

DOT&PF Instructions

SWPPP CGP Noncompliance Notification (Form 25D-143)

The following guidance is intended for the person who has been designated by each Region's Construction Chief to be the person who makes reports of Construction General Permit (CGP) noncompliance to regulatory agencies.

Requirements

The CGP states: "The permittee shall report any noncompliance event that may endanger health or the environment as follows: A report must be made: Orally within 24 hours after the permittee becomes aware of the circumstances, and In writing within five days after the permittee becomes aware of the circumstances. (CGP Appendix A, Part 3.4)

Who makes the report?

DOT&PF's policy statewide is for the Project Engineer to call the Regional Storm Water Specialist when there is a possibility that this reporting is required. Then the Regional Storm Water Specialist decides whether a reportable event has occurred and if so, they report for DOT&PF.

The Contractors, as co-permittees, are responsible for their own reporting. However, the standard specification requires that the contractor "to the extent possible coordinate reports to DEC" (Section 641-3.01.3). The best coordination would be when the DOT&PF and contractor's reports use the same wording, times and dates, etc.

What is reportable?

The CGP describes three types of events that require the "24-hour reporting" (CGP Appendix A, Part 3.4.3). They are:

- an unanticipated bypass
- an upset that exceeds a permit limit
- a violation of a permit discharge limitation.

For any of these three events to require reporting, the storm water discharge must exceed any effluent limitation in the permit. This means that the pollutant (such as turbidity or oil) must enter storm water runoff and flow to a receiving water body or wetland that is a water of the United States or a municipal separate storm sewer system (MS4) that leads to waters of the U.S. If a polluted storm water discharge does not enter waters of the U.S. or a MS4, then it is not reportable under the "24-hour reporting" requirement. If a pollutant enters a water of the U.S. or a MS4, but is not carried there by storm water, it is not reportable under the "24-hour reporting" requirement. Always remember that there may be other reporting requirements for pollutants that go directly to water or to land.

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Situations where you might see a reportable discharge include:

- a turbid plume of water in a ditch on the project enters an adjacent stream untreated and the turbidity is high enough that it still creates a visible brown plume in the stream
- A drain inlet protection device is full of sediment and fails, dumping all the sediment down into the water in the system and the storm water system is a MS4
- There is a visible oil sheen in storm water that is flowing overland across the site and into a stream untreated and you see the sheen in the stream as well

Bypass. A bypass is “the intentional diversion of waste streams from any portion of a treatment facility” (40 CFR 122.41[m]). These would most likely occur during large storm events.

An example would be when a sediment basin is close to full and there is so much rain and runoff that it is about to overflow. Rather than letting it overflow in a way that might flood a nearby facility, the project staff decide to create a new outlet to reduce the basin water volume in a controlled manner. However, the new outlet probably wouldn't have the treatment (skimmer or floating weir), since the crew are working quickly and the situation was unexpected. The controlled new outlet would be the bypass that let turbid water discharge and that requires reporting.

Upset. An upset is “an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, lack of preventative maintenance, or careless or improper operation” (40 CFR 122.41[n]). Since the CGP requires or implies that BMPs be designed for the runoff of a 2-year, 24-hour storm, when a larger storm event occurs, BMPs may be overwhelmed.

An example of an upset would be when a sediment basin is close to full and a large storm causes the basin to fail. The water going over the sides may not yet be adequately treated. If so, if the turbid overflow reaches a water of the U.S., then it requires reporting.

Violation of Discharge Limitation. The third event that the CGP lists in the 24-hour reporting requirement is “a violation of a maximum daily discharge limitation for any of the pollutants listed in the permit as requiring 24-hour reporting.” The CGP doesn't list any pollutants, but it requires design and selection of control measures so that the discharge meets water quality standards (CGP Part 3.1.1).

Example situations include:

- Storm water is discharged to a water body or storm drain without treatment by a temporary BMP

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- Storm water is discharged to a water body or storm drain without adequate treatment because the BMP was seriously damaged, not properly maintained, not properly installed, overwhelmed or the BMP failed
- An allowable non-storm water is discharged to a water body or storm drain without a measure to control or reduce the discharge
- A non-storm water that is not allowable is discharged to a water body or storm drain (the list of allowable discharges is in CGP Part 1.4.2.)
- A prohibited discharge flows in storm water to a water body or storm drain (see CGP Part 4.7)
- Spilled petroleum products or chemicals mix in storm water and then are discharged to a water body or storm drain

If you are in doubt, it is better to report than to not report. Usually, no sampling is required. Based on visual monitoring of the receiving water, the inspector can estimate whether a discharge is likely to have exceeded limitations for the common construction pollutants, turbidity and oil. However, if sampling was conducted, then it will be clearer to know when to report if the results are elevated levels.

Oral 24-Hour Report

The Regional Storm Water Specialist makes the oral report on behalf of DOT&PF. The Contractor, as co-permittee, is responsible for their own reporting. However, the reports by DOT&PF and the contractor should be coordinated so that they don't provide inconsistent information. Use the following checklist to ensure a complete oral report. Keep the oral report simple and brief.

Make the oral report within 24 hours of discovery of the incident to:

1. DEC compliance toll-free number: 877-569-4114

CONSTRUCTION GENERAL PERMIT NONCOMPLIANCE ORAL REPORT CHECKLIST

- The co-permittee names
- Project name
- DOT&PF CGP tracking number
- Description of the noncompliance
- Cause of the noncompliance
- The start time and date of the noncompliance
- The end time and date of the noncompliance
- When the noncompliance was (or will be) corrected
- Steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance

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Written Five-Day Report

The Regional Storm Water Specialist prepares and submits the written report for DOT&PF. The 25D-143 form is designed to ensure inclusion of the specific information that is required by the CGP.

The DEC requires that the written report be certified. Therefore, the Regional Storm Water Specialist needs to sign under the certification paragraph, then scan the signed copy and transmit the PDF file by email.

Send the PDF of the completed report template by attachment to an electronic message within five days of discovery of the incident.

1. DEC, send to: dec-wgreporting@alaska.gov or fax to 907-269-4604
2. Send a copy of the written report to Erik Norberg, DOT&PF Statewide Environmental Program Manager at erik.norberg@alaska.gov

Provide the original report to the contractor for inclusion in the SWPPP of record.

Below are some examples of how you might complete the descriptive parts of the form.

Example 1. Description of the noncompliance and its cause

There was a discharge of turbid water from the project haul road into Green Creek. The discharge of turbid water was caused by heavy rainfall and snowmelt exceeding the design parameters of sediment controls between the haul road and the creek. These controls include a sediment basin and silt fence. A storm event of 4" on June 5, 2014 was followed by another 7" that fell in the next five days. The two-year, 24-hr. storm event for the project location is 5".

Example 2. Actions taken to reduce, eliminate, and prevent reoccurrence

The SWPPP was amended to state that informal inspections will be conducted frequently during rainfall events once the rainfall accumulation has reached 5" so that preventive actions may be taken prior to discharges occurring.

Example 3. Corrective Actions

The sediment basin was cleaned of accumulated sediment and the walls repaired. The silt fence was repaired and cleaned of accumulated sediment. The creek was inspected between the project and the discharge to the ocean. The discharged sediment was not observed to have been deposited in the creek length inspected, probably because of the high creek flows associated with the storm.