




February 5, 2015

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SUBJECT: Project Delivery Memo # 15-01 - Transferring the NPDES Construction Stormwater General Permit to the contractor

## PURPOSE AND DIRECTION

### Background

Starting in 2011 WSDOT has transferred coverage of the Department of Ecology Construction Stormwater General Permit (permit) to the contractor on several pilot projects. Permit transfer is also used on design-build projects. When a project transfers the permit to the contractor, the contractor becomes responsible for all permit requirements. Findings from the pilot projects indicate that transferring the permit to the contractor can provide multiple benefits including:

- Reduced administrative time in tracking costs by force account and unit bid.
- Increased contractor responsiveness and accountability to permit requirements.
- Improved contractor planning (e.g. preserving vegetation and phasing work).

Due to these findings, WSDOT is moving to make the permit transfer a Standard Specification in 2016. As an interim step, the Construction Office and the Environmental Services Office created a statewide General Special Provision (GSP) for transferring the permit to the contractor (a group of GSPs collectively called the transfer GSP).

Lump sum was used to pay for permit compliance in the pilot projects, and lump sum will continue to be used in the transfer GSP. No substantial change in the quality of erosion control work occurred using lump sum in the pilot projects, although using lump sum allows the contractor to think proactively about erosion and water pollution control because they must include the associated costs in their bid proposal. Using lump sum also provides more project cost predictability for the Engineer.

### **Projects Affected**

The transfer GSP must be used on all projects that require coverage under the permit, unless the Assistant State Construction Engineer assigned to the region in which the project is located authorizes a project to forgo transferring the permit (may be authorized for short duration projects or projects with other justifications).

### **Direction**

This change will go into effect immediately for all affected projects. *(Note: The GSP used to implement the permit transfer process was approved and became effective January 5, 2015; and some projects have already used the GSP.)*

### **REGIONAL ACTIONS REQUIRED**

**Design** - WSDOT will continue to design a preliminary Temporary Erosion and Sediment Control (TESC) plan (narrative and plan sheets) in accordance with WSDOT's [TESC Manual M 3109](#). The TESC plan sheets will be included in the contract plans and the TESC narrative will be included in the contract appendix. TESC plans will be used to quantify the engineer's estimate and provide a starting point plan for the contractor. The contractor can create its own TESC plan in accordance with WSDOT's [TESC Manual M 3109](#) or adopt WSDOT's TESC plan and modify it to meet work methods and schedule. The contractor is not allowed to modify the placement of High Visibility Fence (as shown on preliminary TESC plan sheets) that is used to protect sensitive areas not permitted or approved for impacts.

**Permitting** – WSDOT will continue to obtain coverage under the permit by submitting the Notice of Intent to the Department of Ecology (Ecology). Permit coverage is required prior to advertisement of a contract. It is important that the Notice of Intent be filled out correctly; incorrect information can create residual liability for WSDOT after the permit is transferred. When the transfer GSP is included in a contract, a partially filled out Transfer of Coverage form will also be included in the contract. The contractor will be required to fill out certain sections of the Transfer of Coverage form and return the completed form to WSDOT so it can be signed and submitted to Ecology. Use the Notice of Intent guidance and Transfer of Coverage instructions on the [Erosion Control](#) webpage to ensure these steps are done properly.

**Construction** – WSDOT inspectors will continue to have a key role in inspecting the project for compliance with the permit. The tools for ensuring compliance will be to enforce the contract and document compliance concerns (e.g. Inspector's Daily Reports, Environmental Compliance Assurance Procedure, and the Commitment Tracking System). Project Engineer offices will administer the contract as described in the [Construction Manual M41-01](#). Once permit coverage is transferred to the contractor, WSDOT staff shall not direct erosion control related work. However, environmental compliance is important and WSDOT staff should support the contractor's efforts to comply with the conditions in the permit.

Special Condition S1.C.2 of the permit authorizes stormwater discharges from support activities related to the permitted construction site. The TESC plan developed by WSDOT will only include work areas identified in the contract; it will not include the contractor's off-site support activity locations (e.g. staging yards, material storage areas, borrow areas) that may be required to be included in the contractor's TESC plan. When the permit is transferred to the contractor, the contractor's TESC plan is required to include support activity locations related to the permitted construction site (as defined in the permit Special Condition S1.C.2.) to ensure the permit requirements are being met in these locations.

Contracts with high to moderate erosion related risks (defined in 2-1.1 of the [TESC Manual M 3109](#)) should include a TESC compliance incentive for the contractor. The contractor will earn an incentive during the period of a progress estimate when work by the contractor complies with all contract requirements for Erosion Control, Water Pollution Prevention, and the permit. The TESC compliance incentive is being used in the GSP during this transitional period before the permit transfer becomes a Standard Specification.

**Monthly Reporting** – Monthly Discharge Monitoring Reporting (DMRs) requirements begin as soon as permit coverage is issued, even if construction has not started. WSDOT is responsible for monthly DMRs once the permit coverage has been issued until it has been transferred to the contractor. WSDOT staff must continue to use WSDOT's Construction Water Quality Monitoring database to ensure "pre-construction" DMRs are submitted until the transfer of coverage is completed and the contractor begins submitting DMRs. If the permit is transferred mid-month (based on the transfer effective date on the Transfer of Coverage form), both WSDOT and the contractor will be required to submit separate DMRs for that month. The contractor must submit its discharge data directly to [Ecology's WebDMR database](#); contractor discharge data should not be entered into WSDOT's Construction Water Quality Monitoring database. Project inspectors should verify that the contractor submits DMRs by using Ecology's [PARIS](#) database. WSDOT staff must continue to communicate with the Environmental Services Office Erosion Control program (Elsa Pond or Brandon Iwasaki) to ensure DMR requirements are met

on new projects with the permit or projects that have the permit transferred back to WSDOT.

***Non-Compliant Events*** – WSDOT inspectors shall visually monitor project sites for potential compliance issues; the Project Engineer's office will notify the contractor when issues are observed. Non-compliant events must be reported in accordance with WSDOT's Environmental Compliance Assurance Procedure (ECAP) (WSDOT [Construction Manual M41-01](#), Section 1-2.2K(1)). All non-compliant events shall be documented in WSDOT's [Commitment Tracking System](#) (CTS). The ECAP can be initiated by anybody; however, as the permittee the contractor is responsible for phone reporting high-turbidity ( $\geq 250$  NTU) discharges within 24 hours (permit Special Condition S4.C.5.b) and non-compliance events that pose a threat to human health or environment (permit Special Condition S5.F) to Ecology's regional Environmental Report Tracking System.

WSDOT inspectors shall only collect compliance verification discharge samples if the contractor is not taking action when non-compliance is suspected. For example, when a discharge is suspected to be 250 NTU or higher and the contractor has not implemented the permit requirements for such discharges. Compliance verification discharge samples shall not be used by WSDOT as a reason to direct work but they can be used to enforce the contract or initiate ECAP.

***Annual Assessments*** – In accordance with the WSDOT Municipal Stormwater Permit, WSDOT will continue to perform the annual erosion control fall assessments on all WSDOT projects with moderate to high erosion related risks (defined in Section 2-1.1 of the [TESC Manual M 3109](#)). Regional Project Engineer offices with projects that meet these criteria will still be prompted by the Environmental Services Office to participate in these annual assessments, even if the permit has been transferred.

***Permit Termination*** – When the requirements of the contract for Physical Completion have been met, the contractor prepares the Notice of Termination for submittal to Ecology. The contractor is required to submit the Notice of Termination to the Engineer prior to submitting it to Ecology to allow the Engineer an opportunity to review the site for compliance with the final stabilization requirements in Special Condition S10 of the permit. For some contracts Ecology's requirements for final stabilization may extend the duration of the contract. If all other work required for contract completion has been performed, the GSP allows the contractor to request a transfer of the permit back to WSDOT. If the Engineer approves this request, the Notice of Termination form will not be submitted to Ecology, rather the contractor will submit a Transfer of Coverage form instead. It is important to notify the Erosion Control program (Elsa Pond or Brandon Iwasaki) if the permit is transferred back to WSDOT so they can resume submitting monthly DMRs until permit coverage is terminated.

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As WSDOT moves toward making this a Standard Specification, regions should communicate with their Assistant State Construction Engineer in regard to their experiences with the permit transfers. Headquarters Construction and Environmental Offices are specifically interested in hearing lessons learned, feedback on the performance of the transfer GSP, and if certain types of projects should not transfer the permit. Please contact Elsa Pond, the WSDOT TMDL Lead at (360)570-6654 if you have questions about this memo.

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