "transfer GSPs" and do they all need to be included in the contract?

The "transfer GSPs" described in Project Delivery Memo #15-01 are a collection of GSPs used to transfer coverage of the NPDES Construction Stormwater General Permit (Permit) to the contractor.

Yes, all the transfer GSPs must be included in the contract unless they are identified as optional or dependent in the contract requirements checklist. Using the contract requirements checklist can help ensure none of the transfer GSPs are omitted from the contract. A complete list of the transfer GSPs is included in each of the transfer GSPs instructions. To ensure Permit coverage is transferred properly, the contract bid documents must include a partially completed Transfer of Coverage form. Contract development staff should follow the Transfer of Coverage form guidance.

Eventually, the transfer GSPs will be incorporated into the Standard Specifications (specs) and there will no longer be a need to incorporate the transfer GSPs into the contract.

Does transferring Permit coverage happen on emergency projects?

It depends on the project and contract; some are short duration (<30 calendar days) and negotiated with a contractor without advertising for bids, some are solicited (three or more contractors), and others are advertised. Work with your Assistant State Construction Engineer (ASCE) to determine if transferring the permit is appropriate on an emergency project.

Most emergency projects do not have time to apply and wait for Permit coverage before work must begin. Emergency projects are considered provisionally covered under the Permit and must initiate the Permit application process within 30 calendar days after starting emergency work. Projects must manage the project as if they are covered under the Permit until coverage is formally issued by the

Department of Ecology (Ecology). Ecology's Permit (2016) does not provide information about emergency projects, Ecology follows the Environmental Protection Agency's Permit in regards to emergency projects.

Miscellaneous

Is in-water work covered by the Erosion Control lump sum payment?

No, the Erosion Control lump sum payment is for work specific to the Permit (land based construction related discharges) and does not cover any in-water related work. In water work must be included in the contract separately. If specific environmental commitments were made during the permitting process regarding in-water work, those commitments must be included as separate bid items in the contract so the contractor can bid for the work.

Can the Environmental Protection Agency (EPA) *Construction General Permit (CGP)* be transferred to the contractor?

No, and our standardized TOC process (e.g. transfer GSPs, guidance for TOC form etc.) is not applicable to the EPA CGP. The EPA CGP uses a co-permittee structure in which an "operator" is any party that has operational control over construction, including approval of plans and specifications (WSDOT is considered an operator under this definition). Projects should consult with their ASCE to determine the preferred contractual method for ensuring compliance. Instead of transferring coverage to the contractor, projects generally have two options for managing compliance:

a.) Obtaining coverage and including contract language to explicitly cover the contractor's work under WSDOT's CGP (adds liability to WSDOT).

b.) Obtaining coverage and including contract language requiring the contractor to obtain their own CGP. Once the contractor has obtained EPA CGP coverage, WSDOT can submit a Notice of Termination, however the EPA may deny termination if they feel WSDOT still an operator.

Needing to obtain coverage under the EPA CGP is rare (see Limits on Coverage criteria in the Ecology Permit - Special Condition S1.E). WSDOT is not considered a federal operator, but may be required to obtain the EPA CGP when project are located on "Indian Country". See the TESC Manual for additional information about the EPA CGP.

Design:

TESC Planning

Does WSDOT still design the TESC Plan?

Yes, WSDOT creates the original TESC Plan (narrative section and plan sheets) as usual. The change in the TESC planning process can be summarized as follows: 1.) Both the TESC narrative and the plan sheets must be included in the contract (TESC narrative as an appendix, TESC plan sheets in the Contract Plans), and 2.) The contractor must either adopt and modify our TESC Plan or create a new TESC Plan. The contractor shall submit their TESC Plan (either the adopted plan or new plan) and implementation schedule to the Engineer in accordance with the transfer GSP.

Contract Development

Can the incentive be applied to lower risk projects?

The GSP as approved by FHWA did not provide for an incentive for the low risk projects so an incentive should not be included for those projects. Eventually the incentive will be removed from

all types of projects because it is intended to be a temporary measure to encourage contractors to be proactive about compliance. Eventually the incentive will no longer be used for any TOC project.

Is the incentive only a total of 5% of the lump sum bid item?

Yes

Would the incentive amount be subtracted from the estimated lump sum Erosion Control and Water Pollution Prevention item thinking that the contractor is biding to get the incentive or would it be in addition to the estimated amount?

It is a separate bid item in addition to the lump sum costs.

How do we estimate the incentive amount?

5% of the engineers estimate for the cost of the work.

Does the lump sum cover the cost of the ESC Lead?

The ESC Lead is included in the lump sum amount unless the ESC Lead is included as a separate bid item.

Does the project need to have an ESC Lead on the project when you transfer the permit?

Yes, or the project needs to include the Environmental Compliance Lead (ECL).

Will Special Provisions be needed to address our choice of specific active chemical treatment BMPs like chitosan enhanced sand filtration (CESF) or electro-coagulation?

No, Special Provisions will no longer be used to require active chemical treatment systems. If WSDOT feels that using an active chemical treatment system is warranted, the project should include it in the TESC plan so the Contractor can include those costs in their bid. However, the transfer GSPs allows the contractor to adopt and modify the WSDOT TESC plan or make their own TESC plan. So if the contractor feels that they can achieve compliance without using the active chemical treatment proposed in our TESC plan, they may choose to exclude it in their TESC plan (and exclude associated costs in their lump sum bid). If the contractor's TESC lump sum bid is a lot lower that our engineers estimate for TESC related costs, we can request additional information from the contractor as to how they plan to achieve compliance without active treatment.

Transfer of Coverage Form

Does the project office pick a specific date of transfer for the TOC form? How long does the TOC process take once the form is submitted to Ecology?

No, the specific date of transfer field at the top of the TOC form should not be filled in by the project office, that date will be filled in by the CAPS office (it will be the day after contract execution). Use the most recent version of the Transfer of Coverage (TOC) guidance on the Erosion Control intranet page when filling out the TOC form.

Ecology processes the form immediately and uses the specific date of transfer on the form to determine when coverage will be officially transferred. It may take Ecology several weeks to issue a permit coverage letter to the contractor; however a copy of the submitted TOC form serves as proof of Permit coverage for the contractor until they receive a permit coverage letter from Ecology (should be kept in site log book).

Permitting:

Notice of Intent

Does WSDOT still apply for the Permit by submitting the Notice of Intent (NOI)?

Yes, WSDOT will continue to obtain Permit coverage as usual by submitting the NOI and any additional information that may be required during the permitting process (e.g. information about site contamination, impaired outfalls). It is important that the NOI be filled out correctly; incorrect information can create residual liability for WSDOT after the Permit is transferred. The NOI must be completed through Ecology's online electronic NOI (eNOI) system. Use the NOI guidance on the Erosion Control intranet page.

Reissued Permits

What happens when the Permit is reissued by Ecology in the middle of a contract? Do we need to include language in the contract that unforeseen requirements could be added to the Permit?

No, the transfer GSPs requires the contractor to comply with the Permit. General Condition G4 and G8 of the Permit cover reissuance and the duty to reapply. We could incur costs due to changes in the reissued Permit but that is a risk we keep and pay for rather than have the contractor bid for unknown changes that may be added to the Permit. If Permit changes are substantial, it may require a change order.

Who reapplies for coverage under the reissued Permit – WSDOT or the contractor?

It depends on who owns the Permit during the reapplication period (usually several months in the spring before the current Permit expires). It is generally easier for WSDOT to reapply for coverage because we submitted the Notice of Intent, so if WSDOT still owns the permit during the reapplication period, it is best if WSDOT reapplies. However, if Permit coverage was already transferred when the reapplication period begins, the contractor will need to reapply for coverage.

Construction:

Discharge Sampling and Reporting

Who is responsible for Discharge Monitoring Report (DMR)s before the Permit is transferred?

WSDOT is the permittee from the time the Permit is issued by Ecology until coverage is transferred (specific date of transfer should be the day after contract execution). Therefore project offices will need to ensure the monthly Discharge Monitoring Reports (DMRs) are submitted during this pre-construction period in which the Permit is active. Project staffs are responsible for ensuring pre-construction DMRs are submitted as required prior to Permit transfer. For more information refer to the Monthly DMR Procedures guidance on the Erosion Control intranet page.

Compliance Assurance

What about Contractor staging areas far from the construction site on private property? Does the permit cover those locations and what role does WSDOT play with compliance on off-site staging areas?

Special Condition S1.C.2 of the Permit covers stormwater runoff from construction support areas directly related to the permitted project. This has been a compliance challenge for WSDOT owned permits in the past because we do not have operational control over these off-site areas. WSDOT

developed TESC plans will not include these off-site areas, but the transfer GSPs require the contractor to include these areas in their TESC Plan and comply with the Permit in these areas.

What happens when there is a TESC issue that the contractor could not have reasonably known about or expected, such as offsite water entering the site at an unexpected location (like other plan errors we would be required to address this in a change order)?

We need to ensure that our TESC plans are done to the best of our abilities even though the Permit will be transferred. Identifying risks such as potential sources of offsite water run-on is part of the TESC planning process as outlined in the TESC Manual. If the TESC issue does represent a change to the contract (the example above may not qualify as a change), then there is entitlement to the contractor to be paid for the cost of the added Work.

WSDOT Responsibilities

How does the transfer of coverage change our role in compliance?

The Project Delivery Memo #15-01 provides some insight to this question. In the past we directed the work required for TESC compliance and used force account to pay for it, we do not take this approach when the Permit is transferred to the contractor. The contractor is responsible for all work required to comply with the Permit and the Project Engineer (PE) must enforce the contract provisions. Ensuring compliance with the Permit is a contract enforcement issue. While transferring the Permit does minimize some of the liability associated with "operational control", WSDOT is ultimately still liable in that we must enforce the contract to ensure the contractor is complying with the Permit.

Our inspectors must attend our internal Construction Site Erosion and Sediment Control training to ensure they understand the current Permit requirements so they can effectively identify compliance concerns in the field. Inspectors should notify the contractors CESCL (ESC Lead) about any identified compliance concerns (providing a picture is helpful). Inspectors shall not direct the work needed to resolve the compliance concern; they should simply reference the Permit requirement that is not being complied with. Inspectors can provide support in identifying solutions, but they must be careful to provide suggestions not directions. Inspectors should document the compliance concern identified and date the contractor was first notified in their Inspector Daily Reports (IDRs).

PEs review IDRs regularly and should evaluate the severity of the compliance concern and initiate contract enforcement strategies as deemed appropriate. There is some flexibility in how the PE elevates contract enforcement issues, but compliance with the Permit must be enforced under the contract. Suspension of work should be used if the contractor fails to resolve the compliance concern in a timely manner, especially if the concern has the potential to result in a non-compliance event that may pose a threat to human health or the environment. When evaluating the severity of a compliance concern and whether it is being resolved in a "timely manner", keep in mind the difference between the adaptive management Permit requirements and failure to comply with a Permit requirement. For example, silt fence that needs maintenance is an adaptive management issue; the contractor has 10 days to resolve these types of issues once they have been identified. However, failure to install sediment control BMPs (like silt fence) in an area before work begins is a Permit violation, there is no 10 day grace period to comply. Understanding these subtleties of the Permit is why it remains important for our inspectors to attend WSDOT's internal Construction Site Erosion and Sediment Control training and maintain a CESCL when feasible.

How do we track/verify compliance in the field besides visual confirmation that BMPs are in place?

Compliance is more than having BMPs in place, BMPs are required to be installed properly and maintained or adapted as needed to prevent polluted discharges. To help ensure contractors are complying, WSDOT inspectors should walk the site regularly to ensure BMPs are installed and functioning as required. Findings of non-compliance should be documented in the Inspector Daily Reports (IDRs), the contractor should be notified of the issue, and the issue becomes a matter of contract enforcement (the contract requires compliance with the Permit). Inspectors should also review the site log book to ensure the contractor is maintaining it as required and adaptively managing the TESC Plan as needed. The transfer GSP requires the contractor to develop and maintain a BMP tracking table to show that TESC issues are resolved within 10 days of being identified. Inspectors should also verify that the contractor is collecting discharge samples and submitting the data in the Discharge Monitoring Reports (DMRs) as required. The DMRs using can be reviewed through Ecology's PARIS system and automatic alerts can be set up in Ecology's WebDMR system so WSDOT inspectors will be notified when the contractor submits the DMR. The last resort for verifying compliance is the collection of compliance verification discharge samples as described in the non-compliance events section of the Project Delivery Memo #15-01.

Does the ECAP still apply when the Permit has been transferred?

Yes, The ECAP is still required when non-compliance events are identified on projects that transfer the Permit. It doesn't matter who identified the non-compliance event, the ECAP must be initiated to ensure proper notification and resolution. ECAP form #422-011 should be completed by the contractor and submitted to the PE within 48 hours of the non-compliance evert so WSDOT has the details needed to understand what happened, how it will be resolved, and whether resource agencies have or must be notified. Project staff should use the contractor completed ECAP form to enter the information into the Commitment Tracking System (CTS).

Contract Enforcement

How should Division 8-01 of the Standard Specifications be applied during construction?

The construction requirements in Division 8-01 still apply, the transfer GSPs are only intended to supplement Division 8-01. In some cases, specifically the maintenance, removal, measurement, and payment sections of 8-01 are substantively changed by the transfer GSPs because when lump sum is used the measurement of unit and force account items no longer apply.

If the Contractor proposes to use a different BMP or additional BMPs than what was shown in the TESC Plan would WSDOT have to pay for it?

No, unless there is a change to the contract and then the change order for the new work would also address the erosion control costs associated with the change.

Do the materials requirements in Division 9 still apply when the project is transferred?

Yes, the contractor needs to comply with the Standard Specifications for BMP materials covered in Division 9. This is important because some BMP manufacturers use chemicals in their products that can harm the environmental and our materials specifications help ensure we do not allow such products on our projects. When a Standard Specification does not exist for a BMP, the contractor could use any material provided that it complies with Permit requirements.

Notice of Termination

Does the contractor submit the NOT?

Yes, in accordance with the transfer GSP they shall prepare a NOT after they have achieved Physical Completion. They must submit the completed NOT to the Engineer before submitting it to Ecology. In some cases, if the Work is complete but the site has not achieved final stabilization, the Permit may be transferred back to WSDOT. If the Permit is transferred back to WSDOT, project staffs again become responsible for all Permit compliance work including submitting the monthly Discharge Monitoring Reports into Ecology's WebDMR system. Refer to the Monthly DMR Procedures guidance on the Erosion Control intranet page.